

TYPE		PERSONAL APPEARANCE		X RECORD REVIEW																				
		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND ORGANIZATION OF COUNSEL																				
YES	NO																							
	X																							
MEMBERS SITTING						HON	GEN	UOTHC	OTHER	DENY														
										X														
										X														
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ISSUES A91.07		INDEX NUMBER A67.90		<table border="1"> <tr><td>1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td>2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td>3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td>4</td><td>BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td>COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td>TAPE RECORDING OF PERSONAL APPEARANCE HEARING</td></tr> </table>							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
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HEARING DATE 01 0227		CASE NUMBER FD01-00025																						
REMARKS Case heard at Washington, D.C.																								
DD Form 149 submitted. Advise applicant of the decision of the Board and the right to a personal appearance hearing with/without counsel.																								
SIGNATURE OF APPLICANT		SIGNATURE OF BOARD MEMBER																						
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		DRAFTED 10-10-05																				

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD01-00025

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 to exercise this right.

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

FINDINGS: Upgrade of discharge is denied.

The board finds that neither evidence of record nor that provided by the applicant substantiates an inequity or impropriety, which would justify a change of discharge.

The applicant's issue is listed in the attached brief

Issue: The applicant feels like he served his country with the best of intentions and wishes to receive his G.I. Bill so that he can go back to school. The Board reviewed the record and concluded the conduct for which applicant was discharged was a significant departure from the conduct expected of all military members. The applicant had a conviction in a civilian court for assault. He received a Letter of Counseling for leaving his workstation without authority and failing to properly account for his tools. He received two Letters of Reprimand, one for failing to report to his place of duty and one for cruelty to a child. No inequity or impropriety in his discharge was suggested or found in the course of the records review. The many offenses of the applicant amounted to an overall serious problem that could not be tolerated. The Board concluded that the character and reason for discharge were appropriate due to his misconduct.

The Board found no evidence of impropriety or inequity in this case upon which to base an upgrade of discharge.

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 SRA)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 00/03/27 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 75/04/15. Enlmt Age: 17 5/12. Disch Age: 24 11/12. Educ:HS DIPL. AFQT: N/A. A-51, E-54, G-41, M-53. PAFSC: 2A353B - TAC Aircraft Maintenance Journeyman. DAS: 99/05/03.

b. Prior Sv: (1) AFRes 92/09/23 - 93/08/12 (10 months 20 days) (Inactive).

(2) Enld as AB 93/08/13 for 4 years. Svd: 4 yrs 0 mos 0 das, all AMS. Transferred to USAFR 97/08/13. Svd: 0 yrs 10 months 11 das, all inactive. AMN - 94/02/13. A1C - 94/12/13. EPRs: 4,5.

3. SERVICE UNDER REVIEW:

a. Reenld USAF as SRA 98/06/24 for 4 yrs. Svd: 1 Yrs 9 Mo 4 Das, of which AMS is 1 yr 9 mo 1 day (excludes 3 days lost time).

b. Grade Status: SRA - 97/06/19

c. Time Lost: 99/01/11 - 99/01/13 (3 days).

d. Art 15's: none.

e. Additional: LOR, 20 NOV 98 - Dereliction of duty.

LOC, 20 NOV 98 - Failure to account for all tools.

Civilian Conviction, 15 NOV 99 - Battery.

LOR, 23 NOV 99 - Act of cruelty.

f. CM: none.

g. Record of SV: 98/06/24 99/06/23 Moody AFB 3 (Annual)
(Discharged from Moody AFB)

h. Awards & Decs: AFLSAR, AFTR, SWASM W/1 SS, NDSM, AFEM W/1 SS, AFOUA W/1 OLC, AFGCM W/1 OLC.

i. Stmt of Sv: TMS: (7) Yrs (6) Mos (8) Das
TAMS: (5) Yrs (9) Mos (7) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 00/12/14.

(Change Discharge to Honorable)

Issue 1 I wish to upgrade my disch rge from General (Under Honorable Conditions) to Honorable. I fee like I served my country with best intentions and wish to have the opertunity (sic) to receive my VA Benefits (GI Bill) that were assured to me on my discharge. I only wish to go school and one day maybe (if possible) serve my country again. Which I enjoyed so dearly.

ATCH

1. DD Form 214.

01/01/23/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 347TH WING (ACC)
MOODY AIR FORCE BASE, GEORGIA

2 Mar 00

MEMORANDUM FOR 347 WG/CC

FROM: 347 WG/JA

SUBJECT: Legal Review of AFI 36-3208 Administrative Discharge: [REDACTED]

1. I have reviewed the subject administrative discharge and find it legally sufficient. On 31 Jan 00, 68 FS/CC, [REDACTED] recommended that the respondent, SrA [REDACTED], be involuntarily separated from the Air Force with an under other than honorable conditions (UOTHC) discharge under the authority of AFI 36-3208, paragraph 5.50.2, for a pattern of misconduct (conduct prejudicial to good order and discipline). On 2 Feb 00, before 347 WG/CC took action on 68 FS/CC's recommendation, [REDACTED] offered to waive his right to a discharge board on the condition that he receive an under honorable conditions (general) discharge. On 29 Feb 00, [REDACTED] recommended that the conditional waiver be accepted and that [REDACTED] be discharged with a general discharge. [REDACTED] does not recommend a program of probation and rehabilitation (P&R). I concur.

2. In reviewing this action, I find there is a legally sufficient basis to separate [REDACTED] from the Air Force with a general discharge without P&R, as recommended. I also find there is a legally sufficient basis to separate [REDACTED] from the Air Force with a UOTHC discharge.

a. Basis for discharge: AFI 36-3208, paragraph 5.50.2, states that airmen are subject to discharge for conduct prejudicial to good order and discipline, which is defined as conduct that tends to disrupt order, discipline, or morale within the military community. This category of conduct also includes that which causes dissent, disruption, and degradation of mission effectiveness, as well as conduct that tends to bring discredit on the Air Force in the view of the civilian community. In this case, [REDACTED] misconduct includes failure to go to his appointed place of duty, leaving his assigned workstation without making an accurate account of his tools, criminal assault, and cruelty to a child. These acts of misconduct resulted in one Letter of Counseling (LOC), two Letters of Reprimand (LORs), a conviction for battery in Lowndes County, Georgia and a prosecution for child abuse pending in the Lowndes County court system (see Tab 3, Notification Memorandum, atch 1, for additional details).

b. Should [REDACTED] be discharged? In determining whether [REDACTED] should be discharged, you may consider the nature of the offenses and the circumstances surrounding their commission. On 11 Jan 99, [REDACTED] assaulted his girlfriend, who is now his wife. He was convicted of battery and sentenced to 12 months confinement and a fine of \$250.00. He served 3 days in

confinement and was placed on probation for the balance of his sentence. Despite this conviction, fine, confinement, and probation, [REDACTED] perpetrated another domestic assault. On 26 Oct 99, he repeatedly hit his stepdaughter and caused injuries that required treatment at a hospital emergency room. In his 31 Jan 00 memorandum recommending discharge, [REDACTED] stated, "I firmly believe that his actions bring discredit to the Air Force by showing a disregard for the health and safety of his family and Air Force standards." I concur. The serious nature of [REDACTED] misconduct and his response to the consequences of his misconduct demonstrate an unwillingness to conform to Air Force standards. Consequently, he should be administratively discharged.

c. Service characterization: There is a legally sufficient basis to discharge [REDACTED] with a general or a UOTHC discharge. AFI 36-3208, paragraph 1.18.3, states that characterization of an airman's service as UOTHC is warranted when the airman's acts or omissions constitute a significant departure from the conduct expected of airmen. Examples of such behavior, acts, or omissions include:

1. The use of force or violence to produce serious bodily injury or death;
2. Abuse of a special position of trust;
3. Disregard by a superior of customary superior-subordinate relationships;
4. Acts or omissions that endanger the security of the United States;
5. Acts or omissions that endanger the health and welfare of other members of the Air Force; and
6. Deliberate acts or omissions that seriously endanger the health and safety of other persons.

[REDACTED] has engaged in violent behavior that endangered the health and safety of [REDACTED] wife, [REDACTED] and stepdaughter, [REDACTED]. On 11 Jan 99, [REDACTED] struck his then girlfriend [REDACTED] in the back with his fist, threw her to the ground, slapped her in the face and struck her in the shoulder with his fist. This resulted in his arrest and conviction for battery. Despite the conviction, a fine, three days confinement and a probationary period, [REDACTED] struck his stepdaughter, [REDACTED] on 26 Oct 99. [REDACTED] struck [REDACTED] repeatedly with a cooking utensil. One of the blows struck the child's eye causing an injury that required treatment at a hospital. These acts of violence are a significant departure from the conduct expected of airmen. Therefore, removing [REDACTED] from the Air Force with an under other than honorable conditions (UOTHC) discharge is justified. Air Force Instruction 36-3208, paragraph 1.18.2 states that an under honorable conditions (general) discharge is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. [REDACTED] misconduct, as described above clearly outweighs any positive aspects of his record. Since the more negative characterization of UOTHC is warranted by these facts, a general discharge is also legally supportable. The 68 FS/CC recommends that 347 WG/CC accept the conditional waiver and that 347 WG/CC recommend 9AF/CC approve a general discharge without P&R. For reasons stated in paragraph 3 below, I concur with acceptance of [REDACTED] conditional waiver and general discharge.

d. P&R: AFI 36-3208, paragraph 7.3, states tha P&R may be offered to airmen who have demonstrated a potential to serve satisfactorily, have the capacity to be rehabilitated for continued military service or completion of the current enlistment, or whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. [REDACTED] has recommended that P&R not be offered. According to [REDACTED] in his 31 Jan 00 memorandum "If a civilian conviction, confinement and a fine, in addition to a prior Letter of Reprimand (LOR) and a prior Letter of Counseling (LOC) were not sufficient to encourage [REDACTED] to meet Air Force standards, there is no reasonable likelihood that P&R will be successful." I agree.

3. Because [REDACTED] has served for more than six years [REDACTED] is entitled to a hearing before an administrative discharge board. After consulting [REDACTED] Area Defense Counsel, [REDACTED] asserted his right to a board. On 2 Feb 00, [REDACTED] submitted a conditional waiver offering to waive his right to a board if he was granted an under honorable conditions (general) discharge. Under the circumstances of this case, acceptance of the conditional waiver is recommended. First, acceptance of the conditional waiver would facilitate a rapid discharge of [REDACTED]. As stated in [REDACTED] 29 Feb 00 recommendation, [REDACTED] continued presence has an adverse impact on morale and discipline of the 68 FS. Second, proving the serious nature all allegations against [REDACTED] in a discharge board would be problematic. Because this case involves domestic violence, the primary investigation was conducted by the [REDACTED]. [REDACTED] will not cooperate with the Air Force by releasing any of its records of investigation without a subpoena. Because a discharge board does not authorize subpoena power, we have no means by which to force the DFCS to provide us with the records we need to prove the allegations. Third, the sole witness of both assaults is SrA [REDACTED], who has not been cooperative with our efforts to discharge SrA [REDACTED]. I do not anticipate this will change, and we have no way to compel her testimony. Third, local authorities are prosecuting [REDACTED] for cruelty to a child. His misconduct, therefore, will not escape appropriate consequences. For the above mentioned reasons, although a UOTHC discharge is legally justified by the serious nature of [REDACTED]'s misconduct, we recommend you accept the conditional waiver and recommend that 9 AF/CC approve a general discharge for SrA [REDACTED]

4. [REDACTED] physical examination is not yet complete. However, AFI 36-3208 allows processing of involuntary discharges to continue until actual separation. Any approved discharge is then held in abeyance until the member is found medically qualified for worldwide duty.

5. As the Special Court-Martial Convening Authority, you have the following options:

- a. Retain the Respondent.
- b. Reject the conditional waiver and give the member the option of either submitting an unconditional waiver or requesting a board hearing.
- c. Recommend that 9 AF/CC accept [REDACTED]'s conditional waiver and approve an under honorable conditions (general) discharge with or without the opportunity for P&R.

RECOMMENDATION

6. Recommend that AF/CC accept [REDACTED] conditional waiver and approve an under honorable conditions (general) discharge without the opportunity for P&R by signing the proposed letter at Tab I.
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DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 347TH WING (ACC)
MOODY AIR FORCE BASE, GEORGIA

03 DEC 1999

N AND TO [REDACTED]

FROM: 68 FS/CC

SUBJECT: Notification Memorandum

1. I **am** recommending your discharge from the United States Air Force for a pattern of misconduct (prejudicial to good order and discipline). The authority for this action is AFI **36-3208**, paragraph 5.50.2.

2. My reasons for this action are **as follows:**

a. An investigation disclosed that, on or about 13 Nov 98, you failed to report for duty. For this offense, you received a Letter of Reprimand (LOR), dated 20 Nov 98 (Atch 1a).

b. On or about 17 Nov 98, you departed your assigned workstation without making an accurate account of all your tools, to wit: ear protectors. For this offense, you received a Letter of Counseling (LOC), dated 20 Nov 98 (Atch 1b).

c. On or about 11 Jan 99, you intentionally caused substantial physical harm to an individual. For this offense, you pled guilty and received a civilian conviction for committing battery (domestic violence) **as documented by [REDACTED] State Warrant (Atch 1c)**. Your punishment included confinement for **12 months, after the** service of 3 days in confinement, the balance was probated; and a \$250.00 fine. Furthermore, you were ordered to attend **the** Domestic Violence Intervention Project and to have no violent contact of any kind with the victim. As a result of this incident, you were issued a written order by [REDACTED] to refrain from any unsupervised contact with the victim (Atch 1d).

d. An investigation disclosed that, on or about 26 Oct 99, you committed **an** act of cruelty upon a child by repeatedly hitting your stepdaughter causing her to suffer injuries which were treated at the hospital **emergency room**. You were issued a **written** no contact order, dated 28 Oct 99 (Atch 1e) by [REDACTED] to refrain from any contact with your stepdaughter and your wife. For this offense, you received an LOR, dated 23 Nov 99 (Atch 1f).

3. This action could result in your separation with an under other than honorable conditions discharge. I **am** recommending that you receive an under other than honorable conditions discharge. The commander exercising Special Court-Martial (SPCM) jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces, and any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have the right to:

- a. Consult legal counsel;
- b. Present your case to an administrative discharge board;
- c. Be represented by legal counsel at a board hearing;
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing;
- e. Waive the above rights. You must consult legal counsel before deciding to waive any of your rights.

5. 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] in Bldg 5107, extension 3421, at 1300 on 6 Dec 99. Please take your copy of this Notification Memorandum and the attachments with you to your first appointment with counsel. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

6. Confer with your counsel and reply, in writing, within seven (7) workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel, who will also sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to a board hearing.

7. You have been scheduled for a medical examination. You must report to the Moody Air Force Base Hospital, Physical Exams Section, Bldg 3296, at 1400 on 6 Dec 99 for the examination. Then report to the Flight Surgeon's office at 0800 on 9 Dec 99. These are mandatory appointments. Be sure to bring your medical records to these appointments.

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

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. The discharge board or the discharge authority will make the finding and recommendations required under 10 U.S.C. 2005(g).

11. Execute the attached acknowledgment and return it to me immediately.



Attachments:

1. Supporting Documents, Reasons for Discharge
 - a. LOR, 20 Nov 98
 - b. LOC, 20 Nov 98
 - c. State Warrant, 12 Jan 99 (w\atch)
 - d. No Contact Order, 13 Jan 99 (w\atch)
 - e. No Contact Order, 28 Oct 99
 - f. LOR, 23 Nov 99
2. Receipt of Notification Memorandum