

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 GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL				
<table border="1" style="width:100%; border-collapse: collapse;"> <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;">X</td> <td style="padding: 2px;"></td> </tr> </table>	YES	No	X		Mr. <div style="border: 1px dashed black; display: inline-block; width: 100px; height: 15px;"></div>	<div style="border: 1px dashed black; height: 30px; width: 100%;"></div>
YES	No					
X						

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTIC	OTHER	DENY
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X*
					X*
					X*
					X*
					X*

ISSUES A95.00 A01.00	INDEX NUMBER A65.00	EXHIBITS SUBMITTED TO THE BOARD														
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:5%; padding: 2px;">1</td><td style="padding: 2px;">ORDER APPOINTING THE BOARD</td></tr> <tr><td style="padding: 2px;">2</td><td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="padding: 2px;">3</td><td style="padding: 2px;">LETTER OF NOTIFICATION</td></tr> <tr><td style="padding: 2px;">4</td><td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td style="padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE HE</td></tr> </table>	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 20 Mar 2007	CASE NUMBER FD-2006-00393	
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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.

* Reason and Authority

INDORSEMENT	DATE: 3/26/2007
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-2006-00393

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

The applicant was discharged with an under honorable conditions (general) discharge for a homosexual act in April 2001. The applicant contends this is incorrect and was incorrect at the time and would like the records corrected to reflect this error. The records indicated the applicant performed a homosexual act on another airman by performing oral sodomy on her openly and in public view of witnesses. The records also indicated the applicant received three Letters of Reprimand and two Records of Individual Counseling for misconduct. She was administratively disciplined for consuming alcohol under the legal age, body piercing, missing an appointment, failure to go, and being disrespectful to an NCO. The Board concluded the applicant's 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 GEN Disch fr USAF Andrews AFB, MD on 2 Apr 01 UP AFI 36-3208, para 5.36.2.1 (Homosexual Act). Appeals for Honorable Discharge, and to Change the Reason for Discharge.

2. **BACKGROUND:**

a. DOB: 19 Jun 81. Enlmt Age: 18 6/12. Disch Age: 19 9/12. Educ: HS DIPL. AFQT: N/A. A-65, E-45, G-37, M-46. PAFSC: 2A632 - Aerospace Ground Equipment Apprentice. DAS: Unknown.

b. Prior Sv: (1) AFRes 22 Dec 99 - 11 Jan 00 (20 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 12 Jan 00 for 6 yrs. Svd: 01 Yrs 02 Mo 21 Das, all AMS.

b. Grade Status: A1C - 14 Jul 00

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 02 MAR 01 - Disrespect to an NCO and failure to obey a lawful order.

RIC, 04 DEC 00 - Failure to go.

RIC, 26 OCT 00 - Missed appointment.

LOR/UIF, 16 AUG 00 - Body piercing.

LOR/UIF, 28 APR 00 - Consuming alcoholic beverages under age.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (03) Mos (11) Das

TAMS: (01) Yrs (02) Mos (21) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 27 Sep 06.
(Change Discharge to Honorable, and Change the Reason for Discharge)

Issue 1: I received a general under honorable discharge based on homosexuality. This is incorrect and was incorrect at that time. I refused the

sexual advances of a senior and was subsequently given the choice of getting the discharge I was given or having sex with a senior officer. I again refused and accepted the character of discharge. I am now engaged to be married soon, and am pregnant and I wish to have this injustice corrected. Thank you.

ATCH

None.

30OCT06/ia



DEPARTMENT OF THE AIR FORCE
52D FIGHTER WING (USAFE)

FD7006-00393

30 JAN 01

MEMORANDUM FOR A1C: [REDACTED]
52D EQUIPMENT MAINTENANCE SQUADRON

FROM: 52 EMS/CC

SUBJECT: Notification Letter – Board Hearing

1. I am recommending your discharge from the United States Air Force for homosexual conduct according to AFPD 36-32 and AFI 36-3208, under the provisions of paragraph 5.36.2.1. 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 13 Oct 00, you performed a homosexual act on SrA: [REDACTED] by performing oral sodomy on her openly and in public view of witnesses. (Atchs 1 – 10)

b. Immediately after performing this act, you stated to the witnesses who were present, "Does my breath smell like pussy, do you like it?" (Atchs 1 – 10)

3. Because of the homosexual act and statement made referred to in paragraph 2(a) and (b) above, you are presumed to engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. Additionally, you performed this act openly and in public view of witnesses. This homosexual act has had an adverse impact on discipline, good order, and morale in this squadron. Moreover, this act, as the witness statements reveal, was performed on a member who was incapacitated due to voluntary intoxication. After reviewing the witnesses' statements and the circumstances surrounding your actions, I have determined that you engaged in homosexual conduct. Therefore, I am recommending your discharge from the Air Force.

4. This action could result in your separation with an under other than honorable conditions (UOTHC) service characterization because under AFI 36-3208, paragraph 5.37.3, the homosexual act was performed openly in public view. Notwithstanding that your discharge *could* be characterized as a UOTHC, I am recommending that you receive a general (under honorable) service characterization. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for re-enlistment 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 recumbent.

5. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.

Government Exhibit 2

Page Offered 2 Ref/Accepted 2

- c. Be represented by legal counsel at a board hearing.
 - d. Submit statements on 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.
6. You have been scheduled for a medical examination. You must report to the 52d Medical Group, **PHYSICAL EXAMS ELEMENT** on **31 JAN 01** at **1445** hours. An appointment has also been made at **FAMILY PRACTICE** on **2 FEB 01** at **1015** hours.
7. Military legal counsel Capt: [REDACTED], Spangdahlem AB, Germany, DSN 452-6607, has been obtained to assist you. An appointment has been scheduled for you to consult her on **TBD** at **TBD** hours. 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. 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 seven duty days**, 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 on 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.
9. 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 in the Commander's Support Staff office.
10. 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.
11. The discharge board or, the discharge authority will make the finding and recommendations required under 10 U.S.C 2005(g).
12. Execute the acknowledgment at Tab 2 and return it to me immediately.

[REDACTED]

Commander

11 Attachments:

- 1 - 10. Statement letters from witnesses, 16 Nov 00.
11. Airman's receipt of Notification Letter, located at Tab 2.



DEPARTMENT OF THE AIR FORCE
52D FIGHTER WING (USAFE)

27 FEB 01

MEMORANDUM FOR A1C: _____

FROM: 52 EMS/CC

SUBJECT: Addendum to the Notification Letter dated 30 Jan 01

1. The following derogatory data which was originally missing from the Notification of discharge dated 30 Jan 01 will be added to Paragraph 2 in the Notification Letter:
 - a. On or about 23 Apr 00, at or near Sheppard Air Force Base, Texas, while in Tech School, you consumed alcoholic beverages while under the legal age of 21. For this infraction, you received a Letter of Reprimand (LOR) on 28 Apr 00. (Atch 1) An Unfavorable Information File (UIF) was established on 8 May 00 and this LOR was filed in it. (Atch 2)
 - b. On 15 Aug 00, in Tech School at Sheppard Air Force Base, Texas, you, without authorization, departed your appointed place of duty to do errands. Also, on or about 16 Aug 00, while in Tech School, you violated Air Force policy when you wore a nipple ring while in uniform. For these infractions, you received another LOR on 16 Aug 00. (Atch 3) This LOR was filed in your existing UIF on 16 Aug 00. (Atch 4)
 - c. On 13 Oct 00, you failed to report to your scheduled Family Practice appointment at the prescribed time. For this infraction, you received a Record of Individual Counseling (RIC) on 26 Oct 00. (Atch 5)
 - d. On or about 13 Nov 00, you again failed to report to your scheduled Family Practice appointment at the prescribed time. For this infraction, you received another RIC on 30 Sep 00. (Atch 6)
2. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within three duty days, unless you request and receive an extension in writing for good cause shown. I will send them to the separation authority.
3. Execute the acknowledgement located at Tab 2 and return it to me immediately

Government Exhibit _____

Page Offered _____ Rej/Accepted _____

4. The original Notification Letter dated 30 Jan 01 is also included in the package.



Commander

6 Attachments:

1. LOR, 28 Apr 00.
2. AF Form 1058, 8 May 00.
3. LOR, 16 Aug 00.
4. AF Form 1058, 16 Aug 00.
5. RIC, 26 Oct 00.
6. RIC, 4 Dec 00.