

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE MAJ	AFSN/SSAN ██████████
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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	██████████	██████████
<input checked="" type="checkbox"/>	<input type="checkbox"/>	██████████	██████████

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

ISSUES A94.06 A92.22 A92.16	INDEX NUMBER A80.00	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 Sep 2004	CASE NUMBER FD-2004-00135	
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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 Washington, D.C.

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

[Handwritten Signature]

INDORSEMENT		DATE: 10/7/2004
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

FD2004-00135

GENERAL: The applicant appeals for upgrade of discharge to honorable and change of reenlistment eligibility (RE) code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel at Andrews AFB, MD on September 16, 2004. The following witness also testified on the applicant's behalf: [REDACTED]

The following additional exhibit was submitted at the hearing:

Exhibit 6: Additional submission consisting of 120 pages, provided on September 16, 2004.

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

FINDINGS: The discharge is upgraded to general.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an impropriety that would justify an upgrade of the discharge to honorable. However, based upon the record and applicant's testimony, the Board finds that applicant's character of service is more appropriately described as general (under honorable conditions).

The applicant's issues are listed in the attached brief.

Issues. Applicant contends discharge was inequitable because it was too harsh. Applicant also contended that he should not be penalized indefinitely for his mistake. He noted his excellent service record and his good post-service citizenship. The records indicated the applicant received an Under Other Than Honorable Conditions (UOTHC) discharge pursuant to his request to be discharged in lieu of trial by court martial for abuse of his government travel card. Member also had three Letters of Counseling, two Letters of Reprimand, and a traffic ticket, for various other acts of misconduct. While the Board concluded applicant's in service misconduct was a significant departure from conduct expected of all military members, and did not condone his misconduct, they further felt there was enough mitigation to substantiate a partial upgrade to a general (under honorable conditions) service characterization. In arriving at this conclusion, the Board took into consideration the unintended adverse consequences the discharge has had on applicant's post-service ability to practice medicine, consequences which the record made clear were not intended or expected as his misconduct surrounded areas of questionable officership and military bearing, and inability to fully adapt to military life, but not his abilities as a physician. The Board further noted that at the time of member's resignation, he had requested his service be characterized as general, under honorable conditions. In view of the other areas of misconduct and the seriousness of member's offense that gave rise to the court martial charges, the Board felt however that an upgrade to fully honorable characterization would be inappropriate.

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 a discharge Under Honorable Conditions (General). The applicant's characterization of discharge should be changed to Under Honorable Conditions (General), under the provisions of Title 10, USC 1553.

Attachment:

Examiner's Brief

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

(Former MAJ) (HGH MAJ)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Dyess AFB, TX on 15 Aug 96 UP AFI 36-3207, Chapter 2, Section C (Resignation for the Good of the Service). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 23 Jan 61. Enlmt Age: 25 0/12. Disch Age: 35 6/12. Educ: Doctor of Medicine. AFQT: N/A. A-N/A, E-N/A, G-N/A, M-N/A. PAFSC: 048G3 - Flight Surgeon. DAS: 1 May 93.

b. Prior Sv: (1) AFRes 16 Feb 86 - 1 Apr 93 (7 yrs 1 month 16 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Appointed as Captain and Ordered to EAD 2 Apr 93. Svd: 3 Yrs 4 Mo 14 Das, all AMS.

b. Grade Status: Major - 22 May 95

c. Time Lost: None.

d. Art 15's: None.

e. Additional: (Examiner's Note: The following additional derogatory documents are listed in the Legal Review, but are missing from the file)

Traffic Ticket, UNDATED - Speeding and following too closely resulting in an accident.
LOC, 26 FEB 96 - Failure to go two times, and late for duty two time.
LOR, 03 JAN 96 - Returning individuals to flying status in violation of Air Force regulations.
LOR, 05 DEC 95 - Several incidents of misconduct during a deployment.
LOC, 20 JUL 95 - Conduct unbecoming an Officer.
LOC, 30 JUL 95 - Repeatedly failing to report to work on time.

f. CM: None.

g. Record of SV: 02 Apr 93 - 08 Aug 93 Dyess AFB MS (HAF Dir)
09 Aug 93 - 08 Aug 94 Dyess AFB MS (Annual)
09 Aug 94 - 24 May 95 Dyess AFB MS (CRO)

h. Awards & Decs: AFAM W/3 DEVS, AFTR W/1 DEV, SWASM W/1 DEV, AFOUA W/1 DEV.

i. Stmt of Sv: TMS: (10) Yrs (6) Mos (0) Das
TAMS: (3) Yrs (4) Mos (14) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 7 Apr 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Legal Review.
3. Charge Sheet.
4. Adverse Credentialing and Characterization of Discharge.
5. Change in Characterization of Discharge.
6. Three Letters of Support.
7. Recommendation for Award.
8. Letter of Appreciation.
9. Letter of Recommendation.
10. Letter of Support.
11. Three Aerial Achievement Awards.
12. Character Reference.
13. Promotion Order.
14. Character Reference.

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 7TH WING (ACC)
DYESS AIR FORCE BASE, TEXAS

22 May 1996

MEMORANDUM FOR CC

FROM: JA

SUBJECT: Legal Review - Resignation for the Good of the Service - [REDACTED]

1. [REDACTED] has submitted his unconditional resignation for the good of the service under the provisions of AFI 36-3207, paragraph 2.23. Although he has not conditioned his resignation upon the type of characterization, he has also submitted a request that his discharge be characterized as General (Under Honorable Conditions). You must indorse his resignation to the general court-martial convening authority with your recommendations as to acceptance and characterization. We recommend that you forward this resignation with a recommendation that it be accepted and that [REDACTED] be discharged Under Other Than Honorable Condition.

2. **Authority:** Under the provisions of AFI 36-3207, an officer may submit a resignation for the good of the service when his conduct makes him subject to trial by court-martial. This resignation is submitted with the understanding that the Secretary of the Air Force may direct a discharge Under Other Than Honorable Conditions.

3. **Personal Data:** Major Fairbanks was accepted in the Armed Forces Health Professions Scholarship Program in February 1986. To participate in that program, [REDACTED] was commissioned a second lieutenant, United States Air Force Reserve, on 16 February 1986. Through the program, [REDACTED] received a scholarship to attend the University of Virginia School of Medicine. He was awarded the degree of Doctor of Medicine on 21 May 1989. Prior to completion of his degree, [REDACTED] applied and was selected for a deferment to complete specialty training in Ear, Nose, and Throat under the USAF Graduate Medical Education Program. His deferment period began 1 July 1989. On 2 April 1993, [REDACTED] entered active duty. He attended the Military Indoctrination for Military Service Officers (MIMSO) 8 to 23 April 1993. He arrived at Dyess AFB, his first duty station, on 1 May 1993 where he was assigned to the 96 Medical Group [REDACTED].

He was reassigned to [REDACTED]. His PLSD is 21 May 1985. His TAFMSD is 2 April 1993. His TAFMSD is 2 April 1993 and his Pay Date is 22 May 1989. His DOS is involuntarily extended from 1 April 1993 pending resolution of the court-martial charges against him. [REDACTED] received his Bachelor of Science degree from Brigham Young University. His military training includes: Aerospace Medicine Primary, Acromedical Readiness, Combat Casualty Care, Operational Acromedical Problems, The Physician in Management, and Airborne Training. [REDACTED] is 35 years old. He is married and has three children.

4. **Court-Martial Status:** A charge was preferred against [REDACTED] on 1 May 1996. The charge involves two specifications of disobeying a lawful order in violation of Article 92, UCMJ. Also on 1 May, [REDACTED] waived his right to an investigation under Article 32, UCMJ, and submitted his resignation. Further court-martial proceedings are suspended pending disposition of [REDACTED] offer of resignation.

5. **Summary of Facts:**

a. On 9 August 1994, [REDACTED] commander, [REDACTED], issued an order directing [REDACTED] to limit his use of the American Express (AMEX) Government Card to official government business. The order further directed that use of the card was limited to official government business in connection with temporary duty (TDY), and only while Major [REDACTED] was in TDY status. The order also specified that the AMEX card was only to be used to purchase lodging, airline tickets, and meals. No other use was authorized without prior authorization. Finally, the order directed that [REDACTED] was to do

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all acts necessary to prevent delinquent payment of the card. [REDACTED] acknowledge receipt and understanding of the order on 9 August 1994.

b. On 11 September 1995, [REDACTED] submitted a preprinted request for TDY. Included in the request, was a statement of understanding that permissive TDY did not entitle the requester to per diem or travel expenses from the government.

c. On 29 January 1996, [REDACTED] used his AMEX card to purchase two Delta Airline tickets for a round trip to Eugene, Oregon for him and his wife. He was not in TDY status when he purchased the tickets, however, [REDACTED] was in permissive TDY status during the trip (9-16 Feb '96). The basis for the permissive TDY was for [REDACTED] to pursue possible job opportunities with the Oregon Air National Guard. Although his wife chose to accompany him, there was no official basis or Air Force interest in her presence. Accordingly, his wife was not in any Air Force status when she accompanied him. The cost of the tickets was \$1,228. [REDACTED] use of his AMEX card to purchase the tickets constitutes the basis for the first specification of violating the order.

d. On 14 February 1996, [REDACTED] was returning from his permissive TDY when his flight was delayed in Salt Lake City. In compensation for the delay, the airline agreed to pay [REDACTED] for a rental car. [REDACTED] rented the car using his AMEX and received payment from the airline. While in Salt Lake City, [REDACTED] visited family and learned of his grandmother's death two days earlier. He contacted his commander and requested leave to attend the funeral. His leave was approved until 21 February. He kept the rental car for the entire period of his leave. When he turned the car in on 21 February, [REDACTED] used his AMEX card to pay the rental charge. The total charge for the rental car was \$506.28. [REDACTED] use of his AMEX card to rent a car constitutes the basis for the second specification of violating the order.

e. On 27 March 1996, [REDACTED] was outprocessing from his squadron in preparation for his separation from the Air Force on 1 April 1996. As part of the procedure, the squadron AMEX program coordinator retrieved the government AMEX card and canceled the account. In doing so, the coordinator discovered that [REDACTED] had an outstanding balance and that he had charged airline tickets and a rental car. On 28 March, the program coordinator verified that [REDACTED] AMEX balance was \$1,707 and that the account went on the 30 day delinquent list on 27 March. It was this discovery that led to the court-martial charge and specifications.

6. **Other Derogatory Information:** The following documents are contained in [REDACTED] Personal Information File (PIF): Letter of Counseling, dated 28 June 1995, from [REDACTED] for repeatedly failing to report to work on time; Letter of Counseling, dated 20 July 1995, from [REDACTED] for conduct unbecoming an officer (engaging in heated verbal exchanges with an exercise evaluation team member and emotional outbursts including throwing equipment and kicking a table); Letter of Reprimand, dated 5 December 1995, with unfavorable information file entry from [REDACTED] for several instances of misconduct during a deployment to an exercise at the Joint Readiness Training Center in October 1995; Letter of Reprimand, dated 3 January 1996, with unfavorable information file entry from [REDACTED] for returning individuals to flying status in violation of Air Force regulations; Entry on Control Roster, dated 31 January 1996; Letter of Counseling, dated 26 February 1996, from 7 MDOS/CC for failing to report for duty on 2 and 5 February and reporting late on 22 and 25 February. Finally, the PIF also contains two Armed Forces Traffic Tickets for speeding and following too closely resulting in an accident.

7. **Discussion:**

a. **Sufficiency of the Evidence:** There is sufficient evidence to support the specifications and charge pending against [REDACTED]. The order was lawful and was issued by a member of the armed forces, [REDACTED] acknowledged the order in writing and had a duty to obey the lawful orders of his commander. His use of his AMEX card to purchase tickets for his wife and himself and to rent a car was not for official government business and, therefore, constitutes violations of that order. As part of his resignation package, [REDACTED] includes a statement that contends that he did not understand that permissive TDY does

not constitute official government travel. If this case proceeds to court-martial, he will undoubtedly raise that contention in a mistake-of-fact defense. The evidence to refute that defense includes the TDY request that [REDACTED] submitted in September which acknowledges that permissive TDY does not entitle an individual to per diem or travel expenses from the government. The government would also present evidence of the extensive publicity that AMEX abuse has received at Dyess AFB. In [REDACTED] was, in fact, confused as to the unofficial nature of permissive TDY, the government will also present evidence that [REDACTED] never made any attempt to clarify the issue. Even if the court believes in a mistake-of-fact defense, it is only relevant to the purchase of his own airline ticket. [REDACTED] wife was not traveling pursuant to official or permissive TDY. The purchase of her ticket was clearly a violation of the order, as was the payment for a rental car while [REDACTED] was in a leave status.

b. Court-Martial vs Resignation: Justice requires that punitive action be taken in response to [REDACTED] misconduct. Other individuals at Dyess who have engaged in AMEX abuse have received judicial and nonjudicial punishment. Many have also been involuntarily separated from the Air Force as a result of that abuse. To allow [REDACTED] to merely separate at the expiration of his commitment without further action would be inappropriate. Some disciplinary action is appropriate. The forum of a court-martial was chosen because of the nature of the offenses, [REDACTED] position as a field grade officer, and his prior history of misconduct. Appropriate consideration was also given to the fact that [REDACTED] was due to separate. Any impact of punishment under Article 15, UCMJ, or a lesser action would have been diluted by his separation. There would also have been insufficient time to process [REDACTED] for involuntary separation to provide an appropriate characterization of his service. If action could not be completed before his separation date, [REDACTED] could only be involuntarily extended on active duty if he was pending court-martial. Initiation of court-martial action was the only appropriate response to his offenses.

A court-martial conviction will adequately address [REDACTED] offenses, but it will also have the unintended result of interfering with his ability to practice medicine. A federal felony conviction may be enough to cause [REDACTED] medical license to be revoked. That is an unnecessarily harsh reaction to what is primarily a military offense. Although [REDACTED] has repeatedly demonstrated his unsuitability to serve as a commissioned officer, that should not prevent him from pursuing a civilian medical practice. Acceptance of his resignation for the good of the service will accomplish the result of holding [REDACTED] accountable for his actions without unduly prejudicing his future as a civilian doctor.

Acceptance of [REDACTED] resignation for the good of the service will also prevent him from any future service in any of the United States military forces. This is particularly relevant in light of [REDACTED] pursuit of a position in the Air National Guard. His commander, [REDACTED] has received information that [REDACTED] has contacted several Guard units interested in his specialty. Additionally, the Air Force Medical Recruiter has indicated that the Air Force is interested in paying for a fellowship for [REDACTED] in exchange for another active duty commitment. This interest has continued despite the recruiter's knowledge of [REDACTED] active unfavorable information file. Clearly, there is a distinct possibility that [REDACTED] could again serve as a commissioned officer if action is not taken to prevent it. His resignation under these provisions will ensure that.

c. Characterization: The offenses for which [REDACTED] is charged are enough to warrant an under other than honorable conditions discharge. When coupled with his abysmal record as an officer in only three short years of active duty, any other characterization would not adequately reflect his service.

8. Recommendation: That you indorse [REDACTED] tender of resignation with the recommendation that it be accepted and that he be separated under other than honorable conditions.

[REDACTED] USAF
Staff Judge Advocate