

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 150px; height: 15px;"></div>				GRADE AB		AFSN/SSAN <div style="background-color: black; width: 100px; height: 15px;"></div>			
TYPE UOTH		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					
<div style="border: 1px dashed black; width: 280px; height: 130px;"></div>				HON	GEN	UOTHC	OTHER	DENY	
									X
									X
									X
									X
									X
ISSUES A94.05		INDEX NUMBER A67.30		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					
HEARING DATE 05 Oct 2004		CASE NUMBER FD-2004-00240		TAPE RECORDING OF PERSONAL APPEARANCE					
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: 10/6/2004					
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

FD-2004-00240

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.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for knowingly attempting to receive material containing child pornography on his personal computer. Applicant states that he did not actively seek out images of child pornography, but had responded to pop-up banners when he viewed regular pornographic sites. When he searched for pornographic sites, he conducted searches using the words "porn", "girls", and "sex". He indicated that he had no desire to search for pornography since his computer was seized and he was in "an unhealthy frame of mind" when he first told the OSI he viewed child pornography. This issue is without merit. A review of the applicant's hard drive identified fourteen images which appeared to be child pornography. 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

[REDACTED]
[REDACTED]
(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Pope AFB, NC on 12 Aug 03 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 10 Feb 76. Enlmt Age: 24 11/12. Disch Age: 27 6/12. Educ: HS DIPL. AFQT: N/A. A-65, E-66, G-94, M-89. PAFSC: 2A635 - Aircraft Hydraulic System. DAS: 17 Aug 01.

b. Prior Sv: (1) AFRes 30 Jan 01 - 12 Mar 01 (1 month 11 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 13 Mar 01 for 4 yrs. Svd: 2 Yrs 5 Mo 0 Das, all AMS.

b. Grade Status: AB - 26 Jun 03 (Article 15, 26 Jun 03)
A1C - 13 Jan 02

c. Time Lost: None.

d. Art 15's: (1) 26 Jun 03, Pope AFB, NC - Article 80. You did, within the continental United States, on or about 22 Dec 02, knowingly attempt to receive material containing child pornography, to wit: you obtained lascivious images obtained from internet searches using the search term "pre-teen fucking," via your computer that was transported via interstate commerce in violation of 18 USC 2252A. Reduction to AB, 15 days extra duty, and a reprimand. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: None.

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

i. Stmt of Sv: TMS: (2) Yrs (6) Mos (14) Das
TAMS: (2) Yrs (5) Mos (0) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 17 Jun 04.
(Change Discharge to Honorable)

6

Issue 1: I have attached my case file to this application. The important area of this case file is under narrative interviews 2-7 and is highlighted. Thank you for your consideration of the review of discharge or dismissal from the armed forces of the United States.

ATCH

1. Copy of Military Personnel Record.

4AUG04/ia



FD 2007-0021-
DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 43D AIRLIFT WING (AMC)
POPE AIR FORCE BASE NORTH CAROLINA

22 Jul 03

MEMORANDUM FOR AB [REDACTED] 43 AMXS

FROM: 43 AMXS/CC
3503 Surveyor Street
Pope AFB NC 28308

SUBJECT: Notification Memorandum - Board Hearing

1. I am recommending your discharge from the United States Air Force for Commission of a Serious Offense. The authority for this action is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, paragraph 5.52.3. The most severe type of discharge authorized in this case is an Under Other Than Honorable Conditions (UOTHC) discharge, if the convening authority determines such characterization is warranted and directs initiation of a discharge board. I am recommending that you receive a UOTHC discharge. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reason for this action is on or about 22 Dec 02, you knowingly attempted to receive material containing child pornography, to wit: you obtained lascivious images obtained from internet searches using the search term "pre-teen fucking," via your personal computer that was transported via interstate commerce, in violation of 18 USC 2252A.

3. The 43d Airlift Wing Commander, who exercises Special Court Martial (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 and any special pay, bonus, or education assistance funds may be subjected to recoupment.

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 have the right to consult legal counsel before making a decision to waive any of your rights.

5. Military legal counsel may be obtained to assist you. Consult the Area Defense Counsel at 394-2632 for an appointment. Instead of the appointed counsel, you may have another, if the counsel you request is in the active military service and is reasonably available as determined according to AFI 51-201. 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.

6. Confer with your counsel and reply, in writing, within **7 workdays**, specifying the rights you choose to exercise. 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.

7. You have been scheduled for a physical examination with Dr. [REDACTED]. Report to the Pope AFB Family Practice Clinic at the on **22 Jul 03** at **0825** hours. In addition report to the Lab ASAP to receive HIV screening.

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 at the orderly room.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. The discharge board or the discharge authority will make the finding and recommendations required under 10 U.S.C. 2005(g).

11. Execute the attached acknowledgment and return it to me immediately.


Lt Col, USAF
Commander

Attachments:

1. AF Form 3070, dated 26 Jun 03
2. AF Form 1168 (4 pgs), dated 23 Dec 02
3. ROI (27 pgs), dated 23 Jan 03 – 21 Apr 03