




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
					X

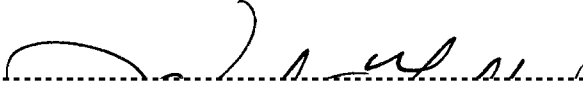
ISSUES A92.21	INDEX NUMBER A67.90	EXHIBITS SUBMITTED TO THE BOARD				
		1	ORDER APPOINTING THE BOARD			
		2	APPLICATION FOR REVIEW OF DISCHARGE			
		3	LETTER OF NOTIFICATION			
		4	BRIEF OF PERSONNEL FILE			
			COUNSEL'S RELEASE TO THE BOARD			
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE			
			TAPE RECORDING OF PERSONAL APPEARANCE			

HEARING DATE 20 Aug 2004	CASE NUMBER FD-2004-00191
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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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.



INDORSEMENT		DATE: 8/20/2004
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-2004-00191

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: Upgrade of discharge is denied.

The Board finds the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was unable to identify any that would justify a change of discharge.

ISSUES:

Applicant was discharged for conduct prejudicial to good order and discipline. The records indicated the applicant received an Article 15, four Letters of Reprimand, two Records of Individual Counseling, a Letter of Admonishment, and had an Unfavorable Information File for misconduct. His infractions included five instances of failure to go, violating a no contact order, and breaking restriction. Additionally, member was the subject of an investigation by the Air Force Office of Special Investigations; their report chronicled his juvenile arrest for assaulting his sister, his civilian arrest for assaulting his wife, and subsequently, eight other instances over a 14-month period where he was arrested or cited by several different local law enforcement authorities for domestic violence or assault against his then girlfriend. Member demonstrated a severe pattern of escalating violence and in spite of his many arrests was unable or unwilling to change his criminal behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members and applicant's actions can not be excused. The characterization of the discharge received by the applicant was found to be appropriate.

Applicant note's his post-service activities as a possible basis for an upgrade. Because he received an administrative discharge, not a punitive discharge, the Board must find an inequity or impropriety on which to base an upgrade; clemency is not available as a reason for upgrading an administrative discharge. The Board noted that the types of offenses applicant was arrested for constitute serious misconduct that is not compatible with Air Force standards. The DRB was pleased to see that the applicant was doing well and is positively involved in his community. However, these activities do not reflect directly upon his period of service or offer a basis of inequity or impropriety to warrant upgrade of his discharge. The Board concluded applicant's misconduct appropriately characterized his term of service.

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)

MISSING DISCHARGE DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Luke AFB, AZ on 30 Oct 01 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 22 Aug 80. Enlmt Age: 18 2/12. Disch Age: 21 2/12. Educ: HS DIPL. AFQT: N/A. A-77, E-50, G-48, M-17. PAFSC: 2W131F - F-16 Weapons Apprentice. DAS: 18 Sep 99.

b. Prior Sv: (1) AFRes 29 Oct 98 - 30 Mar 99 (5 months 2 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 31 Mar 99 for 6 yrs. Svd: 2 Yrs 7 Mo 0 Das, of which AMS is 2 yrs 6 months 20 days (excludes 10 days lost time).

b. Grade Status: AB - 26 Sep 01 (Article 15, 26 Sep 01)
 A1C - 14 May 99

c. Time Lost: 18 Sep 01 thru 27 Sep 01 (10 days).

d. Art 15's: (1) 26 Sep 01, Luke AFB, AZ - Article 92. You, having knowledge of a lawful order issued by 1Lt [REDACTED], not to have any type of contact with [REDACTED], an order which it was your duty to obey, did, at or near Avondale, Arizona, on divers occasions between on or about 27 Jul 01 and on or about 18 Aug 01, fail to obey the same by wrongfully engaging in verbal and physical contact with [REDACTED] Article 134. You, having been restricted to the limits of Luke AFB, Arizona, by a person authorized to do so, did, on or about 19 Sep 01, break said restriction. Reduction to AB. (No appeal) (No mitigation)

e. Additional: (Examiner's Note: The following additional derogatory infractions were taken from 56 FW/JA Memorandum For 56 FW/JA, 24 Oct 01. Actual documents are missing from the file).

LOR, 10 JUL 01 - Failure to go.

RIC, 02 JUL 01 - Failure to go.

LOA, 16 APR 01 - Failure to go.

RIC, 10 APR 01 - Failure to go.

LOR/UIF, 29 MAR 01 - Civil arrest for domestic violence,

assault, and criminal damage.

LOR, 12 DEC 00 - Failure to go.

LOR, 23 JUL 00 - Civil arrest for domestic violence
violence and assault.

f. CM: None.

g. Record of SV: 31 Mar 99 - 15 Oct 00 Luke AFB 4 (HAF Dir)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (3) Yrs (11) Mos (22) Das
TAMS: (2) Yrs (6) Mos (20) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 16 May 04.
(Change Discharge to Honorable)

Issue 1: I would like to change my discharge from Honorable to General (sic) to enhance my education. Since 2001 until now I have grown spiritually, mentally, and I've become more mature. I have realized that my actions in 2001 were inappropriate, but I have changed those ways. I now have a wife and three kids and I need to better myself and be a good role model for my family and provide financially for them. I would appreciate if you would consider changing my discharge to Honorable, so help me be a better man for my family, so that I can contribute to my community. I am a minister of the Lambs Temple, one of the three youth ministers. I tutor in the afternoons after school, and I teach youth Sunday School. I'm also a member of God's Favor, a local gospel group in Tallahassee, FL. So if you would please grant me this opportunity to enhance my education it would be appreciated. Thanks in advance.

ATCH

None.

28JUN04/ia



DEPARTMENT OF THE AIR FORCE
56th Fighter Wing (AETC)
Luke Air Force Base Arizona

FD 2004 00 191

24 OCT

MEMORANDUM FOR 56 FW/CC

FROM: 56 FW/JA

SUBJECT: Legal Review of Administrative Discharge - [REDACTED]
62 FS

1. ACTION: This case is before you for review and action in your capacity as the separation authority. The 62 FS/CC recommends the Respondent be separated from the United States Air Force with a general discharge without probation and rehabilitation pursuant to AFI 36-3208, paragraph 5.50.2 for a Pattern of Misconduct. I concur.
2. BACKGROUND: The Respondent is 21 years old and has been on active duty in the United States Air Force for approximately 2 years and 6 months. He is currently serving a 6 year enlistment. His AQE scores are: Admin - 77; Elect - 50; Gen - 48; and Mech -17. The Respondent's awards and decorations include the Outstanding Unit Award and the Air Force Training Ribbon.
3. FACTS: The following actions from the Respondent's current enlistment establish a pattern of misconduct under paragraph 5.50.2:
 - a. On 23 Jul 00, the Respondent was arrested by the Glendale Police for domestic violence and assault. He received a Letter of Reprimand. An Unfavorable Information File (UIF) was established.
 - b. On 12 Dec 00, the Respondent failed to report to his appointed place of duty at the time prescribed and received a Letter of Reprimand.
 - c. On 29 Mar 01, the Respondent was arrested by the Avondale Police for domestic violence, assault, and criminal damage. He received a Letter of Reprimand which was placed in his existing UIF.
 - d. On or about 10 Apr 01, the Respondent failed to report to his appointed place of duty at the time prescribed and received a Record of Individual Counseling.
 - e. On 16 Apr 01, the Respondent failed to report to his appointed place of duty at the time prescribed and received a Letter of Admonishment.

--Attorney Work Product--

This work product has been prepared by an attorney in the course of performing legal duties on behalf of a client, and is not to be provided to anyone outside the Air Force without approval of the originator or higher authority. It is exempt from disclosure under the Freedom of Information Act under 5 U.S.C. §552(b)(5) and protected from release under FRCP 26(b)(3).

f. On 2 Jul 01, the Respondent failed to report to his appointed place of duty at the time prescribed and received a Record of Individual Counseling.

g. On 10 Jul 01, the Respondent failed to report to his appointed place of duty at the time prescribed and received a Letter of Reprimand.

h. Between on or about 27 Jul 01 and on or about 18 Aug 01, the Respondent failed to obey a lawful order. On 19 Sep 01, he broke restriction. For these offenses, he received an Article 15 and his punishment was a reduction to E-1.

4. RESPONDENT'S MATTERS: The Respondent has met with military defense counsel and waived his right to submit a written statement regarding this discharge action.

5. CHARACTERIZATION OF DISCHARGE: The Respondent's commander recommends a general service characterization for [REDACTED] term of service. A general (under honorable conditions) characterization of service is appropriate if the airman's service has been honest and faithful, and if significant negative aspects of the airman's conduct or duty performance outweigh the positive aspects of his record. The evidence in this case clearly supports the commander's recommendation. The Respondent has had two serious off base domestic violence incidents and received an LOR and a UIF entry in both instances. Also, [REDACTED] has received two additional Letters of Reprimand, two Records of Individual Counseling, a Letter of Admonishment, and an Article 15 during his enlistment. The negative aspects outweigh the positive aspects of his service record; therefore, a general discharge is appropriate.

6. PROBATION AND REHABILITATION (P&R): P&R, in accordance with AFI 36-3208, Chapter 7, would be inappropriate in this case and is clearly contrary to the best interests of good order and discipline. [REDACTED] has been unwilling or unable to respond to past rehabilitative efforts and there is no evidence to suggest that further attempts to correct his behavior would be effective.

7. LEGAL SUFFICIENCY: There is a sufficient factual basis to support this discharge. Further, this file has been prepared in substantial compliance with the provisions of AFI 36-3208. Finally, the Respondent has been notified of this discharge, has met with the Area Defense Counsel and elected not to submit a statement concerning this action. For these reasons, we find this case file legally sufficient.

8. OPTIONS: As the separation authority you have the following options:

a. Retain the Respondent; or

b. Separate the Respondent with a general discharge, with or without probation and rehabilitation; or

c. Forward the case to 19 AF/CC recommending the Respondent receive an honorable discharge, with or without probation and rehabilitation; or

9. RECOMMENDATION: Based on the foregoing, I recommend you separate the Respondent from the United States Air Force with a general discharge without probation and rehabilitation.

A large, dark, irregularly shaped redacted area covering the signature of the Staff Judge Advocate.

, Lt Col, USAF
Staff Judge Advocate
