

# AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 1.2em;"></div>			GRADE  SRA		AFSN/SSAN <div style="background-color: black; width: 100%; height: 1.2em;"></div>																																			
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HEARING DATE <b>13 Apr 2010</b>		CASE NUMBER <b>FD-2008-00354</b>																																						
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.																																								
<p>Case heard via videoteleconference between Andrews AFB, Maryland and Robins AFB, Georgia on 13 April 2010.</p> <p>Advise applicant of the decision of the Board.</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p> <p>* CHANGE RE CODE</p> <p>+ CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY</p>																																								
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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, 3RD FLOOR ANDREWS AFB, MD 20762-7001																																						

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

**FD-2008-00354**

**GENERAL:** The applicant appeals for upgrade of discharge to honorable, to change the reason and authority for the discharge, and to change the reenlistment code.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference between Andrews AFB, Maryland and Robins AFB, Georgia on 13 April 2010.

The following additional exhibits were submitted at the hearing:

Exhibit #5: Applicant's Contentions

Exhibits #6-8: Character reference letters

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

**FINDING:** The board grants the requested relief.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's discharge characterization, RE code, and reason and authority for discharge inequitable.

**ISSUE:** Applicant contends his discharge was inequitable because it was based on an isolated incident during his otherwise good service. The applicant was discharged for commission of a serious offense based on an incident that occurred on 1 December 2005. The applicant was pulled over by a Florida state trooper and initially refused to pull over or exit his vehicle. The applicant finally left his vehicle and was apprehended by the police officer. During the time he was in the car, the applicant recognized the police officer from a previous occasion two months prior where he was stopped for speeding and the police officer was very rude and intimidating. Based on this previous negative experience, the applicant called 911 while in his car so that another police officer would come to the scene. The applicant ultimately pled no contest to charges of resisting arrest, battery upon a police officer (based on the applicant's window hitting the police officer's arm when he rolled up the window), and making a false 911 call. He was issued a letter of reprimand by his unit for this incident. There were also several other minor disciplinary issues during the applicant's enlistment that were not used as the basis for the discharge but were used for characterization. The Board felt that, on their face, the charges against the applicant certainly warranted a discharge for commission of a serious offense. However, when the Board viewed the DVD recording of the incident, it appeared much less serious than what was written on paper. The police officer had written a statement that the applicant had tried to hit and kick him. The recording of the event showed this not to be the case. Additionally, the Board felt the police officer used excessive force on the applicant. Though not excusing the applicant's conduct, the applicant appeared to be in genuine distress and seemed to genuinely fear the police officer. The applicant also provided evidence of other disciplinary issues involving the police officer which showed the police officer had previously engaged in unprofessional conduct on a number of occasions. All of this evidence, combined with the applicant's otherwise good service (as evidenced by his previous "firewall" 5 EPR) convinced the Board that the applicant's discharge was inequitable.

**CONCLUSION:** 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 the applicant was provided full administrative due process.

However, in view of the foregoing findings, the Board concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge and the reason for the discharge is more accurately described as Secretarial Authority and the reenlistment code changed to 3K under the provisions of Title 10, USC 1553.

Attachment:  
Examiner's Brief