

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST FIRST MIDDLE INITIAL)	GRADE SRA
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TYPE GEN	X	PERSONAL APPEARANCE	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	A94.06	INDEX NUMBER	A61.00	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
24 Jan 2006	FD-2005-00295

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

Case heard via video-teleconference between St Augustine, FL and Andrews AFB, MD.

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.

INDORSEMENT		DATE: 1/24/2006
TO:	FROM:	
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	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-2005-00295

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video-conference between St. Augustine, FL and Andrews AFB, MD on 24 Jan 2006.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is granted but 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 applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's discharge service characterization inequitable.

ISSUE:

Issue. Applicant contends her service characterization was inequitable because it was too harsh. Under the particular facts of the applicant's case, the DRB agrees. According to her, the applicant was engaging in activity she believed to be lawful and was trying to comply with Air Force regulations governing off-duty employment. In light of the laudatory comments included with her package, the DRB decided that an under honorable conditions (general) service characterization was too harsh and that the applicant's service was most appropriately characterized as being honorable. The DRB declined to change the reason for the applicant's discharge or to alter the RE code. While her service was honorable, she was properly discharged for the civilian conviction and the current RE code is proper.

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.

However, in view of the foregoing findings, the Board concludes that the overall quality of applicant's service is more accurately reflected by an honorable discharge. The applicant's characterization should be changed to honorable under the provisions of Title 10, USC 1553.

Attachment:

Examiner's Brief

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

(Former SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Langley AFB, VA on 30 Apr 98 UP AFI 36-3208, para 5.51 (Civilian Conviction). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 11 May 75. Enlmt Age: 18 8/12. Disch Age: 22 11/12. Educ: HS DIPL. AFQT: N/A. A-70, E-63, G-55, M-40. PAFSC: 4N151 - Surgical Services Journeyman. DAS: 15 Feb 95.

b. Prior Sv: (1) AFRes 8 Feb 94 - 3 Jun 94 (3 months 27 days) (Inactive).

(2) Enlisted as AB 4 Jun 94 for 4 yrs. Svd: 3 yrs 3 months 26 days, all AMS. Amn - Unknown. A1C - 3 Oct 95. SrA - 3 Jun 97. EPRs: 4,3.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 1 Oct 97 for 4 yrs. Svd: 00 Yrs 06 Mo 30 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: Civilian Conviction, 9 JAN 98 - Performed, promoted, presented, managed, directed, carried on or participated in obscene exhibitions or performances. Further, intentionally made or procured another to make an obscene display of person or private parts in a public place where other were present.

f. CM: None.

g. Record of SV: 3 Feb 97 - 2 Feb 98 Langley AFB 2 (Annual)REF

h. Awards & Decs: AFTR, NDSM, AFOUA, AFGCM.

i. Stmt of Sv: TMS: (04) Yrs (02) Mos (22) Das
TAMS: (03) Yrs (10) Mos (26) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Jul 05.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority

for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Three Personal Statements of Support.
3. Response to Notification Memorandum, 2 Apr 98.
4. Enlisted Performance Report.
5. Six Letters of Support.
6. Certificate of Baptism.

23AUG05/ia

7. SUPPORTING DOCUMENTS (X as applicable) (Please print name and Social Security Number on each document.)

WILL NOT BE SUBMITTED. PLEASE COMPLETE REVIEW BASED ON AVAILABLE SERVICE RECORDS.

ARE LISTED BELOW AND ARE ATTACHED TO THIS APPLICATION: (Continue on a plain sheet of paper if more space is needed.)

a. DOCUMENT 1:

Memorandum for 1 Fighter Wing/CC from

Immediate Supervisor

b. DOCUMENT 2:

Memorandum for 1 Fighter Wing/CC from

c. DOCUMENT 3:

Memorandum for 1 Fighter Wing/CC from

8. ISSUES

* See attachment 1

The Board will consider any issue submitted determine whether there are any issues that pr writing to Issues of concern to you unless thos that pertain to Block 8 prior to completing this part of the application. If you need more space, submit additional issues on an attachment.

will also review the case to ard is not required to respond in v. Carefully read the instructions

1. I didn't intentionally commit an offense. I thought that I was following all policies and procedures. I had the Area Defense Counsel review the matter of my off-duty employment while I was in tech school (Phase II). I was told that it was allowed and was counseled on what I could/could not do, wear or call myself. My instructors were notified and I started working that weekend.

2. Once I arrived at my permanent duty station I informed all the appropriate personnel, from my immediate supervisor to my commander, of my off duty employment during my in-processing briefings. My immediate supervisor was present in every meeting. During the meeting with my NCOIC, I was informed that I was not required to complete any off-duty employment form. (See documents 1-3)

3. While in Basic Training, I suffered a hardship. I was counseled that I had to remedy the problem fairly quickly or I could possibly face disciplinary actions to include possible discharge. My choice of off duty employment allowed me to handle the situation in a timely matter without interfering with my primary duty hours. (See document 4, Items 4-6)

4. I was a good Airman. My EPR ratings were good until my final one. I feel that my EPR was based on my one isolated incident. It was documented that my performance was poor, however, letters from my co-workers, many being officers, state otherwise. (See documents 5-7a)

* See attachments 2-3

I HAVE LISTED ADDITIONAL ISSUES AS AN ATTACHMENT TO THIS APPLICATION.

I PREVIOUSLY SUBMITTED AN APPLICATION ON (Enter date) AND AM COMPLETING THIS FORM IN ORDER TO SUBMIT ADDITIONAL ISSUES.

THE ABOVE ISSUES SUPERSEDE ALL PREVIOUSLY SUBMITTED.

9. CERTIFICATION

I make the foregoing statements as part of my application with full knowledge of the penalties involved for willfully making a false statement. (U.S. Code, Title 18, Section 1001, provides that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

a. DATE (YYYYMMDD)

b. SIGNATURE

20050718

UPON COMPLETION, MAIL THIS APPLICATION TO APPLICABLE ADDRESS BELOW

ARMY	NAVY & MARINE CORPS	AIR FORCE	COAST GUARD
Army Review Boards Agency Support Division, St. Louis ATTN: SFMR-RBR-SL 9700 Page Avenue St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)	Naval Council of Personnel Boards 720 Kennon Street, S.E. Rm. 309 (NDRB) Washington Navy Yard, DC 20374-5023	SAF/MIBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Commandant (G-WPM) 2100 Second Street, S.W. Washington, DC 20593-0001

8. Issues, cont. from DD Form 293

5. Additional duty hours missed from work did not necessarily occur due to my actions alone. The incident would have caused me to miss only one and one half days of duty.
(See document 6, Item 3)

6. Once separated, I wrote my local Virginia Congressman and asked for them to investigate my discharge. His investigation found that my discharge was based on Sodomy charges that violates the "Don't ask, don't tell policy". That charge was proven false, dropped and are not listed. The two minor charges that I was found guilty of were not mentioned to him. I chose not to pursue any further actions regarding my discharge, until now due to the embarrassment of that information.

7. I have been a good citizen the incident. I also no longer engage in that type of off duty employment.
(See document 13)

8. My record of convictions by civil authorities while I was in service indicates only minor and isolated offenses.

8. Issues, cont. from DD Form 293

9. In my opinion, I feel as if I was being judge on other's moral beliefs as apposed to policies and/or regulations. Again, I had my off duty employment verified by the ADC years prior to the incident.

10. My original tour of duty would have come 33 days after my discharge. I feel that it is unfair and an injustice for me to continue to suffer the adverse consequences of a general discharge. I wa also the only one punished even though it has been documented that other personnel in leadership position had knowledge of my off duty employment for years prior to the incident.

11. All other inquiries into my background or the inciden can be referred to document 4 in it's entirety.

7. Supporting documents, cont.

- Document 4:
- d. Memorandum for 1 Fighter Wing/cc from SRA
- Document 5:
- e. EPR dated 2 MAR 98
- Document 6:
- f. Memorandum for Col. McGuire from SRA
- Document 7:
- g. Memorandum for Record from Capt.
- Document 8:
- h. Memorandum for Record from MAJ.
- Document 9:
- i. Memorandum for Record from Capt
- Document 10:
- j. Memorandum for Record from Ssgt.
- Document 11:
- k. Memorandum for Record from Amn
- Document 12:
- l. Memorandum for Record from Amn |
- Document 13:
- m. Certificate of Baptism

OIC PACU
 Operations Officer Surgical
 Services
 , DPM Chief Podiatry Ser
 , NCOIC SPD
 Surgical Services Appren
 , Surgical Services Apprentice



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

FD2005-00295

1 Apr 98

MEMORANDUM FOR SRA

FROM: 1 MDOS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for civilian conviction. The authority for this action is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, Paragraph 5.51. If my recommendation is approved, your service will be characterized with either an honorable or under honorable conditions (general) discharge. I am recommending that your service be characterized with an under honorable conditions (general) discharge.

2. My reasons for this action are:

a. On or about 19 October 1997, you performed, promoted, prepared, presented, managed, directed, carried on or participated in obscene exhibitions or performances. For this misconduct, you were convicted on 9 January 1998 in the Norfolk General District Court and sentenced to a \$500.00 fine with \$250.00 suspended and 6 months confinement suspended.

b. On or about 19 October 1997, you intentionally made or procured another to make an obscene display of your person or private parts in a public place or in a place where others were present. For this misconduct, you were convicted on 9 January 1998 in the Norfolk General District Court and sentenced to a \$500.00 fine with \$250.00 suspended and 6 months confinement suspended.

Copies of the documents to support this recommendation are attached and will be forwarded to the separation authority. 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.

3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult Captain _____ Area Defense Counsel, 56 Willow Street, Suite 101, Ext 5607 at 1000 hours on 1 Apr 1998. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 8 APRIL 1998 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

Golden Legacy, Boundless Future...Your Nation's Air Force

8. Recommendation: Direct Respondent be discharged with an under honorable conditions (general) discharge characterization, without probation and rehabilitation. A proposed memorandum to that effect is attached for signature.

, Captain, USAF
Chief, Criminal Law Division

I concur.

, Colonel, USAF
Staff Judge Advocate

Attachments:

1. Proposed Letter
2. Case File

under control, and she further alleges she has left the dancing scene forever. Respondent also states at the time of her arrest she was in the process of completing her off duty employment request, and she had no idea the company she was auditioning for was having her perform illegally. She also wants you to consider the fact she has always produced quality work and has never brought discredit upon the Air Force, only upon herself. Lastly, Respondent requests she be allowed to remain in the Air Force because she just re-enlisted prior to her arrest and plans on making the Air Force a career.

5. **Discussion:** Respondent committed very serious, service discrediting offenses resulting in two civilian convictions, necessitating her administrative discharge. Misconduct such as hers is intolerable and clearly incompatible with further military service. Respondent states in her response to this discharge action that she never brought discredit upon the Air Force, only upon herself. However, what Respondent fails to realize is that she represents the Air Force 24 hours a day, and any misconduct on her part on or off duty negatively reflects upon the Air Force as well as upon herself. Certainly the negative aspects of Respondent's brief service outweigh any positive contributions. Accordingly, an under honorable conditions (general) discharge characterization is warranted. Respondent's serious misconduct, resulting in two civilian convictions, demonstrates her poor rehabilitative potential. I do not recommend rehabilitation and probation in conjunction with this discharge.

6. **Errors and Irregularities:** No errors or irregularities prejudicial to Respondent's substantive or procedural rights were noted.

7. **Options:** As separation authority in this case, you may:

- a. Direct retention, if you determine the evidence does not warrant discharge;
- b. Return the file for re-initiation and extend board hearing rights to Respondent, if you believe separation with an under other than honorable conditions (UOTHC) discharge is appropriate;
- c. Refer the case to 9 AF/CC, if you believe Respondent should be separated with an honorable discharge; or
- d. Direct Respondent's separation with an under honorable conditions (general) discharge, with or without probation and rehabilitation.