

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AB	AFSN/SSAN [REDACTED]
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TYPE GEN	X	PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	Leonard Calderone	00
X			

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

ISSUES	A94.06 A94.55	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	CASE NUMBER
13 Apr 2010	FD-2009-00124

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.

* CHANGE RE CODE

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INDORSEMENT	DATE: 4/29/2010
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

FD-2009-00124

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, via video teleconference between Andrews AFB, Maryland and Robins AFB Texas on 13 Apr 2010.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Narrative Reason and RE Code

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

FINDINGS: The Board grants the requested relief.

The Board finds that neither the evidence of record nor that provided by the 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 and reason and authority for discharge to be inequitable.

ISSUE: Applicant contends his discharge was inequitable, because it was too harsh. The applicant was discharged with an under honorable conditions (general) discharge for Misconduct: Commission of a Serious Offense. This discharge was based on the applicant being charged with drunken or reckless driving of a vehicle and failure to obey a lawful order and underage drinking. The Discharge Review Board determined that the applicant's discharge was too harsh and based on an offense that the applicant was found not to have committed. While the Discharge Review Board in no way condones underage drinking or drunken or reckless driving, based on the evidence presented, the Board determined that there were a number of mitigating factors involved in the incident in question. On 23 Feb 07, the member was charged with underage drinking and drunken or reckless driving and being drunk on duty, for which he received an Article 15, Unfavorable Information File and 45 days of extra duty. While performing the 45 days of extra duty, applicant was accused of being drunk on duty which led to a Summary Court Martial. He was acquitted of all charges during his Summary Court Martial and returned to duty. Member was never returned to his flight, but instead kept on extra duties for two weeks and told he would be discharged for misconduct on the prior Article 15. The Board contends that the discharge is based on the conduct, which occurred on 23 Feb 07. AB Lincoln received notification of the discharge on 25 Jul 07, over five months later. The Board asserts that in order for the discharge process and discipline in general to be effective, the action should have been initiated promptly and not five months following the misconduct. There was nothing preventing the initiation of this action back in Mar 07. The board felt that if discharge was warranted for this offense the applicant should have been provided with notification of discharge several months ago. The Board contends that the applicant was discharged for his alleged conduct that formed the basis for the 13 Jul 07 Summary Court Martial, conduct that the Summary Court Officer found that he did not commit. Otherwise, the discharge action would have been initiated four months prior. The Board felt that the applicant was being punished for an offense that he was found not to have committed. Also, the Board contends that involuntary administrative discharge should not be a substitute for disciplinary action.

CONCLUSIONS: 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 that the applicant was provided full administrative due process.

However, in view of the findings and based upon contributory factors presented, the Board believes that relief for the characterization of the discharge should be granted and the applicant's service is more accurately reflected by an Honorable discharge and the reason for the discharge is more accurately described as Secretarial Authority with a Reenlistment Code of 3K under the provision of Title 10, USC 1553.

Attachment:

Examiner's Brief