

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 A94.05	INDEX NUMBER A66.00	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 Apr 2005	CASE NUMBER FD-2005-00006			

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: 4/14/2005

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-2005-00006

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 it was based on one isolated incident in 37 months of service with no other adverse action. The records indicated the applicant received a Special Court-Martial for multiple use of nitrous oxide for the purpose of inducing intoxication. 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 AB) (HGH A1C)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Tyndall AFB, FL on 6 Feb 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 23 Sep 78. Enlmt Age: 20 11/12. Disch Age: 24 5/12. Educ: HS DIPL. AFQT: N/A. A-82, E-88, G-82, M-57. PAFSC: A2E154 - Visual Imagery & Intrusion Detection Systems Apprentice. DAS: 8 Jan 03.

b. Prior Sv: (1) AFRes 9 Sep 99 - 4 Jan 00 (3 months 27 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 5 Jan 00 for 6 yrs. Svd: 3 Yrs 1 Mo 2 Das, all AMS.

b. Grade Status: AB - 4 Sep 03 (SPCMO No.4, 17 Sep 02)
A1C - 18 Feb 00

c. Time Lost: (Applicant was sentenced to 6 months confinement; however, it is not possible to compute time lost because the AF Form 2098 computing lost time is missing).

d. Art 15's: None.

e. Additional: None.

f. CM: Special Court Martial Order No.4 - 17 Sep 02

CHARGE: Article 134. Plea: Not Guilty. Finding: Guilty.

Specification 1: Did, on divers occasions, between on or about 1 Apr 02 and on or about 2 May 02, at Tyndall AFB, FL, an area of exclusive or concurrent federal jurisdiction, wrongfully purchase, transfer, or possess more than sixteen (16) grams of nitrous oxide, a chemical substance, in violation of Florida State Statute 877.111, assimilated into Federal law by 18 U.S. Code Section 13. Plea: Not Guilty. Finding: Guilty.

Specification 2: Did, on divers occasions, between on or about 1 Apr 02 and on or about 2 May 02, at Tyndall AFB, FL, an area of exclusive or concurrent federal jurisdiction, wrongfully inhale some amount of nitrous oxide, a chemical substance, for the purpose of intoxication, in violation of Florida State Statute

877.111, assimilated into Federal law by 18 U.S. Code Section 13.
Plea: Not Guilty. Finding: Guilty.

Specification 3: Did, on divers occasions, between on or about 20 Jun 02, at Tyndall AFB, FL, an area of exclusive or concurrent federal jurisdiction, wrongfully inhale some amount of nitrous oxide, a chemical substance, for the purpose of intoxication, in violation of Florida State Statute 877.111, assimilated into Federal law by 18 U.S. Code Section 13. Plea: Not Guilty. Finding: Guilty. Sentence adjudged by officer members on 21 Aug 02: Confinement for six(6) months, forfeiture of \$737.00 pay per month for six months, and reduction to E-1.

- g. Record of SV: 5 Jan 00 - 15 Jul 01 Tyndall AFB 4 (HAF Dir)
- h. Awards & Decs: AFTR, NDSM, AFOUA.
- i. Stmt of Sv: TMS: (3) Yrs (4) Mos (29) Das
TAMS: (3) Yrs (1) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 27 Dec 04.
(Change Discharge to Honorable)

Issue 1: My discharge was inequitable because it was based on one isolated incident in 37 months of service with no other adverse action.

ATCH

- 1. Letter of Commendation.
- 2. Letter of Appreciation.
- 3. Notice of Training Completion.
- 4. Distinguished Graduate Certification.
- 5. Three Training Certificates.

22FEB05/ia



(PD2005-00006)

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND (AETC)
TYNDALL AIR FORCE BASE, FLORIDA

MEMORANDUM FOR [REDACTED]

JAN 31 2003

FROM: 325 CS/CC

SUBJECT: Notification Memorandum—Administrative Discharge

1. I am recommending your discharge from the United States Air Force for Misconduct, specifically, Drug Abuse. The authority for this action is Air Force Policy Directive 36-32 and Air Force Instruction 36-3208, Chapter 5, Section H, para 5.54. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending your service be characterized as general.

2. My reasons for this action are:

a. You did, on divers occasions, between on or about 1 April 2002 and on or about 2 May 2002, at Tyndall Air Force Base, Florida, an area of exclusive or concurrent federal jurisdiction, wrongfully purchase, transfer, or possess more than sixteen (16) grams of nitrous oxide, a chemical substance, in violation of Florida State Statute 877.111, assimilated into Federal law by 18 U.S.C. Section 13.


b. You, did, on divers occasions, between on or about 1 April 2002 and on or about 2 May 2002, at Tyndall Air Force Base, Florida, an area of exclusive or concurrent federal jurisdiction, wrongfully inhale or ingest some amount of nitrous oxide, a chemical substance, for the purpose of intoxication, in violation of Florida State Statute 877.111, assimilated into Federal law by 18 U.S.C. Section 13.

c. You, did, between on or about 10 June 2002 and on or about 20 June 2002, at Tyndall Air Force Base, Florida, an area of exclusive or concurrent federal jurisdiction, wrongfully inhale or ingest some amount of nitrous oxide, a chemical substance, for the purpose of intoxication, in violation of Florida State Statute 877.111, assimilated into Federal law by 18 U.S.C. Section 13.

These offenses are evidenced by Special Court-Martial Order No. 4, dated 17 Sep 02
(Atch 1a)

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising special court-martial jurisdiction, or a higher authority, will decide whether you will be discharged or retained in the Air Force. 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.

[REDACTED]

4. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. An appointment has been made for you to consult  Area Defense Counsel, Bldg. 1005 (3-2911) at 1100 on 31 Jan 2003. You may consult civilian legal 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 three (3) workdays unless you request and receive an extension, in writing, for showing good cause. I will send them to the separation authority.
6. If you fail to consult counsel or 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 medical records check as part of this discharge process. You must report to the NCOIC, Physical Examinations, Building 1465 (3-7673), Monday, Tuesday, Thursday or Friday between 1330 and 1500 to complete this medical records check.
8. You have been scheduled for a separations briefing. You must report to 325 MSS/DPMAR (Separations) section at 1330 on 31 Jan 2003.
9. Any personal information you furnish in rebuttal is covered by the Privacy Act. A copy of AFI 36-3208 is available for your use in the unit personnel office.
10. Execute the attached acknowledgment and return it to me immediately.

 USAF
Commander, 325 CS

Attachments:

- 1a. SCMO No. 4
 2. Airman's Receipt of Notification Memorandum
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