

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 A1C	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE UOTH	PERSONAL APPEARANCE	X	RECORD REVIEW
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No		
	X		

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHIC	OTHER	DENY
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X
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ISSUES A93.07	INDEX NUMBER A94.07	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

HEARING DATE 01 Mar 2007	CASE NUMBER FD-2006-00367	
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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.

INDORSEMENT	DATE: 3/5/2007
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-2006-00367

GENERAL: The applicant appeals for upgrade of discharge to General or 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:

The applicant requests discharge upgraded because he was entitled to an honorable from the beginning. He states he was involved in a case with his stepson who was convinced by his mother to falsely accuse him of sexual mistreatment. He states that it was later discovered that he (stepson) made those statements to be removed from his mother's custody. He supported the accusation to help his stepson be released from his mother's custody. The stepson was released from custody of his mother and joined the Army. Applicant states that Army asked about the case and stepson admitted he made a false statement and that applicant had in fact never done anything he was accused of. Applicant states he gave up a promising career and regrets helping stepson. The records indicate that the applicant was charged for violation of Article 125, Sodomy and Article 134, for wrongful endeavor to impede an investigation and commitment of an indecent act. He requested to be discharged from the Air Force in lieu of court-martial. His request was approved and discharged with Under Other than Honorable Conditions. The Board reviewed the records and found no evidence to substantiate the applicant's issue and 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 A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF Pentagon, VA on 1 Jan 94 UP AFR 39-10, Chapter 4 (In Lieu of Court-Martial). Appeals for General or Honorable Disch.

2. **BACKGROUND:**

a. DOB: 9 Sep 73. Enlmt Age: 18 0/12. Disch Age: 20 3/12. Educ: HS DIPL. AFQT: N/A. A-80, E-70, G-64, M-80. PAFSC: 3S031 - Personnel Apprentice. DAS: 10 Sep 92.

b. Prior Sv: (1) AFRes 1 Oct 91 - 29 Dec 91 (2 months 29 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 30 Dec 91 for 6 years. Svd: 02 Yrs 00 Mo 02 Das, all AMS.

b. Grade Status: A1C - 13 Feb 92

c. Time Lost: None.

d. Art 15's: (1) None.

e. Additional: None.

f. CM: None.

g. Record of SV: 30 Dec 91 - 29 Aug 93 Pentagon ADM 3 (Initial)

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (02) Yrs (03) Mos (01) Das
TAMS: (02) Yrs (00) Mos (02) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 7 Sep 06.
(Change Discharge to General or Honorable)

Issue 1: Request was suppose to be sent buy (sic) Judge Advocates Office 6 months after discharge and never was. Civilian involved in case was found to have falsely accused (sic) and then later joined Army and admitted to falsifing (sic) to be removed from parental custody. No records have been made available to former military member. If status is change member wishes to rejoin service. I was involved in a case with my former stepson who had been convinced by his

mother to falsly (sic) out me to the military by accussing (sic) me of sexual mistreatment. It was later discovered by the Judge Advocates Office that he had made this accussation (sic) in order to be removed from his mother (sic) custody. I supported his accussation (sic) for the time being to help him be release from his mothers custody. After his release from her custody he joined the Army were (sic) he was asked about the case and he admitted that it was a false statement and that I had infact (sic) never done anything he had accused. I gave up a promissing career in the military and have regretted by (sic) decision to help him. I am requesting the discharge that I had received to be upgraded as I was entitled to a (sic) Honorable discharge from the beginning.

ATCH

None.

19OCT06/day



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE DISTRICT OF WASHINGTON
BOLLING AIR FORCE BASE DC 20332

02 DEC 1993

REPLY TO JA
ATTN OF:

SUBJECT: Legal Review of AIC [redacted], Request for Chapter 4, AFR 39-10 Discharge in Lieu of Court-Martial

TO: 1100 NCR/ce *Rom See attached recommendations.*
1100 ABG/ce
AFDW/CC
K 12/16
In Turn

1. I have reviewed the attached request for a discharge in lieu of court-martial, and find that it is legally sufficient.

2. FACTS:

a. On 2 Nov 93, the 1100 NCR SPTG/CCQ, Capt [redacted], preferred court-martial charges on AIC [redacted] for sodomy and indecent acts with his seventeen year old step son, and obstruction of justice into the investigation of these acts.

b. The OSI investigation (attachment 3 to Discharge Package) revealed that AIC [redacted] started having sodomy with seventeen year old [redacted] in late December of 1992. AIC [redacted] told [redacted] that he had a uterus, and the only way to get rid of it was to have sex. AIC [redacted] told [redacted] that "by having anal sex, the pressure would make the eggs inside fall and he would be relieved." In addition, AIC [redacted] told [redacted] that two men having sex was natural. In June of 1993, AIC [redacted] married [redacted] mother for economic reasons, including obtaining dependent support and medical benefits for the [redacted] family. Although the marriage was never consummated, AIC [redacted] continued to sodomize [redacted] until September of 1993. AIC [redacted] would sodomize [redacted] while his other younger stepson was asleep in the upper bunk bed of the same room. AIC [redacted] wife, [redacted] slept in another room. On or about 9 September of 1993, Mrs [redacted], found a letter from Bobby to her husband telling AIC [redacted] about [redacted] feelings, that he was lying, and that AIC [redacted] should find someone else. AIC [redacted] was confronted by his wife and admitted the allegations. His wife then contacted the OSI. When AIC [redacted] determined that the OSI was investigating him for these acts, he contacted his stepson, [redacted], and told him "Your best bet would be to deny everything." Subsequently, AIC [redacted] signed a sworn statement admitting that he and his step-son, [redacted], had anal sex on one occasion.

c. On 15 Nov 93, A1C [] submitted a request for discharge in lieu of trial by court-martial (Attachment 2 to Discharge Package.) A1C [] requests an honorable discharge. Two weeks latter, the 1100 NCR SPTG/CCQ delivered to our office a three page form letter recommending acceptance of the request for a discharge. Our office prepared the attached letters as a courtesy to the 1100 NCR/DP in order to speed the processing of this discharge package.

d. A1C [] has one EPR on file (Attachment 5, Discharge Package) which rated him as an overall 3.

e. A1C [] Commander recommends a general discharge (Attachment 1, Discharge Package).

3. LAW: The maximum punishment for the sodomy, indecent acts, and obstruction of justice by a general court-martial would include a dishonorable discharge, 15 years confinement, reduction to E-1, and total forfeiture of pay. "Airman are not eligible for probation and rehabilitation if the reason for the discharge is in lieu of trial by court-martial" IAW AFR 39-10, Para 7-2(f). "Customarily the service of airman discharged under this provision will be characterized as under other than honorable conditions" IAW AFR 39-10, para 4-2. The 1100 ABG/CC may disapprove the members request for a discharge, or forward the package to the AFDW/CC with a recommendation to characterize the discharge as an honorable, general, or under other than honorable conditions discharge. Similarly, the AFDW/CC may disapprove the members request for a discharge, or grant a discharge, and determine the characterization of the discharge.

4. DISCUSSION: Due to the serious nature of the charges, I recommend a discharge under other than honorable conditions (UOTHC). A1C [] abused this facade of marriage, position of trust, and role as a father to sodomize his seventeen year old step-son. In addition, A1C [] lied about the extent of his actions in his sworn statement, attempted to obstruct justice, and used the pretense of a medical illness to require his son to participate in indecent acts. Such behavior is contrary to the notion of a family, and a disgrace to the armed services. The 1100 NCR SPTG/CCQ recommends a general discharge in contrast to the customary rule that discharges under this section are ordinarily under other than honorable conditions. Although a court-martial could be convened on these charges, the interest of the Air Force are better served by expediently discharging this member from the Air Force under other than honorable conditions. A1C [] request for a discharge and letter from his Area Defense Counsel is located as Attachment 2 to his Commander's

recommendation of a discharge. You must read Attachment 2 and the entire package. A1C [REDACTED] Defense Counsel requests that he receive a general discharge.

5. RECOMMENDATION: I recommend the 1100 ABG/CC sign the attached letter (TAB 1) forwarding the members request for discharge to the AFDW/CC with a recommendation of an under other than honorable conditions discharge. I recommend the AFDW/CC sign the attached letter (TAB 2) granting the members request for a discharge and characterizing that discharge as under other than honorable conditions.

[REDACTED]
Staff Judge Advocate

Atch:

1. ltr 1100 ABG/CC
2. ltr AFDW/CC
3. Discharge Package w/atch