

**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 <b>MSGT</b>	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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<b>TYPE UOTH</b>	<b>X</b>	<b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
<b>COUNSEL</b>		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No		
	<b>X</b>		

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
<div style="border: 1px dashed black; height: 40px; width: 100%;"></div>					X
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ISSUES <b>A01.39</b> <b>A02.09</b> <b>A85.07</b>	INDEX NUMBER <b>A67.30</b> <b>A61.00</b>	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
		<b>1</b> ORDER APPOINTING THE BOARD
		<b>2</b> APPLICATION FOR REVIEW OF DISCHARGE
		<b>3</b> LETTER OF NOTIFICATION
		<b>4</b> BRIEF OF PERSONNEL FILE
		COUNSEL'S RELEASE TO THE BOARD
		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
		TAPE RECORDING OF PERSONAL APPEARANCE HE

HEARING DATE <b>17 Nov 2006</b>	CASE NUMBER <b>FD-2005-00405</b>	
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard in Washington, D.C. via video teleconference from Travis AFB, California.

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.

<b>INDORSEMENT</b>	<b>DATE: 11/17/2006</b>
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-2005-00405**

**GENERAL:** The applicant appeals for upgrade of discharge to honorable.

The applicant appeared and testified before the Discharge Review Board (DRB) at Andrews AFB, Maryland, without counsel, via video teleconference from Travis AFB, California, on 17 Nov 2006.

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

**FINDINGS:** Upgrade of discharge is 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:**

Issue 1. The applicant contends his discharge was inequitable because it was too harsh and did not take into account his more than twenty years of service to the Air Force. He states that he always put the Air Force's needs above his own and that he served honorably for over twenty years. The applicant contends that one incident of misconduct, committed at home and not on duty time, should not overshadow his accomplishments and that he deserves an honorable discharge. The records show the applicant received a civilian conviction for downloading child pornography onto his home computer. He was sentenced to 12 months confinement (with 6 months being suspended), lifetime probation, restitution, and fees. Evidence from a pre-treatment assessment of the applicant done prior to his conviction indicates that the applicant admitted to masturbating while thinking about having sex with a child after viewing images of child pornography. However, the applicant vehemently denied such actions during his personal appearance. When questioned why the counselor included such a statement in the assessment if the applicant had not made such a statement, the applicant continued to deny making such a statement. The DRB found the applicant's denial on this point not to be credible. The DRB found that the applicant had not served honorably for 20 years as the records show that he was downloading child pornography while on active duty for approximately 18 months well prior to completing 20 years of service. 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.

Issue 2. The 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. However, they found the seriousness of the applicant's misconduct offset any positive aspects of his duty performance. The Board concluded the discharge was appropriately characterized given the serious nature of the applicant's misconduct.

Issue 3. The applicant raises a potential impropriety by stating that his area defense counsel did not adequately advise him of his rights during the discharge process. The applicant contends that his defense counsel did not inform him that he had the right to a discharge board or to submit statements on his own behalf for consideration by the separation authority. He states that when he signed the memorandum unconditionally waiving his right to a discharge board or to submit statements, that he was not given adequate time to review the document as he was working at his prison work release job and was not given the time to consult with his defense counsel. The applicant claims that he was completely unaware that he had the right to present his case to a discharge board. The DRB found the applicant's claim not to be credible. The DRB noted that at the time of his discharge board waiver, the applicant was a master sergeant

with over 20 years in the Air Force. The DRB simply did not believe that the applicant would not have been aware of his rights, that his defense counsel would not have explained his rights to him, or that he would have signed the board waiver document without reviewing it first.

Issue 4. The applicant raises a potential impropriety by stating that his assigned defense counsel wrongly led him to believe that he had a "99.9 percent" chance of having his retirement application accepted by the Secretary of the Air Force's designee in lieu of administrative discharge. On 25 April 2002, the applicant submitted his application for retirement in lieu of administrative discharge. This application was denied on 23 July 2002 by SAF/MRB. The DRB again found this assertion by the applicant not to be credible. The DRB simply did not believe that the applicant's defense counsel would have made such a definitive statement regarding the applicant's chances that his retirement application would have been accepted. Even had the applicant's defense counsel gone out on such a limb, neither this statement nor the applicant's reliance on such a statement would have changed the outcome of 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 MSGT) (HGH MSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF Luke AFB, AZ on 23 Jul 02 UP AFI 36-3208, para 5.51 and 5.52.1 (Civilian Conviction and Commission of a Serious Offense - Sexual Perversion). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 12 Jul 59. Enlmt Age: 21 5/12. Disch Age: 43 0/12. Educ: HS DIPL. AFQT: N/A. A-40, E-54, G-27, M-44. PAFSC: 2W171 - Aircraft Armament Systems Craftsman. DAS: 15 Aug 94.

b. Prior Sv: (1) AFRes 13 Dec 80 - 3 May 81 (4 months 21 days) (Inactive).

(2) Enlisted as AB 4 May 81 for 4 yrs. Extended 24 Nov 82 for 8 months. Extended 14 Feb 85 for 6 months. Extended 17 Apr 85 for 6 months. Reenlisted as Sgt 13 Feb 86 for 4 yrs. Extended 23 Nov 88 for 12 months. Extended 3 Jun 89 for 12 months. Extended 26 Dec 90 for 7 months. Reenlisted as TSgt 1 Feb 94 for 6 yrs. Svd: 18 yrs 5 months 26 days, all AMS. AMN - Unknown. A1C - 4 May 82. SrA - 1 Sep 84. Sgt - 1 Sep 85. SSgt - 1 Jan 87. TSgt - 1 Jan 94. APRs: 9,9,9,9,9,9,9,9,9,9. EPRs: 5,4,4,5,5,5,5,5,5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as TSgt 29 Oct 99 for 5 yrs. Svd: 02 Yrs 08 Mo 25 Das, all AMS.

b. Grade Status: MSgt - 16 Oct 00

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 23 AUG 01 - Unknown (missing).

f. CM: None.

g. Record of SV: 16 Jun 99 - 15 Jun 00 Luke AFB 5 (Annual)  
16 Jun 00 - 15 Jun 01 Luke AFB 4 (Annual)

h. Awards & Decs: AFCM W/3 DEVS, NCOPMER W/1 DEV, NDSM W/1 DEV, AFOSLTR W/2 DEVS, AFOSSTR, AFTR, AFLSAR W/4 DEVS, AFOUA W/5 DEVS, AFGCM W/6 DEVS.

i. Stmt of Sv: TMS: (21) Yrs (07) Mos (11) Das  
TAMS: (21) Yrs (02) Mos (20) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01 Oct 05.  
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. Nine Character References.
3. Four Commendation Medal Citations.
4. Three Training Certificates.
5. Seventeen Airman Performance Reports.
7. Three Enlisted Performance Reports.

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**JUSTIFICATION FOR UPGRADE REQUEST**

I disagree with the decision to not give me an honorable discharge after over twenty years of service because it does not reflect accurately my character of service. I have over twenty years of stellar performance reports and four Commendation medals for distinguished service. I volunteered and served for duty overseas for the majority of my service. I completed all required Professional Military Education and completed the Senior NCO correspondence course to refine my leadership abilities. I have always put service and country before myself throughout my entire career.

I will admit that I exercised poor judgement while surfing the internet as I freely admit that I accessed nude photos of underage girls. I did this off-duty in my own home and never ever used a government computer in this manner. I never committed a hands-on offence nor would I ever. I have been required to take numerous polygraphs to support this. I am continuously making good progress in my counseling as required by probation and have abided by my conditions of probation with no problems at all. My dear wife [redacted] is still with me and we still remains a loving family with our two children. We just recently celebrated our 16<sup>th</sup> anniversary.

After filing bankruptcy and losing our home we managed to rebuild our lives. Both [redacted] and I were able to find full time jobs and we eventually bought another house. I found a great job as an apprentice in a commercial plumbing firm and [redacted] is employed with the County as a nurse's assistant.

I think it's totally unjust that my family and I should be denied my ~~retirement~~ <sup>Honorable discharge (med)</sup> because of one mistake I made during an otherwise flawless 20 year career. Please consider carefully everything that I have submitted to you.

Respectfully, [redacted]



DEPARTMENT OF THE AIR FORCE  
61<sup>st</sup> Fighter Squadron (AETC)  
Luke Air Force Base, Arizona

DATE: 4 MAR 2002

MEMORANDUM FOR MSGT [REDACTED] 61 FS

FROM: 61 FS/CC

SUBJECT: Notification Letter - Board Hearing

1. I am recommending your discharge from the United States Air Force for a Civilian Conviction and Sexual Perversion. The authority for this action is AFD 36-32 and AFI 36-3208, paragraphs 5.51 and 5.52.1 respectively. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. The reasons for this action are:

a. On 1 Feb 02, you were convicted in the Superior Court of Arizona, Maricopa County, on two counts of the following: Attempted Sexual Exploitation of a Minor, a Dangerous Crime Against Children in the Second Degree. Your sentence includes incarceration for 6 months, lifetime probation, restitution, fines, and fees.

b. Between on or about 29 Oct 99 and on or about 14 Mar 01, you viewed numerous photographs involving child pornography. Additionally, you admitted to masturbating while thinking about having sex with a child after looking at these pornographic photographs. These acts constitute sexual perversion.

3. This action could result in your separation with either honorable, general, or an under other than honorable conditions. I am recommending that you receive an under other than honorable conditions discharge. The General Court-Martial convening authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces and any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be represented by legal counsel at an administrative discharge board hearing.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. Capt: [redacted], Area Defense Counsel, has been obtained to assist you. An appointment has been scheduled for you to consult him on 7 Mar 02 at 1500 hours. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service, and is reasonably available according to AFI 51-201. In addition to military counsel, you have the right to employ civilian counsel at your own expense. Civilian counsel, if employed, must be readily available.

6. Confer with your counsel and reply, in writing, within 7 work days, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel, who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statement(s) in your own behalf. I will send the statement(s) to the separation authority with the case file to be considered with this recommendation. Failure to respond, constitutes a waiver of your right to a board hearing.

7. If, after separation action starts, you attain the additional service necessary for retirement (20 years active service creditable for retirement), you may apply for retirement; however, the convening authority may decide to complete the discharge processing action before referral to the Office of the Secretary of the Air Force.

a. Your retirement application must:

(1) Be prepared and submitted according to AFI 36-3208.

(2) Request that retirement be effective the 1<sup>st</sup> day of the 2<sup>nd</sup> month following the current month, subject to your availability.

b. Submission of the application for retirement will not cancel the recommended discharge action. Discharge processing may be suspended, pending a decision on the retirement application.

c. If the application for retirement in lieu of further processing is:

(1) Approved, discharge processing will be discontinued.

(2) Disapproved, the discharge action will be processed to completion. If discharge is approved, the case file and the retirement application will be forwarded to HQ AFMPC/DPMARS, 550 C Street, Suite 11, Randolph AFB TX 78150-4713, for further processing.

8. Any personal information you furnish in the rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in the Orderly Room.

9. If you request a board hearing and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. The discharge board or, the discharge authority will make the finding and recommendations required under 10 U.S.C. 2005(g).



11. Execute the receipt of notification memorandum and return it to me immediately.



Commander

**Attachments:**

1. Transcript of Conviction-Superior Court of Maricopa County, AZ
2. Drug Use
3. Letter of Reprimand, dated 23 Aug 01
4. ARS 13-3553
5. ARS 13-604.01