

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

TYPE GEN	X	PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	VFW	
X			

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

ISSUES	A92.35 A02.17 A92.21 A92.19 A94.05 A02.13	INDEX NUMBER	A67.90	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	CASE NUMBER
31 May 2005	FD-2005-00032

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 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.

* CHANGE RE CODE

SIGNATURE OF RECORDING OFFICER: _____ SIGNATURE OF BOARD PRESIDENT: _____

INDORSEMENT		DATE: 6/1/2005
TO:	FROM:	
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	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-2005-00032

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reenlistment code. Through counsel, the applicant clarified that he was not seeking a change in the reason or the authority for the discharge despite the fact that his application requested a change in the reason to "convenience to the government."

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB on 31 May 2005.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of 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:

Issue 1. The applicant cited his desire to return to Air Force employment as a reservist and provide that amount of service necessary to be called an Air Force retiree. He asked the DRB to consider the two year time period for which he committed his misconduct as an aberration in his character. Instead, he asked the DRB to look at his true character, as reflected in his pre-service conduct, his prior honorable military service and his post service conduct to provide him an opportunity to once again serve the Air Force. The DRB recognized the applicant's total conduct and applauded his continued service to the United States as a civilian employee, but the DRB did not consider the applicant's character as a matter of inequity or impropriety which would warrant an upgrade. Nor did the DRB believe that the applicant's prior military service or post service conduct lay a basis for other relief. The DRB determined that the applicant's voluntary and wrongful use of marijuana and his DUI offense, amongst other minor infractions during the enlistment in question, reflected his character at the time and that his service was likewise appropriately characterized.

Issue 2. The applicant also contended that a number of the infractions cited in his discharge were petty and that his discharge was inequitable because it was too harsh. The records indicated the applicant received nonjudicial punishment under Article 15, UCMJ for the wrongful use of marijuana and nonjudicial punishment under Article 15, UCMJ for DUI. Between these two significant pieces of misconduct, the record reflected five other pieces of misconduct: uttering checks without sufficient funds, two derelictions of duty, and two failures to go. (The DRB did not consider an additional failure to go infraction which the applicant's discharge board found was not committed). The DRB recognized that these other pieces of misconduct were of a minor nature and that the applicant had provided testimony establishing either a defense or further extenuation and mitigation. While the DRB did discount many of these infractions, the Board concluded, nonetheless, that the applicant's wrongful use of marijuana and DUI represented a significant departure from conduct expected of all military members and that the characterization of the discharge received by the applicant was appropriate.

Issue 3. Finally, the applicant raised two matters of impropriety. He stated that he believed that the composition of his discharge board had been selected to reach a predetermined result. He said the panel was all white, with a women added as a minority. He further said that his defense counsel appeared to be from a Hindu background and that the two defense witnesses were black. In support of his contention, the applicant

pointed to the initial discharge board result recommending a UOTHC discharge and the alleged comments of the government's representative subsequent to the board in which he allegedly apologized for the strong comments he made at the board and allegedly said the "brass" wanted the applicant "out" to get even for his earlier retention despite having used marijuana. The applicant also contended that his defense counsel provided a weak defense. In the absence of other evidence pointing to actual manipulation of the panel's composition, the DRB determined that the applicant's assertions were insufficient to clearly raise an impropriety in the board process. The DRB also concluded that the record, to include the discharge board transcript, reflected that the applicant was provided effective assistance of counsel.


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

FD2005-00032A

 (Former SSGT) (HGH TSGT) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr Charleston AFB, SC on 01 Apr 91 UP AFR 39-10, para 5.47b (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge, and to Change the Reason and Authority for Discharge.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 11 Apr 01.

b. The AFDRB reviewed case on 01 May 01 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 04 Jan 05. (Change Discharge to Honorable, and Change the Reason and Authority for Discharge.)

Issues 1: Active Duty Accomplishments (will submit before hearing).

Issues 2: Post Service Accomplishments (will submit before hearing).

Atch

1. Two DD Form 214s.

2MAR05/day

FD-01-00102

**DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD**

(Former SSGT)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 91/04/01 UP AFR 39-10, para 5-47b (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch & to Change the Reason & Authority for Disch.

2. BACKGROUND:

a. DOB: 53/01/29. Enlmt Age: 19 11/12. Disch Age: 38 2/12. Educ: HS DIPL. AFQT: N/A. A-69, E-96, G-96, M-84. PAFSC: 60575 - Air Transportation Supervisor. DAS: 89/07/17.

b. Prior Sv: (1) AFRes 73/01/15 - 73/01/31 (16 days) (Inactive).

(2) Enld as AB 73/02/01 for 4 yrs. Ext 76/04/05 for 3 mos. Ext 76/09/23 for 20 mos. Reenld as Sgt 79/12/26 for 4 yrs. Reenld as SSgt 81/03/20 for 4 yrs. Ext 84/10/22 for 2 mos. Svd: 12 yrs, 2 months, 14 days, all AMS. APRs: 7,8,8,9,9,9,9,9,9,7,9,9.

3. SERVICE UNDER REVIEW:

a. Reenld as SSGT 85/04/15 for 4 yrs. Ext: 88/04/22 for 27 mos. Svd: 5 Yrs 11 Mo 17 Das, all AMS.

b. Grade Status: SSgt - 88/05/12 (Article 15, 88/05/12)
TSgt - 87/01/01.

c. Time Lost: none.

d. Art 15's: (1) 90/07/27, Howard AFB, Panama - Article 111. You, did, o/a 7 Jul 90, near the intersection of Kansas and Alaska Drive, operate a vehicle, to wit: a passenger car, while drunk. Rdn to Sgt (susp till 27 Jan 91), Forfeiture of \$150.00 pay per month for 2 months, and 10 days extra duty. (No appeal) (No mitigation)

(2) 88/05/12, Norton AFB, CA - Article 112a. You did, o/a 16 Mar 88, wrongfully use marijuana. Rdn to SSgt, forfeiture of \$250.00 pay per month for 2 months, and 10 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional: LOC, 12 MAR 90 - Failure to go.
VBC, 08 MAR 90 - Failure to go.
LOC, 21 NOV 89 - Dereliction of duty.
RIC, 15 NOV 89 - Missed appointment.
MFR, 26 SEP 89 - Dereliction of duty.
LOR, 21 SEP 89 - Failure to pay just debts.

FD01-00102

f. CM: none.

g. Record of SV: 84/12/03 85/12/02 Norton AFB 9 (Annual)
 85/12/03 86/12/02 Norton AFB 9 (Annual)
 86/12/03 87/12/02 Norton AFB 9 (Annual)
 87/12/03 88/12/02 Norton AFB 7 (Annual)
 88/12/03 89/12/02 Howard AFB 8 (Annual)
 89/12/03 90/12/02 Howard AFB 2 (Annual) **REF**
 (Discharged from Charleston AFB)

h. Awards & Decs: AFCM, AFGCM W/3 OLCs, NCOPMER, AFLSAR W/3 OLCs, NDSM W 1/Dev, AFOLTR W/1 DEV, AFOSSTR, AFTR, AFEM, JSMUA, AFOUA.

i. Stmt of Sv: TMS: (18) Yrs (2) Mos (17) Das
 TAMS: (18) Yrs (2) Mos (1) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 01/03/14.

(Change Discharge to Honorable Disch & to Change the Reason & Authority for Discharge)

Issue 1: I expect my counsel to submit issues before my hearing.

Issue 2: Among main issues, most important are: Change discharge to honorable and change reason for discharge to "For The Convenience of the Government."

ATCH

none.

01/04/11/ia



DEPARTMENT OF THE AIR FORCE
 HEADQUARTERS 61ST MILITARY AIRLIFT GROUP (MAC)
 APO MIAMI 34001-5000

21 AUG 1990

REPLY TO
 ATTN OF: CC

SUBJECT: Notification Letter-Board Hearing

TO: SSgt [REDACTED]

1. I am recommending your discharge from the United States Air Force for A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline according to AFR 39-10, under the provisions of 5-47b. 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 7 July 1990, you operated a motor vehicle while drunk, for which you received Article 15 punishment dated 27 July 1990.
 - b. Between on or about 1 February 1990 and 25 February 1990, you failed to go to the Howard Clinic for a mandatory immunization, for which you received a letter of counseling dated 12 March 1990.
 - c. On or about 8 March 1990, you failed to go to scheduled M-16 training, for which you were counseled.
 - d. Between on or about 1 November 1989 and 21 November 1989, you failed to follow standard operating procedures with regard to the signing in and out of your duty section, for which you received a letter of counseling.
 - e. On or about 6 November 1989, you failed to go to a scheduled dental appointment, for which you received a record of counseling dated 15 November 1989.
 - f. On or about 25 September 1989, you failed to follow your supervisor's instructions with regard to scheduling, for which a memo for record was executed on 26 September 1989.
 - g. Between 5 June 1989 and 1 September 1989, you uttered 23 checks without maintaining sufficient funds in your account to cover these checks, for which you received a letter of reprimand dated 21 September 1989, which was placed in your UIF.
 - h. On or about 16 March 1988, you wrongfully used marijuana, for which you received Article 15 punishment dated 12 May 1988.

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable conditions 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.
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 legal counsel before making a decision to waive any of your rights.
5. You have been scheduled for a medical examination. You must report to the Howard AFB Clinic, at 0715 hrs on 28 AUG 1990.
6. Military legal counsel Capt. [REDACTED] building 812, Albrook AFS, 286-3150, has been obtained to assist you. An appointment has been scheduled for you to consult him on 21 AUG 1990, at 1400 hrs. 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 AFR 111-1. 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 make 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. If this discharge recommendation results in an approved discharge, you may request that it be reviewed in the Office of the Secretary of the Air Force prior to execution.
9. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 6. A copy of AFR 39-10 is available for your use in your orderly room.

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


Commander, Major, USAF

3 Atchs

1. Supporting documents
 - 1a. AF Form 3070, dated 27 July 1990
 - 1b. Ltr. of Counseling, dated 12 March 1990
 - 1c. Memo for Record, dated 21 November 1990
 - 1d. AF Form 174, dated 15 November 1989
 - 1e. Memo for Record, dated 26 September 1990
 - 1f. Letter of Reprimand, dated 21 September 1990
 - 1g. AF Form 3070, dated 12 May 1988
2. Documents containing derogatory information
3. Airman's acknowledgment