

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF APPLICANT (LAST, FIRST, MIDDLE 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 A62.00	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 30 Aug 2005	CASE NUMBER FD-2005-00098
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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.

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

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT
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INDORSEMENT **DATE: 8/30/2005**

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-2005-00098

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: The Board grants the requested relief.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's reason and authority for discharge inequitable.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received a General discharge due to fraudulent entry. It appears that when the applicant completed his Standard Form 86, Questionnaire for National Security Positions, he marked block 23 as "no" to the question of: "Have you ever been charged with or convicted of any felony offense?" When in fact, he was charged with one count of Battery. The other charge of Domestic Battery was dismissed. However, he did indicate on the SF 86, at the bottom of block 23, that he was involved in a fight, but that the charges were dropped. The DRB opined that since the member served almost four years of active duty and had two excellent EPRs, that a General discharge was too harsh.

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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge 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

(Former SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Ellsworth AFB, SD on 16 Jun 04 UP AFI 36-3208, para 5.15 (Fraudulent Entry). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 17 Mar 79. Enlmt Age: 21 7/12. Disch Age: 24 2/12. Educ: HS DIPL. AFQT: N/A. A-74, E-77, G-53, M-49. PAFSC: 2A553B - Bomber Avionics Systems, Instrument & Flight Control Command Journeyman. DAS: 27 Aug 01.

b. Prior Sv: (1) AFRes 31 Oct 00 - 14 Nov 00 (13 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 14 Nov 00 for 4 yrs. Svd: 0 Yrs 0 Mo 0 Das, all AMS.

b. Grade Status: SrA - 14 Nov 03
A1C - 14 Sep 01

c. Time Lost: None.

d. Art 15's: (1) 17 May 04, Ellsworth AFB, SD - Article 128. You did, at or near Rapid City, South Dakota, on or about 8 Mar 04, assault [REDACTED] by grabbing her by the collar of her shirt. Suspended reduction to A1C. Forfeiture of \$200.00 per month for two months (in excess of \$100.00 pay per month for two months suspended). Twenty one days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 14 Nov 00 - 13 Jul 02 Ellsworth AFB 5 (Initial)
14 Jul 02 - 13 Jul 03 Ellsworth AFB 5 (Annual)

h. Awards & Decs: AFTR, NDSM, AFOUA W/VALOR.

i. Stmt of Sv: TMS: (0) Yrs (0) Mos (0) Das
TAMS: (0) Yrs (0) Mos (0) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 2 Feb 05.
(Change Discharge to Honorable)

Issue 1: I feel that my commander did not consider all of the facts before giving me a general discharge. Document 3 clearly shows that I did in fact disclose the fact that I was arrested for fighting. Doc.1 shows that I never received a conviction and the charges were dropped. I served for over 3.5 years with no problems and feel that my discharge should be honorable. As for para.3 on Doc.2, [REDACTED] and I are now married. I would like to have my discharge upgraded so that I may use the benefits that are now denied me.

ATCH

1. Congressional Response.
2. Congressional Correspondence.
3. DD Form 214.
4. Questionnaire For National Security Positions.
5. Notification Memorandum.
6. Court Order.
7. Two Enlisted Performance Reports.
8. Two Character References.

5APR05/ia



FD 2005-80098

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 28TH BOMB WING (ACC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

2 Jun 04

MEMORANDUM FOR SRA [REDACTED] 28 AMXS

FROM: 28 AMXS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for fraudulent entry. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.15. If my recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reason for this action is:

You, on or about 1 Nov 00, by means of deliberate concealment of the fact that you committed domestic battery in DeKalb County, Illinois on 6 Sept 98 and were tried and convicted of the above offense in DeKalb County, Illinois Circuit Court on 16 Nov 98, procure yourself to be enlisted in the United States Air Force, and did thereafter at Ellsworth Air Force Base, South Dakota receive pay and allowances under the enlistment so procured. Failing to disclose the above acts was a deliberate, material misrepresentation, omission, or concealment that, if known at the time of your enlistment or entry into a period of military service, might have resulted in rejection.

3. You have other derogatory information in your military record from your current enlistment, which is outlined below. This information is not being cited as a basis for discharge, however, it may be considered for characterization of service and in deciding whether you should be discharged or retained. It may also be considered on the issue of Probation and Rehabilitation (P & R).

You did, at or near Rapid City, South Dakota, on or about 8 Mar 04, assault [REDACTED] by grabbing her by the collar of her shirt. For this action, you received nonjudicial punishment under Article 15, UCMJ, on 17 May 04. Punishment consisted of a suspended reduction to the grade of Airman First Class, forfeiture of \$200.00 pay per month for two months, with that portion in excess of \$100.00 pay per month for two months suspended, and 21 days extra duty. This action established your Unfavorable Information File (UIF).

4. 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 and any special pay, bonus, or education assistance funds may be subject to recoupment.

5. 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 Capt [REDACTED] at 1000 Ellsworth Street,

Suite 1700 on 2 Jun 04 at 1000 hours. You may consult civilian counsel at your own expense.

6. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 7 Jun 04 at 0830 hours, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

7. If you fail to consult counsel or to submit matters in your own behalf, your failure will constitute a waiver of your right to do so.

8. You have been scheduled for a medical examination. You must report to Flight Medicine / Family Practice A Family Practice B Section of the Base Clinic on 2 Jun at 1400 hours for the examination. This is a mandatory appointment and you must be in uniform. You must report at least 20 minutes in advance to this appointment to complete necessary paperwork. Please have the attached Medical Examination for Separation/Retirement form completed at this time. Return this form to the Separations office.

9. You have been scheduled for a pre-separation appointment. You must report to the Separations Section of the Military Personnel Flight (MPF) on 4 Jun 04 at 1400 hrs. This is a mandatory appointment and you must be in uniform. Your signed Medical Examination for Separation/Retirement will be turned in at this time.

10. You have been scheduled for a pre-separation briefing. You must report to the Family Support Center on 8 Jun 04 at 1430 hours. This is a mandatory appointment and you must be in uniform. You must report at least 15 minutes in advance to this appointment to complete any necessary paperwork.

11. 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 orderly room.

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



Lt Col, USAF
Commander, 28th Aircraft Maintenance Squadron

Attachments:

1. Supporting documents
Triple I Report (Criminal History) – 21 Apr 04
2. Other data:
Article 15/UIF- 17 May 04
3. Airman's receipt of notification memorandum
4. DPMAR FM-21 (Medical Examination for Separation/Retirement)
5. Issuance of Temporary ID Card for Administrative Discharge