

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE SSGT	AFSN/SSAN ████████████████
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TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
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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 A94.05	INDEX NUMBER A67.10	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 17 Aug 2004	CASE NUMBER FD-2004-00233	
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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

ENDORSEMENT		DATE: 8/17/2004
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-2004-00233

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: The Board grants the requested relief.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received two Article 15s, three Letters of Reprimand, one Letter of Counseling, and two Verbal Counseling for misconduct, and for failure to progress in the Weight Management Program. The DRB opined that the primary reason the applicant was discharged was for failure in the weight program and thought that this was too harsh. The Board did not condone the other acts of misconduct, but opined that the first ten years of the applicant's duty performance warranted favorable consideration for upgrade to honorable.

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 an Honorable discharge and should be changed 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 SSGT) (HGH TSgt)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr McGuire AFB, NJ on 10 May 89 UP AFR 39-10, para 5-47b & 5-26f (Misconduct - Minor Disciplinary Infractions & Unsatisfactory Performance - Exceeding Weight Standards). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 5 May 54. Enlmt Age: 23 9/12. Disch Age: 35 0/12. Educ: HS DIPL. AFQT: N/A. A-40, E-65, G-85, M-45. PAFSC: 81170 - Security Technician. DAS: 17 Jun 88.

b. Prior Sv: (1) Enlisted as AB 22 Feb 78 for 6 yrs. Svd: 5 yrs 8 months 15 days, all AMS. AMN - Unknown. A1C-(APR Indicates): 22 Feb 78-31 May 79. SrA-(APR Indicates): 1 Jun 79-9 Mar 80. Sgt - 20 Nov 80. SSgt 1 Jul 81. APRs: 9,9,9,9,9,9,9,9.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 7 Nov 83 for 6 yrs. Svd: 5 Yrs 6 Mo 3 Das, all AMS.

b. Grade Status: SSgt - 4 Feb 88 (Article 15, 4 Feb 88)
TSgt - 1 Apr 86

c. Time Lost: None.

d. Art 15's: (1) 04 Feb 88, Iraklion AB, Greece - Article 134. In that you, did, on about 1 Dec 87, wrongfully and falsely forge your commander's signature, on an official Air Form 118, Refund of Tuition Assistance-Education Services Program, in words and figures as follows: [REDACTED] which conduct was prejudicial to good order and discipline in the armed forces. Reduction to SSgt. (Appeal/Denied) (No mitigation)

(2) 15 Jan 87, Iraklion AB, Greece - Article 128. Preliminary investigation has disclosed that you did, on or about 21 Dec 86, unlawfully slap [REDACTED] in the face with your hand and unlawfully throw a drinking glass at him, striking him in the face. Forfeiture of \$200.00 and 14 days extra duty. (No appeal) (No mitigation)

e. Additional: LOR, 18 OCT 88 - Failure to progress in the Weight Management Program.
UIF, 11 JAN 88 - Financial irresponsibility.

VBC, 30 NOV 87 - Verbally counseled for conduct unbecoming a TSgt.
 LOR, 06 OCT 87 - Failure to progress in Weight Management Program.
 LOR, 12 JUN 87 - Failure to progress in Weight Management Program.
 LOC, 24 FEB 87 - Failure to progress in Weight Management Program.
 VBC, 09 JAN 87 - Verbally counseled for Failure to progress in Weight Management Program.

f. CM: None.

g. Record of SV: 21 Apr 83 - 04 Dec 83 Whiteman AFB 9 (CRO)
 05 Dec 83 - 04 Dec 84 Whiteman AFB 9 (Annual)
 05 Dec 84 - 04 Dec 85 Whiteman AFB 9 (Annual)
 05 Dec 85 - 16 Sep 86 Whiteman AFB 9 (CRO)
 17 Sep 86 - 16 Sep 87 Iraklion AB 9 (Annual)
 17 Sep 87 - 15 Jun 88 Iraklion AB 7 (CRO)

h. Awards & Decs: AFCEM, AFGCM W/1 DEV, NCOPMER, AFLSAR W/1 DEV, AFOSLTR W/1 DEV, AFTR, SAEMR, AFOUA W/2 DEVS, AFOSSTR.

i. Stmt of Sv: TMS: (11) Yrs (2) Mos (19) Das
 TAMS: (11) Yrs (2) Mos (19) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 10 May 04.
 (Change Discharge to Honorable)

Issue 1: I believe that the characterization of my discharge was improper because it was based on failure to maintain a physical standard and not on the total character of my services. My agreement to the type of discharge given was based on unavailability to meet with, in person, legal representation to discuss the merits of the situation. Legal aid was limited due to the geographic location of my final duty station Crete, Greece.

ATCH
 None.

24JUN04/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 7276 AIR BASE GROUP (USAFB)
APO NEW YORK 09291-5000

FD 2004-00233

11 JAN 1989

REPLY TO
ATTN OF: CCG

SUBJECT: Letter of Notification - Board Hearing

TO: SSgt [REDACTED] 7276 ABG

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions and exceeding weight standards according to AFR 39-10, under the provisions of paragraphs 5-47b and 5-26f. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2a. My reasons for this action are:

1. On about 1 December 1987 you wrongfully forged your commanders' signature on an official Air force document for which misconduct you received an Article 15, UCMJ nonjudicial punishment, on 4 Feb 88. Pursuant to the article 15 punishment, you were reduced in grade to E-5, Staff Sergeant. Your authority to bear firearms was also administratively withdrawn.

2. On about 26 November 1987 you wrongfully engaged in disorderly conduct by becoming intoxicated while in uniform and yelling at the acting I.A.S. Consolidated Open Mess manager, "You're supposed to follow the fucking posted schedule," and subsequently having to be escorted out of the facility, for which misconduct you were verbally reprimanded by your commanding officer.

3. On or about 21 December 1986 you wrongfully assaulted another Air Force member by slapping him in the face and throwing a drinking glass at him, for which misconduct you received an Article 15, UCMJ Nonjudicial Punishment, on 15 Jan 87. Pursuant to the Article 15 punishment you were ordered to forfeit \$200.00 and perform fourteen days of extra duty.

4. During the period of about 7 November 1983 through about 31 December 1987 you exhibited financial irresponsibility on numerous occasions by writing checks on an account you knew or should have known did not contain sufficient funds to allow payment, and allowing several outstanding liabilities to become delinquent, for which misconduct an Unfavorable Information File was established on you on 11 January 1988.

2b. Additional reasons for this action are:

1. On 8 December 1986 you were entered into the Weight Management Program (WMP) with a weight of 184 pounds. Your Maximum Allowable Weight (MAW) was 179 pounds.

2. On 9 January 1987 you weighed 180 1/4 pounds, a loss of only 3 3/4 pounds during the preceeding thirty days. For this unsatisfactory performance you were verbally counseled on 9 January 1987.

3. On 10 Feburary 1987 you weighed 180 1/4 pounds, a loss of nothing during the preceeding thirty days. For this unsatisfactory performance you received a Letter of Counseling dated 24 Feburary 1987.

4. On 11 March 1987 you weighed 180 pounds, a loss of only 1/4 pound, during the preceeding thirty days. For this unsatisfactory performance you received a Letter of Reprimand dated 12 June 1987.

5. On 5 October 1987 you weighed 184 3/4 pounds, a gain of 7 1/2 pounds during the preceeding sixty days. For this unsafisfactory performance you received a Letter of Reprimand dated 6 October 1987 and was placed on the Control Roster.

6. On 14 Sep 88 you weighed 183 pounds, 4 pounds over your MAW. You were called in for a random check for this unsatisfactory performance you received a Letter of Reprimand, UIF, and control roster on 18 Oct 88.

7. On 9 December 1988 you weighed 188 pounds, a gain of 8 1/2 pounds during the preceeding thirty days. For this unsatisfactory performance you are hereby recommended for administrative seperation from the United States Air Force.

8. On 9 Jan 89 you weighed 189 1/2, a gain of 1 1/2 pounds during the preceeding thirty days.

3. This action could result in your separation with a General (Under Honorable Conditions) Discharge. I am recommending that you receive a General 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.

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.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

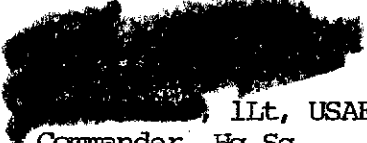
5. You have already had your medical examination. You had to report to physical exams at the base hospital on 21 Dec 88 at 0800 hrs.

6. Contact the legal office at ext 3506 for the name and number of the legal counsel which has been obtained to assist you. An appointment will be scheduled for you to consult him/her. 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 AFM 111-1. 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 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 Statement as explained in AFR 39-10, attachment 6. A copy of AFR 39-10 is available for your use in the Headquarters Squadron Orderly Room.

10. Execute the attached acknowledgement and return it to me immediately.


Commander, Hq Sq

7 Atch

1. AF Form 3070 dated 4 Feb 88.
2. AF Form 590 dated 26 Feb 88.
3. AF Form 3070 dated 15 Jan 87.
4. AF Form 1058 dated 11 Jan 88.
5. WMP Case File
6. Documents containing derogatory information which are not listed in the notification letter.
7. Airman's acknowledgement. 