

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

AMN

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

A93.01
A94.05
A93.09

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

BRJEF OF PERSONNEL FILE

COUNSEL'S RELEASE TO THE BOARD

ADDITIONAL EXHIBITS SUBMITTED AT TIME OF
PERSONAL APPEARANCE

TAPE RECORDING OF PERSONAL APPEARANCE

HEARING DATE

17 Mar 2005

CASE NUMBER

FD-2004-00430

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.

INDORSEMENT

DATE: 3/17/2005

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-2004-00430**

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

ISSUES:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15, a vacation action, one Letter of Reprimand, one Letter of Counseling, two Records of Individual Counseling, and a traffic ticket. His misconduct included speeding, failure to obey an order, driving with suspended driving privileges, transmitting pornographic images and sexually explicit video files via a government computer, and late for work on multiple occasions. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The characterization of the discharge received by the applicant was found to be appropriate.

Issues 2 and 3. 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 report 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 4. 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 October 29, 2001) 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.

Issue 5. Applicant contends that he should not be penalized indefinitely for a mistake he made when young. The DRB recognized the applicant was 20-21 years of age when the discharge took place. However, there is no evidence he was immature or did not know right from wrong. The Board opined the applicant was older than the vast majority of first-term members who properly adhere to the Air Force's standards of conduct. The DRB concluded that the characterization of the applicant's discharge was appropriate due to the misconduct.

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 A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr McConnell AFB, KS on 15 Jun 04 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable. Discharge.

2. **BACKGROUND:**

a. DOB: 5 Oct 82. Enlmt Age: 18 11/12. Disch Age: 21 8/12. Educ: HS DIPL. AFQT: N/A. A-71, E-68, G-70, M-73. PAFSC: 2A551L - Aerospace Maintenance Journeyman. DAS: 9 Jun 02.

b. Prior Sv: (1) AFRes 11 Sep 01 - 15 Oct 01 (1 month 5 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 16 Oct 01 for 6 yrs. Svd: 2 Yrs 8 Mo 0 Das, all AMS.

b. Grade Status: Amn - 24 Sep 03 (Vacation of Article 15, 26 Mar 04)
A1C - 30 Nov 01

c. Time Lost: None.

d. Art 15's: (1) 26 Mar 04, Vacation, McConnell AFB, KS - Article 92. You, having knowledge of a lawful order issued by Col [REDACTED], to wit: not to operate a motor vehicle on base or words to that effect, an order which it was your duty to obey, did, on or about 3 Feb 04, fail to obey the same by wrongfully operating your POV on base. Reduction to Airman. (No appeal) (No mitigation)

(2) 24 Sep 03, McConnell AFB, KS - Article 92. You did, on or about 10 Aug 03, violate a lawful general regulation, to wit: paragraph 6.1.1 and 6.1.3, AFI 33-129, dated 4 Apr 01, by wrongfully transmitting pornographic images and sexually explicit video files via your government computer. Suspended reduction to Airman. Twenty two days extra duty. (No appeal) (No mitigation)

e. Additional: LOR, 04 APR 04 - Failure to obey an order, and failure to stop at a stop sign, failure to stop at a red light, driving without the proper gear, driving with a suspended license, and driving a POV on base while base driving privileges were suspended.

RIC, 17 APR 04 - Late for work.

RIC, 20 MAR 03 - Late for work.

Traffic Ticket, 17 MAR 03 - Speeding.
LOC, 11 JUL 02 - Late for appointment.

- f. CM: None.
- g. Record of SV: 16 Oct 01 - 15 Apr 03 McConnell AFB 4 (HAF Dir)
- h. Awards & Decs: NDSM, AFTR.
- i. Stmt of Sv: TMS: (2) Yrs (9) Mos (5) Das
TAMS: (2) Yrs (8) Mos (0) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 15 Oct 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

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

28DEC04/ia

ATTACHMENT: Statement of Material Contentions

DRB or BCMR: The following statements are the reasons I believe my discharge should be upgraded to Honorable. If you disagree, please explain in detail why you disagree.

- ☐ Under current standards, I would not receive the type of discharge I did.
- ☒ My conduct and efficiency ratings/behavior and proficiency marks were mostly pretty good. [A92.02]
- ☒ I received awards and decorations. [A92.04]
- ☐ I received letters of commendation. [A92.06]
- ☐ I had combat service. [A92.08]
- ☐ I was wounded in action. [A92.10]
- ☒ My record of promotions showed I was generally a good servicemember. [A92.12]
- ☐ There were other acts of merit. [A92.16]
- ☐ I was so close to finishing my tour that it was unfair to give me a bad discharge. [A92.18]
- ☐ I had a prior Honorable Discharge. [A92.20]
- ☒ I have been a good citizen since discharge. [A92.22]
- ☒ My record of NJP's/Article 15's indicates only isolated or minor offenses. [A92.24]
- ☐ My record of court-martial convictions indicates only isolated or minor offenses. [A92.26]
- ☐ My record of convictions by civil authorities while I was in service indicates only minor or isolated offenses. [A92.28]
- ☐ My record of AWOL/UA indicates only minor or isolated offenses. [A92.30]
- ☒ My ability to serve was impaired by my youth and immaturity. [A93.02]
- ☐ My low aptitude scores and level of education impaired my ability to serve. [A93.04]
- ☐ My ability to serve was impaired by my deprived background. [A93.06]
- ☐ My ability to serve was impaired because of marital and family problems. [A93.08]
- ☒ Personal problems impaired my ability to serve. [A93.10]
- ☐ Financial problems impaired my ability to serve. [A93.12]
- ☐ I suffered religious discrimination and that impaired my ability to serve. [A93.14]
- ☐ I faced racial discrimination and that impaired my ability to serve. [A93.16]
- ☐ My use of drugs impaired my ability to serve. [A93.18]
- ☐ My use of alcohol impaired my ability to serve. [A93.20]
- ☐ Medical or physical problems I had impaired my ability to serve. [A93.22]
- ☐ Psychiatric problems I had impaired my ability to serve. [A93.24]

[A93.26]

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- ☐ There was a waiver of moral standards when I enlisted; those pre-service problems impaired my ability to serve. [A93.28]
- ☐ Certain other problems impaired my ability to serve. [A93.30]
- ☒ My ability to serve was impaired because I was not working in the field I was trained for.
- ☐ My ability to serve was impaired because I couldn't speak English very well.
- ☐ The punishment I got was too severe compared with today's standards. [A94.02]
- ☐ The punishment I got at discharge was too harsh—it was much worse than most people got for the same offense. [A94.06]
- ☐ I tried to serve and wanted to, but just couldn't or wasn't able to. [A94.04]
- ☒ My discharge was based on many offenses, but they were mostly only minor offenses. [A94.10]
- ☐ My command abused its authority when it decided to discharge me and decided to give me a bad discharge. [A94.12]
- ☐ When I got back from Vietnam, I just couldn't take state-side duty. [A94.14]
- ☐ I had applied or tried to apply for conscientious objector status, but was unfairly denied or told to forget it. [A99.02]
- ☐ I had applied or tried to apply for a hardship discharge but was unfairly denied or told to forget it. [A99.04]
- ☐ I had applied or tried to apply for a compassionate reassignment but was unfairly denied or told to forget it. [A99.12]
- ☐ My enlistment option was not satisfied or waived. [A99.10]
- ☐ I was being considered for a physical disability discharge and was unfairly denied one. [A99.14]
- ☐ I should have been given a medical discharge because I never was medically qualified to serve.
- ☐ I was enlisted illegally. [A99.06]
- ☐ I was drafted illegally. [A99.08]
- ☐ [other reasons]
- ☐
- ☐



DEPARTMENT OF THE AIR FORCE
22D AIRCRAFT MAINTENANCE SQUADRON (AMC)
McCONNELL AIR FORCE BASE, KANSAS

FD2004-00430

25 MAY 04

MEMORANDUM FOR AMN [REDACTED]

FROM: 22 AMXS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct: Minor Disciplinary Infractions, in accordance with AFD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service may be characterized as either honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. You did, at or near McConnell Air Force Base, Kansas, on or about 11 Jul 02, without authority, fail to go to two scheduled appointments, as it was your duty to do. For this incident, you received a Letter of Counseling (LOC), dated 11 Jul 02.

b. You, who knew or should have known of your duties, at McConnell Air Force Base, Kansas, on or about 17 Mar 03, were derelict in the performance of those duties in that you failed to obey the posted speed limit and drove on a suspended license, as it was your duty to do. For this incident, you received an Armed Forces Traffic Ticket (DD Form 1408) and your base driving privileges were revoked for two years, as evidenced by a Revocation Notice, dated 17 Mar 03.

c. You did, at or near McConnell Air Force Base, Kansas, on or about 18 Mar 03, without authority, fail to go to your appointed place of duty, as it was your duty to do. For this incident, you received a Record of Individual Counseling (RIC), dated 20 March 2003.

d. You did, at or near McConnell Air Force Base, Kansas, on or about 17 Apr 03, without authority, fail to go to your appointed place of duty, as it was your duty to do. You arrived at work only after a supervisor came to your room and woke you up. For this incident, you received a RIC, dated 17 Apr 03.

e. You did, at or near McConnell Air Force Base, Kansas, on or about 10 Aug 03, violate a lawful general regulation, to wit: Air Force Instruction 33-129, Paragraphs 6.1.1 and 6.1.3, dated 4 Apr 01, by wrongfully transmitting pornographic images and sexually explicit video files via your government computer (0008A10FB577). For this incident, you received an Article 15, as evidenced by AF Form 3070, dated 24 Sep 03.

f. You did, at or near McConnell Air Force Base, Kansas, on or about 3 Feb 04, violate a lawful order issued by Colonel [REDACTED] to wit: not to operate a motor vehicle on base or words to that effect, an order which it was your duty to obey, when you wrongfully operated your personal vehicle on base. For this incident, the suspended reduction to the grade of Airman (punishment from the Article 15, dated 24 Sep 03) was Vacated, as evidenced by AF Form 366, 30 Mar 04.

g. You did, at or near McConnell Air Force Base, Kansas, on or about 29 Feb 04, violate a lawful order issued by Colonel Herman Hicks, to wit: not to operate a motor vehicle on base or words to that effect, an order which it was your duty to obey, when you wrongfully operated a motor vehicle (MOPED) on base. For this incident, you received a Letter of Reprimand (LOR), dated 7 Apr 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 higher authority, will decide whether you will be discharged or retained in the United States 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. The separation authority will make the findings and recommendations required under 10 U.S.C. § 2005(g).

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you, at no expense to you. I have made an appointment for you to consult with the Area Defense Counsel (ADC) at McConnell Air Force Base, Kansas, on 26 MAY 04, at 1500 hours. You may consult civilian counsel at your own expense.

5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 1 JUN 04, at 1630 hours, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

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

7. You have been scheduled for a **mandatory** medical examination. You must report to 22d Medical Squadron Public Health Section, 57950 Leavenworth St on 26 MAY 04, at 1300-1400 hours for the examination. Take your medical records with you.

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 at the First Sergeant's Office.

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



Major, USAF
Commander, 22d Aircraft Maintenance Squadron

Attachments:

1. Receipt of Notification Memorandum
2. Statement of Understanding
3. Identification Card Retrieval Letter
4. LOC, dated 11 Jul 02
5. DD Form 1408, dated 17 Mar 03
6. Notice of Revocation of Base Driving Privileges, dated 17 Mar 03
7. RIC, dated 20 Mar 03 (two pages)
8. RIC, dated 17 Apr 03 (two pages)

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9. AF Form 3070, dated 24 Sep 03 (three pages)
10. AF Form 1137, dated 24 Sep 03
11. AF Form 366, dated 30 Mar 04
12. AF Form 1058, dated 30 Mar 04
13. LOR, dated 7 Apr 04