

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

FD-2004-00063

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reason and authority for the discharge.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined to exercise this right.

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

FINDINGS: Upgrade of Discharge and change of reason and authority for discharge are denied.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received a General discharge for Homosexual Conduct. Applicant also received an Article 15 for DWI, making a false official statement and operating a vehicle on base when his driving privileges were suspended. The applicant states that he would also like to receive his GI Bill. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

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 A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Charleston AFB, SC on 6 May 03 UP AFI 36-3208, para 5.36 (Homosexual Conduct). Appeals for Honorable Discharge and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 24 Feb 80. Enlmt Age: 18 9/12. Disch Age: 23 2/12. Educ: HS DIPL. AFQT: N/A. A-23, E-36, G-48, M-26. PAFSC: 3P051 - Security Forces Specialist. DAS: 23 Jul 02.

b. Prior Sv: (1) AFRes 24 Nov 98 - 20 Apr 99 (4 months 28 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 21 Apr 99 for 4 yrs. Extended 12 Apr 01 for 4 months Svd: 4 Yrs 0 Mo 16 Das, all AMS.

b. Grade Status: A1C - 31 Mar 03 (Article 15, 31 Mar 03)
SrA - 21 Apr 02
A1C - 21 Aug 00
Amn - 21 Oct 99

c. Time Lost: None.

d. Art 15's: (1) 31 Mar 03, Charleston AFB, SC - Article 92. You, having the knowledge of a lawful order issued by Col [REDACTED] to refrain from driving while on base, an order which it was your duty to obey, did, on or about 1 Mar 03, fail to obey the same by driving while on base. Article 107. You, did, on or about 1 Mar 03, with intent to deceive, make a false official statement to SrA [REDACTED], to wit: that you did not operate your vehicle on 1 Mar 03 on base, or words to that effect, which statement was totally false, and was then known by you to be so false. Article 111. You, did, on or about 23 Feb 03, near the Dorchester Gate, physically control a vehicle, to wit: a passenger car, while drunk. Article 117. You, did, on or about 22 Feb 03, wrongfully use provoking words, to wit: "Fuck you bitch", or words to that effect towards SSgt [REDACTED] U.S. Air Force. Reduction to A1C, and 7 days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 21 Apr 99 - 20 Dec 00 Cannon AFB 3 (Initial)
 21 Dec 00 - 20 Dec 01 Kunsan AB 4 (Annual)
 21 Dec 01 - 20 Dec 02 Charleston AFB 5 (Annual)

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

i. Stmt of Sv: TMS: (4) Yrs (5) Mos (13) Das
 TAMS: (4) Yrs (0) Mos (16) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 5 Feb 04.
 (Change Discharge to Honorable and Change the Reason and Authority)

Issue 1: I am requesting an upgrade due to the reason of my discharge does not constitute a "General" discharge. I was discharged for "Homosexual Act," which was really just a plain statement. I ask the board to look at the reason for my discharge and not my previous actions. I did serve over four years and only had a few months left. I put money into my MGI Bill and would desperately like to be able to use it. I scored a 99% on my EOC, which not many come close. I ask the board to look at the reason for my discharge and not the mistakes I made in the past. Thank you.

ATCH

None.

17MAR04/ia

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 437TH AIRLIFT WING (AMC)

FD 2004-00063



8 April 2003

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MEMORANDUM FOR A1C [REDACTED] 437 SFS

FROM: 437 SFS/CC

SUBJECT: Notification Memorandum—Board Hearing

1. I am recommending your discharge from the United States Air Force for Homosexual Conduct according to AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, under the provisions of paragraph 5.36. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

On 23 Feb 03, you made a statement to MSgt [REDACTED] (437 SFS/CCF) that you are gay. This statement was documented in a Memorandum for Record, dated 23 Feb 03 (atch 1a).

3. This action could result in your separation with a general discharge. I am recommending that you receive an general discharge. The commander exercising special court-martial jurisdiction or a higher authority will make the final decision in this matter, 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 and will probably be denied enlistment in any component of the armed forces and any special pay, bonus, or education assistance funds may be subjected to recoupment.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board. You are entitled to present evidence to rebut the presumption that you engage in, attempted to engage in, have the propensity to engage in, or intend to engage in homosexual acts.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements on your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You have been scheduled for a medical examination. You must report to the 437th Medical Group, ~~Physical Exams~~ at 1240 on 10 Apr 03 for the examination.
Flight Medicine

6. Military legal counsel (Capt. ~~██████████~~ ADC, Bldg. 503, 3-4415/16) has been obtained to assist you. An appointment has been scheduled for you to consult with him on 8 Apr 03 at 1200. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201, *Administration of Military Justice*. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements on your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

8. 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 in the 437 SFS orderly room.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. If you received advanced educational assistance, special pay, or bonuses, and have not completed the period of active duty you agreed to serve, you may be subject to recoupment. Where recoupment is dependent on a finding that the separation is voluntary or because of misconduct, the discharge board (or the separation authority if the board is waived) will make a specific written finding whether the homosexual conduct constitutes a basis for recoupment. A separation for homosexual conduct is voluntary if the member made the homosexual statement; committed, attempted or solicited the homosexual act; or entered or attempted to enter the homosexual marriage for the purpose of seeking separation. Circumstantial evidence may be considered in determining the member's intent.

11. Execute the attached acknowledgment and return it to me immediately.


Commander Capt, USAF

Attachments:

1. Memorandum for Record, dated 23 Feb 03

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2. Derogatory Information
 - a. Article 15, dated 3 Apr 03
 - b. Letter of Counseling, dated 21 Dec 02
2. Airman's Acknowledgement