

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AIC	AFSN/SSAN [REDACTED]
--	---------------------	--------------------------------

TYPE UOTH	PERSONAL APPEARANCE	X	RECORD REVIEW								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">COUNSEL</td> <td style="padding: 2px;">NAME OF COUNSEL AND OR ORGANIZATION</td> </tr> <tr> <td style="padding: 2px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;">X</td> </tr> </table> </td> <td style="padding: 2px;">ADDRESS AND OR ORGANIZATION OF COUNSEL</td> </tr> </table>	COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;">X</td> </tr> </table>	YES	No		X	ADDRESS AND OR ORGANIZATION OF COUNSEL			
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;">X</td> </tr> </table>	YES	No		X	ADDRESS AND OR ORGANIZATION OF COUNSEL						
YES	No										
	X										

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A94.53	INDEX NUMBER A73.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="padding: 2px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width: 20px; padding: 2px; text-align: center;">1</td> <td style="padding: 2px;">ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="padding: 2px; text-align: center;">2</td> <td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="padding: 2px; text-align: center;">3</td> <td style="padding: 2px;">LETTER OF NOTIFICATION</td> </tr> <tr> <td style="padding: 2px; text-align: center;">4</td> <td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td colspan="2" style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td colspan="2" style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td colspan="2" style="padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE</td> </tr> </tbody> </table>	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	
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 01 Dec 2004	CASE NUMBER FD-2004-00292
------------------------------------	-------------------------------------

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE BASED 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]

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-2004-00292

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

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, and change of reason and authority for discharge, are 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.

Issues. Applicant received an Under Other Than Honorable Conditions (UOTHC) discharge pursuant to his request to be discharged in lieu of trial by court martial. Member was charged with violating a no contact order on divers occasions and with twice assaulting a female airman. Applicant now comes noting the adverse result his discharge has had on his ability to obtain post-service employment. The Board concluded member's misconduct was a particularly serious failure to meet Air Force standards and an extremely significant departure from conduct expected of all military members. His misconduct was sufficient reason for receiving a UOTHC discharge. The Board further notes that applicant voluntarily submitted his request for discharge in lieu of trial by court martial, thus not attempting to establish his innocence or present any extenuating or mitigating factors. In doing so he acknowledged that under these circumstances his characterization of service could be deemed under other than honorable conditions in accordance with discharge regulations, wherein airmen so discharged usually do have their service characterized as UOTHC. The Board found no wrongful action by the Air Force, and could find no inequity or impropriety on which to base an upgrade to the discharge.

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 A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr Elmendorf AFB, AK on 30 Apr 03 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 7 Jan 83. Enlmt Age: 18 2/12. Disch Age: 20 3/12. Educ: HS DIPL. AFQT: N/A. A-57, E-56, G-57, M-57. PAFSC: 1C531 - Aerospace Controller and Warning Systems Apprentice. DAS: 4 Jan 02.

b. Prior Sv: (1) AFRes 30 Mar 01 - 22 Aug 01 (4 months 24 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 23 Aug 01 for 6 yrs. Svd: 1 Yrs 8 Mo 8 Das, of which AMS is 1 yr 8 months 2 days (excludes 6 days lost time).

b. Grade Status: A1C - 8 Oct 01

c. Time Lost: 22 Apr 03, through 27 Apr 03 (6 days).

d. Art 15's: None.

e. Additional: LOR, 28 MAR 03 - Loud and violent altercation in the dormitory resulting in bodily harm and disturbed dormitory occupants, and making false official statements.

LOR, 21 MAR 03 - Failure to obey an order.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (2) Yrs (0) Mos (25) Das
TAMS: (1) Yrs (8) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 21 Jul 04.
(Change Discharge to Honorable and Change the Reason and Authority for Discharge)

Issue 1: I was not took to trial because the Squadron Commander and I talked and I opted to be separated under other the honorable conditions.

Issue 2: When employer see (sic) my DD 214 they say no to jobs that I qualify for just because they see triable by Court-Martial. I desperately need a good job. I have first child on the way and I don't won't (sic) to work for minimum wage anymore.

ATCH

1. DD Form 214.

25AUG04/ia

FD 2004-00292



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

18 Apr 2003

MEMORANDUM FOR 3 WG/CC

FROM: 611 Air Control Squadron/CC

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial
AIC [REDACTED]

1. I have received and reviewed AIC [REDACTED] request for discharge in lieu of trial by court-martial, pursuant to AFI 36-3208, chapter 4. I recommend the attached request for discharge be approved for the following reasons:

- a. AIC [REDACTED] has been charged with failure to obey a no-contact order and assault.
- b. The Air Force benefits from administratively discharging AIC [REDACTED] in lieu of proceeding to trial.

Accordingly, I believe the interests of the Air Force can best be vindicated through administrative discharge.

2. If this request for discharge is approved, I recommend AIC [REDACTED] be given an Under Other Than Honorable Conditions Discharge. No promises have been made to the accused as to what type of discharge he would receive if his request were approved.

3. In accordance with AFI 36-3208, chapter 4, the following information is provided. AIC [REDACTED]

- a. Is not under investigation.
- b. Is not awaiting action under AFI 36-2503 (Administrative Demotion of Airmen), AFI 36-3212 (Physical Evaluation for Retention/Retirement/Separation), or AFI 36-3208 (Administrative Separation of Airmen).
- c. Is not awaiting result of trial.
- d. Is not absent without authority.
- e. Is not absent in the hands of civil authorities.
- f. Has not been referred to a medical facility for examination.
- g. Is not in default with respect to public property or public funds.

FD 2004-00292

- h. Has not completed 16 or more years of active military service.
 - i. Is not accountable or responsible for public property or funds.
 - j. Member did not receive tuition assistance, has the Montgomery GI Bill, and did receive an initial enlistment bonus of \$4,000 on 4 March 2002. After taxes, it was \$2736, voucher number KA 200196.
4. There has not been report of recent courts-martial level offenses other than the charged offenses.
 5. Court-martial charges have been preferred to a trial by special court-martial. Copies of the charges are attached.
 6. At the time of the misconduct, A1C [REDACTED] did not have a mental disease or defect that caused him to lack the substantial capacity either to appreciate the criminality (wrongfulness) of the acts or to conform to the law (AFI 44-109). A1C [REDACTED] presently has the capacity to understand the nature of the proceedings and to assist in the defense.
 7. A1C [REDACTED] does not hold a Reserve of the Air Force appointment as a commissioned or warrant officer.
 8. Information from the military record follows:
 - a. Date and term of enlistment and date this period of continuous active duty started: same for both--23 Aug 01/6 Years.
 - b. Date of birth: 7 Jan 83
 - c. Test scores: Admin - 57. Elect - 56. General - 57. Mech - 57
 - d. Formal training: E3ABR1C531-005, Aerospace Control & Warning Apprentice Course
 - e. Date assigned unit: 4 Jan 02
 - f. Current grade and effective date: A1C/8 Oct 01
 - g. Demotions, if any, and reasons and dates thereof: None
 - h. Time lost: None
 - i. Record of disciplinary actions under the UCMJ: None
 - j. Overall rating and date of enlisted performance reports: none, but initial EPR Due 15 Apr 03. It's in referral status and was submitted to him 18 Apr 03.

