

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████			GRADE AB		AFSN/SSAN ██████████			
TYPE GEN		PERSONAL APPEARANCE			X RECORD REVIEW			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION			ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	No							
	X							
MEMBER SITTING				VOTE OF THE BOARD				
				HON	GEN	UOTHC	OTHER	DENY
								X
								X
								X
								X
ISSUES A94.05 A94.11 A01.21 A01.39		INDEX NUMBER A67.09		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 25 Aug 2004		CASE NUMBER FD-2004-00175						
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE								
<p>Case heard at Washington, D.C.</p> <p>Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR</p>								
ENDORSEMENT				DATE: 8/26/2004				
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-2004-00175

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

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, and change of reenlistment code are 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.

ISSUES:

Issue 1. The applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received 11 AETC 341s for misconduct, one Record of Individual Counseling for damaging government property, one Letter of Reprimand for underage drinking and one Article 15 for being Absent Without Leave and making a false official statement. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior.

Issue 2. The applicant contends his commander's actions were arbitrary and capricious, however, the records review failed to disclose any evidence to demonstrate abuse of authority and does not merit reconsideration. Furthermore, the applicant states Article 31 rights were violated. Documentation shows that the applicant was read his rights using a Rights Advisement card.

Issue 3. The applicant contends that he did not receive adequate counsel. The record reflects that the applicant consulted with his lawyer and was afforded the opportunity to and did present mitigation regarding the Article 15.

While the applicant states that he would like to reenter the military, he has demonstrated a lack in quality of service to justify reversal of findings. 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.

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)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Kirtland AFB, NM on 4 Apr 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 14 Mar 83. Enlmt Age: 18 10/12. Disch Age: 20 0/12. Educ: HS DIPL. AFQT: N/A. A-84, E-80, G-84, M-84. PAFSC: 1A711 - Aerial Gunner. DAS: 25 Jul 02.

b. Prior Sv: (1) AFRes 31 Jan 02 - 5 Mar 02 (1 month 3 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 6 Mar 02 for 6 yrs. Svd: 1 Yrs 1 Mo 0 Das, all AMS.

b. Grade Status: AB - 10 Feb 03 (Article 15, 10 Feb 03)
 Amn - 6 Sep 02 (Reason unknown)
 A1C - 19 Apr 02

c. Time Lost: None.

d. Art 15's: (1) 10 Feb 03, Kirtland AFB, NM - Article 107. You did, on or about 22 Jan 03, with intent to deceive, make to an official statement, to wit: You went to see friends that were in town and did not return to your room until Sunday around 1300 hours, which statement was totally false, and was then known by you to be so false. Article 86. You did, on or about 17 Jan 03, without authority, absent yourself from your unit at which you were required to be, to wit: 58th Training Squadron, and did remain so absent until on or about 20 Jan 03. Reduction to AB, forfeiture of \$575.00 pay per month for 2 months. (Appeal/Denied) (No mitigation)

e. Additional: AETC 341, 27 JAN 03 - Failed room inspection.
 AETC 341, 26 JAN 03 - Playing music excessively loud in the dormitory.
 AETC 341, 13 JAN 03 - Bad attitude.
 AETC 341, 13 JAN 03 - Failure to go.
 LOR, 25 NOV 03 - Underage drinking.
 AETC 341, 27 SEP 02 - Being on a restricted floor in the dormitory, and not having AETC 341 on person.

RIC, 24 SEP 02 - Damaging government property.
 AETC 341, 6 SEP 02 - No phase card on person.
 AETC 341, 5 SEP 02 - Late for mandatory formation.
 AETC 341, 6 SEP 02 - No AETC 341 on person.
 AETC 341, 6 SEP 02 - No military ID card on person.
 AETC 341, 5 AUG 02 - Late for formation, no AETC 341 on
 person, no phase card on person, and
 no military ID card on person.

- f. CM: None.
- g. Record of SV: None.
- h. Awards & Decs: NDSM.
- i. Stmt of Sv: TMS: (1) Yrs (2) Mos (5) Das
 TAMS: (1) Yrs (1) Mos (0) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 2 Apr 04.
 (Change Discharge to Honorable, and Change the RE Code, Reason and Authority
 for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Character References.
3. Copy of Discharge Documents.
4. Six Training Certificates.
5. Congressional Response.
6. Four AF Forms 1168.
7. 377 ABW/JAD Email Correspondence.
8. News Article.
9. Congressional Correspondence.
10. Bill of Sale.
11. 377th Comptroller Squadron Commander Memorandum.
12. Memorandum For 377 ABW/IG.
13. Leave and Earnings Statement.
14. DD Form 214.

16JUN04/ia

24 MAY 2004

B/AIRE/RO/EF FD2004-00175

**APPLICATION FOR THE REVIEW OF DISCHARGE
FROM THE ARMED FORCES OF THE UNITED STATES**

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

*Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006*

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Services and Communications Directorate (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA *(The person whose discharge is to be reviewed).* PLEASE PRINT OR TYPE INFORMATION.

a. BRANCH OF SERVICE *(X one)* ARMY MARINE CORPS NAVY AIR FORCE COAST GUARD

b. NAME *(Last, First, Middle Initial)*

c. GRADE/RANK AT DISCHARGE
E-1/AB

d. SOCIAL SECURITY NUMBER

2. DATE OF DISCHARGE OR SEPARATION

(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)

20040404

4. DISCHARGE CHARACTERIZATION RECEIVED *(X one)*

HONORABLE
 GENERAL/UNDER HONORABLE CONDITIONS
 UNDER OTHER THAN HONORABLE CONDITIONS
 BAD CONDUCT *(Special court-martial only)*
 UNCHARACTERIZED
 OTHER *(Explain)*

5. BOARD ACTION REQUESTED *(X one)*

CHANGE TO HONORABLE
 CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
 CHANGE TO UNCHARACTERIZED *(Not applicable for Air Force)*
 CHANGE NARRATIVE REASON FOR SEPARATION TO:

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION

58th TRS, Kirtland AFB, NM

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST *(Continue in Item 14. See instructions on Page 3.)*

I respectfully ask that my discharge be changed to honorable and my reenlistment code be changed so I can join the Air Force. My former commander lied to the Air Force Congressional Liaison twice, falsified my discharge paperwork, falsified a UCMJ Article 15, falsified my written statement and denied my earned promotion to E-3 for over six months. My UCMJ Article 31 rights were violated twice and my second amendment right to own a firearm was also violated. My punishment *(continued in item 14)*

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON *(YYYYMMDD)*

AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: *(Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)*

Letter from [redacted] Letter from [redacted] Discharge Package, Training Certificates, Letter from [redacted] Statements from [redacted] Statement from [redacted] Letters from [redacted] and [redacted] E-mail from [redacted] Kirtland AFB weekly newspaper) reprint, Letter from [redacted] Leave and Earning Statement for 1-28 Feb 03, Letter from [redacted] and DD Form 214.

9. TYPE OF REVIEW REQUESTED *(X one)*

CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR *(counsel/representative)* WILL NOT APPEAR BEFORE THE BOARD.

I AND/OR *(counsel/representative)* WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.

I AND/OR *(counsel/representative)* WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO *(enter city and state)* Dayton, OH *(NOTE: The Navy Discharge Review Board does not have a traveling panel.)*

10.a. COUNSEL/REPRESENTATIVE *(if any) NAME* *(Last, First, Middle Initial)* AND ADDRESS *(See Item 10 of the instructions about counsel/representative.)*

None

b. TELEPHONE NUMBER *(Include Area Code)*

c. E-MAIL

d. FAX NUMBER *(Include Area Code)*

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name *(print)* and relationship by marking a box below.

SPOUSE WIDOW WIDOWER NEXT OF KIN LEGAL REPRESENTATIVE OTHER *(Specify)*

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE

(Forward notification of any change in address.)

b. TELEPHONE NUMBER *(Include Area Code)*

c. E-MAIL

d. FAX NUMBER *(Include Area Code)*

None

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)*

CASE NUMBER
(Do not write in this space.)

a. SIGNATURE - REQUIRED *(Applicant or person in Item 11 above)*

b. DATE SIGNED - REQUIRED
(YYYYMMDD)

2004 05 17

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

(continued from item 6) was much harsher than other airmen at Kirtland AFB during this time. I was administered a Letter of Reprimand for an alleged event that occurred 45 days prior. For the first six months I was assigned to the 58th TRS I did not have a Military Training Leader (MTL). The Airman Leaders were given duties according to their age with no training at all. I know this because I too was an Airman Leader at one point. The reason I am bringing this to your attention is because the Air Force decided that these same Airman Leaders were fit to discharge me. I gained the respect of many field grade officers with my flying squadron because of my work performance. The officers of the 551st SOS realized my punishment was not right. However since they were not in my chain of command they were prevented from providing any input on my Article 15 or general discharge. My commander also prevented me from supplying a letter of character on my own behalf. During my Article 15, my legal representation was located at Vandenberg AFB, CA. This was over 1,000 miles away and I only spoke with the lawyer once for ten minutes.

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

My father has actively pursued this process. He first had to file an Inspector General complaint to just get a copy of my discharge. All supporting documents are addressed in his letter to the board.

16. REMARKS (If applicable)

Line 9, type of review requested. If needed, I will gladly appear before a hearing if this package is not enough evidence to change my discharge and allow me back into the United States Air Force.

I emphatically state that I made a mistake. However, I want to serve my country like every American should. I want to be involved in defense of Terrorism affecting our country. If I am not allowed to come back on active duty, then I will join the Kentucky Air National Guard. They have openings in Combat Control (J1C2X1) and Pararescue (J1T2X1). I simply don't want to sit at a desk and just gather my benefits. I want to be involved at the tip of the spear!

I originally filed a DD Form 149 (Case number FD2004-00175) with your office. [REDACTED] returned my DD Form 149 on 11 May 2004 and instructed me to submit this DD Form 293. On a post it note, [REDACTED] stated, "I have your attachments on file. No need to re-submit."

I thank you for looking at my application and I eagerly await to hear from you. Bottom line, I made a mistake and I only want to serve my country in our war against terrorism! I'm ready to return on a moments notice! Thanks.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.**ARMY**

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593

To Board for Correction of Air Force Records

May 1, 2004


In January 2003 I made the worst mistake of my life. I helped my best friend with a very personal problem and lost my career because of it. When you join a branch of the military the first thing they teach you is teamwork and to care for your wingman no matter what. I still keep this and the core values in mind and live by them to this day. I was willing to sacrifice my career to insure that another member of the military was safe and because of that action and the actions of my former commander the Air Force lost two of its best Aerial Gunners.

Let's think about the reasons someone would join the military in the first place. In my short tenure in the Air Force, 80% of the airmen that I dealt with were "in it for school". Those same people were also worried about the money they were "owed" for their service. When you join my career field you do it for one reason and one reason alone, TO FIGHT. I was trained to be and will always be a warrior. I find it odd that someone who works in administration with little wartime capability had a better chance in my situation than myself. I gained the respect of many field grade officers with my flying squadron because of my work performance. However since I was treated like a little schoolboy by guys that had none of my knowledge but who had been in the military for two more years were given every luxury they needed. The officers and the 551st SOS realized this and believed it was not right. However since they were not in my chain of command they were prevented from providing any input on my Article 15 or general discharge.

For the first six months I was assigned to the 58th TRS I did not have a Military Training Leader (MTL). The Airman Leaders were given duties according to their age with no training at all. I know this because I too was an Airman Leader at one point. The reason I am bringing this to your attention is because the Air Force decided that these same Airman Leaders were fit to discharge me. I will be the first to admit that we were wrong in our actions, however if I am flying in the same aircraft as a prior-service member then I should be awarded the same treatment as they are in my off time. I was awarded my three-level and the holes in my chest from my wings to prove it. I sacrificed more than anyone my age to earn them.

Before my discharge had even begun I was stripped of my wings and had to wear the same uniform that someone fresh out of basic training wore and I was treated like I was worthless. The airman leaders forced me to watch traffic cones for eight-hour periods. Let's think about the job, Aerial Gunner, one more time. Most people ask me why you joined to do that. My answer is to protect the very liberties that you are accustomed to.

In closing I would like to say that if I'm allowed back into the service (no matter which branch) I would leave in a heart beat. I am a "snake-eater" and want to finish my life as one. I joined to kill for my country and had my hands tied because I was "new" to the Air Force. Thank you for your time and I eagerly await your answer. I'm prepared to leave on a moments notice.





DEPARTMENT OF THE AIR FORCE

58 TRAINING SQUADRON (AETC)
KIRTLAND AIR FORCE BASE NEW MEXICO

FD2004-00175


MEMORANDUM FOR [REDACTED]

17 Mar 03

FROM: 58 TRS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions. The authority for this action is AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. If my recommendation is approved, your service will be characterized as Honorable or General (Under Honorable Conditions). I am recommending that your service be characterized as General (Under Honorable Conditions).
2. My reasons for this action are:
 - a. On 5 Aug 02, you received an AETC Form 341, Discrepancy Report, for being late for Physical Conditioning (PC) and not having the required AETC Forms 341, phase card or military ID card on your person. (Atch A)
 - b. On 6 Sep 02, you received four AETC Forms 341, Discrepancy Reports, for being late for PC and not having the required AETC Forms 341, phase card or military ID card on your person. (Atch B)
 - c. On 24 Sep 02, you received a Record of Individual Counseling (RIC) for destroying government property. (Atch C)
 - d. On 27 Sep 02, you received two AETC Forms 341, Discrepancy Reports, for breaking phase rules by entering the 2nd floor of the dormitory and not having the required AETC Forms 341 on your person. (Atch D)
 - e. On 25 Nov 02, you received a Letter of Reprimand (LOR) for drinking under age. (Atch E)
 - f. On 13 Jan 03, you received two AETC Forms 341, Discrepancy Reports, for missing PC and displaying an attitude after being asked for an AETC Form 341. (Atch F)
 - g. On 26 Jan 03, you received an AETC Form 341, Discrepancy Report, for violating phase rules by possessing and playing a stereo. (Atch G)
 - h. On 27 Jan 03, you received an AETC Form 341, Discrepancy Report, for failing a dorm room inspection. (Atch H)

- i. On 28 Feb 03, you received an Article 15, UCMJ, for being AWOL from 17 Jan 03 to 20 Jan 03 and making a false official statement. (Atch I)
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. Special pay, bonuses, or education assistance funds may be subject to recoupment.
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  at building 20361, 8201 K St. ext. 6-5553, on _____ at _____ hours. You may consult civilian counsel at your own expense.
5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within 3 workdays from today 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 on your own behalf, your failure will constitute a waiver of your right to do so.
7. You will complete a medical examination at the 377th Medical Group (Family Medicine) on _____ at _____.
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 unit orderly room.



Attachments:
Supporting Documents
Airman's Acknowledgment