

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST, MIDDLE INITIAL)	GRADE AB
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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	UOHC	OTHER	DENY
					X+*
					X+*
					X+*
					X+*
					X+*

ISSUES A92.35	INDEX NUMBER A67.30	EXHIBITS SUBMITTED TO THE BOARD														
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:5%; text-align:center;">1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td style="text-align:center;">2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="text-align:center;">3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td style="text-align:center;">4</td><td>BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td>COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td>TAPE RECORDING OF PERSONAL APPEARANCE</td></tr> </table>	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
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HEARING DATE 13 Feb 2006	CASE NUMBER FD-2005-00303	
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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

INDORSEMENT		DATE: 2/13/2006
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-2005-00303

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.

ISSUE: Applicant contends discharge was inequitable because it was based on one isolated incident in 27 months of service with no other adverse actions. The records indicated the applicant was found guilty by a General Court Martial of assault consummated by a battery upon his four year-old stepson. Although the applicant contends he was wrestling and this incident was unintentional he was found guilty. The applicant was sentenced to confinement for 179 days. 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.

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 Lackland AFB, TX on 8 Apr 03 UP AFI 36-3208, para 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: 21 Jul 78. Enlmt Age: 20 5/12. Disch Age: 24 8/12. Educ: HS DIPL. AFQT: N/A. A-74, E-57, G-55, M-23. PAFSC: 4A151 - Medical Material Journeyman. DAS: 19 Jul 99.

b. Prior Sv: (1) AFRes 23 Dec 98 - 30 Mar 99 (3 months 8 days)(Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 31 Mar 99 for 4 yrs. Svd: 04 Yrs 00 Mo 08 Das, of which AMS is 3 Yrs 7 Mo 11 Das (excluding 4 months 27 days lost time).

b. Grade Status: AB - 11 Sep 02 (GCMO#1, 4 Nov 02)
A1C - 30 Jul 00

c. Time Lost: 11 Sep 02 thru 7 Feb 03 (4 months 27 days).

d. Art 15's: None.

e. Additional: None.

f. CM: General Court Martial No.1 - 4 Nov 02

CHARGE: Violation of the UCMJ, Article 128. Plea: Not Guilty.
Finding: Guilty.

Specification: Did, at or near San Antonio, Texas, on or about 10 Jun 01, commit an assault upon ML, a child under 16 years, by unlawfully striking him on the torso, head, and back with means to produce death or grievous bodily harm, to wit: with his fists, arms and/or legs in such a manner as to damage ML's liver and pancreas and to cause bruising around his left eye. Plea: Not Guilty. Finding: Not guilty, but Guilty of the lesser offense of Assault Consummated by a Battery Upon a Child Under 16 Years. Sentence adjudged on 11 Sep 02: Confinement for 179 days and reduction to E-1.

g. Record of SV: 31 Mar 99 - 29 Nov 00 Lackland AFB 5 (Initial)

30 Nov 00 - 29 Nov 01 Lackland AFB 5 (Annual)

h. Awards & Decs: AFTR, NDSM.

i. Stmt of Sv: TMS: (03) Yrs (10) Mos (20) Das
TAMS: (03) Yrs (07) Mos (11) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 13 Jul 05.

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

Issue 1: I feel that my discharge was inequitable, since it was based on one isolated incident in 27 months of service with no other adverse action. I have paid my debt to society, that was my punishment. Allow me to be able to provide to my family the lifestyle that they deserve. After the result of my action, I went back into my squadron and worked the sam way as before and after the incident with excellence. Let me say this, it might have no bearing in your decision, however, we are still together as a family. Please let me fulfilled (sic) my destiny of becoming an Air Force Officer; to keep protecting the country and to use my experience to guide military members. Since I'm currently a full time student, by getting my discharge upgraded, I would have the opportunity to use my education benefits.

ATCH

1. Signature Verification.

6SEP05/ia

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d. Art 15's: None.

e. Additional: None.

f. CM: General Court Martial No.1 - 4 Nov 02

CHARGE: Violation of the UCMJ, Article 128. Plea: Not Guilty.
Finding: Guilty.

Specification: Did, at or near San Antonio, Texas, on or about 10 Jun 01, commit an assault upon ML, a child under 16 years, by unlawfully striking him on the torso, head, and back with means to produce death or grievous bodily harm, to wit: with his fists, arms and/or legs in such a manner as to damage ML's liver and pancreas and to cause bruising around his left eye. Plea: Not Guilty. Finding: Not guilty, but Guilty of the lesser offense of Assault Consummated by a Battery Upon a Child Under 16 Years. Sentence adjudged on 11 Sep 02: Confinement for 179 days and reduction to E-1.

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6SEP05/ia



FD 2005-00303

DEPARTMENT OF THE AIR FORCE
WILFORD HALL MEDICAL CENTER (AETC)
LACKLAND AFB TEXAS

MEMORANDUM FOR AB

18 Feb 03

FROM: 59 LS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Commission of a Serious Offense. The basis for this action is AFPD 36-32 and AFI 36-3208, Paragraph 5.52.3. If my recommendation is approved, your service could be characterized as Honorable, Under Honorable Conditions (General) or Under Other Than Honorable Conditions Discharge. I am recommending your service be characterized as General.
2. My reason for this action is that on about 10 Jun 01, you committed an assault upon a child under 16 years, by unlawfully striking him on the torso, head, and back with means to produce death or grievous bodily harm, to wit: with your fists, arms and/or legs in such a manner as to damage the child's liver, pancreas and to cause bruising around his left eye. As a result, you were convicted by a General Court-Martial on 11 Sep 02 and your sentence was confinement for 179 days and reduction to AB (E-1).
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.
4. You have the right to consult counsel. Military legal counsel can be obtained to assist you. An appointment can be made for you to meet with the Area Defense Counsel (ADC) at Bldg 1000 on 18 Feb 03 at 0830. 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 by (allow 3 workdays) 21 Feb 03 unless you request and receive an extension for good cause shown. I will send them to the separation authority.
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 Willford Hall Medical Center, Family Medicine Clinic on 4 Feb 03 at 0645 hours. You must pickup your medical, immunization, and dental records prior to the examination



DEPARTMENT OF THE AIR FORCE
WILFORD HALL MEDICAL CENTER (AETC)
LACKLAND AFB TEXAS

FD 2005-00303

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8. You have been scheduled for a Transition Assistance Program (TAP) briefing. You must report to the Family Support Center, Bldg 1249, 1561 Stewart Street, on 18 Feb 03 at 1000 hours for an appointment with .

9. 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 Unit Personnel Office.

10. Execute the attached acknowledgment and return it to me immediately.

Commander

Lt Col, USAF

Attachment:

1. GCMO No. 1, dated 4 Nov 02
2. Lost Time Data Rip