

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

SRA

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

UOTHC

OTHER

DENY

X

X

X

X

X

ISSUES

A94.06

INDEX NUMBER

A67.30

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

08 Mar 2007

CASE NUMBER

FD-2006-00389

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: 3/8/2007

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

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: The discharge is upgraded to general.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an inequity that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's characterization for discharge improper.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received a Civilian Conviction for arson. After a thorough and complete consideration of the information submitted by applicant and contained in the records, the Board concluded there was insufficient mitigation to substantiate upgrade of the discharge and that the applicant's submitted issue was without merit. His discharge was proper for the reasons stated at the time. However, the Board found the characterization was too harsh under the circumstances of the case. The DRB opined that the misconduct of the applicant did not directly affect the performance of his military duties as stated in Air Force Instruction 36-3209, Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members, Attachment 2, paragraph A2.2.3. The instruction states that "conduct in the civilian community of a member who is not on active duty or active duty training may be used to characterize service as Under Other Than Honorable Conditions only if the conduct directly affects the performance of military duties." There was no evidence in the case file showing any impact upon the performance of his duties. The DRB concluded that the separation authority's characterization of the applicant's service, in this case, was improper.

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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by a General discharge.

Attachment:

Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

(Former SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAFR Tinker AFB, OK on 2 Jun 06 UP AFI 36-3209, para 3.21.3.4 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 18 Aug 79. Enlmt Age: 20 6/12. Disch Age: 26 9/12. Educ: HS DIPL. AFQT: N/A. A-61, E-75, G-78, M-73. PAFSC: 4N051 - Medical Service Journeyman. DAS: 29 Feb 00.

b. Prior Sv: None.

3. **SERVICE UNDER REVIEW:**

a. Enlisted AFRes as Amn 29 Feb 00 for 6 yrs. Svd: 06 Yrs 03 Mo 04 Das, of which AMS is 00 Yrs 10 Months 22 Days.

b. Grade Status: SrA - 01 Sep 02
A1C - 22 Sep 00

c. Time Lost: None.

d. Art 15's: None.

e. Additional: 19 JUL 05 - Civilian conviction for arson.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (06) Yrs (03) Mos (04) Das
TAMS: (00) Yrs (10) Mos (22) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Sep 06.
(Change Discharge to Honorable)

Issue 1: The felony charge against me has been expunged and I would like to change the discharge to general or better, honorable would be a preference.

ATCH

1. Court Order.

12OCT06/ia



DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND

FT 2006-00389

6 Oct 2005

MEMORANDUM FOR 507 MSS/DPMSAR
507 ARW/CC
IN TURN

FROM: 507 ARW/JA
7435 Reserve Rd, Ste 6
Tinker AFB OK 73145-8726

SUBJECT: Legal Review – Administrative Discharge, SrA: [REDACTED],
507 MDS

1. I have reviewed the discharge case file on SrA: [REDACTED] and find it legally sufficient to support his involuntary discharge under AFI 36-3209, paragraph 3.21.4, Civilian Conviction.

RELEVANT BACKGROUND

2. On 19 July 2005, SrA: [REDACTED] pled no lo contendere in the Cherokee County, Oklahoma District Court, case number CF-2004-23, to the felony offense of third degree arson in violation of Title 21, Oklahoma Statutes, Section 1403 (21 O.S. §1403). The offense occurred on or about 1 January 2004. The information filed by the assistant district attorney charged that SrA: [REDACTED] willfully and maliciously set fire to a business building located at 1598 S. Muskogee, Tahlequah, OK, which was not occupied or inhabited at the time of the fire. After he pled no lo contendere, the court placed him on supervised probation for a term of five (5) years, ordered him to pay a fine of \$250 plus court costs, and ordered him to make restitution in the amount of \$10,000. The court further ordered that upon his successful completion of the probation, his no lo contendere plea would be expunged from his record and the charge would be dismissed with prejudice to any further action.

ANALYSIS AND DISCUSSION

3. Under AFI 36-3209, paragraph 3.21.4, members are subject to discharge based on a conviction by civil authorities, or action which is tantamount to a finding of guilty, when the specific circumstances of the offense warrant discharge and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ, or the sentence by civilian authorities includes confinement for six months or more, without regard to suspension or probation. As stated in paragraph 3.21.4.1 of AFI 36-3209, action

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