

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██	GRADE AIC	AFSN/SSAN ██
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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
					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 14 Jan 2005	CASE NUMBER FD-2004-00361	
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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.

Names and votes will be made available to the applicant at the applicant's request.

SIGNATURE OF BOARD PRESIDENT

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INDORSEMENT	DATE: 1/14/2005
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-2004-00361

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.

The Board finds the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was unable to identify any that would justify a change of discharge.

ISSUE:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received two Articles 15, four Letters of Counseling, and one Memorandum for Record for misconduct. The misconduct included failure to go, dereliction of duty, sexual discrimination, absent without authority, failure to obey a lawful regulation by viewing pornography on the internet, accessing unofficial websites, and placing personal advertisements on the internet. 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.

Issue 2. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance reports and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

Issue 3. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366, on February 2, 1992) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

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 A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Patrick AFB, FL on 30 Jun 98 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 22 Jun 72. Enlmt Age: 19 2/12. Disch Age: 26 0/12. Educ: HS DIPL. AFQT: N/A. A-60, E-67, G-53, M-41. PAFSC: 2E451 - Space Systems Journeyman. DAS: 6 Apr 97.

b. Prior Sv: (1) AFRes 10 Sep 91 - 2 Feb 92 (4 months 24 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 3 Feb 92 for 6 yrs. Ext 5 Feb 97 for 17 months. Svd: 6 Yrs 4 Mo 28 Das, all AMS.

b. Grade Status: A1C - 5 May 98 (Art 15, 5 May 98)
SrA - 7 Aug 94
A1C - (EPR Indicates): 3 Feb 92-21 Oct 93.

c. Time Lost: 30 Dec 92 through 19 Jan 93 (20 days).

d. Art 15's: (1) 5 May 98, Patrick AFB, FL - Article 92. You did, on divers occasions between on or about 12 Feb 98 and on or about 27 Feb 98, fail to obey lawful general regulations, to wit: section 2-301, Joint Ethics Regulation, dated 17 Sep 97 and AFI 33-129, Transmission of Information via the Internet, dated 1 Jan 97, by wrongfully using your government computer during work hours to access the Internet to view pornography, access unofficial web sites and place a personal advertisement. Reduction to A1C, and forfeiture of \$80.00 pay per month for 2 months. (Appeal/Denied) (No mitigation)

(2) 9 Feb 93, Patrick AFB, FL - Article 86. You did, on or about 30 Dec 92, without authority, absent yourself from your place of duty at which you were required to be, and did remain so absent until on or about 20 Jan 91. Suspended reduction to A1C. Forfeiture of \$100.00 pay per month for two months. (No appeal) (No mitigation)

e. Additional: LOC, 05 NOV 97 - Dereliction of duty.
LOC, 04 AUG 97 - Sexual discrimination.
LOC, 30 MAY 97 - Dereliction of duty.

LOC, 28 JUN 96 - Dereliction of duty.

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MFR, 26 NOV 96 - Failure to go.

f. CM: None.

g. Record of SV: 03 Feb 92 - 21 Oct 93 Holloman AFB 3 (Initial)
22 Oct 93 - 21 Oct 94 Holloman AFB 4 (Annual)
22 Oct 94 - 21 Oct 95 Holloman AFB 4 (Annual)
22 Oct 95 - 21 Oct 96 Holloman AFB 4 (Annual)
22 Oct 96 - 21 Oct 97 Holloman AFB 4 (Annual)

h. Awards & Decs: AFLSAR, AFTR, NDSM, NCOPMER, AFOUA, AFGCM.

i. Stmt of Sv: TMS: (6) Yrs (9) Mos (1) Das
TAMS: (6) Yrs (4) Mos (8) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 30 Aug 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Form 214.

16NOV04/ia

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.

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.

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 AIR FORCE COAST GUARD
b. NAME (Last, First, Middle Initial)
c. GRADE/RANK AT DISCHARGE E-3
d. SOCIAL SECURITY NUMBER

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) 19980630
4. DISCHARGE CHARACTERIZATION RECEIVED (X one) HONORABLE
5. BOARD ACTION REQUESTED (X one) CHANGE TO HONORABLE

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.) An upgrade is requested for eligibility for my VA educational benefits. I joined the Air Force for six years, and I completed six years. (see DD Form 214, item 18, Remarks) I completed lots of training, thanks to the Air Force. I even aquired a good conduct medal, along with other decorations. (see item 13 on DD Form 214) There is no excuse for not knowing about Pop-ups on the computers back then. I matured a lot in the Air Force. Since I've been out, I have matured even more.

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.)

9. TYPE OF REVIEW REQUESTED (X one) 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.

10.a. COUNSEL/REPRESENTATIVE (if any) NAME (Last, First, Middle Initial) AND ADDRESS
b. TELEPHONE NUMBER
c. E-MAIL
d. FAX NUMBER

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 and relationship by marking a box below.

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE
b. TELEPHONE NUMBER
c. E-MAIL
d. FAX NUMBER

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
b. DATE SIGNED - REQUIRED (YYYYMMDD) 20040830
CASE NUMBER (Do not write in this space.) FD 2004-00361

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

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

16. REMARKS (If applicable)

Thank you for taking the time to read this.

Taking care of my family is challenging, especially with the long hours and little money I make at my job. To better provide for my little girl, my son, and my wife. I have enrolled in school to get a better education, so I can support my family. If you upgrade my discharge, I will be eligible for my educational benefits from the G.I. Bill. I gave money to while in the Air Force. This will help us out while I continue my education at Devry University. Thank you for your time and consideration.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Air Force 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

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DEPARTMENT OF THE AIR FORCE

50TH SPACE WING (AFSPC)



27 May 98

MEMORANDUM FOR AIG [REDACTED] DET 1, 2 SOPS (AFSPC)

FROM: 2 SOPS/CC
300 O'Malley Ave, Ste 41
Falcon AFB, CO 80912-3041

SUBJECT: Notification Memorandum – Board Hearing

1. I am recommending your discharge from the United States Air Force for misconduct (minor disciplinary infractions) according to AFPD 36-32 and AFI 36-3208, under the provisions of 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:

a. On or about 25 November 1992, you failed to go to a mandatory urinalysis appointment. (Atch 1a). For this misconduct you were given a verbal reprimand.

b. On or about 30 December 1992, you absented yourself without authority from your place of duty and remained so absent until on or about 20 January 1993. For this misconduct you received an Article 15 dated 25 Jan 1993. (Atch 1b).

c. On 26 June 1996, you were derelict in your duty in that you input the wrong Julian Date in an MV5 computer system, causing a misplaced launch point on an actual launch event in which wrong data was sent to the Missile Warning Center and Higher Headquarters. For this misconduct you received a Letter of Counseling dated 28 June 1996. (Atch 1f).

d. On 29 May 1997, you were derelict in your duty in that you signed a checklist without accomplishing all of the actions required by the checklist. Specifically, you failed to turn off a coffee pot. For this substandard duty performance you received a Letter of Counseling dated 30 May 1997. (Atch 1g).

e. On 19 July 1997 and 20 July 1997, you were derelict in your duty in that you engaged in an unprofessional conversation involving personal opinions on having a sexual relationship with a third person, a *menage a trois*, during duty hours, which made your coworker uncomfortable in her working relationship with you. For this misconduct you received a Letter of Counseling dated 4 August 1997. (Atch 1h).

f. On 3 November 1997, you were derelict in your duty in that you failed to comply with Air Force operating instructions for safeguarding COMSEC material. For this misconduct you received a Letter of Counseling dated 5 November 1997. (Atch 1j).

g. On divers occasions between on or about 12 February 1998 and on or about 27 February 1998, you failed to obey lawful general regulations, to wit: section 2-301, Joint Ethics Regulation, and AFI 33-129, *Transmission of Information via the Internet*, by wrongfully using your government computer during work hours to access the Internet to view adult pornography, access unofficial web sites and place a personal advertisement. For this misconduct you were given an Article 15 dated 23 April 1998. (Atch 1k).

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive a general discharge. The commander exercising 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 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 counsel before making a decision to waive any of your rights.

5. You have been scheduled for a medical examination. Contact MSgt [REDACTED], Det 1, 2 SOPS, Patrick AFB, Florida, [REDACTED] and he will inform you of the time and place of the medical examination.

6. Military legal counsel has been obtained to assist you. Contact MSgt [REDACTED], Det 1, 2 SOPS, Patrick AFB, Florida, [REDACTED] and he will inform you of the time and place of your appointment with the Area Defense Counsel. 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. 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 your unit orderly room. Return the copy to your orderly room when the case is completed.

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


Lt Col, USAF
Commander

Attachments:

1. Supporting Documents

- a. Memorandum for Record (Toland), 26 Nov 92
- b. Article 15, 25 Jan 93
- c. AF Form 2098, Duty Status Change, 25 Jan 93
- d. AF Form 2098, Duty Status Change, 25 Jan 93
- e. AF Form 3212, Supplementary Action under Article 15, 9 Mar 93
- f. Letter of Counseling, 28 Jun 96
- g. Letter of Counseling, 30 May 97
- h. Letter of Counseling, 4 Aug 97
- i. Memorandum for Record (Laprise), 5 Aug 97, w/ Atch
- j. Letter of Counseling, 5 Nov 97
- k. Article 15, 23 Apr 98
- l. Report of Investigation (undated)
- m. AF Form 1168, Statement of Suspect, 13 Apr 98

2. Derogatory Data

- a. AAFES Delinquency Notification, 7 Jun 94
- b. 49 MDOS/SGOMHF Memorandum, 19 Jan 95
- c. AAFES Delinquency Notification, 7 Feb 96
- d. AAFES Delinquency Notification, 7 Mar 96
- e. Memorandum for Record (Laprise), 2 Dec 97

3. Acknowledgment