

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE SRA	AFSN/SSAN [REDACTED]
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TYPE UOHC <input checked="" type="checkbox"/>	PERSONAL APPEARANCE	RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	
	X	

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
[REDACTED]	X**+				
[REDACTED]	X**+				
[REDACTED]					X
[REDACTED]	X**+				
[REDACTED]	X**+				

ISSUES A94.08	INDEX NUMBER A75.00	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 04 Mar 2010	CASE NUMBER FD-2008-00591	
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE 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.

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

SECRETARIAL A [REDACTED]

INDORSEMENT	DATE: 3/18/2010
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-2008-00591

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, at Andrews AFB on 04 Mar 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 Board grants the requested relief.

The Board finds that the evidence of record substantiates an impropriety that would justify a change of discharge, reason and authority for discharge.

ISSUE: Applicant contends that the discharge was improper. He contends that when the civilian charges of nonconsensual sodomy were dismissed, he should not have been referred to a trial by General Court-Martial. Applicant was arrested on 28 Nov 2006 on a charge of anal intercourse without consent with an adult female. Applicant admits he and the victim had consensual intercourse and later that night he mistakenly attempted anal intercourse. When the victim said "no" he stopped. He was held in confinement for 10 days until the county attorney's office turned down the case for prosecution. When he was released from confinement, he returned to his unit and continued to perform his normal duties. On 12 Feb 2007 the applicant's squadron commander preferred one charge and one specification of forcible sodomy against the applicant and on 19 Mar 2007 the general court-martial convening authority referred the charge and specification to trial by general court-martial. On 30 Aug 2007, applicant submitted a request for discharge in lieu of trial by court-martial. According to applicant's testimony, he stated that a date for the court-martial had not been set and his defense counsel advised that he could have requested resignation in-lieu of court-martial. Although applicant stated that he was under no pressure to sign the request for resignation with a discharge characterization of Under Other Than Honorable Conditions, he was not advised of any additional options to request a conditional waiver for a General/Under Honorable Conditions or an Honorable discharge. Further, based on the 31 Aug 2007 19AF/JA legal review of applicant's request for discharge, paragraph 3 states "Credibility of Complainant. Defense asserts that going to trial does not guarantee a punitive discharge or even a conviction. The alleged victim testified at the Article 32 hearing that she had been drinking heavily and that she had several memory lapses on the evening in question, including the time she spent with [the applicant]. Since the alleged victim's credibility (based on her testimony at the Article 32 hearing) is somewhat questionable, the potential for acquittal is high. Furthermore, a discharge would save the government time, expense, and manpower of a fully litigated trial." Additionally, a review of applicant's record and testimony of the applicant revealed no additional misconduct while member was serving on active duty. After considering the applicant's records and testimony, the Board opined that the characterization of the discharge was improper in that the applicant was discharged for an offense for which the charges had already been dismissed by civilian authorities. The Board grants the upgrade of the characterization of discharge to Honorable, change the reason and authority for the discharge, and to change the reenlistment code.

CONCLUSION: The Discharge Review Board concludes that the discharge was inconsistent with the procedural and substantive requirements of the discharge regulation and finds the applicant was not provided full administrative due process. 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, 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