

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED] | GRADE SGT | AFSN/SSAN [REDACTED] |
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|-----------|-------------------------------------|---------------------|--|
| TYPE UOTH | X | PERSONAL APPEARANCE | 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 | | | |
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| ISSUES A92.21 A02.04 | INDEX NUMBER A94.39 | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="padding: 5px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width: 5%; padding: 5px; text-align: center;">1</td> <td style="padding: 5px;">ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="padding: 5px; text-align: center;">2</td> <td style="padding: 5px;">APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="padding: 5px; text-align: center;">3</td> <td style="padding: 5px;">LETTER OF NOTIFICATION</td> </tr> <tr> <td style="padding: 5px; text-align: center;">4</td> <td style="padding: 5px;">BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">TAPE RECORDING OF PERSONAL APPEARANCE</td> </tr> </tbody> </table> | 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 |
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| HEARING DATE 20 May 2005 | CASE NUMBER FD-2005-00035 | |
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard via video-teleconference between St. Augustine, Florida, and Andrews AFB, Maryland.

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 REASON AND AUTHORITY TO SECRETARIAL AUTHORITY

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| SIGNATURE OF BOARD PRESIDENT [REDACTED] | |
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| INDORSEMENT | DATE: 5/20/2005 |
| 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-2005-00035

GENERAL: The applicant appeals for upgrade of discharge to Honorable, to change the reason and authority for the discharge and to change the reenlistment code.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video-conference between St. Augustine, Florida, and Andrews AFB, Maryland, on 20 May 2005.

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

FINDINGS: Upgrade of discharge to Honorable is granted; however, change of reason and authority for discharge and change of reenlistment code are denied.

The Board finds that the evidence of record substantiates an impropriety that justifies an upgrade of discharge but does not justify a change in the reason for discharge or reenlistment code.

ISSUE:

Issue 1. Applicant contends discharge was improper because he was never notified of his entitlement to have his case heard before an administrative discharge board. The record shows that he was board entitled on three separate grounds. He was a non-commissioned officer, he had served for over six years and his command sought an under other than honorable conditions discharge. The record does not contain any evidence he was offered an administrative discharge board hearing and the applicant testified that he was not told he could request an administrative discharge board. In light of the importance of the rights given in a board hearing (including the right to confront and question the respondent's accusers, to present evidence and testimony from witnesses favorable to him and the ability to personally present his case and possibly testify himself before a panel of three disinterested officers of varying seniority and backgrounds), the DRB concluded the failure to comply with the respondent's due process right to a discharge board under Air Force regulations was not harmless error. While the board does not condone the respondent's actions, under the facts of this particular case there was substantial doubt that he would have been discharged. It is possible that a discharge board could have decided that he fit the retention criteria for a member who has used drugs. Therefore, the board granted the requested relief of an upgrade in service characterization.

Issue 2. 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 reports and other accomplishments. The DRB found the seriousness of the willful misconduct offset the positive aspects of the applicant's duty performance and concluded that change of reason for discharge and reenlistment code was inappropriate due to the drug abuse which caused the respondent's discharge.

Issue 3. Applicant believes his discharge should be upgraded because of his post-service activities. The DRB was pleased to see that the applicant was doing well and has a good job. However, the DRB concluded the misconduct of the applicant is shown correctly in the reason for discharge and reenlistment code.

Issue 4. Applicant contends that he should not be penalized indefinitely for a mistake he made years ago. The DRB recognized the misconduct occurred in 1994. However, there is no evidence he was immature or did not know right from wrong. The applicant was an NCO and 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 reason for discharge and the reenlistment code should not be changed.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was not consistent with the procedural and substantive requirements of the discharge regulation and that the overall quality of applicant's service is more accurately reflected by an Honorable discharge. The DRB takes this action due to the failure to notify the applicant of his right to an administrative discharge board. Despite this failure, there is no doubt the applicant engaged in an instance of drug use and that allowing him to reenlist would not be in the best interest of the Air Force. Therefore, the DRB did not change the reason for discharge or the reenlistment code. The applicant's characterization should be changed to Honorable under the provisions of Title 10, USC 1553.

Attachment:
Examiner's Brief

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

[REDACTED]
[REDACTED]

(Former SSGT) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr NAS New Orleans, LA on 6 Jun 95 UP AFI 36-3209, para 1.16 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 25 Oct 66. Enlmt Age: 18 8/12. Disch Age: 28 7/12. Educ: HS DIPL. AFQT: N/A. A-Unknown, E-Unknown, G-Unknown, M-Unknown. PAFSC: 2W051 - Munitions Systems Specialist. DAS: 12 Jun 93.

b. Prior Sv: (1) AFRes 3 Jul 85 - 2 Jan 86 (6 months 1 day) (Inactive).

(2) Enlisted as AB 3 Jan 86 for 4 yrs. Extended 12 May 88 for 22 months. Extended 17 Jul 91 for 1 month. Svd: 5 yrs 11 months 0 days, all AMS. Amn-(APR Indicates): 3 Jan 86 - 2 Jan 87. AlC-(APR Indicates): 3 Jan 87-2 Jan 88. SrA-(APR Indicates): 12 Jul 88 - 26 Jul 89. Sgt-(EPR Indicates): 27 Jul 89-31 Mar 90.

(3) Enlisted USAFRes 7 Mar 92 for 6 yrs. Svd: 1 yr 3 mos 4 days, of which AMS is 5 months 27 days. SSgt - 1 Sep 92. APRs: 9,9,9,9. EPRs: 5,4,4.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted USAFRes as SSgt 12 Jun 93 for 6 yrs. Svd: 1 Yrs 11 Mo 25 Das, of which AMS is 20 days.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: MEMO FOR 926 SL, 14 NOV 94 - Positive Drug Urinalysis Test.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: AFOUA W/1 BOLC, NDSM, AFLSAR, NCOPMER, SAEMR, AFTR.

i. Stmt of Sv: TMS: (9) Yrs (8) Mos (1) Das
TAMS: (6) Yrs (5) Mos (18) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 12 Dec 05.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Two DD 214s.
3. Enlistment Documents.
4. Discharge Order.
5. Personal Statement.
6. Positive Drug Urinalysis Test.
7. Letter of Intent.
8. Award Certificate.
9. Two Award Nominations.
10. College Degree.
11. Award Citation.
12. Two Honorable Discharges.
13. Performance Reports.
14. Performance Rating.
15. Police Report.

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ISSUES :

FD 2005-00035

- Served on active duty in the United States Air Force from Jan 3, 1986 to Dec 02, 1991. Received Honorable Discharge.
- Served in the United States Air Force Reserves at Eglin AFB, Aux. Field 3 (Duke Field) from Mar 7, 1992 to Jan 4, 1993.
- Was sent from Duke Field to Air Force Reserve Headquarters (AFRES HQ) at Warner Robins AFB, GA to work as an assistant to the Munitions Accountable Supply Officer. Was placed on active duty from Jan 5, 1993 to Jul 01, 1993. Received Honorable Discharge.
- Was released from AFRES Headquarters to take a permanent Air Reserve Technician Job at Naval Air Station New Orleans, LA. Served at NAS New Orleans, LA from Jun 12, 1993 to Dec 22, 1994. Received Other than Honorable Reserve Order A-139.
- Never used drugs before or since this incident. See attached affidavit.
- Have remarried and started a family and became a productive member of society.
- Have been in drug testing designated jobs ever since without incident.
- Would like discharge upgraded and reenlistment code upgraded so that I can join the Air National Guard to fight the war on terrorism.
- Would also like discharge upgrade so that I can be granted a government security clearance and possibly be placed on the personnel reliability program (PRP).
- Granting this request would allow me to advance in my current federal civil service career. It would also remove a blemish on my records that I have lived with for going on ten years. I admitted to the mistake I made, and deeply regret it, but haven't I been punished long enough?