

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(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 UOHC OTHER DENY

X

X

X

X

X

ISSUES **A94.53**

INDEX NUMBER **A67.30**

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

31 Aug 2005

CASE NUMBER

FD-2005-00148

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, 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.

INDORSEMENT

DATE: 8/31/2005

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, 3RD FLOOR
ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

FD-2005-00148

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 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: Upgrade of discharge, 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.

ISSUES: The applicant was discharge with a general discharge for misconduct--specifically, commission of a serious offense. The records indicated the applicant received an Article 15, a vacation action, a Letter of Reprimand, and a Letter of Counseling. His misconduct included committing sodomy with a child under age 16, underage drinking, and driving while drunk. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior and the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. The applicant noted his desire to return to military service. While the Board commends applicant on this aspiration, it is not a matter of equity or propriety with regard to his discharge and does not provide a basis that warrants an upgrade.

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**

(Former AB) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr Andrews AFB, MD on 20 Mar 03 UP AFI 36-3208, para 5.52.1 and 5.52.3 (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: 6 May 82. Enlmt Age: 17 4/12. Disch Age: 20 10/12. Educ: HS DIPL. AFQT: N/A. A-34, E-49, G-53, M-40. PAFSC: 3P051 - Security Journeyman. DAS: 26 Mar 02.

b. Prior Sv: (1) AFRes 16 Sep 99 - 5 Jul 00 (9 months 20 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as A1C 6 Jul 00 for 4 yrs. Svd: 2 Yrs 8 Mo 15 Das, all AMS.

b. Grade Status: AB - 9 Jul 02 (Vacation of Article 15, 22 Jan 03)
Amn - 9 Jul 02 (Article 15, 9 Jul 02)

c. Time Lost: None.

d. Art 15's: (1) 22 Jan 03, Vacation, Andrews AFB, MD - Article 92. You, who were born 6 May 82, who knew of your duty at or near Harrisonburg, Virginia, on or about 16 Nov 02, were derelict in the performance of those duties in that you willfully failed to refrain from drinking alcohol underage, as it was your duty to do. Article 111. You, did at or near Harrisonburg, Virginia, on or about 16 Nov 02, on James Madison University Campus, physically control a vehicle, to wit: 2002 Suzuki, 4 door, while drunk. Reduction to AB. (No appeal) (No mitigation)

(2) 9 Jul 02, Incirlik, AB Turkey - Article 125. You, did, at or near Incirlik AB, Turkey, on divers occasions between on or about 9 Mar 02, and on or about 10 Mar 02, commit sodomy with [REDACTED] a child under the age of 16. Article 134. You, did, at or near Incirlik AB, Turkey, on or about 9 Mar 02, commit an indecent act upon the body of [REDACTED] a female under 16 years of age, not your wife, by placing your finger in her vagina with intent to gratify your lust. Reduction to Airman. Suspended reduction to AB. Fifteen days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 6 Jul 00 - 28 Feb 02 Incirlik AB 4 (HAF Dir)

h. Awards & Decs: AFTR, NDSM, AFOSSTR.

i. Stmt of Sv: TMS: (3) Yrs (6) Mos (5) Das
TAMS: (2) Yrs (8) Mos (15) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 5 Apr 05.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

Issue 1: Upgrade or change is requested so that my reentry code of 2B will be changed so that I may enter the Armed Forces.

ATCH
None.

18MAY05/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 89TH AIRLIFT WING (AMC)

FD 2005-00148

14 Feb 03

MEMORANDUM FOR AB [REDACTED] 89 SFS

FROM: 89 SFS/CC
1845 Westover Drive
Andrews AFB, MD 20762

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Commission of Serious Offenses. The authority for this action is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, paragraphs 5.52.1. and 5.52.3. If my recommendation is approved, your service will be characterized as general (under honorable conditions).

2. My reasons for this action are:

a. On 16 Nov 02, you were derelict in the performance of your duties, in that you willfully consumed alcohol while you were under the legal drinking age.

b. On 16 Nov 02, you physically controlled a vehicle while intoxicated in violation of Article 111, UCMJ.

For the previous two incidents, I vacated the suspension of your 9 Jul 02 punishment imposed under Article 15, UCMJ, and ordered your reduction in grade from Airman to Airman Basic on 22 Jan 03. (Atch 1)

c. Between 9 and 10 Mar 02, you committed sodomy with a child under the age of 16 in violation of Article 125, UCMJ.

d. On 9 Mar 02, you committed an indecent act upon the body of a female under 16 years of age in violation of Article 134, UCMJ.

For the previous two incidents, you received punishment under Article 15, UCMJ, on 9 Jul 02, consisting of a reduction to the grade of E-2, reduction to the grade of E-1 suspended until 8 Jan 03, and fifteen days extra duty. (Atch 2)

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.

4. You have the right to military counsel. I have made an appointment for you with Captain [REDACTED], Area Defense Counsel. Report to 1430 Arnold Avenue at _____ hrs on _____, for