

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

TYPE GEN	X	PERSONAL APPEARANCE	RECORD REVIEW
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YES	No	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
X		AMERICAN LEGION	1608 K STREET NW WASHINGTON DC 20006

MEMBER SITTING	HON	GEN	UOHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES	A92.21 A93.01 A92.03 A94.05 A93.21	INDEX NUMBER	A67.10
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- | COPIES DELIVERED 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
07 Jul 2005	FD-2005-00054

Case heard at Washington, D.C.

Names and votes will be made available to the applicant at the applicant's request.

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-2005-00054

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB on 07 Jul 2005.

The following additional exhibits were submitted at the hearing:

Exhibit #6: E-mail communication dated June 22, 2005 between applicant and counsel

Exhibit #7: Unofficial college transcript (during enlistment)

Exhibit #8: College transcript (post service)

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.

ISSUES: The applicant contends his discharge was inequitable because it was too harsh due to otherwise good conduct, and unequal treatment due to a medical condition. During testimony he also contended he was immature at the time and cited good post service conduct.

Issue 1. Applicant contends discharge was inequitable because it was too harsh. Applicant contends that he was treated harshly as the result of resentment engendered by a medical problem that prevented deployment with his unit, his off duty employment and taking college courses. The records indicated the applicant received an Article 15, Vacation Action, four Letters of Reprimand, and three Records of Individual Counseling for misconduct. The DRB noted that the infractions were the result of his choices and behavior and not caused by any resentment on the part of coworkers or supervisors. During testimony the applicant stated that his medical condition or its treatment did not prevent him from performing his duties and did not cause the incidents of misconduct. Furthermore, the applicant was properly evaluated by the Air Force Disability System and was determined to be fit and returned to duty. 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 Board noted that documentation of disciplinary actions leading to a UIF and placement on the control roster referred to in an EPR was completely missing from the personnel file and unavailable for review. The applicant stated he did not recall any disciplinary actions, having a UIF established, or being placed on the control roster during that particular rating period. At the time of this referral report, the applicant did not provide comments to his rater to correct any errors that may have been present. Despite this, the Board concluded that the characterization of the discharge received by the applicant was found to be appropriate based solely on the misconduct documented in the personnel file.

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, letters of recommendation, and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

Issue 3. Applicant contends that he should not be penalized indefinitely for a mistake he made when young. The DRB recognized the applicant was nearly 23 years of age when the discharge took place and had been in the Air Force over three years. There is no evidence he was immature or did not know right from wrong. The Board notes that the vast majority of first-term members properly adhere to the Air Force's standards of conduct. The DRB concluded that the characterization of the applicant's discharge was appropriate due to the misconduct.

Issue 4 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well and has a good job. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

Issue 5. The applicant also requested promotion to the rank of E-4, a request outside the purview of the DRB. The Board noted the referral EPR, indicating administrative conditions preventing promotion by Air Force policy, closing out shortly before the date of eligibility for promotion to E-4. In addition to specified time in service and time in grade requirements, promotion to E-4 requires the written recommendation of a member's commander based on all aspects of duty performance as well as on and off duty conduct.

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

FD2005-00054A

 (Former AMN) (HGH A1C) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a Gen Dish fr Cannon AFB, NM on 21 Apr 99 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline) Appeals for Honorable Discharge.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 13 Jun 01.

b. The AFDRB reviewed case on 23 Jul 01 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 21 Jan 05. (Change Discharge to Honorable)

ISSUE 1: My squadron was deployed to Saudi Arabia and I was left behind due to an MEB evaluation. After they returned, there were some hard feelings toward me.

ISSUE 2: During my enlistment, I held a part-time job and went to school full-time. This also posed a conflict with my peers because they were unable to do this. I received my Associates Degree the month after I was released from duty.

ISSUE 3: During my enlistment I never received the rank of E-4, even though I had reached my 36-month mark. There was never any indication in my PIF that stated why this rank was not issued.

ISSUE 4: When I received my Article 15, my current rank of E-3 was relinquished and I received the rank of E-2. I feel that this was unjust because the rank of E-4 was never given to me. I technically lost 2 ranks with the Article 15.

ISSUE 5: I would like the Board to change my discharge from "General Under Honorable" TO "Honorable" and reverse my discharge grade from E-2 to E-4 and I be given retro pay for pay lost due to inadequate documentation.

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None.

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

(Former AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 99/04/21 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 76/05/25. Enlmt Age: 19 3/12. Disch Age: 22 10/12. Educ: HS DIPL. AFQT: N/A. A-95, E-75, G-78, M-50. PAFSC: 2W131F - Aircraft Armament Systems Apprentice. DAS: 96/07/22.

b. Prior Sv: (1) AFRes 95/08/30 - 96/01/30 (5 months 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 96/01/31 for 4 yrs. Svd: 3 Yrs 2 Mo 21 Das, all AMS.

b. Grade Status: AMN - 99/02/26 (Article 15, Vacation, 97/03/19)
A1C - 97/05/31
AMN - (EPR Indicates): 96/01/31-97/09/29

c. Time Lost: none.

d. Art 15's: (1) 97/03/19, Vacation, Cannon AFB, NM - Article 92. You, who knew of your duties on 9 Mar 99, were derelict in the performance of those duties in that you willfully accessed and used the internet on a government computer rather than performing your assigned additional duties. You, did, o/a 9 Mar 99, violate a lawful general regulation, to wit: para 6.1.1 AFI 33-129, dated 1 Jan 97, by wrongfully using a government computer for other than official government business. Rdn to Amn. (No appeal) (No mitigation)

(2) 99/02/26, Cannon AFB, NM - Article 91. You were, o/a 4 Feb 99, disrespectful in language toward SSgt -----, a superior noncommissioned officer, then known by you to be a superior noncommissioned officer, who was then in the execution of his office, by saying, "The people that run dayshift are assholes." You were, o/a 4 Feb 99, disrespectful in language toward SSgt -----, a superior noncommissioned officer, who was then in the execution of his office, by saying, "The people that run dayshift are assholes. Rdn to Amn (susp till 25 Aug 99), and 30 days extra duty. (No appeal) (No mitigation)



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 27th FIGHTER WING (ACC)
CANNON AIR FORCE BASE NEW MEXICO

FD 2005-00054A

26 MAR 1999

MEMORANDUM FOR AMN [REDACTED]

FROM: 524 FS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically, a pattern of misconduct prejudicial to good order and discipline. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.50.2. 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 9 Mar 99, you violated a lawful general regulation, paragraph 6.1.1, Air Force Instruction 33-129, by wrongfully using a government computer for other than official government business, as evidenced by a Vacation of Nonjudicial Punishment dated, 19 Mar 99 (Atch 1a).

b. On or about 15 Mar 99, you violated Air Force Instruction 36-2903 Dress and Appearance by wearing a tongue ring at your work center, as evidenced by a Letter of Reprimand, dated 17 Mar 99, (Atch 1b).

c. On or about 12 Mar 99, you failed to obey a lawful order given to you by Tech Sergeant [REDACTED] evidenced by a Letter of Reprimand, dated 12 Mar 99, (Atch 1c).

d. On or about 4 Feb 99, you were disrespectful in language to Staff Sergeant [REDACTED] and Staff Sergeant [REDACTED] superior noncommissioned officers in charge, as evidenced by an Article 15, dated 26 Feb 99 and an Unfavorable Information File, dated 3 Mar 99, (Atch 1d).

e. On or about 26 Feb 99, you violated Air Force Instruction 36-2903 Dress and Appearance by reporting to your superior officer in charge wearing only your gortex jacket without your Battle Dress Uniform shirt, as evidenced by a Letter of Reprimand, dated 26 Feb 99, (Atch 1e).

f. On or about 18 Feb 99, you failed to go to your appointed place of duty at the prescribed time, as evidenced by a Record of Individual Counseling, dated 18 Feb 99, (Atch 1f).

g. On or about 6 Jul 97, you failed to go to your appointed place of duty at the prescribed time, as evidenced by a Record of Individual Counseling, dated 6 Jul 97, (Atch 1g).

h. On or about 11 Feb 97, you were derelict in your duties as a weapons load crew member

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by not assuring that the seal (lead seal) on the pylon breeches was sealed which could have resulted in a serious situation, as evidenced by a Record of Individual Counseling, dated 12 Feb 97, (Atch 1h).

i. On or about 12 Dec 96, you were derelict in your duties as a weapons load crew member by failing to connect the missile umbilical on an aircraft, as evidenced by a Letter of Reprimand, dated 16 Dec 96, (Atch 1i).

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. 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. I have made an appointment for you to consult [REDACTED] at building 327, ext. 2915, on _____ at _____ hours. You may consult civilian counsel at your own expense.

5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within 3 workdays 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 29 Mar 99 at 0730.

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.

[REDACTED]
USAF
Commander, 524 FS

Attachments

- 1a. Vacation of Nonjudicial Punishment, dated 19 Mar 99
- 1b. Letter of Reprimand, dated 17 Mar 99
- 1c. Letter of Reprimand, dated 12 Mar 99
- 1d. Article 15, dated 26 Feb 99; Unfavorable Information File, dated 3 Mar 99
- 1e. Letter of Reprimand, dated 17 Mar 99
- 1f. Record of Individual Counseling, dated 18 Feb 99
- 1g. Record of Individual Counseling, dated 6 Jul 97
- 1h. Record of Individual Counseling, dated 12 Feb 97
- 1i. Letter of Reprimand, dated 16 Dec 96