

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE A1C		
TYPE UOTH	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	A92.02 A02.15	INDEX NUMBER	A94.07	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	
13 Feb 2006	FD-2005-00262	

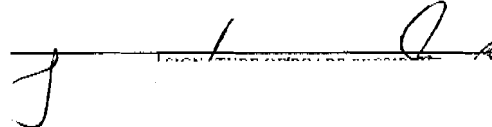
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

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.

+ RE Code
* Reason and Authority



 SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL

INDORSEMENT		DATE: 2/15/2006
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-2005-00262

GENERAL: The applicant appeals for upgrade of discharge to honorable general and 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 and 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:

1. Applicant contends discharge was inequitable because he was falsely accused of rape. The records indicated the applicant received three Letters of Reprimand and two Letters of Counseling for misconduct. The misconduct included lost government identification card, two counts of breaking Phase 1, lying to a commissioned officer, dereliction of duty, failure to go and unauthorized absence from duty section. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The records also indicated that the applicant had court martial charges preferred for rape. The applicant asked to be discharged in lieu of trial by court martial. 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.

2. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance report and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The majority of Board members concluded the discharge was appropriate for the reasons which were the basis for this case.

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 A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Sheppard AFB, TX on 12 Apr 05 UP AFI 36-3208, Chapter 4 (Triable by Court Martial). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 1 Nov 85. Enlmt Age: 17 9/12. Disch Age: 19 5/12. Educ: HS DIPL. AFQT: N/A. A-23, E-19, G-55, M-28. PAFSC: 4N011 - Aerospace Medical Services Helper. DAS: 23 Feb 04.

b. Prior Sv: (1) AFRes 26 Aug 03 - 28 Dec 03 (4 months 3 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 29 Dec 03 for 6 yrs. Svd: 01 Yrs 03 Mo 15 Das, all AMS.

b. Grade Status: A1C - 13 Feb 04

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 03 MAR 05 - Two counts of breaking phase 1 and 1 count of lying to a commissioned officer.
LOR, 14 FEB 05 - Dereliction of duty and 2 phase violations.
LOC, 13 JAN 05 - Failure to go.
LOR, 01 OCT 04 - Unauthorized absence from duty section for 4 hours and 25 minutes.
LOC, 19 FEB 04 - Lost ID card.

f. CM: None.

g. Record of SV: None.

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

i. Stmt of Sv: TMS: (01) Yrs (07) Mos (18) Das
TAMS: (01) Yrs (03) Mos (15) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 23 Jun 05.

(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

05 JUL 2005

All

FD2005-00262

APPLICATION FOR THE REVIEW OF DISCHARGE FROM THE ARMED FORCES OF THE UNITED STATES

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

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

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.

a. BRANCH OF SERVICE (X one) ARMY MARINE CORPS NAVY

DI
3

5. BOARD ACTION REQUESTED (X one)

(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)

2005/04/12

<input type="checkbox"/>	HONORABLE
<input type="checkbox"/>	GENERAL/UNDER HONORABLE CONDITIONS
<input checked="" type="checkbox"/>	UNDER OTHER THAN HONORABLE CONDITIONS
<input type="checkbox"/>	BAD CONDUCT (Special court-martial only)
<input type="checkbox"/>	TERIZED (ain)

<input checked="" type="checkbox"/>	CHANGE TO HONORABLE
<input type="checkbox"/>	CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
<input type="checkbox"/>	CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)
<input type="checkbox"/>	CHANGE NARRATIVE REASON FOR SEPARATION TO:

3. UNIT AND LOCATION AT DISCHARGE

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

I was falsely accused of a crime I did not commit and because of the predicament I was put into, I requested an early discharge in lieu

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 Request for discharge in lieu of court martial with all pertinent evidence of innocence.
- ② personal letter to review board.
- ③ personal data sheet

9. TYPE OF REVIEW REQUESTED (X one)

CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD.

I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.

I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city and state) (NOTE: The Navy Discharge Review Board does not have a traveling panel.)

10.a. COUNSEL/REPRESENTATIVE (If any) NAME (Last, First, Middle Initial) AND ADDRESS

b. TELEPHONE NUMBER (Include Area Code)

c.

d. FAX NUMBER (Include Area Code)

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.

SPOUSE WIDOW WIDOWER NEXT OF KIN LEGAL REPRESENTATIVE OTHER (Specify)

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE

d. FAX NUMBER (Include Area Code)

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.)

CASE NUMBER
(Do not write in this space.)

FD2005-00262

a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)

b. DATE SIGNED - REQUIRED (YYYYMMDD)

2005/06/23

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

of a court martial, after being advised by my military attorney. He said he was convinced of my innocence, but also said I shouldn't take a chance with an impending court martial. I was only accused after I discussed a consensual sexual encounter with other classmates. My accuser made the allegations only after becoming angry about me talking about our date.

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

- ④ Data Sheet (personal) Pre-separation counseling
- ⑤ Memorandum For Convening Authority Letter
- ⑥ DD Form 214
- ⑦ Leadership Award

16. REMARKS (If applicable)

The enclosed Memorandum For Convening Authority letter helps to state my case of complete innocence and it is my hope that the Review Board will seriously consider all facts contained therein. I believe I made the wrong decision asking for an early discharge. However, at the time of the request it seemed reasonable. It is my hope that the Review Board will understand and will come to the determination of my complete innocence.

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

To: Air Force Review Board

22 June 2005

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I am a young man who was in fact falsely accused by an individual who has made other similar accusations in the past against others, which were proven to be false by superiors.

My relationship to the complainant on the date of her false accusation was totally consensual, and her conduct after the supposed occurrence of the incident totally supports the fact that I did nothing inappropriate.

Evidence in the enclosed "Memorandum For Convening Authority Letter" supports the fact of my innocence. She only became angry after I discussed our one night affair with other classmates. The reason there was no physical evidence of a crime is because there wasn't a crime committed. I, myself, have been unjustly victimized by her false complaint. I never should have requested for a discharge in lieu of a court-martial because of

(2)

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my complete innocence. However, I became tired and frustrated because of the false accusations, and I wanted it all to end.

I was also advised by my military attorney to not take a chance with a trial, even though he said he was 'convinced of my total innocence.

Because of my inexperience in being involved in such a serious legal matter at such a young age (18 years old), it is my belief now after having sufficient time to consider all aspects of the situation..... that I in fact made the wrong decision by requesting and accepting such an early discharge, while being totally innocent of the alleged charges.

I also feel as though I was somewhat coerced by my attorney by him inducing fear in me of the possibilities of what could happen at a court-martial.

I served honorably for well

(3.)

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over a year and I know that I was forced to make an early exit because of false charges.

As you read the enclosed letter of the Request For Discharge and the "Memorandum For Convening Authority" letter by my military attorney, I believe you will fully understand my predicament and that you will also become fully convinced of my total innocence. It is my dear hope that you will correct this total injustice that has put a negative blemish on my life and military service. I wanted to make the military a career, and I still do. However, this false accusation has all but destroyed my young future. I am also being denied Veteran's Benefits which I feel is unjustified because I feel as though I rightfully earned them. I am hurting and I desperately need your help. Thank you for your full attention to this personal matter.

SSN -



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

FD 2005-00262

MAR 22 2005

MEMORANDUM FOR 82 TRW/CC

FROM: 383 TRS/CC

SUBJECT: Request for Discharge in Lieu of Trial by Court Martial –
A1C

1. I recommend the attached request for discharge be approved for the following reasons: Although A1C offense would normally warrant a General Court Martial and cannot be condoned, there were mitigating factors, which cause me to believe this request is in the best interests of the United States Air Force. A1C has been subjected to the consequences of being phased back from phase III to phase I as a result of the investigation; this in and of itself restricted his liberty. In addition, there is a potential that the circumstances of this case would not result in a conviction thereby inhibiting the Air Force's ability to impose good order and discipline. An Under Other Than Honorable Conditions Discharge would ensure appropriate disposition and would reflect an accurate characterization of the discredit he has brought upon the United States Air Force.

2. If this request for discharge is approved, I recommend that A1C be furnished an Under Other Than Honorable Conditions Discharge. Member has not been promised or led to believe that the discharge to be issued would be anything except the worst authorized.

3. A1C

- a. Is not under investigation.
- b. Is not awaiting action under AFI 36-2503 and 36-3212, or another section of AFI 36-3208.
- c. Is not awaiting result of trial.
- d. Is not absent without authority.
- e. Is not absent in hands of civilian authorities.
- f. Has been scheduled for a separation physical on 18 Mar 05, 1300 hours..
- g. Is not in default with respect to public property or funds.
- h. Has not completed 16 or more years of active military service.

- i. Is not accountable or responsible for public property or funds.
 - j. Has not received special pay, bonuses, or education assistance.
4. There has not been a report of recent misconduct.
5. Court-martial charges have been preferred. Attached is a copy of charges, DD Form 458, Charge Sheet.
6. Charges have not been referred for trial.
7. At the time of misconduct, A1C [redacted] did not have a mental disease or defect that caused him to lack the substantial capacity either to appreciate the criminality (wrongfulness) of the acts, or to conform to the law (AFI 44-109). He presently has the capacity to understand the nature of the proceedings and to assist in the defense.
8. A1C McCarthan does not hold a Reserve of the Air Force appointment as a commissioned or warrant officer.
9. Information from the military record follows:
- a. Date and term of enlistment: 29 Dec 03, 6 years; date this period of continuous active duty started: 29 Dec 03; pay-day: 29 Dec 03; TAFMSD: 29 Dec 03; and dates of prior service: Delayed Enlistment Program: 26 Aug 03 to 28 Dec 03
 - b. Date of Birth: 1 Nov 85
 - c. Test Scores: Admin -29; Elect -24; Gen -53; Mech - 28
 - d. Formal Training: Basic Military Training, 3 Oct 03; Member was disenrolled from Aero Medical Service Apprentice Course, J3AQR4N031-004 on 18 Mar 05 for academic reasons.
 - e. Date Assigned to Unit: 23 Feb 04
 - f. Current Grade and Effective Date: A1C, 13 Feb 04
 - g. Demotions: Member has not been involved in any misconduct to warrant demotion.
 - h. Time Lost: None
 - i. Record of Disciplinary Actions: None.
 - j. Overall rating or ratings on Enlisted Performance Reports: None.
 - k. Favorable communications, citations, or awards: Air Force Training Ribbon and National Defense Service Medal.

l. Derogatory data, other than action by court-martial or under Article 15, UCMJ: See attachments 6 through 12.

m. Medical or other data meriting consideration: None

Commander

Lt Col, USAF, BSC

Attachments:

1. Request for Discharge In Lieu of Trial by Court Martial, undated with 1 atch
2. DD Form 458, 8 Mar 05
3. OSI ROI, 9 Nov 04 w/12 exhibits.
4. AFOSI Form 158, 21 Jan 05
5. AFOSI Form 158, 1 Feb 05
6. LOR, 3 Mar 05
7. LOR, 14 Feb 05
8. LOC, 13 Jan 05
9. A1C McCarthan response to LOC dated 13 Jan 05
10. LOR, 1 Oct 04
11. A1C McCarthan response to LOR dated 6 Oct 04
12. LOR, 19 Feb 04
13. Separation Physical