

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

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	A93.09	INDEX NUMBER	A67.50	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	26 Apr 2005	CASE NUMBER	FD-2004-00434		

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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: 4/26/2005
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-2004-00434

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 does not contest his discharge. He indicates that since his discharge, he has graduated from college and he would like to join another branch of Service. The records indicated the applicant received a Special Court Martial for making a false written statement to deceive a licensed firearms dealer in order to purchase a firearm; leaving his appointed place of duty; wrongfully communicated a threat to kill two service members; disobeying a lawful order; being disrespectful to two noncommissioned officers, and for willfully damaging government property while in his cell. 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 AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Cannon AFB, NM on 26 Apr 02 UP AFI 36-3208, para 5.50.1 (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: 7 Apr 82. Enlmt Age: 18 5/12. Disch Age: 20 0/12. Educ: HS DIPL. AFQT: N/A. A-74, E-88, G-76, M-79. PAFSC: 2W031 - Munitions Systems Apprentice. DAS: 21 Apr 01.

b. Prior Sv: (1) AFRes 27 Sep 00 - 13 Dec 00 (2 months 17 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 14 Dec 00 for 6 yrs. Svd: 1 Yrs 4 Mo 12 Das, of which AMS is 1 Yr 0 Mo 3 Days (excludes 3 months 9 days lost time).

b. Grade Status: AB - 22 Mar 02 (SPCMO#8, 18 Apr 02)
A1C - 09 Feb 01

c. Time Lost: 20 Dec 01 thru 29 Mar 02 (3 months 9 days).

d. Art 15's: None.

e. Additional: None.

f. CM: Special Court Martial Order No.8 - 18 Apr 02

CHARGE I: Article 81. Plea: NG. Finding: G.

Specification: Did, at or near Clovis, NM, on or about 18 Dec 01, conspire with [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: in connection with the purchase of a firearm from Blg 5 Sporting Goods, Clovis, NM, a licensed firearms dealer, knowingly make a false written statement likely or intended to deceive the said licensed firearms dealer, with respect to a fact material to the lawfulness of the sale or other disposition of a firearm under the provisions of Title 18, United States Code, Section 922(a)(6), an offense under Clause 3 of Article 134, UCMJ, and in order to effect the object of the conspiracy the said [REDACTED] did communicate a false statement to Blg 5 Sporting Goods and thereby purchased a firearm for [REDACTED] Plea: NG. Finding: G.

CHARGE II: Article 86. Plea: NG. Finding: G.

Specification: Did, at or near Cannon AFB, NM, on or about 19 Dec 01, without authority, go from his appointed place of duty, to wit: 27th Equipment Maintenance Squadron, located at 113 E. Sextant Ave, Bldg 22, Cannon AFB, NM. Plea: NG. Finding: G.

CHARGE III: Plea: NG. Finding: NG.

CHARGE IV: Article 134. Plea: NG. Finding: G.

Specification: Did, at or near Cannon AFB, NM, on or about 19 Dec 01, wrongfully communicate to [REDACTED] a threat to kill [REDACTED] and [REDACTED]. Plea: NG. Finding: G.

ADDITIONAL CHARGE I: Article 91. Plea: NG. Findings: G.

Specification 1: Having received a lawful order from [REDACTED] a noncommissioned officer, then known by the said A1C [REDACTED] to be a noncommissioned officer, to stop kicking the walls of his cell, an order which it was his duty to obey, did, at or near the Cannon AFB Confinement Facility, Building 682, Cannon AFB, NM, on or about 28 Jan 02, willfully disobey the same. Plea: NG. Finding: G.

Specification 2: On or about 28 Jan 02, was disrespectful in language toward [REDACTED] a noncommissioned officer, then known by the said [REDACTED] to be a superior noncommissioned officer, who was then in the execution of his office, by saying to him, "fuck no" and "fuck you," or words to that effect. Plea: NG. Finding: G.

Specification 3: Plea: NG. Finding: G.

Specification 4: On or about 25 Jan 02, was disrespectful in language toward [REDACTED] a noncommissioned officer, then known by the said [REDACTED] to be a superior noncommissioned officer, who was then in the execution of his office, by saying to him, "What's your fucking problem" and "Do you think I'm fucking cute or something." or words to that effect. Plea: NG. Finding: G.

Specification 5: Having received a lawful order from [REDACTED] a noncommissioned officer, then known by the said A1C [REDACTED] to be a superior noncommissioned officer, to stop striking the wall of his cell with a padlock and chain, an order which it was his duty to obey, did, at or near Cannon AFB Confinement Facility, Building 682, Cannon AFB, NM, on or about 25 Jan 02, willfully disobey the same. Plea: NG. Finding: G.

ADDITIONAL CHARGE II: Article 108. Plea: NG. Finding: G.

Specification: Did, at or near Cannon AFB Confinement Facility, Building 682, Cannon AFB, NM, from on or about 27 Jan 02 and to on or about 28 Jan 02, without authority, willfully damage, by scratching obscenities into the painted wall of his cell, military property of the United States, the amount of said damage being of some value less than \$100.00. Plea: NG. Finding: Guilty. Sentence adjudged on 8 Mar 02: Confinement for 120 days, hard labor without confinement for 60 days, forfeiture of \$737.00 pay per month for 5 months, a fine of \$100.00 and to be further confined until said fine is paid, but for not more than 1 month in addition to the confinement hereinbefore adjudged, reduction to AB, and a reprimand.

g. Record of SV: None.

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (1) Yrs (6) Mos (29) Das
TAMS: (1) Yrs (0) Mos (3) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 13 Oct 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. Letter of Recommendation.
3. Three Certificates of Commendation.
4. Memorandum For 27 EMS(ACC).
5. Two Certificates of Achievement.
6. Two College Grade Reports.
7. Three Training Certificates.
8. Motorcycle Mechanics Institute Transcript.
9. Copy of Driver's License.

3JAN05/ia

I write this letter to you in the hope of getting a discharge upgrade so that I may be privileged enough to stand beside my brothers in the protection of our homeland. I had previously served in the USAF but was discharged "General Under Honorable Conditions" and now ask for your help in getting a better discharge so that I may be able to serve in the USMC or USA. I ask that you read this letter and consider my words carefully, even though they are just words and can't show how much these things mean they are all I can offer without you being me. I thank you for your time.

I was blessed enough to be able to serve in the worlds greatest airpower our very own United States Air Force two years ago. I had given everything that I could have and more, I was the first to work, the last to leave, and I worked through my lunches and breaks. In my spare time I went to college so that I might educate my mind and make more informed decisions that I could use to help in my duties were I received an A in every course I took. I received top graduate in technical school, had the fastest time of completion, and the best scores for my CDC's "Career Development Courses" because I dedicated every moment of my time to my duties as an armed forces member. The feelings of pride and honor that manifested themselves to be able to serve this great nation are unexplainable, it was not a job but rather my life and my very reason to exist.

Then one day I made an unformed decision that forever changed everything. I'm not able to own firearm's so I had a friend buy one for me because I didn't think that it was a big deal, being that I was in the military and carried a M-16 at times. I turned the firearm into the armory immediately upon it's purchase and proceeded the next day to get the proper approval and forms from my 1st Sergeant. It turned out that it was a larger situation than I had thought; I honestly didn't think it was going to be a problem. I had checked the firearm into the proper authorities and had proceeded to get all the proper paperwork and authorizations complete. I thought that at the very worst they would just tell me that I'm not to be in possession of a civilian weapon and return it to the individual from whom it was purchased. This was not the case, I was informed that ignorance wasn't an excuse and that I would be sent to a special court martial.

The situation continued to escalate when I was told by my appointed defense counsel that no matter what happened I would not be able to stay in the service of my country. The devastation that fell upon me is like no other that I've ever felt in my entire life, I was breathing but not alive. I was told that it would be an Honorable discharge but still a discharge and it devastated me to a point that I didn't even know existed. I didn't mean the things I said or to be disrespectful on the way out, but it hurt so bad, and I just couldn't bare it. I received all of my other charges except the first "Conspiracy to illegally purchase a firearm" after I was told I would be discharged. There are no excuses and what I did was wrong but it is done, if I could change it I would but I am unable. Even now two years later I cry as I write this letter in memory of what was.


I was devastated to a point that words can't describe when I was informed that I would not be able to serve my country. I made some bad decisions and got into some trouble on my way out. I just felt like my very soul and reason for walking this world were stripped away, but still there are no excuses.

They didn't discharge me through the court martial but rather administratively after

wards. Since my discharge from the USAF I've went to school were I received a 3.89 GPA, Student of the Course for advanced electrical, Director's list, and perfect attendance through everything. I grew a lot going to school five hours a day, five days a week and still making a living in a strange town. There were times were I would go from school to different part time jobs I had pieced together to make a full time job back to back to were I would be up for three days straight non-stop working. I also run six miles every other day and the days that I don't run I lift weights so that I may stay in peak physical condition, as is my saying of strong body, mind, and spirit.

There are no excuses for the things that I have done, but they are done and no matter how hard I try or how bad my stomach turns I can't undo what is done, all I can do is ask for forgiveness. I ask that you carefully consider my plea and if it is within your will I ask that you would grant me an upgrade so that I may be able to apply for entry into the worlds greatest fighting force our very own United States Marine Corps or United States Army so that I may have the privilege to stand beside my brothers in the protection of our freedom. I know that I'm not worthy enough to bear this great honor but I ask that you consider it so that if I may be so blessed that I may also make a stand with our troops.

Thank you for your time



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 27th FIGHTER WING (ACC)

CANNON AIR FORCE BASE NEW MEXICO

22 APR 01

MEMORANDUM FOR [REDACTED], 27 EMS

FROM: 27 EMS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically, discreditable involvement with military authorities. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.50.1. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On or about 18 Dec 01, you conspired with [REDACTED] to unlawfully purchase a firearm in violation of 18 United States Code Section 922(a)(6), as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

b. On or about 19 Dec 01, you failed to go to your appointed place of duty, as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

c. On or about 19 Dec 01, you communicated to [REDACTED] a threat to kill Amn [REDACTED] and [REDACTED] as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

d. On or about 28 Jan 02, you disobeyed a lawful order by refusing to stop kicking the wall of your cell while detained in pre-trial confinement, as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

e. On or about 28 Jan 02, you were disrespectful in language toward a Noncommissioned Officer by saying "fuck no" and "fuck you" or words to that effect, as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

f. On or about 25 Jan 02, you were disrespectful in language toward a Noncommissioned Officer when you stated to him "What's your fucking problem" and "Do you think I'm fucking cute or something" or words to that effect, as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

g. On or about 25 Jan 02, you disobeyed a lawful order by refusing to stop striking the wall of your cell with a padlock and chain while you were detained in pre-trial confinement, as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

h. On or about 28 Jan 02, you damaged military property when you scratched obscenities into the painted wall of your cell while detained in pre-trial confinement, as evidenced by Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a) and Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)

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, bonuses, 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. An appointment will be made for you to consult with a military legal counsel from the Cannon AFB Area Defense Counsel's Office at building 600, ext. 2915. 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 **3 duty days** from today 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 on your own behalf, your failure will constitute a waiver of your right to do so.

7. You will complete a medical examination at the 27th Medical Group on 23 Apr 02 at 0910 hours.

PRZ006-00434

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, or you may download a copy from <http://afpubs.hq.af.mil/>.


Commander, 27 EMS

Major, USAF

Attachments:

- 1a. Air Force Form 1359 Report of Result of Trial, dated 8 Mar 02 (Atch 1a)
- 1b. DD Form 458 Charge Sheet, dated 23 Jan 02 (Atch 1b)