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AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE AMN	AFSN/SSAN ████████████████
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TYPE HON	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	<input type="checkbox"/>		
	<input checked="" type="checkbox"/>		

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

ISSUES	A94.05 A01.51	INDEX NUMBER	A67.10	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	27 Oct 2005	CASE NUMBER	FD-2005-00094	
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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 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.

SIGNATURE OF RECORDER ████████████████████	SIGNATURE ████████████████████
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INDORSEMENT **DATE: 11/3/2005**

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00094

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reason and authority for the discharge.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Andrews AFB on 27 Oct 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 reason and authority for discharge 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.

ISSUES:

Issue 1. The applicant contends he was never considered for probation and rehabilitation (P&R). The commander's order directing discharge shows he considered (P&R) but decided it was not appropriate. The records indicated the applicant received an Article 15, a vacation action, four Letters of Reprimand, five Records of Individual Counseling, and two Memorandums for Record for misconduct. His misconduct included failure to go, failure to adhere to safety standards on numerous occasions, failure to meet uniform standards, leaving a passenger bus unattended while still running, threatening language towards a fellow airman, driving with a suspended driver's license, operating a radar detector on base, failed to report an accident involving a government vehicle, unprofessional behavior, failure to obey lawful orders, and insubordinate conduct. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior.

Issue 2. Applicant contends discharge was inequitable because at the time of discharge he was not worldwide qualified. The presumption of regularity dictates that the board members assume that the member's non-worldwide qualification was removed unless the applicant shows sufficient evidence that it was not. There was no evidence presented to the board beyond the absence from the records of a document returning the applicant to a "worldwide qualified" status. This is insufficient to overcome the presumption of regularity. Furthermore, assuming for the sake of argument he had not been worldwide qualified, he eventually would have been discharged. At the most the discharge action might have been "dual processed" to see whether he would receive a medical or administrative discharge. The DRB is made up of members of the Personnel Council, who also make recommendations on such matters. There was no doubt for the Board members that the applicant would have been discharged for misconduct rather than medically discharged.

Issue 2. The applicant states his discharge is not proper due to statements in his own behalf not being properly presented to the wing commander. While the legal review incorrectly states the applicant waived his right to submit matters, it also states that the applicant submitted a statement on his own behalf for the commander to consider. The statement is part of the discharge record and there is no indication it was not considered by the separation authority.

Issue 3. The applicant cited his desire to receive the G.I. Bill benefits and having to repay his enlistment bonus as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366, on July 1, 2001) that he understood he must receive an Honorable discharge to receive future educational entitlements. Additionally, the member signed enlistment documents (AF Form 3008, on March 22, 2001) stating he understood he must complete his first enlistment to be

entitled to the bonus. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was substantially 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. The only potential impropriety, the alleged lack of worldwide qualification at the time of discharge, even if true, did not prejudice the applicant in terms of the reason and characterization of his discharge.

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

[REDACTED]

(Former AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Dover AFB, DE on 20 May 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 30 Sep 83. Enlmt Age: 17 5/12. Disch Age: 19 7/12. Educ: HS DIPL. AFQT: N/A. A-96, E-96, G-86, M-91. PAFSC: 2T231 - Air Transportation Apprentice. DAS: 27 Nov 01.

b. Prior Sv: (1) AFRes 22 Mar 01 - 16 Jul 01 (3 months 24 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 17 Jul 01 for 6 years. Svd: 01 Yrs 10 Mo 04 Das, all AMS.

b. Grade Status: Amn - 26 Aug 02 (Vacation of Suspension, 16 Oct 02)
A1C - 31 Aug 01

c. Time Lost: None.

d. Art 15's: (1) 16 Oct 02, Vacation, Dover AFB, DE - Article 91. You, having received a lawful order from SSgt [REDACTED], a NCO, then known by you to be a NCO, to help the other airmen clean up around the terminal, an order which it was your duty to obey, did on two occasions on or about 2 Oct 02 willfully disobey the same. Reduction to Amn. (No appeal) (No mitigation)

(2) 26 Aug 02, Dover AFB, DE - Article 86. You did, on or about 1 Aug 02, without authority, fail to go at the time prescribed to your appointed place of duty. You did, on or about 7 Aug 02, without authority, fail to go at the time prescribed to your appointed place of duty. Suspended Reduction to Amn. Must successfully complete the Anger Management Class. Forfeiture of \$100.00 pay per month for two months. Restriction to base for 45 days. (No appeal) (No mitigation)

e. Additional: LOR, 26 MAR 03 - Driving with a suspended driver's license, failing to pay a speeding ticket, operating a radar detector on base, and failing to stay in a designated lane.
LOR, 05 AUG 02 - Failed to report an accident involving a

government owned vehicle.
 RIC, 01 AUG 02 - Unprofessional behavior.
 RIC, 28 MAY 02 - Failure to meet uniform standards.
 RIC, 26 MAY 02 - Threatening Language towards a fellow Amn.
 LOR, 23 MAY 02 - Left passenger bus unattended while still
 running.
 LOR, 08 MAY 02 - Failure to obey a lawful order and
 insubordinate conduct.
 RIC, 30 APR 02 - Failure to adhere to safety standards.
 MFR, 16 APR 02 - Failure to go at the time prescribed.
 RIC, 15 APR 02 - Failure to adhere to safety regulations.
 MFR, 09 APR 02 - Counseled on Vehicle safety standards.

f. CM: None.

g. Record of SV: 17 Jul 01 - 16 Mar 03 Dover AFB 2 (Initial) REF

h. Awards & Decs: NDSM, AFOUA, BMTR.

i. Stmt of Sv: TMS: (02) Yrs (01) Mos (28) Das
 TAMS: (01) Yrs (10) Mos (04) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 17 Feb 2005.
 (Change Discharge to Honorable.)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. AF Form 422.
3. Four pages of Medical History.
4. Recommendation for Discharge.
5. Response to notification Memo.
6. Character Reference.
7. E-Mail concerning his driver's license.

20MAY05/day

FEB 25 2005

APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.

a. BRANCH OF SERVICE (X one) ARMY MARINE CORPS NAVY AIR FORCE COAST GUARD

b. NAME (Last, First, Middle Initial) [REDACTED] c. GRADE/RANK AT DISCHARGE E-2/ AMN d. SOCIAL SECURITY NUMBER [REDACTED]

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149) 20030520
4. DISCHARGE CHARACTERIZATION RECEIVED (X one) HONORABLE GENERAL/UNDER HONORABLE CONDITIONS UNDER OTHER THAN HONORABLE CONDITIONS
5. BOARD ACTION REQUESTED (X one) CHANGE TO HONORABLE CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS CHANGE TO UNCHARACTERIZED (Not applicable for Air Force) CHANGE NARRATIVE REASON FOR SEPARATION TO: Medical or Other

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION 436th APS Dover AFB, DE
4. DISCHARGE CHARACTERIZATION RECEIVED (X one) BAD CONDUCT (Special court-martial only) UNCHARACTERIZED OTHER (Explain)

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.) This Discharge was improper because at the time of separation I was not worldwide qualified as evidenced by the AF Form 422 Dated 04/24/2003 and signed by Capt [REDACTED]. The Profile was not due to expire until 06/23/2003, and then only after re evaluation by my doctors. According to AFI 36-3208 an airman must be world wide qualified in order to be discharged from the United States Air Force..

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) _____ AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: (Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)
AF Form 422 Physical Profile dated 04/24/2003
Medical report dated 04/24/2003 signed by DR [REDACTED]
Medical report dated 04/24/2003 signed by DR [REDACTED]

9. TYPE OF REVIEW REQUESTED (X one) CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD. I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA. I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city and state) (NOTE: The Navy Discharge Review Board does not have a traveling panel.)

10.a. COUNSEL/REPRESENTATIVE (if any) NAME (Last, First, Middle Initial) AND ADDRESS (See item 10 of the instructions about counsel/representative.) _____ b. TELEPHONE NUMBER (Include Area Code) _____ c. E-MAIL _____ d. FAX NUMBER (Include Area Code) _____

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print) and relationship by marking a box below.
 SPOUSE WIDOW WIDOWER NEXT OF KIN LEGAL REPRESENTATIVE OTHER (Specify)

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE (Forward notification of any change in address.) _____ b. TELEPHONE NUMBER (Include Area Code) _____ c. E-MAIL _____ d. FAX NUMBER (Include Area Code) N/A

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.) CASE NUMBER (Do not write in this space.) FD 2005-

a. SIGNATURE [REDACTED] b. DATE SIGNED - REQUIRED (YYYYMMDD) 2005 02 17 00094

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

This discharge also was not proper due to the statements on my own behalf not being properly presented to the Wing Commander for his review prior to his decision to allow my discharge. My statement was submitted however my attachments were not and these are what proved that my discharge should not have been allowed, according to the AFI. Also my request for Probation and Rehabilitation was not considered.

Lastly, one of the main reasons for my discharge was discredited by the NCOIC of Reports and Analysis of the 436th SFS. He stated that it was due to a paperwork error that caused my drivers license to be suspended.

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

DD Form 2697 Dated 04/24/2003

Memmorandum for 436AW/CC dated 05/05/2003

Response to Notification memmorandum

Character Reference by MSgt [REDACTED] Dated 04/25/2003

Email dated 04/08/2003 from TSgt [REDACTED]

Statement From Dept of Veterans Affairs dated 02/10/2004

16. REMARKS (If applicable)

If my discharge would have been post-poned until further medical evaluation had been completed or if my discharge had been listed as honorable or medical I would not have lost my GI Bill and would not have to repay my enlistment bonus since I would have met the two year time in service that is required for both of these things. Unfortunately, most of this information was not known to me at the time of my discharge.

Also since my discharge, I have been given a disability rating from the Department of Verterans Affairs, have been seen by orthopedic surgeons at the VA Medical Center in Cincinnati, OH, and have been told that most likely another surgery would be necessary in order to fix the problems with my leg. It has also made it difficult to find and keep work since my leg can be a hindrence to physical work. With my GI Bill reinstated I could go back to school and better myself, and recieve the knowledge and training for an occupation the will not be hindered by my leg.

Thank you for your time in reviewing this matter.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 436TH AIRLIFT WING (AMC)

22 Apr 03

MEMORANDUM FOR AMN [REDACTED]

FROM: 436 APS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Minor Disciplinary Infractions. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.49. 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 reason for this action is:

a. On or about 7 Mar 03, you were cited by the base security forces for driving on a suspended drivers license, operating a radar detector on base and failing to stay in a designated lane. For this misconduct you received a Letter of Reprimand, dated 26 Mar 03.

b. On or about 2 Oct 02, you failed to obey an order to help other airmen clean up around the terminal. For this misconduct the suspended reduction to Airman as a result of a previous Article 15 was vacated, dated 16 Oct 02.

c. On or about 1 Aug 02 and on or about 7 Aug 02, you failed to go to your appointed place of duty. For this misconduct you received an Article 15, dated 14 Aug 02.

d. On or about 19 Jul 02, you were involved in an accident involving a GOV passenger service golf cart with which you hit an Air Force member and caused them physical injury and you did not report the incident. For this misconduct you received a Letter of Reprimand, dated 5 Aug 02.

e. On or about 1 Aug 02, you were disrespectful in voice and manner to SSgt [REDACTED]. For this misconduct you received a Letter of Counseling, dated 1 Aug 02.

f. On or about 28 May 02 you were counseled for not wearing your Passenger Service Badge after being instructed to on several occasions.

g. On or about 27 May 02 you were counseled for failing to meet standards, by not having your boots shined after being instructed to have them shined. For this misconduct you received a Letter of Counseling, dated 28 May 02.

h. On or about 26 May 02, you made threatening statements towards a fellow airman. For this misconduct you received a Letter of Counseling, dated 26 May 02.

i. On or about 20 May 02, you failed to obey an order or regulation by leaving a passenger service bus unattended as it was running and not chalked. For this misconduct you received a Letter of Reprimand, dated 23 May 02.

j. On or about 6 May 02, you failed to comply with multiple lawful orders and made deceitful statements to your superiors. For this misconduct you received a Letter of Reprimand, dated 8 May 02.

k. On or about 30 Apr 02 you were counseled for failure to adhere to base regulations and posted speed limits.

l. On or about 16 Apr 02 you were counseled for failing to report to work on time.

m. On our about 15 Apr 02 you were counseled for leaving a passenger bus unattended with the engine running and vehicle improperly chalked.

n. On or about 9 Apr 02 you were verbally counseled on vehicle safety standards.

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Courts-Martial 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 and any special pay, bonus, or higher education assistance funds may subject to recoupment.

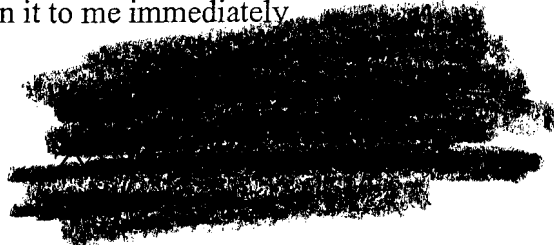
3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. Please contact the Dover Air Force Base Area Defense Counsel, Capt. [REDACTED] at x-6995, Bldg. 261, 3rd Floor **immediately upon receipt of this notification**. You may consult civilian counsel at your own expense.

4. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within **3 duty days** unless you request and receive an extension for good cause shown. I will send them to the separation authority. 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. The Privacy Act of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use in the Orderly Room.

5. You have been scheduled for a **medical examination**. You must report to Family Practice, Second Floor, Building 305, at **0715 on Thursday, 24 Apr 03 for an examination with Dr. Hayes**. Please be there 10 mins early to electronically sign in and fill out appropriate paperwork. If you have any questions or need to reschedule this appointment, please call 677-6865.

6. You have been scheduled for a **Separations Briefing**. Please report to Building 520, Room 112, ext 2155 on **Thursday, 24 Apr 03 at 0900 hours**.

7. Execute the attached acknowledgement and return it to me immediately



Attachments:

1. Letter of Reprimand, dated 26 Mar 03
2. AF Form 366, Vacation of Suspended Article 15 punishment, dated 9 Oct 02
3. AF Form 3070, Article 15, dated 14 Aug 02
4. Letter of Reprimand, dated 5 Aug 02
5. Letter of Counseling, dated 1 Aug 02
6. Memorandum for Record, dated 28 May 02
7. Letter of Counseling, dated 28 May 02
8. Letter of Counseling, dated 26 May 02
9. Letter of Reprimand, dated 23 May 02
10. Letter of Reprimand, dated 8 May 02
11. Letter of Counseling, dated 30 Apr 02
12. Memorandum for Record, dated 16 Apr 02
13. Letter of Counseling, dated 15 Apr 02
14. Memorandum for Record, dated 9 Apr 02
15. Airman's Receipt of Notification Memorandum
16. ID Card Withdrawal letter