

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 CAPT	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>			
TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW			
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	No					
	X					
MEMBER SITTING <div style="border: 1px dashed black; height: 100px; width: 100%;"></div>		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
						X
						X
						X
						X
ISSUES A94.05	INDEX NUMBER A67.50 A92.25	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 27 Apr 2007	CASE NUMBER FD-2006-00454					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE						
<p>Case heard in Washington, D.C.</p> <p>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</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p>						
ENDORSEMENT				DATE: 4/30/2007		
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-2006-00454

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. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received two convictions from a general court-martial: 1) for wrongfully and dishonorably engaging in unprofessional conduct by asking a female Airman to expose her breasts to him, and by commenting on her bra size, the size of her nipples, and her state of sexual arousal; and 2) by, on different occasions, knowingly fraternizing with the same female Airman by developing an unprofessional relationship of inappropriate familiarity with her while she was a subordinate under his command. The convening authority approved a sentence placing the applicant in confinement for two months confinement and giving him a reprimand. The DRB opined that the applicant's lengthy career in both the US Marine Corps (as an NCO) and in the US Air Force (as an officer), when combined with the repeated, serious, and escalating nature of his offenses against this Airman, gave the applicant sufficient time and warnings to cease his criminal behavior. 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.

Issue 2. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

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 CAPT) (HGH CAPT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Fairchild AFB, WA on 24 Apr 06 UP AFI 36-3206, para 3.6.4 (Misconduct - Serious or recurring misconduct punishable by military or civilian authorities). Appeals for Honorable Discharge and Reason for Discharge.

2. **BACKGROUND:**

a. DOB: 15 Feb 72. Enlmt Age: 17 7/12. Disch Age: 34 2/12. Educ: BACHELOR DEGREE. AFQT: N/A. A-N/A, E-N/A, G-N/A, M-N/A. PAFSC: 13M3 - Airfield Operations Officer. DAS: 15 Mar 02.

b. Prior Sv: (1) USMC Res 12 Oct 89 - 14 Aug 90 (10 mos 2 days) (Inactive).
(2) USMC 15 Aug 90 - 10 Aug 98, Svd: 7 Yrs 11 Mos 26 Das, all AMS.
(3) Enlisted USAF as SSgt 12 Aug 98 for 6 years. Svd: 3 Mos 1 Day, all AMS.

3. **SERVICE UNDER REVIEW:**

a. Commissioned as 2Lt AFRes 13 Nov 98. Svd: 07 Yrs 05 Mo 12 Das, of which AMS is 7 yrs 3 months 22 days (excludes 1 month 20 days lost time).

b. Grade Status: Capt - 13 Nov 02
1Lt - 13 Nov 00

c. Time Lost: 26 Aug 04 - 14 Oct 04 (50 days)

d. Art 15's: None.

e. Additional: None.

f. CM: General Court Martial - 18 Oct 04.

CHARGE I: Article 128. Plea: Not Guilty. Finding: Not Guilty.

CHARGE II: Article 133.

Specification: Did, at or near Fairchild AFB, WA, on divers occasions from on or about 1 Apr 03 to on or about 31 May 03, wrongfully and dishonorably engage in unprofessional conduct with A1C [REDACTED], to wit: by asking her to expose her breasts to him, or words to that effect, by commenting on her bra size, or words to that effect, by commenting on the size of her nipples, or words to that effect, by commenting on her state of arousal, or words to that effect, and touching

her breasts with his hands. Plea: Guilty. Finding: Guilty.

CHARGE III: Article 134.

Specification: Did, at or near Fairchild AFB, WA and at or near Al Udeid Air Base, Qatar, on divers occasions, from on or about 1 Apr 03 to on or about 29 Aug 03, knowingly fraternize with A1C [REDACTED] an enlisted person, on terms of military equality, to wit: by wrongfully developing an unprofessional relationship of inappropriate familiarity with A1C [REDACTED] a subordinate under his command, in violation of the custom of the United States Air Force that officers shall not fraternize with enlisted persons on terms of military equality. Plea: Guilty. Finding: Guilty. Sentence adjusted by military judge on 26 Aug 04: Dismissal and two months confinement. (18 AF/CC only approved the confinement.)

g. Record of SV: 06 Nov 99 - 05 Nov 00 Aviano AB MS (Annual)
 06 Nov 00 - 02 May 01 Aviano AB MS (CRO)
 03 May 01 - 15 Feb 02 Aviano AB MS (CRO)
 16 Feb 02 - 01 Feb 03 Fairchild AFB MS (CRO)
 02 Feb 03 - 09 Nov 03 Fairchild AFB NMS (CRO) REF
 10 Nov 03 - 02 Mar 05 Fairchild AFB NMS (Annual) REF

h. Awards & Decs: NAVY AM W/2 DEVS, AFAM, AFCM, AFEM W/1 DEV, MCGCM W/1 DEV, NDSM W/1 DEV, SEA SDR, AFSM W/1 DEV, SWASM W/1 DEV, AFTR, AFLSA W/2 DEVS, SMMEMR, AFOSLTR, NATOM W/1 DEV, NAVY UC, AFOUA W/1 DEV, NAVY MM, GWOTSM, AFESR.

i. Stmt of Sv: TMS: (16) Yrs (04) Mos (20) Das
 TAMS: (15) Yrs (06) Mos (20) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 24 Nov 06.
 (Change Discharge to Honorable and Reason for discharge.)

Issue 1: My case, which lead to my discharge, was not handed (sic) in compliance with AIR FORCE INSTRUCTION 36-2909 dated 1 MAY 1999, PROFESSIONAL AND UNPROFESSIONAL RELATIONSHIPS. Paragraph 8 specifically states "Referral of charges to a court-martial is not appropriate except in aggravated cases." But, the evidence clearly shows that is (sic) was not an aggravated case.

Issue 2: Additional issues attached to brief.

ATCH

1. Applicant's Issues.
2. DD Form 214.

30Jan07/day

Item 6, continuation

AIR FORCE INSTRUCTION 36-2909 dated 1 MAY 1999, PROFESSIONAL AND UNPROFESSIONAL RELATIONSHIPS, governs the unprofessional relationship for which I was ultimately discharged from the Air Force. Paragraph 8 states, "If a relationship is prohibited by this instruction or is causing (or if good professional judgment and common sense indicate that a relationship may reasonably result in) a degradation of morale, good order, discipline or unit cohesion, a commander or supervisor should take corrective action. Action should normally be the least severe necessary to terminate the unprofessional aspects of the relationship. The full spectrum of administrative actions is available and should be considered. Administrative actions include, but are not limited to, counseling, reprimand, creation of an unfavorable information file (UIF), removal from position, reassignment, demotion, delay of or removal from a promotion list, adverse or referral comments in performance reports and administrative separation. One or more complementary actions can be taken. Experience has shown that counseling is often an effective first step in curtailing unprofessional relationships. More serious cases may warrant administrative action or nonjudicial punishment. Referral of charges to a court-martial is not appropriate except in aggravated cases."

When my case began, I was removed from my Flight Commander position, received adverse/referral comments on my next 2 (two) Officer Performance Reports, and a UIF was created. This AFI mentions the "least severe" actions necessary to terminate the unprofessional behavior, but least severe was never an option. The AFI also mentions that "experience has shown that counseling is often an effective first step in curtailing unprofessional relationships." But, at no time was counseling advised for me. I did go on my own for my own sake and the sake of my marriage. But, nobody within my chain of command used this option to curtail this incident and attempt to salvage my 15 year career.

Again, from the AFI, "More serious cases may warrant administrative action or nonjudicial punishment. Referral of charges to a court-martial is not appropriate except in aggravated cases." Even though there were no aggravating circumstances to warrant a court-martial and even after the Article 32 hearing where no aggravating circumstances were present, my case still continued on to a court-martial. At my court-martial, the panel of jurors consisted of 3 members, plus 1 alternate. One of the 3 members was the incoming Deputy Wing Commander. The alternate was someone that had frequent interactions with the presiding judge. In retrospect, the Deputy Wing Commander and the alternate should have been dismissed from the jury - but that would have left on 2 members, so the trial could have been postponed even longer than the 1 and one-half years that is had been dragging along. My sentence included a Dismissal, but it was overturned by the 16 Air Force Commander.

At that point I was allowed to remain in the service but not given any duties to try to rebuild the trust and confidence necessary to be a leader. After another year of waiting, it was decided to Administrative discharge me. In my opinion the Admin Discharge procedures was just a formality because my transcript from my court-martial was the only evidence used to discharge me. How am I able to argue a case when they are using things I plead guilty to as grounds for discharge. Also, as part of the Admin Discharge proceedings, my legal team was severely limited to what evidence could be presented, my unsworn statement had limits imposed on it preventing

me from submitting relevant information to my case. All my legal team wanted to get across was a comparison of my case compared to that of MajGen [redacted]. But his name was even forbidden to spoken in the hearing. Needless to say, I was separated with a General - Under Honorable Conditions discharge.

I desperately request the board upgrade my discharge to Honorable. My 15 years of service were not considered during this 3 year ordeal to separate me from the Air Force. The incident(s) that lead to my court-martial, should not have resulted in a court-martial. AFI 36-2909 clearly states that there are numerous ways to counteract the unprofessional behavior and those actions would have made a great impact on the remainder of my Air Force career. My mistake cost me my career. But, I feel that legal wrangling has distorted my 15 years of service by discharging me with a General discharge.

I would also like to ask the board, based on the information contained in AFI 36-2909 and the synopsis of my 3 year ordeal, if you believe I have been unfairly treated or incorrectly prosecuted in the legal system, would you recommend that my case be re-evaluated and the guidelines set forth in AFI 36-2909 be properly administered. I want to be able to return to active duty and to continue to serve and protect my country. With you help, I may be able to do that.

Thank you for your time and consideration to my request.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS EIGHTEENTH AIR FORCE (AMC)

09 MAR 2005

MEMORANDUM FOR CAPT: [redacted] 92 OSS

FROM: 18 AF/CV

SUBJECT: Notification of Show Cause Action Initiated Under AFI 36-3206, Chapter 3,
Paragraph 3.6.4

1. I am initiating action against you under AFI 36-3206, Chapter 3, paragraph 3.6.4 (serious or recurring misconduct punishable by military or civilian authorities) that requires you to show cause for retention on active duty.

2. I am taking this action because:

a. From on or about 1 April 2003 to on or about 31 May 2003, at or near Fairchild AFB WA, on divers occasions, you wrongfully and dishonorably engaged in unprofessional conduct with Airman First Class: [redacted] to wit: by asking her to expose her breasts to you, or words to that effect, by commenting on her bra size, or words to that effect, by commenting on the size of her nipples, or words to that effect, by commenting on her state of arousal, or words to that effect, and touching her breasts with your hands, in violation of Uniform Code of Military Justice Article 133, Conduct Unbecoming an Officer and Gentleman.

b. From on or about 1 April 2003 to on or about 29 August 2003, you knowingly fraternized with Airman First Class: [redacted] an enlisted person, on terms of military equality, to wit: by wrongfully developing an unprofessional relationship of inappropriate familiarity with A1C: [redacted] a subordinate under your command, in violation of the custom of the United States Air Force that officers shall not fraternize with enlisted persons on terms of military equality, in violation of Uniform Code of Military Justice Article 134, Fraternization.

3. The least favorable character of discharge that the Secretary of the Air Force may approve in this case is under other than honorable conditions. Attached is a copy of documentary evidence supporting this action.

4. Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of the notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will indicate on it the date and time that you declined to acknowledge receiving it and it will be included as a part of your case file.

SCA

GOV'T EXHIBIT 3 FOR ID

5. Familiarize yourself with AFI 36-3206, particularly the rights that you have. If you do not request a resignation in lieu of further administrative action, a Board of Inquiry (BOI) will convene as provided in Chapter 7. Contact Maj: [redacted] at 325 Challenger Way, Ste. 1732, Los Angeles AFB, El Segundo, CA 90245-4677, telephone number 310-363-6776 to discuss the procedures involved and your rights and options. If you decline counsel, contact the chief, Military Personnel Flight, Maj: [redacted] 220 W. Bong St, Fairchild AFB, WA, 99011, telephone number 247-5401, for counseling about your rights and options.

6. If you elect to present matters to a BOI, the standard of proof used by the board to make findings is a preponderance of the evidence. You may present evidence and argument to rebut the reasons set forth in this notification memorandum or any additional reason or information developed during the BOI proceedings. You also may present other pertinent evidence.

7. Within 10 calendar days after you receive this notification memorandum, you must respond by indorsement to me. If I do not receive the indorsement within the allotted time, I will proceed with further action under AFI 36-3206. Include in your indorsement:

a. Any statement you wish to submit on your own behalf and/or any additional evidence that you wish me to consider. If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time to my designee, 18 AF/JA. If you do not submit statements or evidence, your failure will constitute a waiver of your right to do so and I will refer your case to the BOI.

b. A statement that Maj: [redacted] counseled you and that you fully understand your rights and options in this action. If you declined counsel, so state and indicate that Maj: [redacted] chief, Military Personnel Flight, counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of educational assistance, special pay, or bonuses received if you have not completed the period of active duty you agreed to serve:

(1) Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.

(2) Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.

(3) Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.

(4) The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.

(5) If you dispute that you are indebted for educational assistance, the board of inquiry, or if you do not choose a board of inquiry, an authority appointed by AMC/CC, will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, 4.32 and 4.33, regarding special rules for recoupment.

d. A statement notifying me whether you intend to tender your resignation. If you have tendered your resignation, attach a copy of the resignation.

e. A statement that the area defense counsel or the chief, Military Personnel Flight, explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information. In response to this notification memorandum, you may, within 10 calendar days, tender your resignation under AFI 36-3207, chapter 2, section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive an under other than honorable conditions discharge unless the Secretary of the Air Force determines that you should receive a discharge under honorable conditions (general) or an honorable discharge. If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon as possible but no later than 10 calendar days after the date that the Military Personnel Flight receives separation instructions.

8. I have been informed by your commander that action under AFI 31-501 has been taken because you currently have, or have had in the past, access to Sensitive Compartmented Information (SCI), Single Integrated Operational Plan - Extremely Sensitive Information (SIOP-ESI) or other special access programs.

9. You may request excess leave if the Air Force does not require your further participation in processing your case.



Major General, USAF
Vice Commander

Attachments:

- 1. Recommendation Memo w/ indorsement
- 2. General Court-Martial Order No. 1, 18 Oct 04
- 3. AF Form 1359, 26 Aug 04
- 4. AF Form 1168, Cook Statement, 20 Sep 03
- 5. AF Form 475, 3 Dec 99
- 6. AFI 36-3206
- 7. AFI 36-3207