

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE SRA	AFSN/SSAN [REDACTED]
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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	VOICE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A92.15 A92.21 A62.05	INDEX NUMBER A62.00	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 18 Aug 2004	CASE NUMBER FD-2004-00192	
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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.

[Handwritten Signature]

ENDORSEMENT	DATE: 8/18/2004
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, 3E WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2004-00192

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

The applicant was offered a personal appearance before the Discharge Review Board 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 that neither the evidence of record nor that provided by applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issue 1. Applicant was discharged for fraudulent enlistment. During the course of a security clearance background investigation, derogatory information about multiple civilian arrests and convictions involving grand theft, burglary, possession of drug paraphernalia, minor in possession of alcohol, possession of a switchblade knife, and disorderly conduct was discovered which applicant had not entered on his enlistment forms. At the time of the discharge, member consulted counsel and submitted a statement in his own behalf in which he admitted he withheld information on his enlistment forms because the recruiter told him to, and requested an honorable discharge. He also noted his accomplishments while in the Air Force and submitted six character references from co-workers. The Board could find no evidence of record to substantiate applicant's contention of recruiter misconduct and no evidence of an impropriety in processing the discharge.

Issue 2. Applicant now infers his record of achievements while in the Air Force and his post-service accomplishments may provide a basis on which to justify an upgrade of his discharge. While the Board appreciates the quality of service rendered by applicant and is glad he is doing well since his discharge, 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 and fraudulent enlistment constitute serious misconduct that is not compatible with Air Force standards. Additionally, were it not for the falsification of his enlistment documents, it is doubtful applicant would have been allowed into the Air Force based on his extensive pre-service arrest record. The Board finds the discharge proper; the records review disclosed no inequity or impropriety on which to base an upgrade.

Issue 3. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

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 SrA) (HGH SrA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Shaw AFB, SC on 10 Mar 03. UP AFI 36-3208, para 5.15 (Fraudulent Entry). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 17 Aug 78. Enlmt Age: 20 7/12. Disch Age: 24 6/12. Educ: HS DIPL. AFQT: N/A. A-46, E-77, G-68, M-86. PAFSC: 1N251 - Signals Intelligence Production. DAS: 14 Sep 00.

b. Prior Sv: (1) AFRes 25 Mar 99 - 21 Sep 99 (5 months 28 days) (Inactive) (Not credible service because of Fraudulent Enlistment).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 22 Sep 99 for 6 yrs. Svd: 3 Yrs 5 Mo 16 Das, of which AMS is 0 yrs 0 months 0 days (Fraudulent Enlistment)

b. Grade Status: SrA - 5 Mar 02
A1C - 5 Nov 99

c. Time Lost: None.

d. Art 15's: (1) 12 Dec 02, Fort Gordon AIN, GA - Article 83. You did, at or near San Diego, CA, on or about 25 Mar 99, by means of deliberate concealment of the fact that you were arrested for grand theft and burglary, were charged with possession of drug paraphernalia and with being a minor in possession of alcohol, and convicted of possession of a switchblade knife and disorderly conduct, procure yourself to be enlisted as an Airman Basic in the United States Air Force, and did thereafter, at or near Fort Huachuca, Arizona, receive pay and allowances under the enlistment so procured. Article 107. You, did, within the continental United States, on or about 25 Oct 99, with intent to deceive, make official statements on your Security Clearance Application, to wit: that you have never been arrested for, charged with, or convicted of any offenses, which statements were false in that you were arrested for grand theft and burglary, charged with possession of drug paraphernalia and with being a minor in possession of alcohol, and convicted of possession of a switchblade knife and disorderly conduct, and said statements were then known by you to be so false. Thirty days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 22 Sep 99 - 15 Apr 01 Fort Gordon AIN 5 (HAF Dir)

h. Awards & Decs: AFTR, NDSM, AFGCM.

i. Stmt of Sv: TMS: (0) Yrs (0) Mos (0) Das
TAMS: (0) Yrs (0) Mos (0) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 22 May 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

9JUL04/ia

27 MAY 2004

BIAA

FD 2004-00192

APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL 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 Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. 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.

RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

ISSUES

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

This upgrade is requested in order to appeal for GI Bill benefits to attend school. See attachment.

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.)*

See attachment

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)* *(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.)*

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.

d. FAX NUMBER *(Include Area Code)*

13. CERTIFY THAT I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR FALSIFYING A CLAIM. *(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined not more than 5 years, or both.)*

b. DATE SIGNED - REQUIRED *(YYYYMMDD)*

20040522

CASE NUMBER *(Do not write in this space.)*

FD 2004 - 00192

On March 10, 2003 I received a general discharge under honorable conditions from the United States Air Force. The reason for my discharge was fraudulent entry into military service. In my response to notification of administrative separation I stated that my recruiter wrongly informed me. I was told to withhold all information regarding my misdemeanor charges and the only concern that the United States Air Force had were felony charges.

I enjoyed serving in the United States Air Force. In technical school I graduated at the top of my class and under the expected time given to graduate. At my first duty station I trained a number of service members on my positions and was hand picked from my duty section to move on to a higher priority mission. I was a motivated Airman that excelled at my job to become one of the most experienced signal collectors in the division. I required little to no supervision to perform the tasks given by my supervisors in order to support the mission. The 3 years and 5 months I served in the United States Air Force changed my life. I enjoyed being in the military and requested that I be able to finish my 6-year enlistment.

Prior to enlisting in the military my life was going nowhere. I chose to associate with the wrong crowds and made all the wrong decisions. At the age of 18 I was a high school drop out and had a restraining order from my family. I tried to change my life and leave the lifestyle I was living, but could not escape the temptations. I found that the only thing that could change my life, and earn the respect of my family was to enlist into the military. I no longer have a restraining order from my family and now have a family of my own. My wife is in the United States Air Force and my daughter is 18 months old. I am thankful to the Air Force for the opportunity given to me to make these changes.

I am now attending college to better myself and will hopefully earn a degree in nursing. I ask that you please review my discharge and upgrade it so my record will be cleared and I can have an opportunity to use my Montgomery GI bill.



DEPARTMENT OF THE AIR FORCE
31st INTELLIGENCE SQUADRON (ACC)
FORT GORDON GEORGIA

FD 2004-00192

MEMORANDUM FOR [REDACTED]

10 Feb 03

FROM: 31 IS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for defective enlistment - fraudulent entry. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.15. If my recommendation is approved, your discharge will be characterized as Honorable or Under Honorable Conditions (General). I recommend your discharge be characterized as General.
2. My reason for this action is that on or about 25 Mar 99, in order to obtain entry into the Air Force, you knowingly failed to disclose that you had been arrested for grand theft, burglary, possession of drug paraphernalia, possession of alcohol as a minor, possession of a switchblade knife, and disorderly conduct. Had the Air Force Recruiting office known of your deception, you may have been rejected from enlistment. For this misconduct, you received Article 15 nonjudicial punishment, dated 12 Dec 02. Punishment consisted of 30 days extra duty.
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 [REDACTED] Area Defense Counsel, 895-9530, on 10 Feb 03, at 1500 hours. You may consult civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within three days after receipt of the notification memorandum, 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 in your own behalf, your failure will constitute a waiver of your right to do so.
7. You are scheduled for your final out-processing medical examination on 11 Feb 03 at 1100 hours. You will report to Primary Care, located in the Shaw AFB Hospital, at the time prescribed. This appointment is mandatory. If you must reschedule, contact your unit First Sergeant to reschedule the appointment for you. This examination must be carried out within 48 hours of the original appointment if the date must be rescheduled.
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 the orderly room.

9. The Air Force is entitled to recoup a portion of educational assistance, special pay, or bonus monies, which you received, if any, if you separate before completing the period of active duty you agreed to serve. This recoupment applies whether you voluntarily separate or are involuntarily separated. Recoupment will apply regardless of the basis for involuntary discharge, unless the reason is homosexual conduct. The recoupment in all cases is an amount that bears the same ratio to the total cost provided to you as the unserved portion of active duty bears to the total period of active duty you agreed to serve. If you dispute that you are indebted for educational assistance, a board or other authority will make findings and recommendations concerning the validity of the indebtedness.

10. Execute the attached acknowledgment, and return it to me immediately.



, Lt Col, USAF
Commander

Attachments:

- 1. AF Form 3070, dated 12 Dec 02 (Tab 4)
- 2. Respondent's Receipt of Notification (Tab 5)