

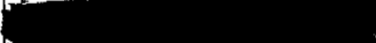




AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) 	GRADE AB	AFSN/SSAN 
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">NO</td> </tr> <tr> <td style="height: 20px;"></td> <td style="height: 20px;"></td> </tr> </table>	YES	NO				
YES	NO					

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
					X
					X
					X
					X
					X



ISSUES A94.53, A92.21	INDEX NUMBER A67.30	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="padding: 2px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width: 5%; padding: 2px; text-align: center;">1</td> <td style="padding: 2px;">ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="padding: 2px; text-align: center;">2</td> <td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="padding: 2px; text-align: center;">3</td> <td style="padding: 2px;">LETTER OF NOTIFICATION</td> </tr> <tr> <td style="padding: 2px; text-align: center;">4</td> <td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td></td> <td style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td></td> <td style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td></td> <td style="padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE HEARING</td> </tr> </tbody> </table>	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
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HEARING DATE 06 NOV 02	CASE NUMBER FD2000-0105																	

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

REMARKS
Applicant did not show for scheduled PA.

Case heard at Andrews AFB, MD

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 
INDORSEMENT	DATE 06 NOV 02

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

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

The applicant did not show for his schedule personal appearance before the Discharge Review Board (Board) and his case was considered by records review.

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 that would justify a change of discharge.

ISSUES: The applicant's issues are listed in the attached brief. He contends that his discharge was improper because at the time of his discharge he had not exhausted all appeals of his court martial conviction, however, the day prior to the scheduled Board hearing the Supreme Court denied his petition for a writ of certiorari. The United States Court of Appeals for the Armed Forces had denied his appeal and upheld his court martial conviction. The applicant received 3 memos for record, 3 Letters of Reprimand, and 2 Article 15's for a variety of instances of misconduct including failure to go, disobeying orders, failure to comply with training phase curfew, drunk and disorderly, and threatening to kill Security Forces personnel. He was convicted by Court Martial of drinking alcohol within eight hours of duty, drunk and disorderly, assault, and wrongfully distributing anabolic steroids (a Schedule III controlled substance). He was sentenced to confinement for twelve months. The applicant reports that since his discharge he has completed his college degree and was pursuing a new career. The Board concluded that the good aspects of the applicant's military service and his post service accomplishment did not outweigh the negative aspects of his serious and recurring misconduct.

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 AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 99/04/07 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 75/05/15. Enlmt Age: 21 4/12. Disch Age: 23 10/12. Educ:HS DIPL. AFQT: N/A. A-95, E-87, G-90, M-72. PAFSC: 3E751 - Fire Protection. DAS: 97/05/27.

b. Prior Sv: (1) AFRes 96/09/26 - 96/12/11 (2 months 15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 96/12/11 for 4 yrs. Svd: 02 Yrs 03 Mo 27 Das, of which AMS is 1 yr 7 months 00 days (excludes lost time of 8 months 26 days).

b. Grade Status: AB - 98/10/02 (GCMO NR.5, 98/11/25)
AMN - 98/03/31 (Article 15, 98/03/31)
A1C - 98/03/15
AMN - 97/05/15 (Article 15, 97/05/15)

c. Time Lost: 98/07/09 thru 99/04/05 (8 months 26 days).

d. Art 15's: (1) 98/03/31, Mountain Home AFB, ID - Article 134. You, were, on or about 14 Mar 98, drunk and disorderly in that you were yelling, raising your fist, and threatening to kill Security Forces personnel and dormitory residents. Reduction to Amn. (No appeal) (No mitigation)

(2) 97/05/15, Goodfellow AFB, TX - Article 92. You, who knew or should have known of your duties, were, at or near Goodfellow Air Force Base, Texas, on or about 3 May 97, derelict in the performance of those duties in that you willfully failed to comply with the curfew hours established by the Phase Program, as it was your duty to do. Reduction to Amn. (No appeal) (No mitigation)

e. Additional: none.

f. CM: General Court Martial No.5 - 98 Nov 25

CHARGE 1: Article 128. Plea: Guilty. Finding: Guilty.

Specification 1: Did, at or near Boise, Idaho, on 13 June 98, unlawfully strike Airman ----- on the head with his arm.

Specification 2: Did, at or near Boise, Idaho, on 13 June 98, unlawfully grab and strike ----- with his hands and legs by wrestling with him on the ground.

CHARGE II: Article 92. Plea: Guilty. Finding: Guilty.

Specification: Who knew of his duties at or near the state of Idaho, on 13 Jun 98, was derelict in the performance of those duties in that he willfully failed to refrain from drinking alcoholic beverages within eight hours of duty, as it was his duty to do.

CHARGE III: Article 112a. Plea: Not Guilty. Finding: Guilty.

Specification: Did, at or near Elmore County, Idaho, on 9 Jul 98, wrongfully distribute more than 25 grams of anabolic steroids (methandrostonolone and testosterone enanthate) Schedule III controlled substances. Sentence adjudged on 18 Sep 98: Confinement for twelve months and reduction to the grade of E-1.

g. Record of SV: 96/12/11 - 98/04/10 Mountain Home AFB 2 (Initial)REF

(Discharged from Mountain Home AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (01) Yrs (10) Mos (11) Das
TAMS: (01) Yrs (07) Mos (00) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/03/02.
(Change Discharge to Honorable)

Issue 1: I was dismissed erroneously because my legal case is still in review under appeal which I'm confident will be overturned. I am a productive member of society, since discharge I've completed my bachelor degree and am currently in Parametic School.

ATCH

1. DD Form 149.

02/06/20/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 366TH WING (ACC)
MOUNTAIN HOME AIR FORCE BASE, IDAHO

FD 2002-0105

22 MAR 1999

MEMORANDUM FOR 366 WG/CC

FROM: 366 WG/JA

SUBJECT: Legal Review, AFI 36-3208 Discharge- [REDACTED]
[REDACTED], 366th Civil Engineers Squadron

- 1. Initiation of Action:** This action was initiated by the 366th Civil Engineer Squadron Commander, [REDACTED] on 18 Mar 99, against [REDACTED] (Respondent) pursuant to AFD 36-32 and AFI 36-3208, paragraph 5.52.3: Commission of a Serious Offense. He recommends a general discharge characterization without probation and rehabilitation (P&R).
- 2. Respondent's Personal Data:** This 23 year old Respondent has approximately two years and three months of creditable service. A detailed summary of Respondent's personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter.
- 3. Basis for Discharge:** Airmen are subject to discharge under AFI 36-3208, paragraph 5.52.3, based on a commission of a serious offense if a punitive discharge would be authorized for the same offense under the UCMJ. In this matter, the Respondent unlawfully struck another person on the head with his arm and unlawfully grabbed and struck another person, wrestling with him on the ground. Further, he was derelict in the performance of his duties as a firefighter in that he willfully failed to refrain from drinking alcohol within eight hours of duty. Also, on or about 9 Jul 98, he wrongfully distributed more than 25 grams of anabolic steroids, a Schedule III controlled substance. Respondent was convicted of these crimes in a general court-martial on 18 Sep 98 and sentenced to 12 months confinement and reduction to the grade of E-1. Evidence of the conviction is properly documented in this discharge package. The UCMJ authorizes a punitive discharge for the offenses for which respondent was convicted (although the court did not give Respondent a punitive discharge). As such, the basis for discharge is legally sufficient.
- 4. Respondent's Statement:** Respondent was informed of his right to submit matters in response to this action. He waived this right in writing. (See Tab 4).
- 5. Errors or Irregularities:** None.

6. **Discussion:** Once you are convinced there is a basis for an airman's discharge, you may look at the airman's entire military record in deciding whether it is appropriate to discharge the airman. The serious nature of the crimes committed by the respondent are sufficient to establish a basis for discharge under commission of a serious offense. His crimes and subsequent conviction demonstrate that he lacks the integrity required of a military member. Discharge is appropriate in light of Respondent's criminal activity.

7. **Characterization of Service:** Paragraph 1.18 of AFI 36-3208 provides guidance on the types of service characterizations for administrative discharges. An "honorable" discharge is appropriate when: "the quality of an airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate" (para 1.18.1). An "under honorable conditions (general) discharge is defined as: "if an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record" (para 1.18.2). An "other than honorable conditions" discharge is defined as "a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen" (para 1.18.3). Such a discharge characterization, where the sole basis for discharge is a serious offense that resulted in conviction by a court-martial and the court declined to issue a punitive discharge, can only be approved by the Secretary of the Air Force (para 1.21.3). In this case, the Respondent's service, as evidenced by his criminal misconduct is most appropriately characterized as under honorable conditions (general).

8. **Probation and Rehabilitation (P&R):** P&R is not available. AFI 36-3208 para 5.55.2.3 directs that a member approved for discharge for drug abuse, to include distribution, is not eligible for P&R.

9. **Convening Authority Options:** As the Special Court-Martial Convening Authority, in accordance with paragraph 5.52.3 of AFI 36-3208, you may:

- a. Direct this action be withdrawn and retain the Respondent;
- b. Discharge the Respondent with a general discharge with or without P&R;
- c. Recommend to the General Court-Martial Convening Authority, HQ 12 AF/CC, approval of an honorable discharge; or
- d. Recommend a UOTHC discharge and order the case be processed according to board procedures. However, a UOTHC discharge would require Secretary of the Air Force final approval.

10. **Recommendation:** Discharge Respondent with a general discharge without P&R.



I concur.



2 Attachments:

1. Proposed 366 WG/CC Memo
2. Case File

FD 2002-6105



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 366TH WING (ACC)
MOUNTAIN HOME AIR FORCE BASE, IDAHO

18 MAR 1999

MEMORANDUM FOR [REDACTED]

FROM: 366 CES/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct: specifically, Commission of a Serious Offense. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.52.3. I am recommending your service be characterized as general.

2. My reason for this action is that, between on or about 13 Jun 98, you unlawfully struck another person on the head with your arm and unlawfully grabbed and struck another person, wrestling with him on the ground. Further, you were derelict in the performance of your duties as a firefighter in that you willfully failed to refrain from drinking alcohol within eight hours of duty. Also, on or about 9 Jul 98 you wrongfully distributed more than 25 grams of anabolic steroids, a Schedule III controlled substance. As a result of your crimes, you were found guilty by general court-martial on 18 Sep 98. You were sentenced to confinement for 12 months and reduction to E-1.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction 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 and any special pay, bonus, or education assistance funds may be subject to recoupment.

4. 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 the Area Defense Counsel, at Mountain Home AFB, on Fri day, 19 Mar 99 at 1400 hours. The telephone number is 828-2675. You may consult civilian counsel at your own expense.

5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within three workdays of the date of this memorandum unless you request and receive an extension for good cause shown. I will send them to the separation authority.

6. 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.

7. You have been scheduled for a medical examination on Tuesday, 6 Apr 99 at 1300 hours. You must report to the Physical Examination Section at the hospital. You must be in uniform. If you wear glasses, wear them to the scheduled examination.
8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available at the Area Defense Counsel's office or your squadron orderly room.
9. Upon your return to Mountain Home, proceed with this letter to the Military Personnel Flight, Customer Service, Building 512, Mountain Home AFB no later than 6 Apr 99 where you will be issued a temporary ID card valid for 90 days. If the discharge action is still pending at the end of 90 days, another temporary ID card will be issued to you until the case is finalized.
10. This letter also authorizes you to proceed to the Security Forces, Pass and Registration Section, Building 7001, Visitor Control Center, no later than _____ where you will turn in your Mountain Home AFB vehicle sticker and your USAF vehicle decal. They will issue a temporary permit good for 90 days. If the discharge action is still pending at the end of 90 days, another temporary vehicle decal will be issued to you until the case is finalized.
11. Finally, proceed with this letter to the Traffic Management Office (TMO), in Building 512, immediately after receiving your separation orders from the Separations Section at the MPF for arranging shipment of your household goods.



Attachments:

1. AF Form 1359, Report of Result of Trial, 18 Sep 98