

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 AMN		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 A67.10		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 09 Dec 2004		CASE NUMBER FD-2004-00335				
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> <div style="border: 1px dashed black; width: 100%; height: 40px; margin-top: 20px;"></div>						
INDORSEMENT				DATE: 12/9/2004		
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-2004-00335

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.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received two Article 15s, two Letters of Reprimand, one Letter of Admonishment, and one Record of Individual Counseling for misconduct. 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. The applicant states that he was separated from his wife in April of 1999 and paying court ordered child support. This issue is without merit as he was still legally married and his records at the time of discharge indicate that he was married with one dependent.

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 AMN) (HGH SrA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Holloman AFB, FL on 10 Jul 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 23 Jul 76. Enlmt Age: 18 5/12. Disch Age: 26 11/12. Educ: HS DIPL. AFQT: N/A. A-61, E-61, G-41, M-44. PAFSC: 2W151 - Aircraft Armament Systems Journeyman. DAS: 27 Dec 00.

b. Prior Sv: (1) AFRes 20 Jan 95 - 11 Apr 95 (2 months 23 days) (Inactive).

(2) Enlisted as AB 12 Apr 95 for 4 yrs. Extended 24 Jul 96 for 8 months. Extended 23 Dec 96 for 20 months. Svd: 3 yrs 3 months 9 days, all AMS. AMN - 12 Oct 95. A1C - 12 Aug 96. SrA - 12 Apr 98. EPRs: 4,4.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 21 Jul 98 for 6 yrs. Svd: 4 Yrs 11 Mo 19 Das, all AMS.

b. Grade Status: AMN - 06 May 03 (Article 15, 6 May 03)
A1C - 15 Jan 03
AMN - 14 Nov 01 (Article 15, 14 Nov 01)

c. Time Lost: None.

d. Art 15's: (1) 6 May 03, Holloman AFB, NM - Article 134. You, a married man, did, at or near Alamogordo, New Mexico, between on or about 1 Jan 02 and between on or about 10 Apr 03, wrongfully have sexual intercourse with A1C [REDACTED], a woman not your wife. You, a married man, did, at or near Alamogordo, New Mexico, between on or about 20 Nov 02 and between on or about 1 Mar 03, wrongfully have sexual intercourse with [REDACTED] a woman not your wife. Reduction to Airman. Suspended forfeiture of \$300.00 pay per month for 2 months. Suspended 45 days extra duty. (No appeal) (No mitigation)

(2) 14 Nov 01, Holloman AFB, NM - Article 107. You, did, on or about 18 Sep 01, with intent to deceive, sign A1C [REDACTED] name to an official record, to wit: an AFTO Form 781A, which record was totally false, and

was then know by you to be so false. Reduction to Airman, and 12 extra duty. (Appeal/Denied) (No mitigation)

- e. Additional: LOR, 26 MAR 03 - Late for duty.
 LOR, 13 FEB 03 - Adultery with a minor.
 LOA, 24 JUN 02 - Traffic citations for not wearing a seat belt, and two citations for failing to stop.
 RIC, 28 FEB 01 - Missed appointment.

f. CM: None.

- g. Record of SV: 17 Apr 98 - 16 Apr 99 Kadena AB 4 (Annual)
 17 Apr 99 - 16 Apr 00 Kadena AB 3 (Annual)
 17 Apr 00 - 15 Nov 00 Kadena AB 3 (CRO)
 16 Nov 00 - 15 Nov 01 Holloman AFB 2 (Annual) REF
 16 Nov 01 - 15 Nov 02 Holloman AFB 4 (Annual)

h. Awards & Decs: AFTR, NCOPMER, AFLSAR W/BOLC, NDSM W/1 BS, AFGCM W/BOLC, AFOUA, AFAM.

- i. Stmt of Sv: TMS: (8) Yrs (5) Mos (21) Das
 TAMS: (8) Yrs (2) Mos (29) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 16 Aug 04.

(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

Issue 1: Re-enter service as a Reserve & I asked for the discharge without fully thinking about the situation. I was a lot more (sic) money doing an outside job. I was seperated (sic) for 9 yrs but divorced (sic) when female called my 1st Shirt and told him she was pregant (sic). My Shirt gave me a artcal (sic) 15 I asked for a discharge instead of court martial and it was granted.

Issue 2: My discharge was improper because at the time I did not fully way (sic) the pros and cons of accepting GENERAL discharge. The issue which allowed me to receive this discharge was I committed adultery although I was separated from my wife in APR 1999 and paying court ordered child support. I owned a business on the outside which made more money than I was making in the military. So when this situation came up my Shirt told me I could ask for a discharge and get out instead of going through a legal presiding (sic). So I asked for a General Discharge. Now that I look back on the situation I feel that I made a great mistake asking for a General discharge and I would even like to reenter into the reserves. Please understand my situation and grant my request for an upgrade to honorable so that I may reenter the service and serve my country proudly. Thank you for your time.

FD2004-00335

ATCH
None.

16SEP04/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 49TH FIGHTER WING (ACC)
HOLLOMAN AIR FORCE BASE, NEW MEXICO

FD 2004-00335

14 MAY 2003

MEMORANDUM FOR AMN [REDACTED]

FROM: 49 AMXS/CC

SUBJECT: Notification Memorandum – Board Hearing

1. I am recommending your discharge from the United States Air Force for Minor Disciplinary Infractions. The authority for this action is AFI 36-3208, *Administrative Separation for Airmen*, Chapter 5, Section H, paragraph 5.49. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are as follows:

a. You did, at or near Holloman AFB, NM, on or about 20 February 2001, without authority, fail to go at the time prescribed to your appointed place of duty. For this misconduct, you received a record of Individual Counseling, dated 28 February 2001.

b. You did, at or near Holloman AFB, NM, on or about 18 September 2001, with intent to deceive, sign Airman First Class [REDACTED] name to an official record, to wit: an AFTO Form 781A, which record was totally false, and was then known by you to be so false. For this misconduct, you received Article 15 punishment, dated 14 November 2001, consisting of reduction to airman and 12 days extra duty.

c. You did, at or near Holloman AFB, NM, between on or about 7 July 2001 and 24 May 2002, receive 12 traffic points for violating traffic laws on three different occasions. For this misconduct, you received a Letter of Admonishment, dated 24 June 2002.

d. You did, at or near Alamogordo, NM, between July 2002 through September 2002, act in a manner bringing discredit upon yourself, your unit, and the United States Air Force, to wit: that you wrongfully had sexual intercourse with a certain person other than your wife while you were married. For this misconduct, you received a Letter of Reprimand, dated 13 February 2003.

e. You did, at or near Holloman AFB, NM, on or about 12 March 2003 and 17 March 2003, without authority, fail to go at the time prescribed to your appointed place of duty. For this misconduct, you received a Letter of Reprimand, dated 26 March 2003.

f. You, a married man, did, at or near Alamogordo, New Mexico, between on or about 1 January 2002 and on or about 10 April 2003, wrongfully have sexual intercourse with A1C [REDACTED] a woman not your wife. You, a married man, did, at or near Alamogordo, New Mexico, between on or about 20 November 2002 and on or about 1 March 2003, wrongfully have sexual intercourse with Ms. [REDACTED] a woman not your wife. For this misconduct, you received Article 15 punishment, dated 6 May 2003, consisting of reduction to

MTR

airman, 30 days restriction to base, suspended forfeitures of \$300 pay per month for 2 months and 45 days extra duty suspended.

3. This action could result in your separation with an under other than honorable conditions (UOTHC) service characterization. I am recommending that you receive a general discharge. The commander exercising Special Court-Martial 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, will probably be denied enlistment in any component of the armed forces, 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 must consult legal counsel before making a decision to waive any of your rights.

5. You have been scheduled for a medical examination. You must report to the Family Practice Clinic, Bldg 15, at 1000 hours on 16 May 2003 for the examination.


6. Military legal counsel, [REDACTED], Area Defense Counsel, Bldg 22 Holloman AFB, New Mexico, phone [REDACTED], has been obtained to assist you. An appointment has been scheduled for you to consult her at 0930 hours on 15 May 2003. 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 AFI 51-201, *Administration of Military Justice*. 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 of 1974. A copy of AFI 36-3208 is available for your use in the office of the Area Defense Counsel.

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. You must execute the attached acknowledgment and return it to me immediately. The acknowledgment does not admit or deny any of the allegations against you, nor does it mean that you agree with the discharge action. It is simply an acknowledgment that you have received this Letter of Notification.


Commander

Attachments:

1. Record of Individual Counseling, 28 February 2001
2. Article 15, 14 November 2001
3. Letter of Admonishment, 24 June 2002
4. Letter of Reprimand, 13 February 2003
5. Letter of Reprimand, 26 March 2003
6. Article 15, 6 May 2003