

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	GRADE AB	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE BCD	X	PERSONAL APPEARANCE	RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="text-align: center; padding: 2px;">X</td> <td style="padding: 2px;"></td> </tr> </table>	YES	No	X			
YES	No					
X						

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X
					X
					X
					X
					X

ISSUES	A94.11 A92.35 A92.21 A93.01 A92.01 A92.03 A91.05 A93.15 A94.05	INDEX NUMBER	A68.00	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	CASE NUMBER	
28 Mar 2006	FD-2004-00081	

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 RECORDING OFFICER <div style="border: 1px dashed black; height: 30px; width: 100%;"></div>	SIGNATURE OF BOARD PRESIDENT <div style="border: 1px dashed black; height: 30px; width: 100%;"></div>
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INDORSEMENT	DATE: 3/28/2006
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-2004-00081

GENERAL: The applicant appeals for upgrade of discharge to honorable. The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Andrews AFB on 28 Mar 2006. The following additional exhibits were submitted at the hearing: Exhibit 5(1) & 5(2): Character Reference Letters. 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 applicant justifies a change of discharge.

ISSUE: The applicant received a bad conduct discharge at a special court-martial for breaking restriction and for striking a 15-year old female in the chest with his fist. He contends that his punitive discharge is unjust and clemency is warranted because: (1) his "average conduct and efficiency ratings/behavior and proficiency mark (sic) were very good;" (2) he received awards and decorations; (3) he has been a "great citizen" since his discharge; (3) his court-martial was for "isolated or minor offenses;" (4) his court-martial punishment was harsh and disproportionate to other cases; (5) his ability to serve was impaired by his youth and immaturity; (6) he faced discrimination; (7) he was harassed by his command; (8) he was stressed; and (9) because he pled guilty for a crime he didn't commit.

The records indicated the applicant received three Article 15 actions, one Article 15 Vacation action, one Letter of Reprimand, three Letters of Admonishment and other low level counseling. The applicant's Article 15s were for theft, DUI, and assault on a female airman by striking her in the face with his fist. The records also indicated that the applicant was pending involuntary discharge for a pattern of misconduct prior to the commission of the offenses that lead to his bad conduct discharge. The command recommendation under the administrative action was that he receive an under other than honorable conditions (UOTHC) discharge.

The DRB recognized that the applicant received an Army Achievement Medal for feeding Army personnel transiting his duty station enroute to Operations DESERT SHIELD/STORM and that he received the Air Force Good Conduct Medal. The DRB also saw, however, in the applicant's three Enlisted Performance Reports (with overall ratings of 4, 3, and 3), that he while he was described variously as a "satisfactory," "good" or "excellent" duty performer, there were also negative comments on his ability to adhere to Air Force standards. The DRB also recognized that the applicant was nearly 24 years of age when he committed the offenses for which he was tried.

The DRB was not convinced that the applicant was harassed or discriminated against in light of the long list of misconduct across two different duty stations. The DRB was also not convinced that the applicant's recent assertion that he didn't commit the crime was credible in light of contrary statements in his court-martial stipulation of fact and his sworn testimony during the military judge's inquiry into the facts surrounding his guilty plea. The DRB also did not find the applicant's bad conduct discharge to be harsh or disproportionate given the nature of the offenses for which he was convicted and his previous pattern of disciplinary failures. While the DRB was disappointed to hear that the applicant had another DUI post discharge, it was pleased that the applicant was doing well and had a good job.

CONCLUSIONS: The Discharge Review Board concluded that the applicant's punitive discharge by Special Court-Martial is appropriate under the facts and circumstances of this case and there is insufficient basis, as an act of clemency, for change of discharge.

Attachment:
Examiner's Brief

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

(Former AB) (HGH A1C)

MISSING MEDICAL RECORDS

1. **MATTER UNDER REVIEW:** Appl rec'd a BCD Disch fr Malmstrom AFB, MT on 24 Aug 94 UP Special Court Martial Order No. 7 (Conviction by Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 24 Jun 70. Enlmt Age: 18 7/12. Disch Age: 24 2/12. Educ: HS DIPL. AFQT: N/A. A-86, E-36, G-46, M-28. PAFSC: 3M031 - Morale, Welfare, Recreation, and Services Apprentice. DAS: 6 Mar 92.

b. Prior Sv: (1) AFRes 24 Jan 89 - 19 Oct 89 (8 months 26 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 20 Oct 89 for 4 yrs. Svd: 4 Yrs 10 Mo 4 Das, of which AMS is 4 yrs 7 months 3 days (excludes 3 months 2 days lost time).

b. Grade Status: AB - 12 May 93 (Article 15, 12 May 93)
Amn - 19 Mar 93 (Article 15, 19 Mar 93)
A1C - 11 Feb 92
Amn - Unknown
AB - 24 Oct 90 (Article 15, 24 Oct 90)
Amn - 20 Apr 90

c. Time Lost: 27 Jul 93 thru 29 Oct 93 (3 months 2 days).

d. Art 15's: (1) 12 May 93, Malmstrom AFB, MT - Article 128. You, did, on or about 17 Apr 93, assault Airman [redacted], by striking her in the face with your fist. Reduction to AB, Forfeiture of \$150.00 pay per month for 2 months, 45 days restriction, and 45 days extra duty. (Appeal/Denied) (No mitigation)

(2) 19 Mar 93, Malmstrom AFB, MT - Article 111. You, did, on or about 28 Feb 93, at Ave G and Goddard Drive, operate a vehicle, to wit: a passenger car while drunk. Reduction to Airman, forfeiture of \$300.00 pay, 45 days restriction, and 45 days extra duty. (Appeal/Denied) (No mitigation)

(3) 11 Dec 90, Rhein-Main AB, Germany - Article 86. You, did, on or about 15 Nov 90, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to AB. (No appeal) (No mitigation)

(4) 24 Oct 90, Rhein-Main AB, Germany - Article 121. You, did, on or about 18 Oct 90, steal one pair of men's slacks, one pair of shoes, and two Nintendo home video games, of a value of about \$122.00, the property of the Army Air Force Exchange Service. Suspended reduction to the grade of AB, forfeiture of \$75.00 pay per month for 2 months, and 30 days extra duty. (No appeal) (No mitigation)

e. Additional: LOA, 19 FEB 93 - Making false allegations.
LOR, 28 JAN 93 - Playing stereo at excessively loud levels.

f. CM: Special Court Martial No.7 - 2 Sep 93

CHARGE: Article 128. Plea: Guilty. Finding: Guilty.

Specification: Did, at Great Falls, Montana, on or about 12 Jun 93, unlawfully strike [redacted], a child under the age of 16 years, on the chest with his fist. Plea: Guilty. Finding: Guilty.

CHARGE: Article 134. Plea: Guilty. Finding: Guilty.

Specification: Having been restricted to the limits of Malmstrom AFB, Montana, by a person authorized to do so, did, at or near Great Falls, Montana, on or about 12 Jun 93, break said restriction. Plea: Guilty. Finding: Guilty. Sentence adjudged on 27 Jul 93: Confinement for four months, forfeiture of \$300.00 pay per month for four months, and a bad conduct discharge.

g. Record of SV: 20 Oct 89 - 19 Jun 91 Rein-Main AB 4 (Initial)
20 Jun 91 - 15 Feb 92 Rein-Main AB 3 (CRO)
16 Feb 92 - 15 Feb 93 Malmstrom AFB 3 (Annual)

h. Awards & Decs: AAM, AFOUA W/1 OLC, AFGCM, NDSM, AFOSLTR, AFTR, AFLSAR.

i. Stmt of Sv: TMS: (5) Yrs (3) Mos (10) Das
TAMS: (4) Yrs (7) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 12 Apr 03.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

FD2004-00081

ATCH

1. Applicant's Issues.
2. Two Character References.
3. Enlisted Performance Report Draft.

5MAY04/ia



UNITED STATES AIR FORCE

DOCUMENT: 4

RR: 


DEAR DRB:

The following issues are the reasons I believe my discharge should be upgraded to honorable. If you disagree, please explain in detail why you disagree. The presumption of regularity that might normally permit you to assume that the service acted correctly in characterizing my service as less than honorable does not apply to my case because of the evidence I am submitting clemency is warranted, because it is an in justice for me to confine to suffer the adverse consequences of a bad conduct discharge. Also my average conduct and efficiency ratings/behavior and proficiency mark were very good. I received awards and decoration. I have been a great citizen since my discharge. My record of court – martial convictions indicates only isolated or minor offenses. Also my ability to serve was impaired by my youth and immaturity. I also faced racial discrimination and that impaired my ability to serve. The punishment I got at discharge was too harsh, it was much worse than most people got for the same offense. Also at the time of my discharge my first sergeant and commander had done a lot of thing to me I very much disapprove of and I was so stress out at them. I was unable to serve my country to the best of my ability. I just wasn't myself at the time of my discharge. I had the first sergeant following me around. Taking things out my room without me knowing anything about it. Harassing me day after day. I love the USAF, and I will love to get back in the air force, if I can. I never wanted to get out, but I was unable to serve, with thing happen like that. I have a family now and I have learned a lot. I'm very much mature than I was, and I'm still around the usaf, because my wife is in the air force. I miss it and if there's any way I can get back in the air force I will do anything to get back in. Please consider what I'm saying to you and upgrade my discharge.

Thank you 




DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 43D AIR REFUELING WING (AMC)

FD 2004-00081

FROM: 43 MWRSS/CC
7314 Dormitory Court
Malmstrom AFB, Montana 59402-7548

8 Jun 93

SUBJ: Notification Letter -- Board Hearing

TO: AB

1. I am recommending your discharge from the United States Air Force for A Pattern of Misconduct, Discreditable Involvement With Military or Civil Authorities. The authority for this action is AFR 39-10, paragraph 5-47a. I am recommending that your service be characterized as Under Other Than Honorable Conditions (UOTHC).

2. My reasons for this action are:

a. On or about 18 Oct 90, you stole one pair of men's slacks, one pair of shoes, and two Nintendo home video games of a value of about \$122.00 from the Army Air Force Exchange Service at Ramstein AB, Germany. For this misconduct, you received an Article 15 resulting in reduction in grade from Amn to AB (suspended), forfeiture of \$75.00 pay per month for two months, and 30 days extra duty on 29 Oct 90.

b. On or about 15 Nov 90, you failed to go to your appointed place of duty at the prescribed time. For this misconduct, your Article 15 suspension of reduction in grade from Amn to AB was vacated on 11 Dec 90.

c. On 23 Jan 93, you were disruptive in the dormitory by playing your stereo at an excessively loud level. For this misconduct, you received a Letter of Reprimand on 28 Jan 93.

d. On 25 Jan 93, you wrongfully accused an NCO of stealing \$150.00 which you claimed was secured under a piece of stereo equipment inside your stereo cabinet. For this misconduct, you received a Letter of Admonishment on 19 Feb 93.

e. On or about 28 Feb 93, you operated a passenger vehicle while drunk. For this misconduct, you received an Article 15 resulting in reduction in grade from A1C to Amn, forfeiture of \$300.00 pay, 45 days restriction to Malmstrom AFB and 45 days extra duty on 23 Mar 93.

f. On or about 17 Apr 93, you assaulted another airman by striking her in the face with your fist. For this misconduct, you received an Article 15 resulting in reduction in grade from Amn to AB, forfeiture of \$150.00 pay per month for 2 months, restriction to Malmstrom AFB for 45 days and 45 days extra duties on 7 Jun 93.

3. This action could result in your separation with an Under Other Than Honorable Conditions discharge. I am recommending that you receive an Under Other Than Honorable Conditions discharge. The commander exercising SPCM jurisdiction or higher authority will make the final decision in this matter. If you are discharge, you will be ineligible for reenlistment.

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 making a decision to waive any of your rights.

5. You must receive a medical examination. You are scheduled for a medical examination at the 43d Aerospace Medical Group at N/A hours on N/A. You recently had a medical examination on 22 Apr 93 at 0730 hours, therefore one is not required.

6. Military legal counsel, Area Defense Counsel, has been obtained to assist you. An appointment has been scheduled for you at ~~1000~~ 0730 hours on 9 Jun 93 at Bldg 2050. 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 AFR 111-1. 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.

7. Confer with your counsel and reply, in writing, within 7 work-days, 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 a board hearing.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, Atch 6. A copy of AFR 39-10 is available for your use at the 43 MWRSS Orderly Room.

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

[Redacted signature area]

Commander

3 Atchs

1. Supporting documents for the reasons for discharge:
 - a. Article 15, 21 Oct 90
 - b. AF Form 3212, Vacation of Suspension, 11 Dec 90
 - c. LOR, 28 Jan 93
 - d. LOA, 19 Feb 93
 - e. Article 15, 23 Mar 93
 - f. Article 15, 7 Jun 93
2. Documents with derogatory information which are not listed in the notification ltr:
3. Airman's receipt of notification ltr