

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	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE GEN	PERSONAL APPEARANCE	X	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	UOTHC	OTHER	DENY
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X*
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X*
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<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X*
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ISSUES A94.53 A92.35	INDEX NUMBER A67.90	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 25 May 2006	CASE NUMBER FD-2005-00372	

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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.

*Reason and Authority

SIGNATURE OF RECORDER <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: 5/31/2006
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-2005-00372

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

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 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 received a General discharge – Conduct Prejudicial to Good Order and Discipline

Applicant contends discharge was based on isolated incidents in twenty eight months of service, the discharge was improper because his admittance of prior service use of marijuana was used in determination of his discharge, he was punished eight months after the last investigation was complete and the Article 15 for underage drinking was two years old, and the Article 15 given to him in August 2005 was unjust because of personal dislike of applicant by his commander, the fact that he pled not guilty to charges which he believed had insufficient proof, and he was subsequently punished and involuntarily discharged with no regard given to his appeal. The records indicated that over a 16 month period, applicant received two Article 15s and four Records of Individual Counseling for misconduct to include underage drinking, unlawfully entering the Base Student Activity Center, two instances of tardiness, needing a haircut, failing to properly check in for PT, making a false official statement to AFOSI investigators, and wrongfully concealing evidence and assisting a fellow airman to desert the Air Force. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The DRB found no evidence in applicant's records that there was any merit to his claim that his commander disliked him or that his admittance of prior service use of marijuana was used as a basis for his involuntary discharge; in fact, the Discharge Notification Memorandum furnished member by his commander cited only the misconduct noted above as reasons for initiating discharge action. Member's allegations that he was involuntarily discharged with no regard given to his appeal are without merit as a review of his records indicates that four days after being notified that he was being recommended for discharge, member signed a document stating that he had consulted legal counsel and was waiving his right to submit statements in his behalf. Likewise, member's statement that he was punished eight months after the last investigation, and the Article 15 for underage drinking was two years old, are without merit, as is his claim that he pled guilty to charges which he believed had insufficient proof in that he accepted non-judicial punishment vice a court-martial and did not appeal the non-judicial punishment. 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 Ellsworth AFB, SD on 23 Aug 05 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge and Change in Reason for Discharge.

2. **BACKGROUND:**

a. DOB: 4 Jul 83. Enlmt Age: 19 1/12. Disch Age: 22 1/12. Educ: HS DIPL. AFQT: N/A. A-76, E-75, G-74, M-73. PAFSC: 2W031 - Munitions System Apprentice. DAS: 15 Mar 04.

b. Prior Sv: (1) AFRes 14 Aug 02 - 21 Apr 03 (8 mos 8 das) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 22 Apr 03 for 6 years. Svd: 02 Yrs 04 Mo 02 Das, all AMS.

b. Grade Status: AB - 9 Aug 05 (Article 15, 9 Aug 05)
A1C - 6 Jun 03

c. Time Lost: None.

d. Art 15's: (1) 9 Aug 05, Ellsworth AFB, SD - Article 107. You did, on or about 13 Dec 04, with intent to deceive, make to Special Agent [REDACTED] an official statement, to wit: the last time you had seen A1C [REDACTED] was at dinner after a Christmas party on 10 Dec 04, which statement was false in that A1C [REDACTED] was with you on 12 Dec 04, and was then known by you to be so false. Article 134. You, having knowledge that A1C [REDACTED] had actually committed a serious offense to wit: Desertion, did, at or near Rapid City, SD, from about 13 Dec 04, to about 27 Dec 04, wrongfully conceal such serious offense by not disclosing that you drove A1C [REDACTED] to the vicinity of the Rapid City Bus Station and fail to make the same known to the civil or military authorities as soon as possible. Reduction to AB and 30 days extra duty.
(No appeal) (No mitigation)

(2) 27 Oct 03, Brooks-City Base - Article 92. You, who knew of your duties, on or about 28 Sep 03, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcohol while under 21 years of age, as it was your duty to do.

Article 134. You did, on or about 28 Sep 03, unlawfully enter Building 722, Student Activity Center. Forfeiture of \$50.00 pay per month for 2 months, 10 days extra duty and Reprimand. (No appeal) (No mitigation)

- e. Additional: RIC, 24 JUN 04 - Failure to Obey a lawful Order.
RIC, 01 JUN 04 - Failure to Obey a lawful Order.
RIC, 27 MAY 04 - Late for Duty.
RIC, 13 MAY 04 - Failure to Go at the time prescribed.

f. CM: None.

g. Record of SV: 22 Apr 03 - 21 Dec 04 Ellsworth AFB 3 (Initial)

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

i. Stmt of Sv: TMS: (03) Yrs (00) Mos (09) Das
TAMS: (02) Yrs (04) Mos (02) Das

- 4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 29 Sep 05.
(Change Discharge to Honorable and Change Reason for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

- 1. Applicant's Issues.
- 2. Eleven pages of OSI Report.
- 3. Response to Nonjudicial Proceedings.
- 4. Article 15, 1 Aug 04.
- 5. Notification Memorandum.

22DEC05/day

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

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

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

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 Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. 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 ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397. PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for 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 AIR FORCE COAST GUARD b. NAME (Last, First, Middle Initial) c. GRADE/RANK AT DISCHARGE E1 d. SOCIAL SECURITY NUMBER

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149) 23 Aug 2005 4. DISCHARGE CHARACTERIZATION RECEIVED (X one) HONORABLE GENERAL/UNDER HONORABLE CONDITIONS UNDER OTHER THAN HONORABLE CONDITIONS BAD CONDUCT (Special court-martial only) UNCHARACTERIZED OTHER (Explain) 5. BOARD ACTION REQUESTED (X one) CHANGE TO HONORABLE CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS CHANGE TO UNCHARACTERIZED (Not applicable for Air Force) CHANGE NARRATIVE REASON FOR SEPARATION TO: Other/early Administrative/separation

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.) 1. Discharge was based on isolated incidents in 20 months of service. 2. The discharge is improper because my admittance of prior service marijuana use was used in determination of my discharge. 3. I was punished 8 months after the last investigation was complete. And the Article 15 for underage drinking is over 21 years old.

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) 2005 09 19 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.) I previously sent evidence and supported documents.

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 (See item 10 of the instructions about counsel/representative.) b. TELEPHONE NUMBER (Include Area Code) c. E-MAIL 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 b. TELEPHONE NUMBER (Include Area Code) 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.)

a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above) b. DATE SIGNED - REQUIRED (YYYYMMDD) 2005 09 29 FD2005-00372

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

4. An article 15 given to me on 09 AUG 05 was unjust in that because of personal dislike of me by my commander Lt. Col [redacted] I pled not guilty to the charges which I believe had insufficient proof. I was subsequently punished and involuntarily discharged with no regard given to my appeal.

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

16. REMARKS (If applicable)

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



DEPARTMENT OF THE AIR FORCE
 HEADQUARTERS 28TH BOMB WING (ACC)
 ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

AUG 11 2005

MEMORANDUM FOR AB [REDACTED] 28 MUNS

FROM: 28 MUNS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for a pattern of misconduct, specifically, conduct prejudicial to good order and discipline. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.50.2. If my recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reasons for this action are:

a. On 28 Sep 03, you were derelict in the performance of your duties in that you failed to refrain from consuming alcohol while under 21 years of age. Furthermore, on 28 Sep 03, you unlawfully entered Building 722, Student Activity Center at Brooks City-Base, Texas. For this action, you received nonjudicial punishment under Article 15, UCMJ, on 27 Oct 03. Punishment consisted of forfeiture of \$50.00 pay per month for two months, ten days extra duty and a reprimand. This action established your UIF.

b. On 22 Apr 04, you were one hour late for work. For this action, you received a Record of Individual Counseling dated 13 May 04.

c. On 27 May 04, you were one hour late for work. For this action, you received a Record of Individual Counseling dated 27 May 04.

d. On 1 Jun 04, you failed a uniform inspection due to needing a haircut. This was the second time you were told you needed a haircut. For this action, you received a Record of Individual Counseling dated 1 Jun 04.

e. On 23 Jun 04, you did not properly check in for schedule PT at 0645 hours. For this action, you received Record of Individual Counseling dated 24 Jun 04.

f. On 13 Dec 04, you made a false official statement to Special Agent [REDACTED] in Airman First Class [REDACTED] investigation. From 13 Dec 04 – 27 Dec 04, you wrongfully concealed evidence concerning Airman First Class [REDACTED] desertion. For this action, you received nonjudicial punishment under Article 15, UCMJ, on 9 Aug 05. Punishment consisted of reduction to the grade of Airman Basic and 30 days extra duty.

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 and, if you are discharged, how your discharge 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.
4. 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 the Area Defense Counsel, on 12 Aug 05 at 1400 hours. 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 ^{MMP} 17 Aug 05 at 1310 hours, 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 matters 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 Flight Medicine / Family Practice A / Family Practice B Section of the Base Clinic on 16 Aug 05 at 0800 hours for the examination. This is a mandatory appointment and you must be in uniform. You must report at least 20 minutes in advance to this appointment to complete necessary paperwork. Please have the attached Medical Examination for Separation/Retirement form completed at this time. Return this form to the Separations office.
8. You have been scheduled for a pre-separation appointment. You must report to the Separations Section of the Military Personnel Flight (MPF) on _____ at _____ hrs. This is a mandatory appointment and you must be in uniform. Your signed Medical Examination for Separation/Retirement will be turned in at this time.
9. You have been scheduled for a pre-separation briefing. You must report to the Family Support Center on 16 Aug 05 at 0900 hours. This is a mandatory appointment and you must be in uniform. You must report at least 15 minutes in advance to this appointment to complete any necessary paperwork.
10. 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 your orderly room.

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



Commander, 28th Munitions Squadron

Attachments:

1. Supporting documents
 - a. AF Form 3070 – 27 Oct 03
 - b. RIC – 13 May 04
 - c. RIC – 27 May 04
 - d. RIC – 1 Jun 04
 - e. RIC – 24 Jun 05
 - f. Article 15 – 9 Aug 05
 - g. UIF Summary
2. Airman's receipt of notification memorandum
3. DPMAR FM-21, Medical Examination for Separation/Retirement
4. Issuance of Temporary ID Card for Administrative Discharge