

TYPE GEN		PERSONAL APPEARANCE		X RECORD REVIEW	
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	NO				
	X				
MEMBERS SITTING				VOTE OF THE BOARD	
				HON	GEN
				UOHC	OTHER
					DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]				X	
ISSUES A93.07, A94.05, A92.21, A67.01		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 01-02-27		CASE NUMBER FD01-00010			
REMARKS Case heard at 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 AF'BCMR					
SIGNATURE OF RECORDER [REDACTED]			SIGNATURE OF BOARD MEMBER [REDACTED]		
ENDORSEMENT				DATE: 01-02-27	
TO: SAF/MIBR 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, 3 RD FLOOR ANDREWS AFB, MD 20762-7002		

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-01-00010

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

The applicant was offered a personal appearance before the Discharge Review Board but declined to exercise this right.

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

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither the evidence of record or that provided by the applicant substantiates an inequity or impropriety that would justify a change of the discharge.

Issues. Applicant was discharged for misconduct, minor disciplinary infractions. He had five Letters of Reprimand, and two Articles 15. He also had an Unfavorable Information File and referral "2" Enlisted Performance Report. His misconduct included multiple incidents of disobeying lawful orders, an assault on his wife, writing bad checks, and failure to pay just debts. In member's reply to the discharge action he requested retention and contended all of his misconduct was related to his marital problems, and that his unit was not understanding of or helpful regarding his situation. The Board noted that all of his incidents of misconduct occurred during the period November 1994 to February 1995. This coincides with the period of time member was undergoing divorce proceedings. The Board further noted however that the applicant was age 22 and 23 when his misconduct occurred, which is essentially the same age as most first term airmen who do not engage in misconduct; and there is no evidence of record he did not know right from wrong. Furthermore, the Board recognized that member's marital problems may have had some bearing on his misconduct, but his problems were not unique and the Board did not find them of sufficient mitigation to explain his misconduct. There was no evidence that he used available agencies such as the Chaplain or Family Support Center to help him cope with the situation. No inequity or impropriety was found in his discharge in the course of the records review.

Member also cites his post-service achievements raising his children, working on his college degree, and as an accounting supervisor with a large firm. The Board commends applicant for these accomplishments, but this information is insufficient to overcome the factors that were the basis for discharge, and are not relevant to the period of service under review. It therefore does not provide a basis for upgrade

If the applicant can provide additional documented evidence to substantiate his issues, he should consider exercising his right to make a personal appearance before the Board. If he chooses to do so, he should be prepared to provide the Board with evidence of an inequity or impropriety, and any post-service accomplishments and contributions to his community.

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.

In view of the foregoing findings the board further concludes that there exists no legal or equitable basis for upgrade of discharge, thus the applicant's discharge should not be changed.

Attachment:

Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

(Former A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 95/07/27 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 72/02/17. Enlmt Age: 19 4/12. Disch Age: 23 5/12. Educ:HS DIPL. AFQT: N/A. A-41, E-62, G-46, M-51. PAFSC: 2M032 - Missile Systems Maintenance Apprentice. DAS: 94/08/01.

b. Prior Sv: AFRes 91/07/08 - 51/09/17 (2 months 9 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enld as AB 91/05/18 for 4 yrs. Ext: 93/11/19 for 11 months. Svd: 3 Yrs 10 Mo 10 Das, all AMS.

b. Grade Status: A1C - 95/02/06 (ART15, 95/02/06)
SRA - Unknown
A1C - 93/01/18
AMN - (EPR Indicates): 91/09/18-93/05/17

c. Time Lost: none.

d. Art 15's: (1) 95/02/17, F.E. Warren AFB, WY - Article 92. You, having knowledge of a lawful order issued by MSgt -----, not to attempt to contact your wife or go to your home unless otherwise directed to do so by SMSgt -----, or LTC -----, an order which it was your duty to obey, did, o/a 3 Feb 95, fail to obey the same by wrongfully contacting your wife. Reprimand. (No appeal) (No mitigation)

(2) 95/02/06, F.E. Warren AFB, WY - Article 134. You, did, o/a 29 Dec 94, make and utter to -----, F.E. Warren AFB, WY a certain check, in words and figures as follows, to wit: Check Number 2223, in the amount of \$12.00, dated December 29, 1954, for the purchase of a thing of value, and did thereafter dishonorably fail to maintain sufficient funds in the ----- Bank for payment of such check in full upon its presentment for payment. Rdn to A1C. (No appeal) (No mitigation)

e. Additional: LOR, 24 JUN 95 - False statement.
LOR, 12 JAN 95 - Assault.

LOR, 10 JAN 95 - Bad check.
 LOR, 05 JAN 95 - Disobeying a direct order.
 LOR, 06 NOV 94 - Failure to pay just debt.

f. CM: none.

g. Record of SV: 91/09/08 93/05/17 Ellsworth AFB 4 (Initial)
 93/05/18 94/05/17 Ellsworth AFB 4 (Annual)
 94/05/18 95/05/17 F.E. Warren AFB 2 (Annual) REF
 (Discharged from F.E. Warren AFB)

h. Awards & Decs: AFTR, NDSM, AFGCM.

i. Stmt of Sv: TMS: (4) Yrs (0) Mos (20) Das
 TAMS: (3) Yrs (10) Mos (10) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 00/11/16.
 (Change Discharge to Honorable)

Issue 1: I would like to begin by saying that going through a divorce is very difficult. I filed for divorce back in November or early December of 1994. I never received any help from anyone during this troubled time. In every incident that led up to my discharge I was guilty no matter what I said. My divorce was final in April of 1995 and by then I was ordered to attend a mandatory men's group counseling session with family services. These sessions were supposed to prevent the divorce but it was already too late for me. The young lady who gave the sessions apologized to me after the sessions because I was not the bad person the US Air Force was making me out to be. We all make mistakes but when I had to bounce a few checks to retain a lawyer to fight for my children I felt that I was doing the right thing. I did not however realize what effect this would have on my career. All the events leading up to my discharge happened during my divorce Nov 92-Feb 95. At that time in my life I had no one else in my life besides my children. Without them I was no good to anyone especially the Air Force. I fought for my children and although it may have cost me my career in the US Air Force I am ultimately victorious. I was awarded full custody of both my children in April of 1995 my daughter 3 and my son 1 at the time. If I had harmed my ex-wife in any way or my children I don't believe that any court would have given the children to me.

Today however I am happily married and I still have full custody of my children who are now 6 and 8. I am also an Accounting Supervisor with ----- & ----- one of the [REDACTED] firms. I am currently seeking my Bachelors degree at the [REDACTED]. I know that I can not change the events that led up to my discharge, but I can at least ask for the honorable discharge that I rightfully earned. My life could not be better at this time and I owe all of this to the training and discipline that I learned in the US Air Force. All that I am asking from you is to review my discharge and reconsider my general discharge and upgrade it to honorable. I would also like to know if you were put in a position where you would have to choose between your children and your career what would you do? Every morning when I get my children out of bed I know that regardless of the outcome I did the right thing. Thank you.

ATCH

1. Letter to the Discharge Review Board.
2. DD Form 214.
3. AF Form 100.
4. AF Form 973.
5. DD Forms 4.
6. Memorandum for 90 MSS/MSMPR, 24 Jul 95.
7. Memorandum for 90 MW/CC, 17 Jul 95.
8. Recommendation for Discharge, 07 Jul 95.
9. Notification Memorandum, 07 Jul 95.
10. Copy of Social Security Card & Driver License.
11. Decree of Divorce.

01/01/07/ia

FDD/00010



DEPARTMENT OF THE AIR FORCE
90TH MISSILE WING (AFSPACECOM)

19 JUL 1995

MEMORANDUM FOR 90 MW/CC
ATTENTION: [REDACTED]

FROM: 90 MW/JA

SUBJECT: Legal Review: Discharge Under Provisions of AFPD 36-32 and AFI 36-3208, Para 5.49 (AIC) [REDACTED]

1. **BASIS FOR ACTION:** Administrative discharge action **was** initiated on 7 Jul 95 against [REDACTED] under the provisions of AFPD 36-32 and AFI 36-3208, paragraph **5.49**, minor disciplinary infractions. The squadron commander recommends separation with a general discharge and that the member not be considered a candidate for probation and rehabilitation. [REDACTED] is not entitled to a board hearing. He **has** consulted with counsel and **has** submitted statements on **his** behalf.

2. **FACTS:**

a. January 1995 [REDACTED] made a false official statement to the First Sergeant when he **claimed** he **was** unable to pay his dependent wife support **as** directed due to the fact that he had paid the daycare bill of \$90.00. Investigation revealed that the daycare **was** never paid. He received a Letter of Reprimand (LOR) on 24 Jun 95.

b. On 3 Feb 95, [REDACTED] having knowledge of a lawful order issued by [REDACTED] not to attempt to contact his wife or go to his home unless otherwise directed to do so, failed to obey by wrongfully contacting his wife. He received an Article 15 punishment on 17 Feb 95.

c. On 29 Dec 94, [REDACTED] wrote a check in the amount of \$12.00 and failed to maintain sufficient funds in his bank account for payment upon its presentment. He received an Article 15 punishment on 6 Feb 95.

d. On 23 Dec 94 [REDACTED] assaulted his wife by poking her in the right eye. Furthermore, he forcibly grabbed her legs and panties against her will, an act which he **has** admitted **was** to inflict fear of sexual assault upon **his** victim. He had an Unfavorable Information File (UIF) established and received an LOR on 12 Jan 95.

e. On 3 Dec 94 [REDACTED] wrote a check in the amount of \$16.50 and failed to maintain sufficient funds in his bank account for payment upon its presentment. He received an LOR on 10 Jan 95.

f. On 31 Dec 94, ██████████ contacted his wife which was a violation of a direct order from his first sergeant, supervisor, and flight chief. He received an LOR on 5 Jan 95.

g. ██████████ failed to pay ██████████ \$150.00 for furniture in full prior to his departing Ellsworth AFB, SD, as agreed. He received an LOR on 6 Nov 94.

3. PERSONAL DATA: ██████████ is 23 years old and has served on active duty since 18 Sep 91. His duty title is Peacekeeper Tool Room Specialist, DAFSC 2M052. He is divorced and lives base housing.

4. REGULATORY GUIDANCE:

a. This discharge recommendation complies with AFI 36-3208, and the record is legally sufficient to sustain a discharge. The circumstances cited by 90 MXS/CC as reasons for discharge occurred within ██████████ current enlistment and should be considered by you as a basis for discharge.

b. AFI 36-3208, paragraph 5.49 states that an airman may be subject to discharge based on a pattern of misconduct that consists solely of minor disciplinary infractions. Minor disciplinary infractions include violations of nonpunitive regulations and minor offenses under the UCMJ. Minor disciplinary infractions are normally evidenced by formal or informal counseling, letters of reprimand, and Article 15s.

5. FOR THE GOVERNMENT:

a. A pattern of minor disciplinary infractions is contrary to the self-discipline required for effective military service. ██████████ record shows a pattern of disciplinary problems that violate the UCMJ. His misconduct includes having contact with his wife on two separate occasions after he was directed by his first sergeant not to do so, making a false official statement to his first sergeant, assaulting his wife, writing several checks with insufficient funds in his account, and failing to pay ██████████ for furniture prior to his departure from Ellsworth AFB, SD, as agreed. ██████████ has exhibited careless disregard for his responsibilities as an Air Force member.

b. ██████████ string of misconduct demonstrates he has consistently failed to comply with Air Force standards. A general discharge is warranted because the negative aspects of ██████████ service outweigh the positive. Probation and rehabilitation are not appropriate under these circumstances because ██████████ has not responded to previous opportunities to bring his conduct within Air Force standards.

6. FOR THE RESPONDENT:

a. ██████████ is entitled to wear the Air Force Good Conduct Medal, National Defense Service Medal, Air Force Training Ribbon, and has received three letters of appreciation.

b. In his behalf, [REDACTED] recounts his life before the Air Force, from the time he graduated high school in the top ten percent of his class up to his present assignment. He states that all of the negative paperwork stemmed from his relationship with his spouse. [REDACTED] has requested for probation and rehabilitation or nothing less than an honorable discharge, due to him having sole custody of his three children.

7. OPTIONS: As the separation authority in this case, you may:

a. Reject the squadron commander's recommendation and retain [REDACTED] on active duty;

b. Recommend reinitiation of this action if you believe an under other than honorable conditions discharge is warranted and refer this case to a board of officers;

c. Recommend an honorable discharge with or without probation and rehabilitation and forward this package to 20 AF/CC for approval;

d. Discharge [REDACTED] with a general discharge with or without probation and rehabilitation.

8. RECOMMENDATION: I concur with the squadron commander's recommendation of a general discharge without probation and rehabilitation. I recommend you concur and direct [REDACTED] general discharge.

[REDACTED]
Staff Judge Advocate

FD01-000/C



DEPARTMENT OF THE AIR FORCE
90TH MISSILE WING (AFSPACECOM)

MEMORANDUM FOR [REDACTED]

07 JUL 1995

FROM: 90 MXS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable, general, or under other than honorable conditions. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On or about January 1995, you made a false official statement to the First Sergeant when you claimed you were unable to pay your dependent wife support as directed due to the fact that you had paid the daycare bill of \$90.00. Investigation revealed that the daycare was never paid. You received a Letter of Reprimand (LOR) on 24 Jun 95.

b. On or about 3 Feb 95, you, having knowledge of a lawful order issued by SMSgt [REDACTED] not to attempt to contact your wife or go to your home unless otherwise directed to do so, failed to obey by wrongfully contacting your wife. You received an Article 15 punishment on 17 Feb 95.

c. On or about 29 Dec 94, you wrote a check in the amount of \$12.00 and failed to maintain sufficient funds in your bank account for payment upon its presentment. You received an Article 15 punishment on 6 Feb 95.

d. On or about 23 Dec 94, you assaulted your wife by poking her in the right eye. Furthermore, you forcibly grabbed her legs and panties against her will, an act which you have admitted was to inflict fear of sexual assault upon your victim. You had an Unfavorable Information File-established and received an LOR on 12 Jan 95.

e. On or about 3 Dec 94, you wrote a check in the amount of \$16.50 and failed to maintain sufficient funds in your bank account for payment upon its presentment. You received an LOR on 10 Jan 95.

f. On or about 31 Dec 94, you contacted your wife which was a violation of a direct order from your first sergeant, supervisor, and flight chief. You received an LOR on 5 Jan 95.

g. You failed to pay [REDACTED] \$150.00 for furniture in full prior your departing Ellsworth AFB, SD, as agreed. You received an LOR on 6 Nov 94.

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force and if you are discharged how your service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force.

3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [REDACTED] of the ADC office, at bldg 292, ext 3248, on 12 Jul 95 at 0900 hrs. You may consult civilian counsel at your own expense.

4. You have the right to submit a statement in your own behalf. Any statements you want the separation authority to consider must reach me by within three workdays after receipt of the notification memorandum. That date being 12 Jul 95, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.

6. You have been scheduled for a medical examination. You must report to the F. E. Warren Hospital physical exams section at 0700 hrs on 11 Jul 95.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement of 1974. A copy of AFI 36-3208 is available for your use in your orderly room.

[REDACTED]
Commander