

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

GRADE

SRA

TYPE UOTH		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 A92.01 A92.03	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 14 Feb 2006	CASE NUMBER FD-2005-00329
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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: 2/17/2006

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00329

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.

ISSUES:

1. Applicant contends discharge was inequitable because he claims that he did not commit the offense. The records indicated that the applicant had court martial charges preferred for indecent assault on a female service member. 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 reports, letters of recommendation and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The DRB recognized the fact that the applicant had served nine years total service before the discharge was initiated, but concluded the applicant's misconduct outweighed the positive aspects of his time in the Air Force.

3. The applicant contends that he had an Honorable discharge. The member's DD 214, Certificate of Release or Discharge from Active Duty, shows the character of service as "Under Other Than Honorable Conditions, Triable by Court Martial." The applicant submitted a DD 256, Certificate of Honorable Discharge as proof that his discharge was Honorable. The Board reviewed the member's service record to include discharge papers signed by the applicant's commander stating that he would receive an administrative discharge "Under Other Than Honorable Conditions" in lieu of court martial. The DRB concluded that the military personnel flight issued the DD 256 in error and that the DD 214 is correct.

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 SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr McChord AFB, WA on 30 Dec 99 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 12 Nov 70. Enlmt Age: 19 8/12. Disch Age: 29 1/12. Educ: HS DIPL. AFQT: N/A. A-82, E-51, G-48, M-62. PAFSC: 2T251 - Air Transportation Journeyman. DAS: 27 Mar 96.

b. Prior Sv: (1) AFRes 25 Jul 90 - 08 Nov 90 (3 months 15 days) (Inactive).

(2) Enlisted as AB 9 Nov 90 for 4 yrs. Extended on 2 Sep 92 for 2 months. Svd: 03 yrs 10 months 05 days, all AMS. AMN - Unknown. A1C-(EPR Indicates): 9 Nov 90-8 Jul 92. SrA - 9 Nov 93. EPRs: 3,4,5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 15 Sep 94 for 6 yrs. Svd: 05 Yrs 03 Mo 15 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV:	13 Jul 94 - 12 Jul 95	Edwards AFB	5	(Annual)
	13 Jul 95 - 10 Mar 96	Edwards AFB	5	(Annual)
	11 May 96 - 10 May 97	McChord AFB	5	(Annual)
	11 May 97 - 10 May 98	McChord AFB	5	(Annual)
	11 May 98 - 10 May 99	McChord AFB	4	(Annual)

h. Awards & Decs: AFAM W/2 DEVS, AFLSAR W/1 DEV, AFTR, AFOSSTR, NDSM, NCOPMER, AFEM, AFOUA W/2 DEVS, AFGCM W/2 DEVS.

i. Stmt of Sv: TMS: (09) Yrs (05) Mos (06) Das
TAMS: (09) Yrs (01) Mos (22) Das



DEPARTMENT OF THE AIR FORCE
86th AIRLIFT WING (USAFE)

23 NOV 1999

MEMORANDUM FOR 86 AW/CC

FROM: 86 AW/JA

SUBJECT: Legal Review of Request for Discharge in Lieu of Trial by Court-Martial
SrA [redacted] 623 AMSS

1. On 22 Nov 99, SrA [redacted] submitted a Discharge in Lieu of Trial by Court-Martial under AFI 36-3208, Chapter 4 (Atch 2). The Commander, 623 AMSS, recommends this request be approved (Atch 3).

2. FACTS: The accused, SrA Wayne A. Wright, is charged with one charge and one specification of indecent assault upon Airman [redacted] a person not his wife by inserting two of his fingers into her vagina without her consent, with the intent to gratify his sexual desires. This incident was initially reported on 30 May 99 by (then AB) [redacted]. The victim reported that SrA [redacted] removed her panties and indecently assaulted her by placing his fingers into her vagina without her consent. When the 568th Security Forces Flight interviewed SrA [redacted] on 30 May 99, he provided a sworn statement under rights advisement.

3. DISCUSSION: Discharge in lieu of courts-martial should be reserved for deserving cases. Normally, a request for discharge is favorably considered when the victim would suffer additional trauma from the trial, the victim is uncooperative, or it would be in the best interest of the Air Force. In this case, approval of this request would be in the best interest of the Air Force. In addition, the victim provided a statement on 22 Nov 99 requesting SrA [redacted] request for discharge in lieu of court-martial be approved. She understands that if the request is approved, he will be discharged from the Air Force with an Under Other than Honorable Conditions (UOTHC) discharge. She asserts that he will suffer adverse consequences and be denied significant veterans benefits by the UOTHC discharge. Coupled with a termination of his nine-year military career with UOTHC characterization, the victim feels these consequences are sufficient punishment in this case. The victim has some valid concerns about the disposition of this case. Charges were referred in this case in large part to support the victim's desire that the accused be held accountable for his actions. The victim is still willing to testify at court, if necessary. However, if she can avoid testifying, and be assured that the accused will be discharged from the Air Force, that is her preferred course of action. Given the facts and circumstances surrounding this case, an administrative discharge, particularly an under other than honorable conditions, is appropriate, because it will send the necessary message to SrA [redacted] and motivate him to reform his behavior once he is discharged. Given the serious nature of the charged offense, a service characterization of under other than honorable conditions (UOTHC) is clearly warranted.

5. ERRORS AND IRREGULARITIES: None noted.

6. OPTIONS: You have the following options in this case:

a. Recommend to 3 AF/CC that he approve this request with a service characterization of Honorable, General or Under Other Than Honorable Conditions Discharge.

b. Disapprove the request and return it to the unit commander.

7. RECOMMENDATION: Forward this file to 3AF/CC with a recommendation to approve this request and discharge SrA [redacted] with a UOTHC.

Lt Col, USAF

Staff Judge Advocate

3 Attachments

1. Proposed 86 AW/CC Letter.
2. SrA [redacted] request, 22 Nov 99
3. 623 AMSS/CC Ltr, 23 Nov 99

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)		2. SSN	3. GRADE OR RANK SrA	4. PAY GRADE E-4
62nd Aerial Port Squadron (AMC) McChord Air Fo		6. CURRENT SERVICE		
7. PAY PER MONTH		. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$1,485.30	\$0.00	\$1,485.30	N/A	N/A

II. CHARGES AND SPECIFICATIONS

10. CHARGE: UCMJ, ARTICLE 134

SPECIFICATION
 In that SENIOR United States Air Force. did, at or near Ramstein Air Base, Germany, on or about 30 May 1999, commit an indecent assault upon Airman a person not his wife by inserting two of his fingers into her vagina without her consent, with the intent to gratify his sexual desires.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE Lt Col	c. ORGANIZATION OF ACCUSER 623rd Air Mobility Support Squadron
d. SIGNATURE OF ACCUSER	e. DATE 16 Aug 99	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 16th day of August, 19 99, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

_____ Typed Name of Officer	_____ 86th Airlift Wing Organization of Officer
_____ Captain Grade	_____ Judge Advocate Official Capacity to Administer Oath (See R.C.M. 307(b)--must be commissioned officer)
_____ Signature	

12. On 16 August, 19 99, the accused was informed of the charges against him/~~her~~ and of the name(s) of the accuser(s) known to me (See R.C.M. 303(a)). (See R.C.M. 308 if notification cannot be made.)

Lieutenant Colonel
Typed Name of Immediate Commander
623rd Air Mobility Support Squadron
Organization of Immediate Commander
[Signature]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1400 hours, 16 August 19 99 at Headquarters, 86th Airlift Wing, Ramstein Air Base, Germany
Designation of Command or
y Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ Commander
Staff Judge Advocate
Official Capacity of Officer Signing
Colonel
Grade
[Signature]
Signature

V. REFERRAL: SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>Headquarters, 86th Airlift Wing</u>	b. PLACE <u>Ramstein AB, Germany</u>	b. DATE <u>8 September 1999</u>
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Referred for trial to the Special court-martial convened by Special Order AA-30
this headquarters

dated 8 September 19 99, subject to the following instructions: ² None

XX FOR THE COMMANDER XX
Command or Order

Colonel
Typed Name of Officer
Staff Judge Advocate
Official Capacity of Officer Signing

15. On 8 September 19 99, I (caused to be) served a copy hereof on [Signature] the above named accused.

Captain
Grade or Rank of Trial Counsel
[Signature]
Typed Name of Trial Counsel

FOOTNOTES: 1- When an appropriate commander signs personally, inapplicable words are stricken.
2- See R.C.M. 601(e) concerning instructions. If none, so state.

1st Ind. DD Form 458, Charge Sheet, dated 16 August 1999, Senior Airman
62nd Aerial Port Squadron (AMC), McChord Air Force Base, Washington

623 AMSS/CC

16 AUG 1999

TO: 86 AW/CC

1. Since SrA arrival to the 623rd Air Mobility Support Squadron 14 April 1999, his performance in the load planning section has been noteworthy. He was a valued asset while coordinating with U.S. Army and Air Force deploying units during Operation ALLIED FORCE. He has sincere respect for supervision and his dress and appearance is exceptional.

2. I recommend the charge be referred to trial by general court-martial. The Security Forces report of investigation is attached and supports the charge. The victim and witnesses have been informed of the charge. Due to the nature of the charge, I do not believe retention on active duty is appropriate if he is convicted. The accused is not subject to the restrictions identified in AFI 31-501, para 8.14.

Commander Lt Col, USAF

Attachments:

1. Personal Data Sheet
2. Report of Investigation