

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	<b>GRADE</b>  <b>AMN</b>	<b>AFSN/SSAN</b> <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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<b>TYPE GEN</b>	<b>PERSONAL APPEARANCE</b>	<b>X</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>				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

<b>ISSUES</b> <b>A94.05</b>	<b>INDEX NUMBER</b> <b>A67.90</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	

<b>HEARING DATE</b> <b>20 Feb 2007</b>	<b>CASE NUMBER</b> <b>FD-2006-00284</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>		<b>DATE: 2/22/2007</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-2006-00284**

**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:**

Issue 1. Although not explicitly stated, applicant contends his discharge was inequitable because it was too harsh. He contends his military career was fine until he was separated from his wife and comments made by his 1<sup>st</sup> Shirt made him act out and ruined his career with the investigation of homosexuality. The Board considered the applicant's contentions and noted that he provided a written statement to his commander requesting to be discharged because he was bisexual. The records also indicated the applicant received an Article 15, a Vacation, a Letter of Counseling and two Records of Individual Counseling for misconduct. He received an Article 15 for misuse of his Government Travel Card (GTC), failing to provide financial support to his spouse while he was receiving Basic Assistant (*sic*) for Housing and failure to pay his GTC. He was punished with a reduction in grade to Airman, suspended forfeiture of pay, and restriction to Dover AFB for 60 days. The Vacation action was for failure to pay his GTC. He forfeited \$645.00 pay for two months. 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.

Issue 2. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366, on July 16, 2001) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

**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 A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Dover AFB, DE on 18 Apr 03 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 15 Jul 80. Enlmt Age: 20 11/12. Disch Age: 22 9/12. Educ: HS DIPL. AFQT: N/A. A-51, E-36, G-46, M-45. PAFSC: 2T231 - Air Transportation Apprentice. DAS: 3 Nov 01.

b. Prior Sv: (1) AFRes 28 Jun 01 - 2 Jul 01 (5 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 2 Jul 01 for 6 yrs. Svd: 01 Yrs 09 Mo 16 Das, all AMS.

b. Grade Status: Amn - 10 Feb 03 (Article 15, 10 Feb 03)  
A1C - 17 Oct 01

c. Time Lost: None.

d. Art 15's: (1) 24 Mar 03, Vacation, Dover AFB, DE - Article 134. You, being indebted to Bank of America in the sum of \$1489.60 for government travel card expenses, which amount became due and payable on 3 Nov 02, did, from 3 Nov 02 to 3 Mar 02, dishonorably fail to pay said debt. Forfeiture of \$645.00 pay per month for two months. (No appeal) (No mitigation)

(2) 10 Feb 03, Dover AFB, DE - Article 92. You, who knew of your duties at or near Doha, Kuwait, on divers occasions between on or about 23 Sep 02 and on or about 13 Oct 02, were derelict in the performance of those duties in that you willfully failed to refrain from using your Government Travel Card for other than official government travel, as it was your duty to do. You, who knew of your duties somewhere in the world, between on or about 5 Sep 02 and on or about 22 Jan 03, were derelict in the performance of those duties in that you willfully failed to provide financial support to your spouse while you received Basic Assistance for Housing (BAH) and were assigned a dormitory room in Building 445, room 213, Dover AFB, Delaware, simultaneously, as it was your duty to do. You, who knew of your duties at or near Dover AFB, Delaware,

between on or about 14 Dec 02 and on or about 22 Jan 03, were derelict in the performance of those duties in that you willfully failed to refrain from signing for meals as though you were on meal card status at the In-Flight Kitchen at Dover AFB, Delaware, while you were receiving Basic Allowance for Sustenance, as it was your duty to do. Article 134. You, being indebted to Bank of America in the sum of \$1,489.60 for government travel card expenses, which amount became due and payable on 3 Nov 02, did at or near Dover AFB, Delaware, from 3 Nov 02 to 27 Jan 03, dishonorably fail to pay said debt. Reduction Airman. Suspended forfeiture of \$645.00 pay per month, for two months. Restriction to the industrial side of Dover AFB, Delaware for 60 days. (No appeal) (No mitigation)

e. Additional: LOC, 12 APR 02 - Late for work.  
 RIC, 01 MAR 02 - Late for duty.  
 RIC, 14 FEB 02 - Late for duty.

f. CM: None.

g. Record of SV: 3 Jul 01 - 15 Jan 03 Dover AFB 3 (HAF Dir)

h. Awards & Decs: NDSM, AFOUA.

i. Stmt of Sv: TMS: (01) Yrs (09) Mos (21) Das  
 TAMS: (01) Yrs (09) Mos (16) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 27 Jul 06.  
 (Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

28AUG06/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 Services 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)	ARMY	MARINE CORPS	NAVY	<input checked="" type="checkbox"/> AIR FORCE	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)	4. DISCHARGE CHARACTERIZATION RECEIVED (X one)		5. BOARD ACTION REQUESTED (X one)	
	HONORABLE		<input checked="" type="checkbox"/> CHANGE TO HONORABLE	
	<input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS		CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS	
	UNDER OTHER THAN HONORABLE CONDITIONS		CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)	
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION	BAD CONDUCT (Special court-martial only)		CHANGE NARRATIVE REASON FOR SEPARATION TO:	
436 APS - DASSB	UNCHARACTERIZED			
	OTHER (Explain)			

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.)  
 My military career was fine with no problems till separation from spouse. Comments from 1st Lt made me act out and ruin my career and with the investigation of homosexuality. I was a very hard worker and dedicated to the military and wish to use the MGI Bill.

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)

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 (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.)		CASE NUMBER (Do not write in this space.)
a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)	b. DATE SIGNED - REQUIRED (YYYYMMDD)	FD 2006-00284
	20060727	



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 436TH AIRLIFT WING (AMC)

FD 7006 00284

7 APR 2003

MEMORANDUM FOR AMN:.....; 436 APS

FROM: 436 APS/CC

SUBJECT: Notification Memorandum – Board Hearing

1. I am recommending your discharge from the United States Air Force for Homosexual Conduct and Misconduct, specifically, Conduct Prejudicial to Good Order and Discipline according to AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, under the provisions of paragraph 5.36 and 5.50.2. 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 or about 10 Mar 03 you provided a written statement informing me that you were bisexual. In accordance with AFI 36-3208, para 5.36.2.2, a statement by a service member that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. In response to this statement, an Administrative Discharge action has been initiated.

(b) Between on or about 3 Nov 02 and 3 Mar 03, you failed to pay your government travel card debt in the amount of \$1489.60. For this misconduct the suspended forfeiture of \$645 pay per month for two months as a result of a previous Article 15 was vacated.

(c) Between on or about 23 Sep 02 and 13 Oct 02, you were derelict in the performance of your duties in that you willfully used your government travel card for purchases other than official government travel. In addition, between on or about 5 Sep 02 and 22 Jan 03, you failed to provide financial support to your spouse while you received BAH. You were also derelict in the performance of your duties in that you signed for meal card meals while you were receiving BAS between on or about 14 Dec 02 and 22 Jan 03. You also failed to pay your government travel card in the amount of \$1489.60 between on or about 3 Nov 02 and 27 Jan 03.

(d) On 12 Apr 02 you were 15 minutes late for work. For this misconduct you received a Letter of Counseling, dated 12 Apr 02.

(e) On or about 28 Feb 02 you were 30 minutes late for work. For this misconduct you received a Letter of Counseling, dated 1 Mar 02.

(f) On or about 14 Feb 02 you were 45 minutes late for work. For this misconduct you received a Letter of Counseling, dated 14 Feb 02.

3. This action could result in your separation with an Honorable or General discharge. I am recommending that you receive a General discharge. The commander exercising Special Court-Martial (SPCM) 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 subjected to recoupment.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board. You are entitled to present evidence to rebut the presumption that you engage in, attempted to engage in, have the propensity to engage in, or intend to engage in homosexual acts.
- 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.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You have been scheduled for a medical examination on **Tuesday, 8 Apr 03 at 1315 hours** in Family Practice, 2<sup>nd</sup> Floor, Building 302. Your appointment will be with Dr. \_\_\_\_\_. If you have any questions or need to reschedule this appointment, please call ext. 6130.

6. You have been scheduled for a **Separations Briefing**. Please report to **Building 520, Room 112, ext 2155 on Tuesday, 8 Apr 03 at 0900 hours**.

7. Military legal counsel Capt. \_\_\_\_\_; the Dover Air Force Base Area Defense Counsel, located in building 263, room 313, ext. 6995, is available to assist you. **Please contact him immediately upon notification of this action.** Instead of the appointed counsel, you may have another, 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.

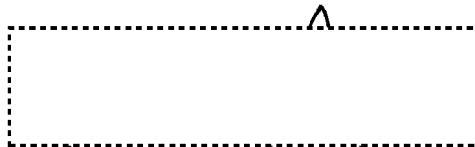
8. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written 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. The Privacy Act Statement of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use in the orderly room.

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

homosexual conduct constitutes a basis for recoupment. A separation for homosexual conduct is voluntary if the member made the homosexual statement; committed, attempted or solicited the homosexual act; or entered or attempted to enter the homosexual marriage for the purpose of seeking separation. Circumstantial evidence may be considered in determining the member's intent.

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



Commander

**Attachments:**

1. Member's Statement
2. AF Form 366, Vacation of Suspended Non Judicial Punishment, dated 17 Mar 03
3. AF Form 3070, Article 15, dated 30 Jan 03
4. Letter of Counseling, dated 12 Apr 02
5. Letter of Counseling, dated 1 Mar 02
6. Letter of Counseling, dated 14 Feb 02
7. Airman's Receipt of Notification Memorandum
8. Withdrawal of ID Card