

		X PERSONAL APPEARANCE		RECORD REVIEW				
		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO	The American Legion		1608 K. Street NW, Washington DC 20006				
	X							
MEMBERS SITTING				HON	GEN	UOTBC	OTHER	DENY
[REDACTED]								X
[REDACTED]								X
[REDACTED]								X
[REDACTED]								X
[REDACTED]								X
ISSUES		INDEX NUMBER		1 ORDER APPOINTING THE BOARD				
A92.21, A94.05		A67.10		2 APPLICATION FOR REVIEW OF DISCHARGE				
				3 LETTER OF NOTIFICATION				
HEARING DATE		CASE NUMBER		4 BRIEF OF PERSONNEL FILE				
01 06 28		FD01-00036		COUNSEL'S RELEASE TO THE BOARD				
				ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE				
				TAPE RECORDING OF PERSONAL APPEARANCE HEARING				
REMARKS								
Case heard at Washington, D.C.								
Advise applicant of the decision of the Board, and the right to submit an application to the AFBCMR.								
SIGNATURE OF RECORDER				SIGNATURE OF BOARD PRESIDENT				
[REDACTED]				[REDACTED]				
TO:				FROM:				
SAF/MIBR 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, 3 RD FLOOR ANDREWS AFB, MD 20762-7002				

GENERAL: The applicant appeals for upgrade of discharge to Honorable, change of reason for discharge, and change of reenlistment eligibility (RE) code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel at Andrews AFB, MD on June 28, 2001.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions.

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

FINDINGS: Upgrade of/reasons for discharge and change of RE code are 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 issues are listed in the attached brief.

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15, two Letters of Reprimand, and four Records of Individual Counseling for misconduct. The misconduct included operating a vehicle while drunk, failing to go to her place of duty at the prescribed time on four separate occasions, and failing to keep awake while on duty on two occasions. The DRB opined that through these administrative actions, the applicant had ample opportunities to change her negative behavior. After careful consideration of the testimony and information provided by the applicant and her counsel, the Board concluded the 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 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well. However, no inequity or impropriety in her discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized her term of service.

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/change of reason for discharge and change of RE code, 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 93/11/08 UP-AFR 39-10, para 5-46 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 70/02/18. Enlmt Age: 21 4/12. Disch Age: 23 8/12. Educ: HS DIPL. AFQT: N/A. A-67, E-49, G-59, M-18. PAFSC: 27131 - Apprentice Airfield Management Specialist. DAS: 92/02/21.

b. Prior Sv: AFRes 91/06/21 - 91/12/25 (6 months 5 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enld as A1C 91/12/26 for 4 yrs. Svd: 1 Yrs 10 Mo 13 Das, all AMS.

b. Grade Status: none.

c. Time Lost: none.

d. Art 15's: (1) 93/08/24, Dover AFB, DE - Article 111. You did, o/a 15 Aug 93, on Arnold Drive, operate a vehicle, to wit: a passenger car, while drunk. Rdn to Amn (suspt till 23 Feb 94), and forfeiture of \$100.00 pay per month for two months. (No appeal) (No mitigation)

e. Additional: LOR, 02 SEP 93 - Failure to go.
LOR, 03 AUG 93 - Failure to go.
LOC, 31 AUG 93 - Sleeping on duty.
LOC, 26 JUN 93 - Failure to go.
LOC, 24 APR 93 - Sleeping on duty.
LOC, 09 NOV 92 - Failure to go.

f. CM: none.

g. Record of SV: 91/12/26 93/09/28 Dover AFB 2 (Initial)
(Discharged from Dover AFB)

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (2) Yrs (4) Mos (18) Das
TAMS: (1) Yrs (10) Mos (13) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 00/12/28.

FD01-00036

(Change Discharge to Honorable)

Issue 1: **My** discharge was inequitable because it was based on one isolated incident during my length of service in the Air Force with no other adverse action.

ATCH

1. Two Character References.

01/02/01/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 436TH AIRLIFT WING (AMC)



FROM: JA (Cap^t [REDACTED]) 15 October 1993
SUBJ: Legal Review of AFR 39-10 Discharge Action, A1C [REDACTED]
[REDACTED] 436 OSS
TO: 436 MSSQ/MSP

1. Summary: This discharge action was initiated against A1C [REDACTED] for misconduct, specifically, minor disciplinary infractions, under Air Force Regulation 39-10, paragraph 5-46. Respondent's commander recommends a discharge with a general service characterization without probation and rehabilitation. For reasons set forth below, we concur with the recommendation of respondent's commander.

2. Procedural Status: This discharge action has been processed through notification procedures. Respondent was served with the notification letter on 1 October 1993, and consulted with legal counsel on that same date. The completed package arrived in the Office of the Staff Judge Advocate on the ninth duty day, Friday, 15 October 1993, for legal review.

3. Background Information: Respondent enlisted in the Air Force on 26 December 1991, for a term of four years, and has served on continuous active duty since that date. She has been assigned to the 436 OSS since 21 February 1992. Respondent received one EPR with an overall evaluation of 2 on 28 September 1993. Respondent is entitled to wear the National Defense Service Medal and the Air Force Training Ribbon.

4. Evidence:

a. For the Government: On or about 24 April 1992, respondent failed to stay awake and alert during duty hours, for which she received a letter of counseling on 24 April 1993. On or about 05 November 1992, respondent failed to attend a mandatory formation', Commander's Call, for which she received a letter of counseling on 09 November 1992. On or about 26 June 1993, respondent failed to go to her appointed place of duty, for which she received a letter of counseling

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on 28 June 1992. On or about 05 August 1993, respondent failed to go to her mandatory Dispatch meeting, for which she received a letter of reprimand on 07 August 1993. Thereafter, on or about 15 August 1993, respondent operated a motor vehicle on Dover Air Force Base while under the influence of alcohol. For that misconduct, respondent received Article 15, UCMJ punishment, which consisted of a suspended reduction to Airman and forfeiture of \$100 pay for two months; On or about 31 August 1993, respondent was found sleeping on duty, for which she received a letter of counseling on 31 August 1993. Lastly, on or about 02 September 1993, respondent failed to go to a mandatory dispatchers meeting, for which she received a letter of reprimand on 09 September 1993. Based upon the above noted pattern of misconduct, respondent's commander initiated this discharge action.

b. For the Respondent:

(1) Respondent submitted a statement wherein she requests to be retained in the Air Force. If she is discharged, respondent requests an honorable characterization. Respondent states that the most serious incident is the driving while intoxicated charge, for which she received an Article 15. She relates that she had no business being behind the wheel of a car and "[i]t was a very stupid and careless thing to do."

(2) Respondent states that in the two months since she received the Article 15, she has been trying to stay "out of the way of anything that would land [her] in trouble." She asserts the letter of reprimand she received for missing a dispatchers meeting at 1500 hours on 02 September 1993 was unjust, because she was reprimanded for failing to be able to be in two places at the same time. Respondent relates that she was told to go to the orderly room at 1500 hours to sign papers. After being at the orderly about seven minutes, respondent said she was paged and asked why she was not at the dispatchers meeting. Respondent replied that she had forgotten the meeting due to the fact that she was in the orderly room.

(3) Respondent states she joined the Air Force to serve her country and to belong to an organization that was built on integrity, pride, and unity. At basic training, respondent states that she felt like she "belonged there." Since coming to Dover AFB, respondent states that various military members have told her negative things about Dover AFB. She states that people in her office discredit one

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another and that she has never experienced that type of behavior in a work place.

(4) Respondent states that, regarding her first letter of counseling, her supervisor told her to go to sleep after he came from a nap. Respondent asserts that her supervisor told her LOCs and LORs were "not a big deal at all" and no one else would ever see them, therefore, she chose not to respond to the **LOCs**.

(5) Respondent also relates that she asked her supervisor if she could teach a quality course, either Teams and Tools or QAF. She stated that her supervisor denied her request, stating that the section was shorthanded and TQM was "a pile of crap anyway." Respondent asserts that "[t]his is the type of motivation [she is] given in [her] office."

(6) Respondent admits that she is not a model person, but states that it is hard not to make mistakes when you are constantly told how to do different things, by different people. Respondent states that she loves being in the Air Force and would be honored to continue to serve her country and excel through the ranks in the Air Force.

5. Errors/Irregularities: It should be noted that three of the dates in the letter of notification are not accurate. Respondent operated a vehicle under the influence of alcohol on 15 August 1993, not 24 August 1993. The date that respondent failed to attend a mandatory meeting, for which she received a letter of reprimand, was 5 August 1993, not 3 August 1993. Respondent failed to go to a Commander's Call, for which she received a letter of counseling, on 5 November 1992, not 9 November 1992 as listed in the notification letter.

6. Discussion:

a. AFR 39-10, paragraph 5-46, provides that a pattern of misconduct consisting solely of minor disciplinary infractions in the current enlistment makes an airman subject to discharge. AFR 39-10, paragraph 5-46, also provides that failure to comply with nonpunitive regulations or minor offenses under the UCMJ that result in formal counselings, letters of reprimand, or Article 15 nonjudicial punishments are the type of infractions that subject an airman to discharge under this paragraph. In this case, respondent failed to report to her appointed place of duty on four

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separate occasions, was found sleeping on duty twice and operated a motor vehicle while she was under the influence of alcohol. Four of the most serious incidents of misconduct occurred in less than one month, from 5 August 1993, to 2 September 1993. Respondent's flagrant violations of the UCMJ during that month indicates she does not have the ability or desire to conform with Air Force standards. Respondent's above noted pattern of misconduct establishes a legally sufficient basis for discharge under AFR 39-10, paragraph 5-46.

b. In her statement, respondent asserts that when she received her first LOC, her supervisor informed her that LOCs and LORs were "no big deal" and that no one would see them. Even if she had received that advice regarding her first LOC, that does not excuse respondent's subsequent repeated and flagrant violations of the UCMJ. Her statement that she is now in the position of trying to rebut counselings which occurred several months ago is not accurate. The majority of the misconduct that forms the basis for this discharge action occurred in August and September 1993, not several months ago. Respondent had the opportunity to respond to all of the latest actions, but only chose to respond to the Article 15, UCMJ punishment. Respondent's assertion that she was reprimanded on 09 September 1993 for not being in two places at the same time is not a proper characterization of that incident. Respondent was reprimanded for demonstrating a lack of responsibility by not attending a mandatory meeting and by not contacting anyone regarding her absence. The actions taken against respondent for her misconduct were warranted and appropriate.

c. AFR 39-10, paragraph 6-1, provides that when a basis for discharge is established, the member's entire military record must be considered in the decision to separate or retain the member. In addition to respondent's misconduct, the case file indicates that her duty performance is poor. She received an overall evaluation of 2 on her latest EPR. In addition, her commander, 436 OSS/CC, indicates in the letter recommending discharge that respondent fails to perform competently without constant supervision and has been decertified in several primary duty tasks. Respondent's record of misconduct and poor duty performance indicates she lacks potential for continued service in the Air Force. Therefore, respondent's separation is appropriate.

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d. As mentioned above, respondent's commander recommends that respondent receive a general service characterization. We concur. AFR 39-10, paragraph 1-18, provides that an honorable discharge is appropriate when the quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty. A general service characterization is in order when significant negative aspects of the airman's conduct or performance of duty outweigh the positive aspects of his military record. An under other than honorable conditions discharge is appropriate where the airman's misconduct is a significant departure from conduct expected of airmen. As a general rule, discharge for misconduct will be characterized as general. An honorable discharge may be warranted if the respondent's service, apart from the reasons for separation, has been so meritorious that any other characterization would be clearly inappropriate. In this case, respondent's brief service record is not so meritorious as to warrant an honorable characterization. The negative aspects of respondent's misconduct clearly outweigh any positive aspects of her military record. Therefore, a general service characterization is warranted.

e. AFR 39-10, paragraph 7-2(g), provides that probation and rehabilitation may be offered where there is a reasonable expectation of rehabilitation. Given respondent's inability or unwillingness to conform with Air Force standards in the past, despite various rehabilitative measures, no reasonable expectation exists that she will now be rehabilitated. Therefore, probation and rehabilitation are inappropriate.

7. Actions: As the Special Court Martial Convening Authority (SPCMCA), and thereby the separation authority, AFR 39-10, paragraph 5-53, provides that 436 AW/CC can:

- a. Direct that respondent be discharged with a general service characterization, with or without probation and rehabilitation.
- b. Recommend to the General Court Martial Convening Authority, 21 AF/CC, that respondent be discharged with an honorable discharge, with or without probation and rehabilitation.
- c. Direct processing of this discharge under Chapter 6, AFR 39-10, if he finds that an under other than honorable conditions discharge is warranted.
- d. Discontinue this action if he finds that the commander's recommendation is not supported by the evidence.

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8. Conclusion: This file is in substantial compliance with the provisions of AFR 39-10 and is legally sufficient to discharge respondent prior to the expiration of her term of enlistment.

9. Recommendation: That 436 AW/CC direct that respondent be discharged with a general service characterization without probation and rehabilitation.


Staff Judge Advocate, USAF

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 436TH AIRLIFT WING (AMC)



FROM: 436 OSS/CC

1 Oct 93

SUBJECT: Notification Letter

TO: A1C [REDACTED] 436 OSS

1. I am recommending your discharge from the United States Air Force for misconduct, specifically, minor disciplinary infractions. The authority for this action is AFR 39-10, paragraph 5-46. If my recommendation is approved, your service will be characterized as Honorable or General. I am recommending that your service be characterized as General.

2. My reasons for this action is your Record of Misconduct:

<u>DATE</u>	<u>OFFENSE</u>	<u>ACTION</u>
24 AUG 93	DWI	ARTICLE 15
2 SEP 93	FAILURE TO GO	LOR
3 AUG 93	FAILURE TO GO	LOR
31 AUG 93	SLEEPING ON DUTY	LETTER OF COUNSELING
26 JUN 93	FAILURE TO GO	LETTER OF COUNSELING
24 APR 93,	SLEEPING ON DUTY	LETTER OF COUNSELING
9 NOV 92	FAILURE TO GO	LETTER OF COUNSELING

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. You will also 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 Capt [REDACTED] at 1000hrs on 1 Oct 93 at Bldg 200, first floor. You may consult civilian counsel at your own expense.

4. You have the right to submit statement in your own behalf. Any statement you want the separation authority to consider must reach me by 6 Oct at 0900hrs, 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 Dover AFB Hospital at 1300hrs on 6 Oct 93 at the family practice clinic with Dr [REDACTED] for the examination.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 2. A copy of AFR 39-10 is available for your use in the OSS Orderly Room.

[REDACTED] Lt Col, USAF
Commander, 436 OSS

7 Atchs

1. AF Form 3070,
Article 15, UCMJ dtd 18 Aug 93
2. LOR, dtd, 9 Sep 93
3. LOR, dtd, 7 Aug 93
4. AF Form 174, dtd 31 Aug 93
5. AF Form 174, dtd 24 Apr 93
6. AF Form 174, dtd 9 Nov 92
7. AF Form 174, dtd 28 Jun 92