

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> ██	<b>GRADE</b> AB	<b>AFSN/SSAN</b> ████████████████████
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<b>TYPE GEN</b>	<input checked="" type="checkbox"/>	<b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
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<b>COUNSEL</b>		<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>No</b>		
	<input checked="" type="checkbox"/>		

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

<b>ISSUES</b>	A94.11 A92.21 A93.01 A93.05 A93.07 A94.05 A90.07	<b>INDEX NUMBER</b>	A67.09	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
				1 ORDER APPOINTING THE BOARD
				2 APPLICATION FOR REVIEW OF DISCHARGE
				3 LETTER OF NOTIFICATION
				4 BRIEF OF PERSONNEL FILE
				COUNSEL'S RELEASE TO THE BOARD
				ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
				TAPE RECORDING OF PERSONAL APPEARANCE

<b>HEARING DATE</b>	19 Oct 2004	<b>CASE NUMBER</b>	FD-2004-00038
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**APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

Case heard at Andrews AFB MD via video teleconference with Travis AFB CA.

Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.

<b>INDORSEMENT</b>	<b>DATE: 10/25/2004</b>
<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

**FD-2004-00038**

**GENERAL:** The applicant appeals for upgrade of discharge to honorable.

The applicant personally appeared via video-teleconference from Travis AFB CA before the Discharge Review Board (DRB) at Andrews AFB MD on 19 October 2004. The applicant's father, [REDACTED] also testified before the Board.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

**FINDINGS:** Upgrade of discharge is denied.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

**ISSUE:**

Issue 1: Applicant contends his discharge was improper because the Air Force prosecuted him for a crime for which the civilians were not going to prosecute him. This contention is without merit. The military justice system is independent of the civilian system and is not bound by the civilian decision not to prosecute a particular case.

Issue 2: The applicant contends his discharge was improper because the commander denied him access to an attorney. At the hearing he was unable to specify when he was denied access to an attorney. He stated he thought it was during his Article 15, but the records indicate he was given time to consult with an attorney, did so, and did not ask for a delay in the proceedings. He also consulted counsel regarding his administrative discharge and submitted matters for the separation authority's consideration.

Issue 3: The applicant claims his discharge was improper because the offense for which he was court-martialed should have been handled through non-judicial punishment. The disposition of an offense lies within the discretion of the commander. The applicant presented no evidence the commander abused his discretion by deciding to take the charge to a court, and in light of the applicant's previous misconduct the decision to court-martial the applicant was reasonable.

Issue 4: The applicant contends his discharge was inequitable because it was too severe compared with today's standards. The records indicated the applicant was court-martialed, received an Article 15, a Letter of Reprimand, four Records of Individual Counseling and was decertified from his duty for misconduct. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded his misconduct was a significant departure from the conduct expected of all military members. The characterization of the discharge is in accordance with today's standards.

Issue 5: Applicant contends that his discharge was inequitable because of his age and deprived background (the applicant explained at his personal appearance that he meant his failed marriage when he referred to his deprived background). The applicant's misconduct did not appear to be significantly linked to the applicant's marital status. The applicant's father appeared before the Board with the applicant and testified to the stable and sheltered nature of the applicant's childhood. The DRB recognized the applicant was 20 years of age when the discharge took place. However, there is no evidence he was particularly immature or did not know right from wrong. The Board opined the applicant was older than the vast majority of first-

term members who properly adhere to the Air Force's standards.

Issue 6: Applicant contends his post-service activities justify an upgrade. The DRB noted that the applicant was attending college, but did not find that justifies upgrading the applicant's discharge.

**CONCLUSIONS:** The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and that the applicant was provided full administrative due process.

In view of the foregoing findings the Board further concludes that there exists no legal or equitable basis for upgrade of discharge, thus the applicant's discharge should not be changed.

Attachment:  
Examiner's Brief

DEPARTMENT OF THE AIR FORCE  
AIR FORCE DISCHARGE REVIEW BOARD  
ANDREWS AFB, MD

(Former AB) (HGH A1C)

MISSING MEDICAL RECORDS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Seymour-Johnson AFB, NC ON 13 May 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 4 Sep 82. Enlmt Age: 18 11/12. Disch Age: 20 8/12. Educ: HS DIPL. AFQT: N/A. A-77, E-59, G-41, M-46. PAFSC: 2F031 - Fuels Apprentice. DAS: 6 Mar 02..

b. Prior Sv: (1) AFRes 22 Aug 01 - 22 Oct 01 (2 months 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 23 Oct 01 for 6 yrs. Svd: 1 Yrs 6 Mo 21 Das, of which AMS is 1 yr 6 months 11 days (excludes 10 days lost time).

b. Grade Status: AB - 22 Apr 03 (SPCMO No.8, 23 Apr 01)  
Amn - 29 Jan 03 (Article 15, 29 Jan 03)  
A1C - Unknown

c. Time Lost: 18 Jan 03 thru 28 Jan 03 (10 days).

d. Art 15's: (1) 29 Jan 03, Seymour-Johnson AFB, NC - Article 134. You did, at or near Goldsboro, North Carolina, on or about 12 Nov 02, wrongfully communicate to [REDACTED] a threat that "I will have my boys from California come and kill you" or words to that effect. You did, on or about 12 Dec 02, wrongfully communicate to [REDACTED] a threat that "You will catch one in the dome" or words to that effect. Reduction to Airman, and 30 days restriction. (Appeal/Denied) (No mitigation)

e. Additional: RIC, 16 DEC 02 - Uniform not meeting standards.  
LOR, 23 JUL 02 - Dereliction of duty.  
AF Form 2419, 22 Jul 02 - Decertified for failing to properly use the fillstand checklist.  
RIC, 18 JUL 02 - Failure to comply with Flightline Safety.  
RIC, 17 JUL 02 - Late for duty.  
RIC, 03 JUN 02 - Late for duty.

f. CM: Special Court Martial Order No.8 - 23 Apr 03

CHARGE: Article 80. Plea: Not Guilty. Finding: Guilty.  
 Specification: Did, at or near Greenville, North Carolina, on or about 18 Jan 03, attempt to willfully damage a 1993 Ford Mustang automobile, the property of [REDACTED], valued at an amount greater than \$500.00, by striking one of the automobile's windows with a metal car jack. Plea: Not Guilty. Finding: Guilty except the words "valued at an amount greater than \$500.00." for the excepted words, NG. Sentence adjudged on 8 Apr 03: Reduction to AB, and forfeiture of \$200.00 for one month.

g. Record of SV: None.

h. Awards & Decs: NDSM, AFOUA, AFTR.

i. Stmt of Sv: TMS: (1) Yrs (8) Mos (12) Das  
 TAMS: (1) Yrs (6) Mos (11) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 28 Jan 04.  
 (Change Discharge to Honorable)

Issue 1: The Civilian judge wanted me to complete my service honorable and I would have done so had not my squadron went out there (sic) way to gain Federal juristiction (sic) over the civil matter. Privacy act violation was committed by the Unit at this time as well and I was never helped by PA department after my squadron gained juristiction (sic). There was no evidence of damage on the vehicle and there was never a breaking or entering of the vehicle which Pitt County determined and so dropped that charge. Yet for the more minor charge which was an attempt to damage property less then \$500 in value the public defender had announce (sic) to me that the judge was arranging a prayer for judgement for me in which would actually never go on my record. Th Millitry (sic) knowing this instead of letting it go through the Pitt County system forcefully went for juristiction (sic) and inflicted more punishment upon me and to the point it became excessive. After I served 11 day (sic) in jail for a crime Pitt County agreed never happened.

**ATCH**

1. Arguments and Contentions.

31MAR04/ia



DEPARTMENT OF THE AIR FORCE  
4TH FIGHTER WING (ACC)  
SEYMOUR JOHNSON AIR FORCE BASE NC

FD2004-00038

28 APR 03

MEMORANDUM FOR [REDACTED]

FROM: 4 LRS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically minor disciplinary infractions. The authority for my recommendation is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, Paragraph 5.49. According to Table 1.3, Rule 11 of AFI 36-3208, your service can be characterized as honorable, general, or under other than honorable conditions. I am recommending your service be characterized as general.
2. My reasons for this action are:
  - a. On 3 June 2002, you reported late for duty. For this misconduct, you received a Record of Individual Counseling. This is documented by an AF Form 174, dated 3 June 2002 (Tab 1a).
  - b. On 17 July 2002, you reported late for duty. For this misconduct, you received a Record of Individual Counseling. This is documented by an AF Form 174, dated 17 July 2002 (Tab 1b).
  - c. On 18 July 2002, you failed to comply with flightline safety procedures when you backed unit 461 towards a KC-135 aircraft without repositioning a chock in violation of T.O. 00-25-172, page 5.2, paragraph b. For this misconduct, you were decertified in your training records and you received a Record of Individual Counseling. This is documented by an AF Form 174, dated 18 July 2002 with attachments (Tab 1c).
  - d. On 19 July 2002, you were derelict in the performance of your duties in that you disengaged the Scully overfill prevention system while refilling refueling unit 98L00009 on fill stand one at Bulk Storage. Additionally, you disengaged the Scully system and proceeded to refill the refueling unit without having a second person on the scene with you. For this misconduct, you received a Letter of Reprimand. This is documented by a Letter of Reprimand, dated 23 July 2002 (Tab 1d).
  - e. On 22 July 2002, you failed to properly use the fillstand checklist. For this misconduct, you were decertified on this task in your training record. This is documented by an AF Form 2419, dated 22 July 2002 (Tab 1e).
  - f. On 12 November 2002, you wrongfully communicated a threat to another military member in violation of Article 134 of the Uniform Code of Military Justice. For this misconduct, you received an Article 15. This action is documented by an AF Form 3070, dated 16 January 2003 (Tab 1f).
  - g. On 12 December 2002, you wrongfully communicated a threat to another military member in violation of Article 134 of the Uniform Code of Military Justice. For this misconduct, you received an Article 15. This action is documented by an AF Form 3070, dated 16 January 2003 (Tab 1f).

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h. On 16 December 2002, you failed to meet and maintain Air Force Standards of dress and appearance. For this misconduct, you received a Record of Individual Counseling. This is documented by an AF Form 174, dated 16 December 2002 (Tab 1g).

i. On 18 January 2003, you wrongfully attempted to damage a vehicle belonging to another military member. For this misconduct, on 8 April 2003, you were convicted at a special court-martial. This is documented by an AF Form 1359, dated 8 April 2003 (Tab 1h).

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force, and if you are discharged, how your service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force.

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [redacted] Area Defense Counsel, at 1185 Cannon Street, Suite 308, Seymour Johnson AFB NC. The Area Defense Counsel can be reached at extension [redacted]. Your appointment has been scheduled on 28 Apr 03 (date) at 1300-1500 (time). You may consult civilian counsel at your own expense.

5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 1 May 03 (allow three duty days) unless you request and receive an extension for good cause shown. I will send them to the separation authority.

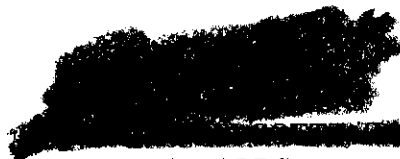
6. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.

7. You have been scheduled for and attended a mandatory medical examination at the 4th Medical Group, Seymour Johnson AFB, at Family Practice (Gold Team) at 0810 hours on 25 February 2003 with [redacted]

8. You have been scheduled for and already attended a mandatory Transition Assistance Program (TAPs) counseling on 24 February 2003 at 1300 hours [redacted]

9. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use at the unit orderly room or the Area Defense Counsel office.

10. Execute the attached acknowledgement and return it to me immediately.



, USAF

Commander, 4 LRS

Attachments:

Supporting Documentation:

- a. AF Form 174, dated 3 June 2002
- b. AF Form 174, dated 17 July 2002
- c. AF Form 174, dated 18 July 2002 with attachments
- d. Letter of Reprimand, dated 23 July 2002
- e. AF Form 2419, dated 22 July 2002
- f. AF Form 3070, dated 16 January 2003
- g. AF Form 174, dated 16 December 2002
- h. AF Form 1359, dated 8 April 2003