

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 15px;"></div>			GRADE A1C		AFSN/SSAN <div style="background-color: black; width: 100%; height: 15px;"></div>	
TYPE GEN		PERSONAL APPEARANCE			X RECORD REVIEW	
COUNSEL YES No X		NAME OF COUNSEL AND OR ORGANIZATION			ADDRESS AND OR ORGANIZATION OF COUNSEL	
MEMBER SITTING				VOTE OF THE BOARD		
				HON	GEN	UOTHC
						OTHER
						DENY
						X
						X
						X
						X
						X
ISSUES A94.05		INDEX NUMBER A67.50 A66.00		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-2004-00327				
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE						
<p>Case heard at Washington, D.C.</p> <p>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</p>						
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-2004-00327

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: Upgrade of discharge, change of reason and authority for discharge, and change of reenlistment code are denied.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

ISSUE: Applicant contends discharge was inequitable because it was too harsh and that he was not afforded legal council. The records indicated the applicant received two Article 15s and three Letters of Reprimand for various misconduct to include drug abuse by wrongfully inhaling aerosol propellant. The applicant's contention that he did not receive legal council is without merit. The record clearly shows that the applicant consulted council when both Article 15s were administered and again when he was notified of the commander's recommendation to discharge him. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. 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]
(Former AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr F.E. Warren AFB, WY on 9 Jul 04 UP AFI 36-3208, para 5.54 & 5.50.2 (Drug Abuse & Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 26 Nov 84. Enlmt Age: 18 0/12. Disch Age: 19 7/12. Educ: HS DIPL. AFQT: N/A. A-40, E-41, G-44, M-31. PAFSC: 3P031 - Security Forces Apprentice. DAS: 5 Nov 03.

b. Prior Sv: (1) AFRes 23 Dec 02 - 2 Jun 03 (5 months 11 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 3 Jun 03 for 6 yrs. Svd: 1 Yrs 1 Mo 7 Das, all AMS.

b. Grade Status: Amn - 30 Mar 04 (Vacation of Article 15, 4 Jun 04)
A1C - 18 Jul 03

c. Time Lost: None.

d. Art 15's: (1) 4 Jun 04, F.E. Warren AFB, WY - Article 134. You did, on or about 19 Apr 04, wrongfully inhale aerosol propellant, which conduct under the circumstances was to the prejudice of good order and discipline in the armed forces. Reduction to Airman. (No appeal) (No mitigation)

(2) 30 Mar 04, F.E. Warren AFB, WY - Article 92. You, who knew of your duties, at or near Cheyenne, Wyoming, on or about 29 Feb 04, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcoholic beverages while under the legal drinking age of twenty-one years, as it was your duty to do. Suspended reduction to Airman. Thirty days restriction, and 30 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional: LOR, 19 MAR 04 - Late for duty.
LOR, 12 MAR 04 - Late for duty on several occasions.
LOR, 15 DEC 03 - Failure to obey an Order or Regulation.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: AFTR, NDSM, SFS, FPB.

i. Stmt of Sv: TMS: (1) Yrs (6) Mos (17) Das
TAMS: (1) Yrs (1) Mos (7) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 9 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. Notice of Monetary Benefit Determination.

14SEP04/ia

FD 2004-00327

OMB Approved No. 2900-0075
Respondent Burden: 15 minutes

STATEMENT IN SUPPORT OF CLAIM

PRIVACY ACT INFORMATION: The law authorizes us to request the information we are asking you to provide on this form (38 U.S.C. 501(a) and (b)). The responses you submit are considered confidential (38 U.S.C. 5701). They may be disclosed outside the Department of Veterans Affairs (VA) only if the disclosure is authorized by the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22, Compensation, Pension, Education and Rehabilitation Records - VA, published in the Federal Register. The requested information is considered relevant and necessary to determine maximum benefits under the law. Information submitted is subject to verification through computer matching programs with other agencies.

RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average 15 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 this burden, to the Clearance Officer (723), 810 Vermont Ave., NW, Washington, DC 20420; and to the Office of Management and Budget, Paperwork Reduction Project (2900-0075), Washington, DC 20503. PLEASE DO NOT SEND THIS FORM OR APPLICATIONS FOR BENEFITS TO THESE ADDRESSES.

FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN (Type or print)	SOCIAL SECURITY NO. "	VA FILE NO.
[REDACTED]	[REDACTED]	CICSS-

The following statement is made in connection with a claim for benefits in the case of the above-named veteran:

TO WHOM IT MAY CONCERN,
ATTACHED IS MY PERSONEL LETTER I HAVE WRITTEN TO YOU. I AM ASKING PLEASE TO HAVE MY DISCHARGE CHANGED FROM UNDEB HONORABLE CONDITIONS TO HONORABLE. AS YOU CAN SEE I MADE A MISTAKE FOR WHICH I AM VERY SORRY. I WAS MISLED BY THE ONES IN MY OUTFIT AND I ALSO DID NOT HAVE COUNCEL TO ADVISE ME. AS MY LIFE IS NOW I CANNOT REENTER THE SERVICE IN ANY BRANCH NOR CAN I FIND EMPLOYMENT.

THANK YOU IN ADVANCE FOR ANY CONSIDERATION AND HELP YOU MAY GIVE TO ME.

(CONTINUE ON REVERSE)

I CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

SIGNATURE

DATE SIGNED

07-29-2004

DAYTIME TELEPHONE NUMBER (Include Area Code)

ADDRESS

PENALTY: The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false.



July 28, 2004

To whom it may concern,

My name is [REDACTED] and upon my graduation from [REDACTED] School in June, 2003 I proudly enlisted in the United States Air Force to proudly serve my country as part of the security forces with specialty in the K-9 unit. My recruiter informed me that I would be immediately eligible for K-9 training as soon as I finished basic training and tech school security forces of which I did at the Lackland Air Force Base in San Antonio, TX, October 23, 2003.

During my time at tech school, I was informed that I was NOT eligible to attend K-9 until I was promoted to Senior Airman. I was extremely disappointed to say the least, but realized my goal was still attainable.

On October 23, 2003, I received my transfer orders and arrived at F.E. Warren Air Force Base, Cheyenne, WY on November 5, 2003.

December, 2003 - Me and my friend were shooting pellet guns in the dorm. Being new to the Air Force and excited about the combat training, we indulged ourselves with some tactical response maneuvers. I look back at it now and realize it was not the most intelligent decision, but between being bored and unsupervised, "Idle hands are the Devil's playground". As a result of my actions, my punishment was an LOR from my first sergeant.

March, 2004 - A fellow serviceman was caught drinking (he was underage) and upon threat of punishment, he implicated me as to drinking with him. An investigation was performed and I was informed I could retain counsel. The Air Force counsel was already handling another client involved in the same case so I had to find counsel elsewhere. The lawyer I was able to get was not able to be present during my interview because she was based in Little Rock, AR. As a result, I was found guilty of underage drinking. My punishment was an Article 15, 30-day base restriction, 30-days extra duty and a 6 month suspended stripe.

April, 2004 - While working in General Duty Section, I was late for work twice. The first time I was late was due to a power outage causing my alarm clock not to go off. The second time I was only late by 2 minutes according to the on-premises clock. My punishment was an LOR for each incident.

May, 2004 - Five fellow servicemen and myself were in a dorm room and someone brought in one can of aerosol dusting spray (used for getting dust out

of computer and electronic equipment). We all proceeded to spray the aerosol in our mouths so we could cause our voices to go low and to make us feel good. Upon getting caught, all of us were brought up on drug abuse charges. I was called in by investigators [REDACTED] and was informed to write down the entire incident, in exchange for leniency (their statements were I would not get kicked out of the Air Force). Whatever it was, I felt like I was being coerced to confess under promise of a lesser charge. The punishment I received for this incident was vacated stripe and my badge and beret were taken away and my pay grade reduced from E-3 to E-2. In addition, when I received my punishment, I was not able to talk to my lawyer because she was TDY during that time and I was not given another lawyer in her place. Due to this fact, I was not able to properly defend myself and fight to stay in the Air Force.

My First Sergeant encouraged me to volunteer around and off-base to prove my integrity so I could get my badge and beret back. I started the volunteer work right away only to receive a discharge package a week later. My squadron commander [REDACTED] recommended my discharge, but told me that I would be able to join the Army after my discharge.

As of the writing of this letter, I have been discharged (General, Under Honorable) from the Air Force for huffing duster and for a pattern of misconduct. I take full responsibility for these actions, but feel that my actions warranted explanation as to the circumstances that lead to my discharge.

Upon returning home to Mississippi, I made an appointment to see my local Army recruiter and was informed that due to the enlistment code on my discharge papers, I would NEVER be eligible for military service for the rest of my life. His quote was "It would take an act of Congress to get you back into the military". A statement quite contrary to the words of my squadron commander [REDACTED].

I agree the Air Force was right to discharge me for my conduct. Under the circumstances however, I do not feel that I deserved the TYPE of discharge I received. Also, due to the General, Under Honorable discharge I received, I am not eligible for Unemployment and have not been able to secure full-time employment.

I also understand that the things I did wrong were stupid and childish. Being the first time I have ever been away from home, I now know that to be a man requires me to take responsibility for my actions. I also believe that all men desire to protect their family and country and I would like the opportunity to continue my service to my country like my grandfathers have and to do something I and my family can be proud of. I have straightened my life out and am willing and ready to enlist in any military service possible if I am ever allowed to again. If I am ever given another chance, this time I won't disappoint anyone.

If I cannot serve my country in the military, I would like to be a contributing

member of society and be able to have a full-time job, something I cannot do at the moment because of the enlistment code on my discharge papers.

Thank you for the time and patience. Any help and/or consideration you can afford me at this point is greatly appreciated. If you should have any questions and/or need any additional information, please feel free to call me at ([REDACTED])

Respectfully submitted,

[REDACTED]

cc:

[REDACTED]



DEPARTMENT OF THE AIR FORCE
90TH SPACE WING (AFSPC)

18 Jun 04

MEMORANDUM FOR AMN [REDACTED]

FROM: 90 MSFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for drug abuse and a pattern of misconduct. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.54 and 5.50.2. If my recommendation is approved, your service will be characterized as Honorable or Under Honorable Conditions (General) discharge. I am recommending that your service be characterized as Under Honorable Conditions (General) discharge.

2. My reasons for this action are:

a. You were, at or near dormitory 835, Francis E. Warren Air Force Base, Wyoming, on or about 2 Dec 03, apprehended by the 90th Security Forces Squadron for violation of Article 92 of the UCMJ, to wit: you and a fellow airman, [REDACTED], were dressed in BDU's, wearing load bearing equipment (LBE) and ski masks and carrying BB guns that resembled real firearms. This was in direct violation of 90SWI 32-9, paragraph 4.3. For this misconduct you received a Letter of Reprimand (LOR), dated 15 Dec 03.

b. You, who knew of your duties at or near Cheyenne, Wyoming, on or about 29 Feb 04, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcoholic beverages while under the legal drinking age of twenty-one years, as it was your duty to do. For violation of Article 92 of the UCMJ you received an Article 15, dated 30 Mar 04. An Unfavorable Information File (UIF) was created and this information was placed in it.

c. You did, at or near Francis E. Warren Air Force Base, Wyoming, on various occasions between on or about 7 Mar 04 and on or about 12 Mar 04, fail to go to your appointed place of duty at the prescribed time. For this misconduct you received an LOR, dated 12 Mar 04.

d. You did, at or near Francis E. Warren Air Force Base, Wyoming, on or about 17 Mar 04, fail to go to your appointed place of duty at the prescribed time. For this misconduct you received an LOR, dated 19 Mar 04

e. You did, at or near Francis E. Warren Air Force Base, Wyoming, on or about 19 Apr 04, wrongfully inhaled aerosol propellant, which conduct under the circumstances was to the prejudice of good order and discipline in the armed forces. For violation of Article 134 of the UCMJ, you received a Vacation Action, dated 4 Jun 04.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force and, if you are discharged, how your service will be characterized. 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 subject to recoupment.

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 with an attorney at the Area Defense Counsel's Office at Building 292, extension 3248, on 18 JUNE 04 at 1500 hrs. You may consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within three workdays after receipt of the notification memorandum, that date being 23 JUNE 04, unless you request and receive an extension for good cause shown. I will send any statements you submit to the separation authority for his consideration.

6. If you fail to consult counsel or to submit statements on your own behalf, your failure will constitute a waiver of your right to do so.

7. You have been scheduled for a medical examination. You must report to Family Practice at 0800 hours, on 21 JUNE 04 for the examination.

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 your Command Support Staff office.

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



Attachments:

1. LOR, dated 15 Dec 03
2. Article 15, dated 30 Mar 04
3. LOR, dated 12 Mar 04
4. LOR, dated 19 Mar 04
5. Vacation Action, dated 4 Jun 04
6. Other derogatory data not listed in the Notification Memorandum: UIF Summary.