

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 150px; height: 20px; margin-top: 5px;"></div> | | | GRADE A1C | | AFSN/SSAN <div style="background-color: black; width: 100px; height: 20px; margin-top: 5px;"></div> | |
| TYPE GEN | <input checked="" type="checkbox"/> | PERSONAL APPEARANCE | | | RECORD REVIEW | |
| COUNSEL YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> | | NAME OF COUNSEL AND OR ORGANIZATION AMERICAN LEGION | | | ADDRESS AND OR ORGANIZATION OF COUNSEL ATTN: QUEEN BAKER 1608 K STREET NW WASHINGTON DC 20006 | |

| VOTE OF THE BOARD | | | | |
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| HON | GEN | UOTHC | OTHER | DENY |
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| ISSUES A94.55 A94.05 A92.21 | 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 27 Jul 2010 | CASE NUMBER FD-2009-00073 | | |

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 and the right to submit an application to the AFBCMR.

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

+RE Code

* Narrative Reason

INDORSEMENT

DATE: 8/3/2010

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-2009-00073

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), with counsel, at Andrews AFB, Maryland on 27 Jul 2010.

The following additional exhibits were submitted at the hearing:

Exhibit #5: Applicant's Contentions

Exhibit #6: American Legion Statement

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

FINDING: The Board denies the upgrade of the discharge, the change of reason and authority for discharge, and change of reenlistment code.

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 in light of his performance over the years. The records indicated the applicant received an Article 15 and one Letter of Reprimand (LOR), both for alcohol related misconduct. The applicant contends that since he was not diagnosed as an alcoholic following his 1-day Alcohol and Drug Abuse Prevention and Treatment program (ADAPT) counseling for his first misconduct (Article 15), and was diagnosed with alcoholic dependence following his second treatment program, the first instance of misconduct should not have been used as a basis for his discharge. Further, the applicant disputed the validity of the breathalyzer and field sobriety tests administered following his second instance of misconduct. Finally, the applicant states he was not convicted of the charges, and should have been retained in the Air Force until after his court date. The evidence of record indicates that the applicant was not diagnosed as an alcoholic and did not recognize his drinking problem following his initial ADAPT. The applicant admitted he was drinking on the night of his arrest which resulted in his second alcohol misconduct (LOR) and he did not cite in the response to the LOR or his discharge that he believed the breathalyzer and field sobriety tests were invalid. Lastly, although the applicant was not convicted of the original charges of his arrest, he plead "NOT GUILTY" to a reduced charge and received a "PROBATION BEFORE JUDGMENT" verdict. The condition of this verdict was three years of probation and a \$300.00 fine. The DRB opined that through his commander's administrative actions, the applicant had ample opportunity to change his negative behavior. The Board concluded that these negative aspects of the applicant's service outweighed the positive contributions he made in his Air Force career. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. The DRB was pleased to see that the applicant is continuing his college education and has remained employed since his discharge. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

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.

In view of the foregoing findings, the Board further concludes that there exists no legal or equitable basis for upgrade of discharge and determines the discharge should remain unchanged.

Attachment:
Examiner's Brief