

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

AMN

TYPE GEN

X

PERSONAL APPEARANCE

RECORD REVIEW

COUNSEL

NAME OF COUNSEL AND OR ORGANIZATION

ADDRESS AND OR ORGANIZATION OF COUNSEL

YES

No

X

VOTE OF THE BOARD

MEMBER SITTING

HON

GEN

UOTHC

OTHER

DENY

X*+

X*

X*+

X*+

X*+

ISSUES

A94.06

INDEX NUMBER

A67.10

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

14 Apr 2010

CASE NUMBER

FD-2008-00568

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.

Case heard via videoteleconference between Andrews AFB, Maryland and Robins AFB, Georgia on 14 April 2010.

Advise applicant of the decision of the Board.

Names and votes will be made available to the applicant at the applicant's request.

* CHANGE RE CODE

+ CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY

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-2008-00568
<p>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.</p> <p>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 14 Apr 2010. The following witness also testified on the applicant's behalf: his mother, Ms. Annette Neal.</p> <p>The following additional exhibits were submitted at the hearing: Exhibit #5: Applicant's Contentions Exhibit #6-8: Character reference letters</p> <p>The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.</p> <p>FINDING: The Board grants the requested relief.</p> <p>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, reason and authority for discharge, and RE code inequitable.</p> <p>ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 (failure to go and false official statement) and two Letters of Reprimand (one for indecent acts with another and communicating a threat and one for reckless driving and false official statement). Within a few days of arriving to his first duty station at Travis AFB, California following tech school, the applicant engaged in consensual oral sex with a female airman. Later, while the female airman's boyfriend was in the room, the applicant kissed the face and neck of the female airman, who was not wearing a shirt. After being embarrassed about the situation by her boyfriend telling others what had occurred, the female airman reported that she had been sexually assaulted by the applicant. After months of investigation, during which time the applicant was removed from training and assigned to the night shift, charges were dismissed against the applicant based on a complete lack of credibility of the female airman. However, the day after charges were dismissed, the applicant was issued a Letter of Reprimand for committing an indecent act with another and for communicating a threat to a male airman in a separate incident. The Board found that the applicant's actions did not rise to the level of committing an indecent act. Additionally, the Board found that the threat incident simply involved two young airman exchanging insulting words, which did not amount to anything.</p> <p>The applicant admitted to reckless driving and lying to the MDG/CC regarding his identity. He explained that he was scared of getting into more trouble because of the sexual assault investigation. The morning after charges were dismissed against the applicant, he was late to work because he had been celebrating the night before. He also lied to his supervisors by stating that his cell phone was not charged, when it was properly charged.</p> <p>The DRB felt that the false allegation of sexual assault against the applicant, occurring so soon after his arrival at his new duty station, created a situation that made it nearly impossible for the applicant to recover, even after it was revealed that the allegations against him were false. While not excusing the two false official statements and reckless driving incidents, the DRB felt that these incidents alone would not ordinarily result in a discharge. The DRB disregarded the LOR for indecent acts and communicating a threat</p>	

as this LOR seemed to be a method of punishing the applicant for the false sexual assault allegation and for a minor act of two young airmen behaving in an immature manner toward one another.

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