

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 15px;"></div>			GRADE CAPT		AFSN/SSAN <div style="background-color: black; width: 100%; height: 15px;"></div>		
TYPE	X	PERSONAL APPEARANCE	RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION FRANK J. SPINNER	ADDRESS AND OR ORGANIZATION OF COUNSEL 10511 JUDICIAL DRIVE FAIRFAX VA 22030				
YES	No						
X							
MEMBER SITTING			VOTE OF THE BOARD				
<div style="background-color: black; width: 100%; height: 100px;"></div>			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 HEARING					
HEARING DATE 20 May 2010		CASE NUMBER FD-2008-00512					
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 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> <p>+Reason and Authority</p>							
<div style="background-color: black; width: 100%; height: 40px;"></div>			<div style="background-color: black; width: 100%; height: 40px;"></div>				
INDORSEMENT			DATE: 5/20/2010				
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 20762-7001				

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2008-00512

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

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB on 20 May 2010.

The following additional exhibits were submitted at the hearing:

Exhibit #5: Applicant's Contentions

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

FINDING: The discharge is upgraded to general.

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 character of discharge inequitable.

ISSUE: The applicant contends his discharge characterization was inequitable because it was too harsh and was inconsistent with the standards of discipline. He contends that his court-martial acquittal for a child sex offense was improperly held against him in determining his discharge characterization.

The applicant was court-martialed in 2005 for committing indecent acts with his minor stepdaughter and for assault consummated by a battery on one occasion against his wife. He was acquitted of the indecent acts charge at a general court-martial, but was found guilty of slapping his wife in the face several times on a single occasion. At the request of the applicant, the general court-martial convening authority set aside the applicant's conviction for this offense, as well as his dismissal, and substituted an Article 15 for the assault offense. The applicant agreed to accept the Article 15 and submit his resignation in lieu of administrative discharge action. The applicant also received a letter of reprimand for engaging in an unprofessional relationship, to include sexual intercourse, with a female staff sergeant in his unit. According to the applicant, the staff sergeant was due to separate from the Air Force within three weeks of the time he first asked her on a date. Additionally, the applicant and his wife had separated with no hope of reconciliation. After he began dating the staff sergeant, she was involuntarily extended on active duty for another six months. He was discharged with a UOTHC characterization in November 2005.

The Board found the applicant's testimony credible that the assault incident occurred on only one occasion and was at least partially in self-defense. Additionally, the Board found it mitigating that the applicant's relationship with the staff sergeant occurred when both thought her separation was imminent and at a time in the applicant's life when he was separated from his wife and facing serious court-martial charges. He married the staff sergeant following her separation and after the applicant's divorce was final and they are married to this day. The Board found that these two incidents (plus a minor incident where the applicant received a letter of counseling for improper uniform wear) warranted discharge for misconduct but did not rise to the level of seriousness that would warrant a UOTHC. However, the Board also did not feel his conduct warranted a fully honorable discharge, despite the applicant's outstanding duty record. The Board determined an under honorable conditions (general) discharge, as was recommended by the general court-martial convening authority, was appropriate. The Board saw no reason to change the applicant's reason for discharge.

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 a discharge under honorable conditions (general).

Attachment:
Examiner's Brief