

**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>AB</b>	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE UOTH <input type="checkbox"/>	PERSONAL APPEARANCE <input checked="" type="checkbox"/>	X	RECORD REVIEW <input type="checkbox"/>
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COUNSEL YES <input type="checkbox"/> No <input checked="" type="checkbox"/>	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
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MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X*
					X*
					X*
					X*
					X*

ISSUES <b>A94.05</b>	INDEX NUMBER <b>A67.00</b>	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="padding: 5px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width:20px; text-align: center;">1</td> <td>ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="text-align: center;">2</td> <td>APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="text-align: center;">3</td> <td>LETTER OF NOTIFICATION</td> </tr> <tr> <td style="text-align: center;">4</td> <td>BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td></td> <td>COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td></td> <td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td></td> <td>TAPE RECORDING OF PERSONAL APPEARANCE HE</td> </tr> </tbody> </table>	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 HE
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HEARING DATE <b>25 Jan 2007</b>	CASE NUMBER <b>FD-2006-00120</b>	
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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 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.

\* Reason & Authority

SIGNATURE OF RECORDER <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	SIGNATURE OF BOARD PRESIDENT <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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INDORSEMENT TO: SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	DATE: 2/6/2007 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-2006-00120**

**GENERAL:** The applicant appeals for upgrade of discharge to general 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 contends discharge was inequitable because it was too harsh. The records indicated the applicant received two Letters of Reprimand and was found guilty of three charges by a Special Court Martial for misconduct. The Special Court Martial Board found the member guilty for failure to go to appointed place of duty; for being derelict in the performance of duty by allowing a person under the age of 18 in his dormitory room; failing to refrain from allowing a guest to sleep in his dormitory room; and by committing the offense of carnal knowledge. He was punished with a reduction in grade to Airman Basic, 4 months confinement and required to be identified as a "Sex Offender". Applicant was administratively disciplined with two Letters of Reprimand for being late for duty and failure to go. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. 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 AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF Anderson AFB, Guam on 1 Apr 05 UP AFI 36-3208, para 5.50 (Pattern of Misconduct). Appeals for General Discharge, and to Change the Reason for Discharge.

2. **BACKGROUND:**

a. DOB: 2 Oct 84. Enlmt Age: 18 7/12. Disch Age: 20 5/12. Educ: HS DIPL. AFQT: N/A. A-67, E-66, G-50, M-32. PAFSC: 3M031 - Services Apprentice. DAS: 19 May 04.

b. Prior Sv: (1) AFRes 14 May 03 - 12 Jan 04 (7 months 29 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 13 Jan 04 for 4 yrs. Svd: 01 Yrs 02 Mo 19 Das, of which AMS is 00 Yrs 10 Months 19 Days (excludes 4 months lost time).

b. Grade Status: AB - 13 Dec 04 (SPCM, 29 Nov 04)  
Amn - 13 Jul 04

c. Time Lost: 29 Nov 04 thru 29 Mar 05 (4 months).

d. Art 15's: None.

e. Additional: LOR, 24 AUG 04 - Late for duty.  
LOR, 07 SEP 04 - Failure to go.

f. CM: Special Court Martial - 29 Nov 04

CHARGE I: Article 86. Plea: Guilty. Finding: Guilty.

Specification 1: Did, at or near Andersen AFB, Guam, on or about 4 Nov 04, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Building 21000. Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Andersen AFB, Guam, on or about 16 Nov 04, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Building 17002. Plea: Guilty. Finding: Guilty.

CHARGE II: Article 92. Plea: Guilty. Finding: Guilty.

Specification 1: Who knew or should have known of his duties at or near Andersen AFB, Guam, on divers occasions between on or

about 5 Jul 04 and on or about 7 Jul 04, was derelict in the performance of those duties in that he willfully failed to refrain from allowing A.C.W., a person under the age of 18, in his dormitory room, as it was his duty to do. Plea: Guilty. Finding: Guilty.

Specification 2: Who knew or should have known of his duties at or near Andersen AFB, Guam, on or about 7 Jul 04, was derelict in the performance of those duties in that he willfully failed to refrain from wrongfully allowing a guest, A.C.W., to sleep in his dormitory room, as it was his duty to do. Plea: Guilty. Finding: Guilty.

CHARGE III: Article 120. Plea: Guilty. Finding: Guilty.

Specification: Did, at or near Andersen AFB, Guam, on divers occasions between on or about 6 Jul 04 and on or about 7 Jul 04, commit the offense of carnal knowledge with A.C.W. Plea: Guilty. Finding: Guilty. Sentence adjudged 29 Nov 04. Reduction to AB and 4 months confinement. "SEX OFFENDER NOTIFICATION REQUIRED."

g. Record of SV: None.

h. Awards & Decs: AFOUA, NDSM, BMTR.

i. Stmt of Sv: TMS: (01) Yrs (06) Mos (18) Das  
TAMS: (00) Yrs (10) Mos (19) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 24 Mar 06.  
(Change Discharge to General, and Change the Reason for Discharge)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.

17MAY06/ia

**APPLICATION FOR THE REVIEW OF DISCHARGE 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 the Department of Defense, Executive Service and Communications Directorate (0704-0004). 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 ORGANIZATION. 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)	<input type="checkbox"/> ARMY	<input type="checkbox"/> MARINE CORPS	<input type="checkbox"/> NAVY	<input checked="" type="checkbox"/> AIR FORCE	<input type="checkbox"/> COAST GUARD
b. NAME (Last, First, Middle Initial)	c. GRADE/RANK AT DISCHARGE		d. SOCIAL SECURITY NUMBER		
	E-1				

**2. DATE OF DISCHARGE OR SEPARATION**

*(YYYYMMDD) If date is more than 15 years ago, submit a DD Form 149)*

2005 April 1

**4. DISCHARGE CHARACTERIZATION RECEIVED (X one)**

<input type="checkbox"/> HONORABLE
<input type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS
<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS
<input checked="" type="checkbox"/> BAD CONDUCT (Special court-martial only)
<input type="checkbox"/> UNCHARACTERIZED
<input type="checkbox"/> OTHER (Explain)

**5. BOARD ACTION REQUESTED (X one)**

<input type="checkbox"/> CHANGE TO HONORABLE
<input checked="" type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
<input type="checkbox"/> CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)
<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION TO:

**3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION**

36 Services Squadron  
Andersen AFB, Guam

**6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.)**

I never knew the victims age before the offense occurred I only took the Pre-trial Agreement (PTA) because I was advised to do so I was also told I would be able to register under the first-time offenders act but later found out I would have to do 10 yrs. I have no criminal record aside from this. In all fairness I was treated harshly for something I didn't do.

**7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) 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.)**

**9. TYPE OF REVIEW REQUESTED (X one)**

<input checked="" type="checkbox"/> 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.
<input type="checkbox"/> 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.
<input type="checkbox"/> 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.**

<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER (Specify)
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**12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE**

*(Forward notification of any change in address.)*

**b. TELEPHONE NUMBER (Include Area Code)**

c. E-MAIL
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.)**

a. SIGNATURE - REQUIRED (Applicant or person in item 11 above)	b. DATE SIGNED - REQUIRED (YYYYMMDD)
	2006 May 12

**CASE NUMBER**

*(Do not write in this space.)*

FD 2006-00120

To whom this may concern:

Here is the number of the victim also a witness that can testify to the fact that I did not know her age before we had sex: [redacted] cell no. She was 15 at the time of this incident but she told me she was 17 and I was 19 at the time. I would never target someone more than 2 yrs. younger than I am knowingly or purposely. When I went to my court martial I took the PTA (Pretrial Agreement) based on the facts that I was scared because I had never been in trouble with the law my entire life up until that point, Also I was advised to by my counsel Captain [redacted] to take the PTA I was told I would be able to register under the 1<sup>st</sup> time offenders act and only have to register for a year then it would be expunged from my record I didn't know I had to do 10 years of registration until after I did my 4 months of jail time. I didn't know that I could do anything about this until about 1 month '1/2 ago when I talked to a Marine about my situation so I would like to get my case overturned and discharge upgraded because I am not a sex offender.

Respectfully,

[redacted]



DEPARTMENT OF THE AIR FORCE  
36TH SERVICES SQUADRON (PACAF)  
UNIT 14004, APO AP 96543-4004

FD 2006-00140

18 February 2005

MEMORANDUM FOR AB: [REDACTED], 36 SVS

FROM: 36 SVS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct, specifically A Pattern of Misconduct, according to AFPD 36-32 and AFI 36-3208, paragraph 5.50. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

- a. On 21 August 2004, you reported to duty 45 minutes late. For your actions, you received a Letter of Reprimand dated 24 August 2004. (Atch 1)
- b. On 6 September 2004, you failed to report to duty. For your actions, you received a Letter of Reprimand dated 7 September 2004. (Atch 2)

c. On 29 Nov 2004, you were convicted in a special court-martial of the following offenses:

(1) On or about 4 November 2004, without authority, you failed to go at the time prescribed to your appointed place of duty, to wit: Building 21000.

(2) On or about 16 November 2004, without authority, you failed to go at the time prescribed to your appointed place of duty, to wit: Building 17002.

(3) On divers occasions between on or about 5 July 2004 and on or about 7 July 2004, you were derelict in the performance of your duties in that you willfully failed to refrain from allowing a person under the age of 18 in your dormitory room, as it was your duty to do.

(4) On or about 7 July 2004, you were derelict in the performance of your duties in that you willfully failed to refrain from wrongfully allowing a guest to sleep in your dormitory room, as it was your duty to do.

(5) On divers occasions between on or about 5 July 2004 and on or about 7 July 2004, you committed the offense of carnal knowledge.

For these offenses you were court-martialed on 29 November 2004. The military judge found you guilty of all violations alleged and sentenced you to a Bad Conduct Discharge, four months confinement, and reduction to the grade of E-1. On 18 January 2005, the Special Court Martial Convening Authority (SPCMCA) approved your sentence in part, authorizing confinement for four months and reduction to Airman Basic. (Atchs 3 and 4)

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable conditions discharge. The commander exercising special court-martial jurisdiction or a higher 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 a board hearing;
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing; and
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You must report to the 36th Medical Operations Squadron, Physical Exams Section, with your medical records on hand, for a review of these records immediately. You do not need an appointment. They will decide whether you need a complete physical examination or a family practice appointment. If an examination is required, tell the doctor you need a "separation" physical examination.

6. Military legal counsel, Captain: [REDACTED]; Andersen Area Defense Counsel, DSN 366-2281, has been obtained to assist you. An appointment has been scheduled for you to consult with him at his office on **18 Feb 05 at 1430 hours**. Instead of the appointed counsel, you may have another lawyer, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201, Administration of Military Justice. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available

7. Confer with your counsel and reply, in writing, within 7 workdays, by **25 Feb 05**, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel, who will also sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

8. 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 with your Commander's Support Staff (CSS). Please return it to the CSS upon your completion.



9. If you request a board 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. If you received advanced educational assistance, special pay or bonuses, and have not completed the period of active duty you agreed to serve, you may be subject to recoupment. Where recoupment is dependent on a finding that the separation is voluntary or because of misconduct, the discharge board (or the separation authority if the board is waived) will make a specific written finding whether the misconduct constitutes a basis for recoupment.

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



Commander

**4 Attachments:**

1. Letter of Reprimand, dated 24 August 2004
2. Letter of Reprimand, dated 7 September 2004
3. AF Form 1359, dated 29 November 2004
4. SPCMCA action, dated 18 January 2005