

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00078

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

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: The Board grants the requested relief.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received a General discharge for Homosexuality and Fraudulent Entry. The Board gave the applicant the benefit of doubt on her enlistment paperwork.

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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge.

Attachment:

Examiner's Brief

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

[REDACTED]

(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Travis AFB, CA on 12 Apr 93 UP AFR 39-10, paragraphs 5-35a & 5-15 (Homosexuality & Fraudulent Entry). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 1 Dec 67. Enlmt Age: 22 7/12. Disch Age: 25 4/12. Educ: HS DIPL. AFQT: N/A. A-95, E-74, G-84, M-87. PAFSC: 46150 - Munitions Systems Specialist. DAS: 12 Feb 91.

b. Prior Sv: (1) AFRes 25 Jul 90 - 9 Oct 90 (2 months 15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 10 Oct 90 for 4 yrs. Extended 26 Oct 92 for 2 months. Svd: 2 Yrs 6 Mo 3 Das, all AMS.

b. Grade Status: A1C - 10 Feb 92
Amn - 10 Apr 91

c. Time Lost: None.

d. Art 15's: None.

e. Additional: AF FORM 286A, 12 MAR 93 - Homosexual acts prior to enlistment.

f. CM: None.

g. Record of SV: 10 Oct 90 - 9 Jun 92 RAF Upper Heyford 5 (Initial)

h. Awards & Decs: SAEMR, NDSM, AFOSLTR W/1 OLC, AFTR, AFOUA.

i. Stmt of Sv: TMS: (2) Yrs (8) Mos (19) Das
TAMS: (2) Yrs (6) Mos (3) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 26 Feb 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Form 214.
3. Notification Memorandum.
4. Letter of Appreciation.
5. Certificate of Appreciation.
6. Three Day Pass Award.

22MAR04/ia

7. SUPPORTING DOCUMENTS (X as applicable) (Please print name and Social Security Number on each document.)

WILL NOT BE SUBMITTED. PLEASE COMPLETE REVIEW BASED ON AVAILABLE SERVICE RECORDS.

X ARE LISTED BELOW AND ARE ATTACHED TO THIS APPLICATION: (Continue on a plain sheet of paper if more space is needed.)

- a. DOCUMENT 1:
DD - 214
- b. DOCUMENT 2:
Letter from Air Force commander explaining discharge.
- c. DOCUMENT 3:
More listed separately

8. ISSUES
The Board will consider any issue submitted by you prior to closing the case for deliberation. The Board will also review the case to determine whether there are any issues that provide a basis for upgrading your discharge. However, the Board is not required to respond in writing to issues of concern to you unless those issues are listed or incorporated by specific reference below. Carefully read the instructions that pertain to Block 8 prior to completing this part of the application. If you need more space, submit additional issues on an attachment.

My discharge was inequitable because my service in the military was honorable and exemplary and the General Discharge does not reflect that (please see supporting documents 3 - 6; and DD-214 line 13). Eleven years ago I was discharged from the Air Force because I am a homosexual and I misrepresented that fact on my enlistment application. My negative response to the application question (DD Form 1966/3, question 36c): "Are you a homosexual or bisexual?" was an isolated incident and was not repeated once I became an active service member. I served honorably, and when I was investigated for homosexuality I admitted that it was true (see supporting document "Notification Letter - Board Hearing" paragraph 2a). The prosecuting Commander stated he had the option of recommending me for an Honorable Discharge, but elected to recommend a General Discharge (see supporting document "Notification Letter - Board Hearing" paragraph 3).

I learned a valuable lesson regarding the effects of lying about my sexual orientation. I tried to hide my sexual orientation because I was afraid and ashamed. That is no longer the case. I know it was wrong of me to lie on my military application. Now, when I interview for a job and I am asked why I received a "General Discharge", I tell the truth - although I believe it is the reason I am sometimes denied a job. I would like to put this behind me. I think I can do that if my discharge is upgraded to "Honorable." I ask that you consider the lessons I have learned, along with the time that has passed since this occurred, and upgrade my general discharge to an honorable one.

Final issue: Shortly after I was discharged, because of the new "Don't Ask - Don't Tell" policy, the question "Are you a homosexual...?" was omitted from military enlistment applications.

Please do not hesitate to contact me if you need any further clarification or documentation.

Thank you for your time and consideration. Sincerely, [Redacted Signature]

- I HAVE LISTED ADDITIONAL ISSUES AS AN ATTACHMENT TO THIS APPLICATION.
- I PREVIOUSLY SUBMITTED AN APPLICATION ON (Enter date) AND AM COMPLETING THIS FORM IN ORDER TO SUBMIT ADDITIONAL ISSUES.
- THE ABOVE ISSUES SUPERSEDE ALL PREVIOUSLY SUBMITTED.

9. CERTIFICATION
I make the foregoing statements as part of my application with full knowledge of the penalties involved for willfully making a false statement. (U.S. Code, Title 18, Section 1001, provides that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

a. DATE (YYYYMMDD) b. SIGNATURE

2004/02/26 [Redacted Signature]

UPON RECEIPT MAIL THIS APPLICATION TO APPLICABLE ADDRESS BELOW

ARMY	NAVY & MARINE CORPS	AIR FORCE	COAST GUARD
Army Review Boards Agency Support Division, St. Louis ATTN: SFMR-RBR-SL 9700 Page Avenue St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)	Naval Council of Personnel Boards 720 Kennon Street, S.E. Rm. 309 (NDRB) Washington Navy Yard, DC 20374-5023	SAF/MIBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Commandant (G-WPM) 2100 Second Street, S.W. Washington, DC 20593-0001



DEPARTMENT OF THE AIR FORCE
20TH EQUIPMENT MAINTENANCE SQUADRON (USAFE)
APO NEW YORK 09194-5000

FD 2004-00078



REPLY TO
ATTN OF: Commander

12 March 1993

SUBJECT: Notification Letter-Board Hearing

TO: A1C [REDACTED] 20 EMS

1. I am recommending your discharge from the United States Air Force for Homosexuality and Fraudulent Entry according to AFR 39-10, under the provisions of paragraphs 5-35a and 5-15. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

a. On or about 10 October 1990, you procured a fraudulent enlistment into the United States Air Force by deliberately misrepresenting and concealing a material fact, to wit: that you were a homosexual, which fact, if known at the time of enlistment, might have resulted in denial of enlistment. Such misrepresentation and concealment occurred on 15 June 1990 when you answered question 36c ("Are you a homosexual or bisexual?"), "No" on DD Form 1966/3, which you certified on DD Form 1966/5; and again on 10 October 1990, when you recertified your answer to question 36c on DD Form 1966/5. In addition to the DD Form 1966, such fraudulent enlistment is evidenced by your admissions to security police investigators on 18 December 1992 and numerous letters seized from your house on 15 Dec 92. (AFR 39-10, para 5-15)

b. On divers occasions prior to entry into active Air Force service up to on or about 18 December 1992, you engaged in homosexual acts as evidenced by your admissions to security police investigators on 18 December 1992 and numerous letters seized from your house on 15 December 1992. (AFR 39-10, para 5-35a)

3. This action could result in your separation with an honorable, general, or under other than honorable conditions discharge. I am recommending that you receive a general discharge. If you contest your separation, the Secretary of the Air Force will make the final decision in this matter. If you do not contest your separation, the commander exercising Special Court Martial (SPCM) jurisdiction or a higher authority will make the final decision in this matter. 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 (AFR 39-10, para 6-9e).

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements in 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 20 Med Gp Hospital, RAF Upper Heyford, at 0730 hrs on 22 Mar 93.

6. Military Legal Counsel, Capt [REDACTED], 20 FW Area Defense Counsel, ext 4688 has been obtained to assist you. An appointment has been scheduled for you to consult him on 15 March 93 at 1030 hrs in bldg 36. 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 AFR 111-1. 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 in 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 Statement as explained in AFR 39-10, attachment 2. A copy of AFR 39-10 is available for your use in the 20 EMS Orderly Room.

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

[REDACTED]
 [REDACTED], Mj, USAF
 Commander

- 3 Attachments
- 1. Evidence in support of discharge
 - 2. Airman's acknowledgement of receipt
 - 3. EPR