

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
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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	A94.0510	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	CASE NUMBER	
12 Oct 2005	FD-2005-00173	

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.

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ENDORSEMENT		DATE 10/12/2005
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	

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00173

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: 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.

ISSUE:

Issues 1, 2, 3, and 6. Applicant contends his discharge was inequitable because he consumed cough medication which made him drowsy and declares he was not intoxicated. The records indicated the applicant received two Article 15s for wrongfully consuming alcohol or malt beverages within 8 hours before duty and found sleeping while posted as a sentinel; and for sleeping on duty while a member of the Alarm Response Team in a parked vehicle. Member's argument about his flight chief's statement is without merit as member consented to a blood alcohol test which resulted in a finding of .02%. 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 characterization of the discharge received by the applicant was found to be appropriate.

Issue 4. The member contends his discharge is improper because his first Article 15 (which happened two years prior) should not have been a consideration for discharge and appears to be double jeopardy. This issue is without merit. A commander considers the entire enlistment period when determining discharge.

Issue 5. Applicant contends his discharge is inequitable because there was a belief he suffered from sleep apnea and his studies were never finished. This issue is also without merit. Member's medical records reflect a ruling of no evidence of obstructive sleep apnea/central apnea found during testing.

Issue 7. Applicant contends his discharge is inequitable because he was stripped of all benefits and did not receive his last out-process dental examination. This issue is also without merit as member's DD Form 214, block 17 reflects member did not complete his dental examination/treatment within 90 days of separation, combined with the fact member had served 180 days made him eligible for certain VA benefits. Member needs to contact his local VA to determine specifically which benefits he's entitled.

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 A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Izmir AS, Turkey on 26 Apr 02 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 12 Feb 78. Enlmt Age: 20 5/12. Disch Age: 24 2/12. Educ: HS DIPL. AFQT: N/A. A-32, E-42, G-39, M-49. PAFSC: 3P051 - Security Forces Journeyman. DAS: 27 Jul 01.

b. Prior Sv: (1) AFRes 31 Jul 98 - 16 Feb 99 (6 months 17 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 17 Feb 99 for 6 yrs. Svd: 3 Yrs 2 Mo 10 Das, all AMS.

b. Grade Status: A1C - 27 Feb 02 (Article 15, 27 Feb 02)
SrA - 02 Aug 01
A1C - 02 Apr 99

c. Time Lost: None.

d. Art 15's: (1) 27 Feb 02, Izmir AS, Turkey - Article 92. You did, on or about 7 Jan 02, fail to obey a lawful general regulation, to wit: Paragraph 2.12.4, AFI 31-207, dated 1 Sep 99, by wrongfully consuming alcohol or malt beverages within 8 hours before duty. Article 113. You were on or about 7 Jan 02, while on post as a sentinel at Special Post-1 found sleeping upon your post. Reduction to A1C, forfeiture of \$49.00 pay, and a reprimand. (Appeal/Denied) (No mitigation)

(2) 19 Jan 00, RAF Mildenhall, UK - Article 113. You, on or about 31 Dec 99, being a member of the Alarm Response Team, were found sleeping in a vehicle parked on the south end of [REDACTED] near the end of the runway. Suspended reduction to Amn. Fourteen days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 17 Feb 99 - 16 Oct 00 RAF Mildenhall 3 (Initial)

17 Oct 00 - 22 Jun 01 RAF Mildenhall 3 (CRO)

h. Awards & Decs: AFTR, AFEM.

i. Stmt of Sv: TMS: (3) Yrs (8) Mos (27) Das
TAMS: (3) Yrs (2) Mos (10) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 21 Apr 05.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues with Attachments.

26MAY05/ia

APPLICATION FOR THE REVIEW OF DISCHARGE 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 the Department of Defense, Executive Services and Communications Directorate (0704-0004). 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 ORGANIZATION. 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.

Form with fields for Branch of Service (Army, Marine Corps, Navy, Air Force, Coast Guard), Name, Grade/Rank at Discharge (E-4/Senior Airman), Social Security Number, Date of Discharge (2002/04/29), Discharge Characterization (General/Under Honorable Conditions), and Board Action Requested (Change to Honorable).

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.)

- 1) The discharge is improper because I informed the flight chief (Ssgt. [redacted]) that I did consumed cough medicine before guardmount because I was sick.
2) My discharge was inequitable because at guardmount if I was intoxicated then why didn't the flight chief (Ssgt. [redacted]) relieve me of duty and take my weapon away?

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.)

- 1) AF FORM 3545
2) Notification Memorandum
3) AF Form 3070

9. TYPE OF REVIEW REQUESTED (X one)

Form with checkboxes for 'Conduct a Record Review of My Discharge Based on My Military Personnel File and Any Additional Documentation Submitted by Me' and 'I and/or Counsel/Representative Will Not Appear Before the Board'.

Form with fields for Counsel/Representative Name and Address, Telephone Number, E-Mail, and Fax Number.

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.

Form with checkboxes for Spouse, Widow, Widower, Next of Kin, Legal Representative, and Other (Specify).

Form with fields for Current Mailing Address of Applicant or Person Above, Telephone Number, E-Mail, and Fax Number.

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.)

Form with fields for Signature - Required, Date Signed (2005/04/21), and Case Number (FD 2005-00173).

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

- 3) My discharge was improper because the flight chief also stated in his AF FORM 3545 [redacted] appeared sober, did not smell of any alcoholic beverages, his speech was normal and he was alert to instructions."
- 4) My discharge was improper because in the Notification Memorandum it states one of the reasons for discharge was the first incident in England, that happened 2 years before the second incident and I received punishment for the first at that time. Now they listed it as part of the reason for discharge and to be tried twice for the same event is Double Jeopardy.
- 5) My discharge was inequitable because there was a belief that I suffered from sleep apnea since my prior base and studies were never finished. Doctors in Germany wanted to keep me for further tests on other sleeping disorders but my commander (Col. [redacted]) refused and went ahead with the discharge.
- 6) My discharge was inequitable because I had already received punishment for the incident in Turkey, then a few days later the command decides to discharge me.
- 7) My discharge was inequitable because I was stripped of all benefits and did not receive my last outprocess dental examination.

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

[Empty space for supporting documents]

16. REMARKS (If applicable)

[Empty space for remarks]

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
39TH WING (USAFE)

20 March 2002

MEMORANDUM FOR A1C [REDACTED]

FROM: 425 ABS/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 AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable or general under honorable conditions. I am recommending that your service be characterized as general.
2. My reasons for this action are:
 - a. On or about 7 January 2002 you failed to obey a lawful general regulation, paragraph 2.12.4, of Air Force Instruction 31-207, dated 1 September 1999, by wrongfully consuming alcohol within 8 hours before duty, a violation of Article 92 of the Uniform Code of Military Justice (UCMJ); and you were found sleeping on post as a sentinel which is a violation of Article 113, UCMJ. You were given an Article 15, Nonjudicial Punishment.
 - b. On or about 31 December 1999 you were found sleeping in a vehicle while being a member of the Alarm Response Team, in violation of Article 113, UCMJ. You were given an Article 15, Nonjudicial Punishment.
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 and any special pay, bonus, 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 informed the Area Defense Counsel, Capt. [REDACTED] at Incirlik AB, Turkey of this pending action. You may reach him at DSN 676-6908 or Comm'l (90) 322-316-6908. 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 three workdays after receipt of this notification memorandum, that date being 25 MAR 02, unless you request and receive an extension for good cause shown. I will send any statements you submit to the separation authority for his consideration.
6. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.
7. You have been scheduled for a medical examination. You must report to Physical Exams, SSgt [REDACTED] 675-4039, at 0800 hours, on 21 March 2002 for the examination.
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 Command Support Staff office, room 301 of the Akin Building.
9. Execute the attached acknowledgment and return it to me immediately.

[REDACTED]
[REDACTED], USAF
Commander, 425th Air Base Squadron

Attachments:

1. Article 15, dated 21 February 2002
2. Article 15, dated 6 January 2000
3. Recoupment of Education Assistance, Special Pay, or Bonuses
4. Receipt of Notification Memorandum