

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██	GRADE SRA	AFSN/SSAN ██
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TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No	NAME OF COUNSEL AND OR ORGANIZATION	
	X		

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A94.01	INDEX NUMBER A67.30	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 21 Jul 2005	CASE NUMBER FD-2004-00505	
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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.

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INDORSEMENT		DATE: 7/21/2005
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-2004-00505

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.

ISSUE: Applicant contends discharge was inequitable because of the severity of the punishment when the civilian case against him was dismissed. The records indicated the applicant received a Letter of Reprimand for attacking an unarmed man and severely beating him. As the applicant was departing the scene of the fight, a passenger in his car, grabbed the applicant's gun and fired numerous shots indiscriminately into a crowd of innocent bystanders that had gathered. An innocent man was struck and killed by one of those bullets. Although the charges of murder were dropped against the applicant due to insufficient evidence to prosecute him, this serious offense is reason enough to discharge the applicant. 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

(Former SrA) (HGH SrA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Pope AFB, NC on 25 Mar 04 UP AFI 36-3208, para 5.52.3 (Commission of a Serious Offense - Other Serious Offenses). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 2 Nov 77. Enlmt Age: 20 10/12. Disch Age: 26 4/12. Educ: HS DIPL. AFQT: N/A. A-55, E-39, G-41, M-40. PAFSC: 3P051 - Security Forces Journeyman. DAS: 20 Mar 03.

b. Prior Sv: (1) AFRes 18 Sep 98 - 16 Feb 99 (5 months) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 17 Feb 99 for 6 yrs. Svd: 5 Yrs 1 Mo 9 Das, of which AMS is 4 yrs 11 months 22 days (excludes 1 month 18 days lost time).

b. Grade Status: SrA - 02 Aug 01
A1C - 02 Apr 99

c. Time Lost: 6 Jul 03 thru 24 Aug 03 (1 month 18 days).

d. Art 15's: None.

e. Additional: LOR, 17 FEB 04 - Attacked an unarmed man and severely beat him.

f. CM: None.

g. Record of SV: 17 Feb 99 - 15 Oct 00 Goodfellow AFB 5 (HAF Dir)
16 Oct 00 - 15 Oct 01 Goodfellow AFB 4 (Annual)
16 Oct 01 - 15 Oct 02 Goodfellow AFB 5 (Annual)
16 Oct 02 - 15 Oct 03 Goodfellow AFB 4 (Annual)

h. Awards & Decs: AFAM W/1 OLC, AFTR, NDSM, AFLSAR, AFGCM.

i. Stmt of Sv: TMS: (5) Yrs (4) Mos (21) Das
TAMS: (4) Yrs (11) Mos (12) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 23 Aug 04.
(Change Discharge to Honorable)

Issue 1: The discharge was based on civilian case against me. After the discharge, the civilian case was dismissed. I request to be upgraded to an

honorable discharge.

ATCH

1. State of North Carolina Dismissal Notice of Reinstatement.

16FEB05/ia

FD 2004-00 505



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 43D AIRLIFT WING (AMC)
POPE AIR FORCE BASE, NORTH CAROLINA

9 MAR 04

MEMORANDUM FOR [REDACTED]

FROM: 43 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Commission of a Serious Offense. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.52.3. The most severe type of discharge authorized in this case is an under other than honorable conditions discharge, if the convening authority determines such characterization is warranted and directs initiation of a discharge board. I am recommending that you receive an Under Honorable Conditions (General) service characterization.
2. My reason for this action is that on 6 Jul 03, near "C&S Night Spot" in Wallace, North Carolina, you were identified by several eye-witnesses as a principal participant in an altercation in which you and six or seven of your friends and relatives attacked an unarmed man and severely beat him. You, were specifically identified as the person who grabbed the victim and threw him on the ground, allowing your group of friends and relatives to kick and beat the victim while he was on the ground. At some point during beating, your cousin hit the victim in the face with a beer bottle. Furthermore, as you and your group of friends and relatives made your getaway in your vehicle, one of your cousins used your pistol, to fire numerous shots indiscriminately into a crowd of innocent bystanders that had gathered. An innocent man was struck and killed by one of those bullets. These actions are documented by a Letter of Reprimand (LOR), dated 12 Feb 04 and a Report of Investigation, dated 16 Jan 04.
3. The 43d Airlift Wing Commander, who exercises Special Court-Martial (SPCM) jurisdiction, or a higher authority will decide whether you will be discharged or retained in the Air Force. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. 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. Military legal counsel has been obtained to assist you. Contact [REDACTED] at the Area Defense Counsel's office immediately after being served with this notification memorandum. At that time, an appointment will be scheduled for you to consult 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.

5. You have the right to submit a statement in your own behalf. Any statements you want the separation authority to consider must reach me by 12 Oct 04 at 1200 unless you request and receive an extension for good cause shown. Any submitted statements will be sent to the separation authority.

6. If you fail to consult counsel or to **submit statements in your own behalf in three days**, 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 Pope Clinic, 379 Maynard St. on _____, at _____ hours 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 at the orderly room.

[REDACTED]

Commander

Attachments:

- 1. LOR, dated 12 Feb 04 (2 pgs)
- 2. Report of Investigation, dated 16 Jan 04 (110 pgs)
- 3. Receipt of Notification Memorandum