

**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  AMN	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE GEN	<b>PERSONAL APPEARANCE</b>	<b>X</b>	<b>RECORD REVIEW</b>
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<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th align="left" colspan="2" style="padding: 2px;">COUNSEL</th> </tr> <tr> <td style="width:50%; padding: 2px;">YES</td> <td style="width:50%; padding: 2px;">No</td> </tr> <tr> <td style="text-align: center; padding: 2px;"><b>X</b></td> <td style="padding: 2px;"></td> </tr> </table>	COUNSEL		YES	No	<b>X</b>		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
COUNSEL								
YES	No							
<b>X</b>								

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
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					X

ISSUES <b>A01.15</b>	INDEX NUMBER <b>A67.30</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th align="left" colspan="2" style="padding: 2px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width:5%; padding: 2px; text-align: center;"><b>1</b></td> <td style="padding: 2px;">ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="padding: 2px; text-align: center;"><b>2</b></td> <td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="padding: 2px; text-align: center;"><b>3</b></td> <td style="padding: 2px;">LETTER OF NOTIFICATION</td> </tr> <tr> <td style="padding: 2px; text-align: center;"><b>4</b></td> <td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td colspan="2" style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td colspan="2" style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td colspan="2" style="padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE HE</td> </tr> </tbody> </table>	EXHIBITS SUBMITTED TO THE BOARD		<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	
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HEARING DATE  <b>02 Nov 2006</b>	CASE NUMBER  <b>FD-2006-00007</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.

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.

<b>INDORSEMENT</b>		DATE: 12/5/2006
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****FD-2006-00007**

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

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 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:**

Applicant contends there was an impropriety in his discharge from the Air Force. He states his pretrial agreement was breached when the government processed an administrative discharge after the window they set in his pretrial agreement. This issue is without merit. The records indicated the applicant received a Special Court Martial for being drunk and disorderly and carrying a concealed weapon. He was sentenced by a military judge with a reduction in grade to airman and 45 days of confinement. 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 AMN) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Maxwell AFB, AL on 21 Dec 05 UP AFI 36-3208, para 5.52 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 29 Jul 82. Enlmt Age: 19 1/12. Disch Age: 23 4/12. Educ: HS DIPL. AFQT: N/A. A-50, E-55, G-53, M-41. PAFSC: 4Y051 - Dental Assistant. DAS: 1 Jun 03.

b. Prior Sv: (1) AFRes 11 Sep 01 - 25 Sep 01 (15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 26 Sep 01 for 4 yrs. Extended 12 Nov 05 for 3 months. Svd: 04 Yrs 02 Mo 26 Das, of which AMS is 04 yrs 01 month 21 days (excludes 1 month 5 days lost time).

b. Grade Status: Amn - 17 Nov 05 (SPCMO #1, 17 Nov 05)  
SrA - 26 Sep 04  
A1C - 26 Jul 02

c. Time Lost: 11 Oct 05 thru 16 Nov 05 (1 month 5 days).

d. Art 15's: None.

e. Additional: None.

f. CM: Special Court Martial No.1 - 17 Nov 05

CHARGE I: Dismissed.

CHARGE II: Article 134. Plea: Guilty. Finding: Guilty.

Specification 1: Was, at or near Maxwell AFB, AL, on or about 25 Jun 05, drunk and disorderly which conduct was to the prejudice of good order and discipline. Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Maxwell AFB, AL, on or about 25 Jun 05, unlawfully carry on or about his person a concealed weapon, to wit: a gun. Plea: Guilty. Finding: Guilty. Sentence adjudged by Military Judge alone on 11 Oct 05: Reduction to the grade of Airman and 45 days confinement.

g. Record of SV: 26 Sep 01 - 25 May 03 Scott AFB 5 (Initial)

26 May 03 - 25 May 04 Maxwell AFB 5 (Annual)  
25 May 04 - 25 May 05 Maxwell AFB 5 (Annual)

h. Awards & Decs: AFGCM, NDSM, GWOTSM, AFLSAR, AFTR.

i. Stmt of Sv: TMS: (04) Yrs (02) Mos (06) Das  
TAMS: (04) Yrs (01) Mos (21) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 26 Dec 05.  
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. Pretrial Agreement and Addendum.
3. Notification Memorandum.
4. Extension of Enlistment.
5. Defense Exhibits.

20MAR06/ia



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

the process for the administrative discharge. I extended my ETS because the court martial took place after my ETS expired in late Sep 05 and I needed the assurance that my family would not be left without support if I was sent to confinement. I have served my punishment and I was not adjudged a bad conduct discharge. It is my understanding that the trial counsel stated that the convening authority would consider either an agreement not to approve a bad conduct discharge or a cap on confinement not both. I chose a cap on confinement for my family, and I served the adjudged confinement. I was shocked that that trial counsel told the judge that the intent was to discharge me immediately after I served confinement, even if my wife had not delivered our child, he said this to the judge even though our agreement was specifically to extend my ETS to allow for medical care for my child's delivery in Nov 05. I appreciate that the judge recognized the concern which led to the addendum to the pretrial agreement. At that point, I had the choice to accept the pretrial agreement or refuse it. I accepted it because I wanted to be responsible for my family. It seems inherently unfair that I was discharged a few days before my extended ETS. Had I not been responsible for my family, I would have been separated after my confinement and I would have a honorable discharge. It seems unreasonable that taking care of my family resulted in a general discharge, but not being responsible would have resulted in an honorable.

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

Attachment 3 Extension paperwork AF IMT 1411

**16. REMARKS (If applicable)**

In my case, the Airforce did not follow its own rules and regulations set in accordance to my pretrial agreement in processing my discharge. I was advised by my unit that I had to go to the legal office upon release from confinement to be discharged the following week. The legal office told me to go see my ADC or unit. My unit expected me to be discharged the following week because my wife had our daughter a week earlier. I had to look into voluntary separation. With the assistance of my acting commander, I applied for it (Attachment 4). I was then in limbo until I was served the discharge notification. The discharge notification stated I had an appointment to see Maj \_\_\_\_\_ at 0730 on 12 Dec 05, I signed that I had been given an appointment relying on the notification memorandum from 42ADOS/CC. Unfortunately, the ADC office knew nothing of the appointment. Apparently, my unit and JA decided on the time without even asking the ADC and knowing the ADC was on SAV and TDY the following week, including 12 Dec 05. (Attachment 5) I am concerned that this process is made to have the appearance of fairness, but in fact, it is void of any fairness. I was not afforded a significant amount of time for legal counsel because of the rush to separate me before my ETS. The notification memorandum stated that the court-martial was on 16 Nov 05 when, in fact it was 11 Oct 05. I feel as though disregard to significant details indicative of the lack of attention to my particular situation. When I was served the notification package by my first sergeant, I told him I did not want to waive my rights to write a response to the separation authority, my first sergeant said, "the legal office was going to be mad". Please consider the fact and circumstances in determining whether my discharge should be upgraded. I am also including my sentencing package from my court-martial (Attachment 6).

**MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.**

<p align="center"><b>ARMY</b></p> <p>Army Review Boards Agency Support Division, St. Louis 9700 Page Avenue St. Louis, MO 63132-5200 (See <a href="http://arba.army.pentagon.mil">http://arba.army.pentagon.mil</a>)</p>	<p align="center"><b>NAVY AND MARINE CORPS</b></p> <p>Naval Council of Personnel Boards 720 Kannon Street, S.E. Room 309 (NDRB) Washington Navy Yard, DC 20374-5023</p>
<p align="center"><b>AIR FORCE</b></p> <p>Air Force Review Boards Agency SAF/MRBR 650-C Street West, Suite 40 Randolph AFB, TX 78150-4742</p>	<p align="center"><b>COAST GUARD</b></p> <p>U.S. Coast Guard Commandant (G-WPM) 2100 Second Street, S.W. Room 5500 Washington, DC 20593</p>

FD 2006-00007



DEPARTMENT OF THE AIR FORCE  
42D AIR BASE WING (AETO)  
MAXWELL AIR FORCE BASE ALABAMA

8 DEC 05

MEMORANDUM FOR AIRMAN [redacted]

FROM: 42 ADOS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct: Commission of a Serious Offense. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.52. If my recommendation is approved, your service will be characterized as an Under Honorable Conditions (General) Discharge. I am recommending that your service be characterized as an Under Honorable Conditions (General) Discharge.

2. My reason for this action is:

On or about 16 November 2005, you were found guilty at a Special Courts-Martial of violating Article 134 of the UCMJ. The punishment consisted of reduction to the grade of Airman and 45 days confinement.

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or higher authority will decide whether you will be discharged or retained in the United States Air Force and, if you are discharged, how your service 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. The separation authority will make the findings and recommendations required under 10 U.S.C. Section 2005(g).

3. 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 Maj: [redacted] at the Area Defense Counsel at Bldg 40, Maxwell AFB on 12 Dec 05 hours. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 13 Dec 05 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. 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.

6. You have been scheduled for a medical examination. You must report to Blue Team on 12 Dec 05, at 1430 hours for the examination.

7. 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 at Area Defense Counsel's Office.

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

  
[Redacted signature box]

Commander, 42d Aeromedical-Dental Squadron

**Attachments:**

1. Supporting Documents
2. Receipt of Notification Memorandum