

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

DENY

X

X

X

X

X

ISSUES

A01.13

A92.21

A94.55

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

06 Jul 2010

CASE NUMBER

FD-2009-00183

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, the right to a personal appearance with/without counsel, 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.

INDORSEMENT

DATE: 7/6/2010

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, 4E WING, 3RD FLOOR
ANDREWS AFB, MD 20762-7001

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

FD-2009-00183

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 his discharge was inequitable because the record does not support the basis for same. The applicant submits the charges against him were based on false statements made by his wife in the midst of their divorce. The records indicate one charge and specification of rape (a violation of Article 120, UCMJ) and one charge with two specifications of battery (violations of Article 128, UCMJ) were preferred against the applicant on 5 January 2001. These charges were based on allegations by the applicant's estranged wife that he had raped her on one occasion in July 2000, struck her on numerous occasions between January and March 1998, and attempted to choke her in March or April 1999. The charges preferred against the applicant carried a maximum punishment of life in prison and a dishonorable discharge. On 10 January 2001, an Article 32 Investigation was convened. On 31 January 2001, the applicant requested a discharge in lieu of court-martial IAW Chapter 4, AFI 36-3208, *Administrative Separation of Airmen* (Chapter 4 Request). In his request, the applicant explained that he understood the ramifications of his Chapter 4 Request, and had consulted with counsel. He further elaborated that he had made some mistakes, but believed a Chapter 4 discharge would benefit all parties involved. Specifically, the applicant explained, he would not be able to provide financially for wife and child if he received a federal conviction and he would "hate to see Holly or Dakota suffer financially for my own actions." The applicant now contends that he regrets requesting to be discharged with a UOTHC discharge in lieu of proceeding to his court-martial and fighting the charges against him. The DRB opined that the applicant's decision to request an UOTHC discharge in lieu of proceeding to a court-martial was an informed decision based on a thorough assessment of the evidence against him. The applicant has submitted no new evidence to the Board that was unavailable for his consideration at the time he submitted his Chapter 4 request, and which might have affected the choices he made at the time. The Board concluded the applicant made a conscious and knowing decision to request a UOTHC discharge in lieu of court-martial after receiving advice from legal counsel. After a careful review of the applicant's personnel file, the Board found no improprieties or inequities in the processing of the applicant's discharge and determined that the applicant's misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. Applicant further states that his discharge did not take into account the good things he did while in the service and does not reflect his subsequent post-service contributions to the community. The DRB took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other accomplishments. The DRB was pleased to see that the applicant was doing well and has applied himself to serving his community in times of crisis. However, it found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

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