

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)				GRADE		AFSN/SSAN	
TYPE		PERSONAL APPEARANCE		X	RECORD REVIEW		
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION			ADDRESS AND OR ORGANIZATION OF COUNSEL		
YES	No						
	X						
				VOTE OF THE BOARD			
				HON	GEN	UOTHC	OTHER
							X
							X
							X
							X
							X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD			
A01.13		A94.07		1 ORDER APPOINTING THE BOARD			
A92.35				2 APPLICATION FOR REVIEW OF DISCHARGE			
A94.05				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		CASE NUMBER					
29 Jun 2010		FD-2009-00102					
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, the right to a personal appearance with/without counsel, 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>							
TO:				FROM:			
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742				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-2009-00102

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined and requests that the review be completed based on the available service record.

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 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.

ISSUES:

Issue 1. Applicant contends there was inadequate evidence to support the basis for his discharge. Applicant was discharged at his own request in lieu of proceeding with his court-martial IAW Chapter 4 of AFI 36-3208. At his court-martial he faced charges of marijuana use and engaging in improper sexual contact with a 15 year old female. Applicant presently contends that, at the time he engaged in the alleged sexual contact, he did not know the female was under the age of 16. However, evidence found in the case file demonstrates that the Applicant initially learned the victim was 15 years old when an acquaintance introduced them and stated that LM was "15 and gay." In addition, when interviewed by OSI, the Applicant initially denied having any sexual contact with the victim, explaining that she was "too young" and "only 14 or 15 years old." Further, Applicant's confession to marijuana use was corroborated by at least one other eye witness. The Applicant's contention of inadequate evidence to support a discharge in lieu of court-martial is unfounded.

Issue 2. Applicant contends that he should not be penalized indefinitely for mistakes he made early on in his career, and which were not repeated. The DRB recognized the applicant was 23 years of age at the time he engaged in the alleged misconduct; he was 27 years of age when the discharge took place. There is no evidence he was immature or did not know right from wrong. The Board opined the applicant was older than the vast majority of first-term members who properly adhere to the Air Force's standards of conduct. The DRB also recognized the fact that the applicant had, as claimed, served an additional three years in the Air Force following his commission of the misconduct charged in his court-martial, without repeating the same offenses. However, these years were not without incident. Specifically, just months prior to his discharge, the Applicant assaulted a fellow Airman with a ten inch hunting knife. The inference that the Applicant's service continued unblemished after his commission of the charged offenses is misplaced. The DRB concluded the applicant's misconduct outweighed the positive aspects of his time in the Air Force.

Issue 3. Applicant contends that an UOTHC discharge in lieu of court-martial, under the circumstances described above, was too harsh. The DRB opined that there was adequate evidence against the accused to warrant a court-martial and that Applicant had, himself, requested issuance of an UOTHC discharge in lieu of proceeding to trial where his innocence (or guilt) could be established by a panel of his peers. The Board determined the applicant's misconduct was a significant departure from conduct expected of all military members and that the negative aspects of the applicant's service outweighed the positive contributions he made in his Air Force career. In sum, the Board concluded that the discharge characterization was appropriate.

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