

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b>  [ ]	<b>GRADE</b>  1LT	<b>AFSN/SSAN</b>  [ ]
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<b>TYPE GEN</b>	<b>X</b>	<b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
<b>COUNSEL</b>		<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>No</b>		
	<b>X</b>		

<b>MEMBER SITTING</b>  [ ]	<b>VOTE OF THE BOARD</b>				
	<b>HON</b>	<b>GEN</b>	<b>UOTHC</b>	<b>OTHER</b>	<b>DENY</b>
					X
					X
					X
					X

<b>ISSUES</b> A01.17	<b>INDEX NUMBER</b> A67.50	<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	

<b>HEARING DATE</b> 21 Mar 2006	<b>CASE NUMBER</b> FD-2005-00433	
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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 at Washington, D.C.

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>SIGNATURE OF RECORDER</b>  [ ]	<b>SIGNATURE OF BOARD PRESIDENT</b>  [ ]
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<b>INDORSEMENT</b>		<b>DATE: 3/23/2006</b>
<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> 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-2005-00433

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Andrews AFB on 21 Mar 2006.

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.

**ISSUES:** The applicant's issues are listed in the attached brief. The applicant requests upgrade of his discharge contending that his administrative separation was improper because it was wrongful termination of employment that violated his constitutional right against repeat prosecution and punishment for the same offense, i.e., double jeopardy. He further asserts he was denied due process to "confront his accuser" when the Numbered Air Force commander, the Show Cause Authority, did not meet with him in person when processing his administrative discharge.

The applicant was discharged with an under honorable conditions (general) discharge for misconduct after 3 years, 8 months and 5 days on active duty. A graduate of the Air Force Academy with a degree in aeronautical engineering, he requested and was granted an Exception To Policy by the Chief of Staff of the Air Force for pilot training due to disqualifying excessive refractive error. While in undergraduate pilot training, he requested and was granted training as a First Assignment Instructor Pilot (FAIP). He also requested and was granted assignment to Vance AFB as a T-1 FAIP. While attending instructor pilot training he received a Letter of Reprimand for two incidents of leaving his place of duty and the local area without authority and failure to obey a lawful order. He was nevertheless allowed to complete instructor pilot training and arrived at his requested assignment at Vance AFB. Within four weeks of his arrival for Instructor Pilot Duty, the applicant turned in his wings stating he did not want to fly anymore and wanted to be assigned in acquisitions or personnel, or as an engineer (aeronautical engineering degree). He was removed from the flying schedule and detailed to the Security Forces Squadron as a Security Forces Augmentee, approximately one month after the 9-11 terrorist attacks. His conduct while detailed to the Security Forces Squadron (including reporting late, failing to show for duty, and poor duty performance) prompted the Security Forces Squadron Commander to return the applicant to his permanent squadron and formed the predominant basis for non-judicial punishment by Article 15 for two incidents of failure to go, and one incident of being absent from duty without authority.

The applicant's initial request for Voluntary Disqualification of Aviation Service was denied and he was notified of Flight Evaluation Board proceedings. In response he submitted a request for Voluntary Disqualification In Lieu of Flying Evaluation Board (VILO) that was subsequently approved in August 2002. Simultaneously with his final disqualification for flying based on VILO, he was notified of show cause for administrative discharge for his previous misconduct. The applicant requested retention in the Air Force and assignment in an engineering career field stating his misconduct was caused by the stress of marital discord which had been resolved. The applicant's wing commander recommended separation stating, "*While it is true that Lt \_\_\_\_\_ possesses skills needed by the Air Force, there is little evidence to suggest that his future conduct and judgment would be different if faced with similar stressors. He has*

*demonstrated a lack of reliability, repeatedly poor judgment, and a conscious willingness to repeatedly disregard rules and procedures when it meets his needs. Such conduct demonstrates a lack of character.”*

The DRB noted the applicant's excellent duty performance in a non-flying position following his Article 15 as well as his testimony of post service employment as an aeronautical engineer but concurred with the Wing Commander's assessment. The Board also noted that the applicant, an avid runner who was on the Academy track team, is also involved in numerous running related community charitable activities. The Board also acknowledged the applicant's desire to join the Missouri ANG and apparent offer of employment, conditioned upon upgrade of his characterization, but this is not a matter of inequity or impropriety substantiating a basis for upgrade.

The applicant's assertion that his discharge was repeat punishment for offenses for which he was previously punished is without merit. The applicant's main contention is that the Letter of Reprimand and the Article 15 non-judicial punishment constitute being placed in Jeopardy in accordance with Amendment V of the United States Constitution and his subsequent Administrative Discharge for the same acts contained in the Reprimand and Article 15 constitute prohibited Double Jeopardy. His theory is clearly erroneous as the Fifth Amendment involves attachment of criminal jeopardy. A Letter of Reprimand and an Article 15 do not constitute criminal jeopardy nor does the Administrative Discharge. Since no jeopardy ever attached, there can be no double jeopardy and his position is without merit. The applicant's separation from service was the administrative consequence, not punishment, of his previous misconduct. The applicant's assertion that he was also denied his right to "confront his accuser" is also without merit since his separation was not a criminal court proceeding but rather an administrative procedure that provides no privilege to demand a personal appeal with a Numbered Air Force commander. The Board notes that voluntary disqualification from flying may alone be cause for administrative separation and that cross training or reassignment to another career field under these circumstances is not assured. Further, the applicant's pattern of misconduct made such consideration inconsistent with the needs of the Air Force.

**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 1LT) (HGH 1LT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Vance AFB, OK on 6 Feb 03 UP AFI 36-3206, para 5.3.4 (Misconduct - Serious and Recurring Misconduct Punishable by Military or Civilian Authorities). Appeals for Honorable Discharge, and to Change the Reason and Authority for Discharge.
2. **BACKGROUND:**
- a. DOB: 8 Nov 75. Enlmt Age: 19 7/12. Disch Age: 27 2/12. Educ: Baccalaureat Degree. AFQT: N/A. PAFSC: T11K3A - Instructor Pilot. DAS: 8 Nov 99.
- b. Prior Sv: USAF Academy 28 Jun 95 - 1 Jun 99 (3 yrs 11 months 3 days) (Inactive).
3. **SERVICE UNDER REVIEW:**
- a. Appointed to 2Lt & Ordered to EAD 2 Jun 99. Svd: 03 Yrs 08 Mo 05 Das, all AMS.
- b. Grade Status: 1Lt - 2 Jun 01
- c. Time Lost: None.
- d. Art 15's: (1) 22 Feb 02, Vance AFB, OK - Article 86. You did, on or about 15 Oct 01, without authority, fail to go at the time prescribed 0800 hours, to your appointed place of duty, to wit: 71st Security Forces Squadron, Building 527. You did, on or about 0500 hours, 14 Nov 01, without authority, absent yourself from your unit, to wit: 71st Security Forces Squadron, Building 527, and did remain so absent until on or about 1520 hours, 14 Nov 01. You did, on or about 27 Nov 01, without authority, fail to go at the time prescribed, 0730 hours, to your appointed place of duty, to wit: 32nd Flying Training Squadron, Building 541. Forfeiture of \$1,375.00 pay per month for 2 months, and a reprimand. (Appeal/Granted) (No mitigation)
- e. Additional: LOR, 10 MAY 01 - Leaving place of duty without authority and failure to obey a lawful order.
- f. CM: None.
- g. Record of SV: 16 Dec 00 - 24 Dec 01 Vance AFB DNMS (Annual) REF

h. Awards & Decs: NDSM, AFTR, AFLSAR, SAEMR.

i. Stmt of Sv: TMS: (07) Yrs (07) Mos (09) Das  
TAMS: (03) Yrs (08) Mos (05) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 24 Oct 05.  
(Change Discharge to Honorable and Change the Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. Copy of Show Cause Notification Letter, 26 Aug 02.
3. Letter of Reprimand, 10 May 01.
4. Article 15, 22 Feb 02.
5. HQ USAF/DFBL Letter, 25 Oct 05.

14DEC05/ia

TO: SAF/MIBR  
550-C Street West, Suite 40  
Randolph AFB, TX 78150-4742

FROM:

To Whom It May Concern,

I am requesting an appearance before the Air Force Discharge Review Board. I was involuntarily discharged on 7 February 2003 as a result of a Show Cause Action. The separation was General Discharge under Honorable Conditions as a result of misconduct. However, the Show Cause against me was a violation of my constitutional right against double jeopardy. I had previously been prosecuted for the events that were the basis of the Show Cause. I will explain below how this Show Cause led to a Wrongful Termination.

To begin with, I would like to define double jeopardy and wrongful termination. Double jeopardy is the act of being tried twice for the same offense. It is illegal and banned by the 5<sup>th</sup> Amendment of the U.S. Constitution. It prevents second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense.

Wrongful termination is the firing of an employee for illegal reasons in the eyes of the law. This means that the employer, in this case the U.S. Air Force, violates a Federal law, regulation, or constitutional provision.

Enclosure A is the Show Cause Notification Letter. Paragraph 2a charges misconduct on 17-20 Apr 2001 and 27-29 April 2001. At the end of that paragraph it states, "For these offenses you received a letter of reprimand." At this point, according to our U.S. Constitution, I can not be prosecuted again for this offense. The Letter of Reprimand is enclosure B. Although I still believe myself to be innocent, that is not a subject of this forum.

Paragraph 2b charges misconduct that occurred on 15 October 2001, 14 November 2001, and 27 November 2001. At the end of this paragraph it states, "For these offenses you received Article 15 punishment on 22 Feb 2002." The Article 15 documentation is enclosure C. Although I still believe myself to be innocent that also is not a subject of this forum.

As can be seen, I had already been prosecuted once for each of the offenses listed as the reason I was being prosecuted under the Show Cause action. This is double jeopardy. As stated above, this meets the criteria of "a second prosecution for the same offense after conviction, and multiple punishments for the same offense." This illegal act led to my being dismissed from the Air Force. This is wrongful termination because I was fired in violation of my 5<sup>th</sup> Amendment rights, a "constitutional provision."

Enclosure D is a letter from my former Squadron Commander Colonel: [REDACTED]. It states that after the Article 15 action, there was no further misconduct and I was a valuable asset to the squadron. With no misconduct, I could not legally be prosecuted under this Show Cause.

I have chosen to pursue correction of this issue through the Air Force Discharge Review Board instead of through legal action. I believe resolving these matters in this forum is in the best interest for both parties. As a result of the illegal actions taken against me, I ask the Discharge Review Board for the following four actions:

1. Removal of misconduct as the reason for discharge.
2. Upgrade of my discharge to an Honorable Discharge because the General Discharge was given as a result of the misconduct label.
3. Payment of the separation pay I was wrongfully denied because the separation was labeled misconduct.
4. Payment of all lost wages from February 2003 to the present because I would still be serving in the Air Force if not for this illegal Show Cause action.

I look forward to discussing this with the Air Force Discharge Review Board. Thank you for your time.

Respectfully,

[REDACTED]

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS NINETEENTH AIR FORCE (AETC)

26 AUG 2002

MEMORANDUM FOR ILT [REDACTED] 32 FTS  
VANCE AFB OKFROM: 19 AF/CC  
73 Main Circle, Suite 1  
Randolph AFB TX 78150-4549

SUBJECT: Notification of Show Cause Action Initiated Under Chapter 3, AFI 36-3206

1. I am initiating action under AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, Chapter 3, Misconduct, paragraph 3.6.4, recurring misconduct punishable by military authorities, that requires you to show cause for retention on active duty.
2. I am taking this action because:
  - a. On 17 to 20 Apr 01 and on 27 to 29 Apr 01, you left your place of duty and the local area without authority, without signing out of the unit and without receiving a pre-departure safety briefing. On 27 Apr 01, you also failed to obey a lawful order of your flight commander to be in the squadron area from 0800 to 1600 unless given explicit authorization to depart. For these offenses you received a letter of reprimand on 10 May 01 (Atch 1). In your response, you stated that nothing like this would happen again.
  - b. After the events of 11 Sep 01, you were assigned duties in support of the 71<sup>st</sup> Security Forces Squadron based on a heightened force protection condition. On 15 Oct 01, you failed to go, without authority, to your appointed place of duty, the 71<sup>st</sup> Security Forces Squadron Building. At 0500 hours on 14 Nov 02, you were absent, without authority, from the 71<sup>st</sup> Security Forces Building. As a result of this misconduct, you were reassigned from duty with the 71<sup>st</sup> Security Forces Squadron back to the 32<sup>nd</sup> Flying Training Squadron. On 27 Nov 01, you failed to go to your appointed place of duty, the 32<sup>nd</sup> Flying Training Squadron. For these offenses you received Article 15 punishment on 22 Feb 02 (Atch 2).
  - c. The least favorable characterization of discharge that the Secretary of the Air Force may approve in this case is under other than honorable conditions (UOTHC). Attached are copies of documentary evidence to support this action.
3. Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of the notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting this to you will indicate on it, the date and time that you declined to acknowledge receipt. This notification and acknowledgement memorandums will be part of your case file.
4. Familiarize yourself with AFI 36-3206, particularly the rights that you have. If you do not request a resignation in lieu of further administrative action, an Air Force Personnel Board

E 8



(AFPB) or Board of Inquiry (BOI) will convene as provided in Chapter 6 or Chapter 7. Contact the Area Defense Counsel (ADC) Captain [REDACTED], at McConnell AFB KS, DSN: 743-4375 to discuss the procedures involved and your rights and options. If you decline counsel, contact Captain [REDACTED], Chief, MPF, Vance AFB OK, DSN: 448-7546 for counseling about your rights and options.

5. If you are entitled to a BOI and you elect to present matters to the BOI, the standard of proof used to make findings is a preponderance of evidence. You may present evidence and argument to rebut the reasons set forth in this notification memorandum or any additional reason or information developed during the BOI proceedings. You also may present other pertinent evidence.

6. Within 10 calendar days after you receive this notification memorandum, indorse it directly to me. If I do not receive the indorsement within the allotted time, I will proceed with further action under AFI 36-3206. Include in your indorsement:

a. Any statement you wish to submit on your behalf and/or any additional evidence you wish me to consider. Attach any statements or documentary evidence. If you are unable to submit your statements or documentary evidence within 10 calendar days after receipt of this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time to me addressed to 19 AF/CC, 73 Main Circle, Suite 1, Randolph AFB TX 78150-4549. If you do not submit statements or evidence, your failure will constitute a waiver of your right to do so and I will refer your case to an AFPB or BOI.

b. A statement that Captain [REDACTED], AFLSA/ADC, counseled you and that you fully understand your rights and options in this action. If you declined to consult with counsel, so state and indicate that Captain [REDACTED], Chief, Military Personal Flight, counseled you and that you fully understand your rights and options in this action.

c. A statement that you fully understand the following regarding the recoupment of education assistance, special pay and/or any special pay or bonuses received if you have not completed the period of active duty you agreed to serve:

(1) Recoupment of a portion of education assistance and/or special pay or bonus monies received if you voluntarily separate.

(2) Recoupment of a portion of education assistance received if involuntarily discharged for misconduct.

(3) Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.

(4) Recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve. If you dispute that you are indebted for educational assistance, the board of inquiry, or, if you do not choose or are not entitled to a board of inquiry, an authority

appointed by either the Show Cause Authority or AETC/CC, will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, paragraphs 4.32 and 4.33 regarding special rules for recoupment.

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the resignation.

e. A statement that the Area Defense Counsel or Chief, Military Personnel Flight, explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information.

7. In response to this notification memorandum, you may, within 10 calendar days, tender your resignation under AFI 36-3207, Chapter 2, Section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive a discharge under other than honorable conditions (UOTHC) unless the Secretary of the Air Force determines that you should receive a discharge under honorable conditions (general) or an honorable discharge. If the Secretary of the Air Force accepts your resignation, your discharge will be as soon as possible, but no later than 10 calendar days after the date that the MPF receives separation instructions.

8. Action is not required under AFI 31-501, *Personnel Security Program Management*.

9. You may request excess leave, if the Air Force does not require your further participation in processing your case.

Major General, USAF  
Commander

Attachments:

1. Letter of Reprimand, 10 May 01 (3 pages)
2. Article 15, 22 Feb 02, w/supporting documentation (21 pages)
3. Referral OPR (16 Dec 00 to 24 Dec 01)
4. Records Review RIP, 31 Jul 02 (4 pages)
5. Acknowledgment of SCA Notification
6. Response to SCA