

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE SSGT	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	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]	X+				
[REDACTED]	X+				
[REDACTED]	X+				
[REDACTED]	X+				
[REDACTED]	X+				

ISSUES A94.06	INDEX NUMBER A75.00	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 13 Dec 2004	CASE NUMBER FD-2004-00317	
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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.

+ CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY

INDORSEMENT		DATE: 12/14/2004
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-2004-00317

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

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 partial relief. The discharge is upgraded to Honorable and the reason and authority for discharge is changed to Secretarial Authority. The reenlistment code will not be changed.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's discharge and reason and authority for discharge inequitable.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant was charged with dereliction in the performance of his duties and elected to be discharged in lieu of a Court Martial. Although the applicant was found to be negligent in the performance of his duties, his service record reflects fourteen years of dedicated service. The Board opined that the characterization of the discharge received by the applicant to be too harsh and directs it be changed 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 the reason and authority for the discharge is more accurately described as Secretarial Authority 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 SSGT)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr Lackland AFB, TX on 22 Jul 99 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. BACKGROUND:

a. DOB: 15 Apr 63. Enlmt Age: 21 8/12. Disch Age: 36 3/12. Educ: Bachelor's Degree. AFQT: N/A. A-45, E-45, G-52, M-66. PAFSC: 3P071 - Security Forces Craftsman. DAS: 7 Jul 97.

b. Prior Sv: (1) AFRes 28 Dec 84 - 28 Mar 85 (3 months 1 day) (Inactive).

(2) Enlisted as AB 29 Mar 85 for 4 yrs. Extended 7 Jul 86 for 7 months. Reenlisted as Sgt 27 Mar 89 for 4 yrs. Reenlisted as Sgt 26 Mar 92. Extended as 26 Oct 94 for 13 months. Svd: 9 yrs 11 months 23 days, all AMS. AMN-(APR Indicates): 29 Mar 85-28 Mar 86. A1C-(APR Indicates): 29 Mar 86-16 Aug 86. SrA-(APR Indicates): 11 Apr 87-20 Nov 87. Sgt-(APR Indicates): 21 Nov 87-22 Feb 89. SSGT - 1 Dec 92. APRs: 9,9,9,9,9,9. EPRs: 4,5,3,5,5,5,5.

3. SERVICE UNDER REVIEW:

a. Reenlisted as SSGT 25 Mar 95 for 4 yrs. Svd: 4 Yrs 3 Mo 27 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: none.

g. Record of SV:	18 Mar 95 - 17 Mar 96	Clear AS	4	(Annual)
	18 Mar 96 - 17 Mar 97	Barksdale AFB	4	(Annual)
	18 Mar 97 - 17 Mar 98	Lackland AFB	5	(Annual)
	18 Mar 98 - 17 Mar 99	Lackland AFB	4	(Annual) REF

h. Awards & Decs: AFAM, AFOUA W/4 BOLCS, AFGCM W/3 BOLCS, NDSM, AFOSSTR W/1 BOLC, AFOSLTR W/2 BOLCS, NCOPMER, SAEMR, AFTR.

i. Stmt of Sv: TMS: (14) Yrs (6) Mos (25) Das

TAMS: (14) Yrs (3) Mos (24) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 2 Aug 04.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Form 214.
3. Two College Degrees.
4. Grade Report.

8SEP04/ia

AUG 1 0 2004

B/AA/RE/RD/EF

FD2004-00317

APPLICATION FOR THE REVIEW OF DISCHARGE 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 the Department of Defense, Executive Services and Communications Directorate (0704-0004). 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. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.

a. BRANCH OF SERVICE (X one)		ARMY	MARINE CORPS	NAVY	<input checked="" type="checkbox"/> AIR FORCE	COAST GUARD
b. NAME (Last, First, Middle Initial)			c. GRADE/RANK AT DISCHARGE		d. SOCIAL SECURITY NUMBER	
[REDACTED]			SSGT		[REDACTED]	
2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)		4. DISCHARGE CHARACTERIZATION RECEIVED (X one)			5. BOARD ACTION REQUESTED (X one)	
19990722		<input checked="" type="checkbox"/> HONORABLE			<input checked="" type="checkbox"/> CHANGE TO HONORABLE	
		<input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS			CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS	
		UNDER OTHER THAN HONORABLE CONDITIONS			CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)	
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION		BAD CONDUCT (Special court-martial only)			CHANGE NARRATIVE REASON FOR SEPARATION TO:	
343 TRAINING SQ		UNCHARACTERIZED				
I ACKI AND AFR TX		OTHER (Explain)				

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

The reason for the action taken was due to a training accident where a student was injured. The accident was merely an accident and not misconduct or criminal intent. The current classification of discharge is effecting hiring decisions being made by US Government agencies concerning background checks. I believe the type of discharge was inequitable because it was based on one isolated incident in 14 years and four months of outstanding service. During those 14+ years of outstanding service, CONT'd

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.)

Since discharge from the Military I have accomplished the following: Received a B.S. in Criminal Justice from Empire State University; Received an Associates Degree in Paralegal Studies and currently completing graduate level courses in Labor Relations & Human Resources at the University of Rhode Island. My current position is that of Security Supervisor for a Department of Homeland Security-Federal Protective Service contract. I have performed these duties for approximately four years as of CONT'd

9. TYPE OF REVIEW REQUESTED (X one)

<input checked="" type="checkbox"/>	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.
<input type="checkbox"/>	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.
<input type="checkbox"/>	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)	
[REDACTED]		[REDACTED]	
		c. E-MAIL	
		[REDACTED]	
		d. FAX NUMBER (Include Area Code)	
		[REDACTED]	

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.

<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> 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)	
[REDACTED]				[REDACTED]	
				c. E-MAIL	
				[REDACTED]	
				d. FAX NUMBER (Include Area Code)	
				[REDACTED]	

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)		b. DATE SIGNED - REQUIRED (YYYYMMDD)		CASE NUMBER (Do not write in this space.) FD-2004- 00317
[REDACTED]		20040802		

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

previous to the training incident I had not received a single Letter of Reprimand for any type of poor performance from my supervisors or other leaders in my chain of command. My Enlisted Performance Reports, if reviewed, will show outstanding performance in my duties and responsibilities. I was selected to instruct at a Technical Training School at Lackland AFB due to my knowledge, experience and past performance in my duty area. My final performance report was rated "5" out of "5" but it was a Referral Report due to derogatory information placed in it due to the training accident. I do not have a copy of the final Enlisted Performance Report to show the evaluation received or the final overall rating. My understanding from what I recall is that it remained a "5".

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

20040905

16. REMARKS (If applicable)

Requested Actions:

#27 Reentry Code; Change From 2B To a code the States I can enlist in the Guard or Reserve IF I wish to do so.

#28 Reason for Separation; Change Triable By Courts martial to Completion of Required Service. 855

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593

CHARGE SHEET

FD 2004-00317

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [REDACTED]			2. SSN [REDACTED]	3. GRADE OR RANK SSgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION Lackland Air Force Base, Texas 78236				6. CURRENT SERVICE	
				a. INITIAL DATE 29 Mar 85	b. TERM 4
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED NONE	9. DATE(S) IMPOSED	
a. BASIC \$1,844.10	b. SEA/FOREIGN DUTY \$0.00	c. TOTAL \$1,844.10			

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 92

SPECIFICATION: 1
 In that [REDACTED] United States Air Force, 343rd Training Squadron, who knew or should have known of his duties at or near Camp Bullis, Texas, on or about 8 March 1999, was derelict in the performance of those duties in that he negligently failed to perform barrel changes on an M-60 machine gun after each two hundred rounds were fired, as it was his duty to do.

SPECIFICATION 2: In that [REDACTED] United States Air Force, 343rd Training Squadron, who knew or should have known of his duties at or near Camp Bullis, Texas, on or about 8 March 1999, was derelict in the performance of those duties in that he negligently failed to perform correct immediate action steps for an M-60 machine gun, as it was his duty to do.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE Capt	c. ORGANIZATION OF ACCUSER [REDACTED] Training Squadron
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 1 Jun 99

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 1st day of June, 19 99, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

_____ Typed Name of Officer. Captain _____ Grade.	_____ Organization of Officer. Judge Advocate _____ Official Capacity to Administer Oath (See R.C.M. 307(b)--must be commissioned officer)
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DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

FD 2004-00317

MEMORANDUM FOR 37 TRW/CC

FROM: 37 TRW/JA

SUBJECT: Legal Review - Request for Discharge in Lieu of Trial by Court-Martial—
SSgt [REDACTED] 343rd Training Squadron

1. SSgt [REDACTED] is charged with two specifications of negligent dereliction of duty resulting in injury to a technical training student who suffered facial lacerations and powder burns. The two offenses are related and occurred very close in time. After consulting with military defense counsel, SSgt [REDACTED] submitted this request for discharge in lieu of trial by court-martial pursuant to AFI 36-3208, Chapter 4.
2. SSgt [REDACTED] is 36 years old and married with one child. He has no prior Article 15s. Neither of the two charged offenses, standing alone, authorizes a Bad Conduct Discharge. SSgt [REDACTED] squadron commander and group commander recommend that the request for discharge be accepted and that SSgt [REDACTED] be discharged with a service characterization of under honorable conditions (general).
3. The request for discharge case file is legally sufficient. As the court-martial convening authority, you have the following options:
 - a. Forward the request for discharge to the 2 AF/CC recommending approval of the request for discharge and recommend that SSgt [REDACTED] be discharged with a service characterization of under other than honorable conditions, under honorable conditions (general), or honorable.
 - b. Deny the request for discharge and return the case file for further processing of the court-martial charges.
4. An airman who submits a request for discharge in lieu of trial by court-martial normally receives a discharge with a service characterization of under other than honorable conditions, the least favorable administrative discharge characterization. A discharge under honorable conditions (general) is appropriate when the airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh the positive aspects of the airman's military record. An honorable discharge may be given only if the airman's record has been so meritorious that any other service characterization would be inappropriate.

5. A general discharge is warranted in this case in view of SSgt [REDACTED] lengthy honest and faithful service to the Air Force. Except for the charged misconduct, SSgt [REDACTED] service record reflects fourteen years of dedicated service. The facts surrounding the charged misconduct reveal a gross lapse in judgment on SSgt [REDACTED] part, but there is no evidence of intent to cause injury. The student's injuries were relatively minor and did not require hospitalization. Further, based upon a review of SSgt [REDACTED] performance records, this serious lapse in judgment was uncharacteristic of his prior performance.

6. According to the squadron commander and the 37th Training Group commander, acceptance of the request for discharge in lieu of trial by court-martial will not have a detrimental effect upon morale and discipline in their respective units. Therefore, based upon all the circumstances, including SSgt [REDACTED] overall military record, I recommend that the request be accepted with a discharge with a service characterization of under honorable conditions (general).

[REDACTED]
[REDACTED] Col, USAF
Acting Staff Judge Advocate