

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE A1C	AFSN/SSAN ████████████████
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TYPE HON	PERSONAL APPEARANCE	X	RECORD REVIEW
COUNSEL		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 A01.27 A01.37	INDEX NUMBER A46.00	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 10 Oct 2005	CASE NUMBER FD-2005-00108	

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, the right to a personal appearance with/without counsel, 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 OF BOARD PRESIDENT ████████████████████
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INDORSEMENT **DATE: 11/8/2005**

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

FD-2005-00108

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

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: Change of reason and authority for 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:

Applicant contends discharge was inequitable because of a false accusation of his admission to homosexuality. He also contends many people first asked if he was homosexual and then accused him of complying with an admission to homosexuality--breaking the first rule of "Don't Ask/Don't Tell." In addition, he alleges he endured many occasions of prejudice, inequity, bias, and discrimination. Lastly, the member states he was questioned without any suggestion for a lawyer to assist him and never given the opportunity to fully present his case or himself. The records indicated the applicant received an honorable discharge with the narrative reasoning of homosexual admission. The member was notified of discharge action on March 7, 2002, and scheduled to consult counsel (Area Defense Counsel) on March 8, 2002. Additionally, member consulted counsel on March 15, 2002, and submitted a conditional waiver of his rights to a board hearing contingent upon receiving a discharge characterization no less than an honorable discharge.

AFI 36-3208, Chapter 5, Section G, paragraph 5.36.1 indicates a basis for discharge exists if the member makes a statement that demonstrates a propensity or intent to engage in homosexual acts. The applicant made statements that fit the criteria set out in paragraph 5.36.1. While he denied such statements, three credible witnesses signed sworn statements asserting that such statements were made. The characterization of the discharge received by the applicant was found to be appropriate.

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

working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

5.35.13. The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service.

5.35.14. The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

5.35.15. The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

5.36. Basis for Discharge:

5.36.1. Homosexual conduct is grounds for separation from the military service under the terms set forth in paragraph 5.36.2. Homosexual conduct includes homosexual acts, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in or will engage in homosexual acts. A member's sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct in the manner described in paragraph 5.36.2.:

5.36.2. A member shall be separated under this section if one or more of the following approved findings is made:

5.36.2.1. The member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

5.36.2.1.1. Such acts are a departure from the member's usual and customary behavior;

5.36.2.1.2. Such acts under all the circumstances are unlikely to recur;

5.36.2.1.3. Such acts were not accomplished by use of force, coercion, or intimidation;

5.36.2.1.4. Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in proper discipline, good order, and morale; and

5.36.2.1.5. The member does not have a propensity or intent to engage in homosexual acts.

5.36.2.2. The member has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a service member that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts.

Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether a member has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered: **NOTE:** This list is not exhaustive; any other relevant evidence may also be considered:

- 5.36.2.2.1. Whether the member has engaged in homosexual acts.
- 5.36.2.2.2. The member's credibility.
- 5.36.2.2.3. Testimony from others about the member's past conduct, character, and credibility.
- 5.36.2.2.4. The nature and circumstances of the member's statement.
- 5.36.2.2.5. Any other evidence relevant to whether the member is likely to engage in homosexual acts.

5.36.2.3. The member has married or attempted to marry a person known to be of the same biological sex (as evidenced by external anatomy of the persons involved).

5.37. Types of Separation. discharge under this section for homosexual conduct may be:

5.37.1. Described as an entry level separation if:

- 5.37.1.1. The airman is in entry level status; and
- 5.37.1.2. Characterization as under other than honorable conditions is not warranted according to paragraph 5.37.3.

5.37.2. Characterized as honorable or general according to **Chapter 1, Section 1B**, if:

- 5.37.2.1. The airman is not in entry level status; and
- 5.37.2.2. Characterization as under other than honorable conditions is not warranted according to paragraph 5.37.3.

5.37.3. Characterized as under other than honorable conditions only if it is found that during the current term of service the airman attempted, solicited, or committed a homosexual act:

- 5.37.3.1. By using force, coercion, or intimidation;
- 5.37.3.2. With a person under 16 years of age;
- 5.37.3.3. With a subordinate in circumstances that violate customary military superior-subordinate relationships;
- 5.37.3.4. Openly in public view;
- 5.37.3.5. For compensation;
- 5.37.3.6. Aboard a military vessel or aircraft; or
- 5.37.3.7. In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or an aircraft.

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

(Former A1C) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a HON Disch fr Langley AFB, VA on 22 Apr 02 UP AFI 36-3208, para 5.36.2 (Homosexual Admission). Appeals for a Change to the RE Code, and Change the Reason and Authority for Discharge.

2. BACKGROUND:

a. DOB: 16 Jun 81. Enlmt Age: 18 11/12. Disch Age: 20 10/12. Educ: HS DIPL. AFQT: N/A. A-50, E-62, G-55, M-35. PAFSC: 2S031 - Supply Technician. DAS: 27 Nov 00.

b. Prior Sv: (1) AFRes 25 May 00 - 21 Jun 00 (28 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 22 Jun 00 for 4 yrs. Svd: 1 Yrs 10 Mo 1 Das, all AMS.

b. Grade Status: A1C - 22 Oct 01
Amn - 22 Dec 00

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 22 Jun 80 - 22 Feb 02 Langley AFB 4 (Initial)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (1) Yrs (10) Mos (29) Das
TAMS: (1) Yrs (10) Mos (1) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 14 Feb 05.
(Change Discharge to the RE Code, and Reason and Authority for Discharge)

Issue 1: I was discharged from the Air Force because of a false accusation of my admission to homosexuality. Many people first, asked me if I was a homosexual and then accused me of complying with an admission to homosexuality. Breaking the first rule of "Don't Ask/Don't tell." During this period I endured many occasions of prejudice, inequality, bias, and discrimination to which any American citizen should have never encountered. I was questioned without any suggestion for a lawyer to help me with the matter, and never given the

opportunity to fully represent my case and myself. Judgment was passed on me based on another persons bias thoughts about myself, and after I was discharged I was told that the matter should never have been allowed to progress because it was based on accusations and not evidence. I am asking that my case be reviewed and my Narrative reason for discharge/Reentry code be upgraded so that I can ultimately be given the justice that was appropriate during my period of inequality.

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None.

29APR05/ia



FD 2005-00108

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 1ST FIGHTER WING
LANGLEY AIR FORCE BASE VA

MEMORANDUM FOR A1C [REDACTED]

7 MAR 2002

FROM: 1 CS/CC

SUBJECT: Notification Memorandum – Board Hearing

1. I am recommending your discharge from the United States Air Force for homosexual conduct according to AFPD 36-32 and AFI 36-3208, Chapter 5, Section G, paragraph 5.36.2. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

On or about 27 Sep 01, you made several statements to various individuals that indicate a propensity or intent to engage in homosexual acts.

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an honorable discharge. The commander exercising special court-martial 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 and will probably be denied enlistment in any component of the armed forces. Any special pay, bonus, or education assistance funds you have received may be subject to recoupment.

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 deciding to waive any of your rights.

5. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult Captain [REDACTED], Area Defense Counsel, 54 Willow Street, Bldg. 147, Ext. 5607 at 1030 hours on 8 Mar 02 2002. 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 AFI 51-201. 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.

6. 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 may 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.

7. You have been scheduled for a medical examination. You must report to the 1st Medical Group, Physical Exam Section at 0930 hours on 12 Mar 02 2002. An additional examination will be scheduled if necessary. You must bring your medical records to your scheduled appointment.

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 the unit orderly room.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. If you received advanced educational assistance, special pay, or bonuses, and have not completed the period of active duty you agreed to serve, you may be subject to recoupment.

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



Attachments:

1. Supporting Documents
 - a. Report of Fact-Finding Inquiry of Homosexual Conduct, dated 6 Nov 01
 - b. AF Form 1168/ Statement of SrA [REDACTED]
 - c. AF Form 1168/ Statement of SrA [REDACTED]
 - d. AF Form 1168/ Statement of A1C [REDACTED]
 - e. Memorandum from 1 CS/CC, dated 25 Feb 02
2. Receipt of Notification Memorandum