

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE AB	AFSN/SSAN [REDACTED]				
TYPE UOTH	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE	RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	No	[REDACTED]		[REDACTED]			
<input checked="" type="checkbox"/>	<input type="checkbox"/>						
MEMBER SITTING			VOTE OF THE BOARD				
			HON	GEN	UOTHC	OTHER	DENY
							X
							X
							X
							X
ISSUES A94.53 A92.19		INDEX NUMBER A67.90		EXHIBITS SUBMITTED TO THE BOARD			
				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		
HEARING DATE 16 Nov 2004		CASE NUMBER FD-2004-00118					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE							
Case heard at Washington, D.C., via video-conference with Randolph AFB, TX.							
Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.							
INDORSEMENT				DATE: 11/22/2004			
TO: SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742			FROM: 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-2004-00118

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

The applicant appeared with counsel, [REDACTED] of the Texas Veterans Commission, and testified before the Discharge Review Board (DRB) at Randolph AFB, TX, via video-teleconference with Andrews AFB, MD, on November 16, 2004. Applicant's mother, [REDACTED] was present but did not testify.

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: Applicant received an Under Other Than Honorable Conditions (UOTHC) discharge for conduct prejudicial to good order and discipline.

Issue 1. Applicant states that his discharge did not reflect his entire service while in the Air Force. The records indicated the applicant received two Article 15s, a vacation action of a suspended reduction, and one Letter of Reprimand, for misconduct to include failure to pay just debts and issuing checks with insufficient funds, failure to follow unit policy for reporting in after returning from TDY, numerous instances of failure to go, and knowingly assisting in the smuggling of underage illegal aliens into the country for which he was detained and questioned by the Immigration and Naturalization Service. His misconduct is well documented and his own statements while under investigation for the alien smuggling incident substantiate the record of criminal conduct. At the time of his discharge, the applicant submitted a conditional waiver to a board hearing in response to the discharge notification requesting a general discharge. When his request was denied, he then submitted an unconditional waiver. He now claims to have Persian Gulf-type illness symptoms from a TDY to that theater in 1998; however, a review of his medical records does not substantiate any medical conditions that would explain or mitigate his misconduct nor did he provide any documentation during his testimony. His medical records do indicate that applicant was a repeat no-show for several appointments he had in the Mental Health Clinic for stress management training and applicant was not able to provide any documentation or give an explanation for this. The DRB opined that through the unit's administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the repeated misconduct and serious nature of the offenses was a significant departure from conduct expected of all military members and concluded the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. The applicant notes that the discharge has caused a difficult time in his life, that he has obstacles to face in obtaining a productive career and his family has suffered due to his inability to progress and have a secure and stable job, and that he is currently working for a temporary service which provides little means for stability. While the Board was sympathetic to the applicant's situation, it is not related to the period of service in question and is not a matter of equity or propriety that would warrant an upgrade of his 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

FD2004-00118A

[REDACTED]
[REDACTED]
(Former AB) (HGH A1C) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a OUTHC Dish fr Beale AFB, CA on 10 Aug 99 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for General Discharge.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 4 May 00.

b. The AFDRB reviewed case on 26 Jul 00 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 22 Mar 04. (Change Discharge to General)

ISSUE: I have made attempts to upgrade my discharge in the past, but have failed. I am continuing to proceed with my efforts to upgrade my discharge to the next possible level. My will to become a better citizen has surpassed my expectations and others. Although my formidable behavior extended for a period of about a year, I feel that my previous enlistment does not reflect my entire service in the air force (sic). The board has made attempts to characterize the first enlistment as honorable, but any way you look at it the block on the DD 214 will always state other wise (sic). It has been four years since my release from the military. During which continues to be difficult time in my life. The obstacles I continue to face have had a negative impact on my ability to obtain a productive career. My family has suffered a great deal with my inability to progress and have a secure and stable job. Now I am working for a temporary work service that has provided little means for stability. So, I am asking for consideration in regards to an upgrade.

Atch

1. Four Letters of Support.

8JUL04/ia

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



(Former AB)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 99/08/10 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 74/06/01. Enlmt Age: 19 3/12. Disch Age: 25 2/12. Educ:HS DIPL. AFQT: N/A. A-93, E-66, G-53, M-44. PAFSC: 2A631E - Aerospace Propulsion Apprentice. DAS: 98/08/07.

b. Prior Sv: AFRes 93/09/08 - 94/01/03 (3 months 26 days)(Inactive).

(2) Enld 94/01/04 as A1C for 4 yrs. Svd: 3 yrs 7 mos 3 das, all AMS. SRA - 96/05/04. EPRs: 4;4.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SRA 97/08/07 for 6 yrs. Svd: 2 Yrs 0 Mo 3 Das, all AMS.

b. Grade Status: AB - 99/06/28 (ART 15, 99/06/28)
A1C - 99/02/12 (ART 15, Vacation, 99/03/12)

c. Time Lost: none.

d. Art 15's: (1) 99/06/28, Beale AFB, CA - Article 134. You did, on 13 Jun 99, wrongfully and knowingly attempt to shield from detection in a motor vehicle three aliens who you knew had come to the United States in violation of the law in violation of 8 USC 1324. Rdn to AB, forfeiture of \$479.00 pay per month for 2 months (susp til 27 Dec 99), 30 days restriction (15 days susp til 27 Dec 99), and 30 days extra duty. (No appeal) (No mitigation)

(2) 99/03/12, Vacation, Beale AFB, CA - Article 86. You did, o/a 17 Feb 99, w/o auth, fail to go at the time prescribed to your appointed place of duty. Rdn to A1C. (No appeal) (No mitigation)

(3) 99/02/12, Beale AFB, CA - Article 86. You did, o/a 21 Dec 98, w/o auth, fail to go at the time prescribed to your appointed place of duty. You did, o/a 31 Dec 98, o/a 31 Dec 98, w/o auth, fail to go at the time prescribed to your appointed place of duty. Rdn to A1C (susp til 11 Aug 99), forfeiture of \$637.00 pay per month (susp til 11 Aug 99), and 45 days extra duty.

(No appeal) (No mitigation)

e. Additional: LOR, 27 AUG 98 - Failure to pay just debts.

f. CM: none.

g. Record of SV: 96/01/13 97/01/12 Beale AFB 4 (Annual)
 97/01/13 98/01/12 Beale AFB 5 (Annual)
 98/01/13 99/01/12 Beale AFB 3 (Annual)
 (Discharged from Beale AFB)

h. Awards & Decs: AFLSAR, AFTR, NDSM, HSM W/1 DEV, NCOPMER, AFOUA W/2 DEV, AFGCM.

i. Stmt of Sv: TMS: (5) Yrs (11) Mos (3) Das
 TAMS: (5) Yrs (7) Mos (7) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 00/04/28.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH
none.

00/05/04/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 9TH OPERATIONS GROUP (ACC)
BEALE AIR FORCE BASE, CALIFORNIA

FD2004-00118

07 JUL 1999

MEMORANDUM FOR AB [REDACTED]
99th Reconnaissance Squadron

FROM: 99 RS/CC

SUBJECT: Letter of Notification--Board Hearing

1. I am recommending your discharge from the United States Air Force for a Pattern of Misconduct, under the provisions of Section H, paragraph 5.50.2. 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 24 May 1998 until on or about 22 August 1998, you failed to pay just debts to several creditors. Additionally, you did not report for duty after returning from a TDY. You further failed to report for WAPS testing, as well. For this you received a Letter of Reprimand and Unfavorable Information File (atch 1).

b. On or about 21 December 1998 and 31 December 1998, investigation disclosed you failed to go to your place of duty at the prescribed time. For this you received Nonjudicial Punishment (atch 2).

c. On or about 12 February 1999, investigation disclosed you failed to go to your place of duty at the prescribed time, again. For this you received Vacation of Suspended Punishment (atch 3).

d. On or about 13 June 1999, you wrongfully and knowingly attempted to shield from detection in a motor vehicle 3 aliens who you knew had come to the United States in violation of the law, 8 USC 1324. For this you received Nonjudicial Punishment (atch 4).

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable discharge. The commander exercising 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 and any special pay, bonus or education assistance funds may be subjected to recoupment.

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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; or
- 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 Physical Exams on 8 Jul 99 at 1000 hours.

6. Military legal counsel, [REDACTED] of the Area Defense Counsel's Office, ext 2081, has been obtained for you to consult her 9 Jul 99, at 0900, at the Area Defense Counsel's Office, Building 2179, Room 102. 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. 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 seven (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 of 1974. A copy of AFI 36-3208, is available for your use in your 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. The discharge board or, discharge authority will make the findings and recommendations required under Title 10, U.S.C., 2005 (g).

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



Commander

Attachments:

1. LOR and UIF, 27 Aug 98
2. Article 15, 19 Feb 98
3. Vacation, 15 Mar 99
4. Article 15, 2 Jul 99
5. Airman's Acknowledgment