






AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) 	GRADE SSGT	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="text-align: center; padding: 2px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> </tr> </table>	YES	NO	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
YES	NO					
<input type="checkbox"/>	<input checked="" type="checkbox"/>					

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

ISSUES A94.05	INDEX NUMBER A61.00	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 4 NOV 02	CASE NUMBER FD2002-0219			

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

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 AFBCMR.

SIGNATURE OF RECORDER 	SIGNATURE OF BOARD PRESIDENT 
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INDORSEMENT	DATE: 4 NOV 02
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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 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 issues are listed in the attached brief.

ISSUE: The applicant felt his discharge was too harsh because it was based solely on one incident. The applicant was convicted in a civilian court of abusing and endangering the health of a child and inflicting great bodily injury, which resulted in the death of his two year old adopted son. Applicant served honorably for 8 years and feels that his full military record should be considered. The DRB agreed that the applicant's discharge was based on a single incident; however, the Board found that the seriousness of that misconduct; Commission of a Serious Offense and a conviction, outweighs the applicant's otherwise satisfactory service. The Board concluded the misconduct was a significant departure from conduct of all military members.

However, no inequity or impropriety in his discharge was suggested or found in the course of the records review. The Board concluded that the character of and reason for discharge were appropriate due to his 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 SSGT) (HGH SSGT)

1. MATTER UNDER REVIEW: Appl rec'd a UOTHC Disch fr USAF 98/04/07 UP AFI 36-3208, para 5.56.2 (Misconduct - Civilian Conviction). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 71/09/02. Enlmt Age: 17 0/12. Disch Age: 26 7/12. Educ: HS DIPL. AFQT: N/A. A-89, E-62, G-68, M-59. PAFSC: X1A251 - Aircraft Loadmaster Journeyman. DAS: 93/05/20.

b. Prior Svc: (1) AFRes 88/09/15 - 89/10/01 (1 Yr 17 Days) (Inactive).

(2) Enld as AB 89/10/02 for 4 yrs. Ext: 92/12/17 for 23 mos. Svd: 5 Yrs 0 Mos 12 Days. AMN - 90/04/02. A1C - 91/02/02. SRA - 92/10/02. EPRs: 3,4,5,4.

3. SERVICE UNDER REVIEW:

a. Reenld as SRA 94/10/14 for 4 yrs. Svd: 3 Yrs 5 Mos 24 Das, of which AMS is 2 Yrs 8 Mos 26 Das (ex. 8 Mos 28 Das lost time).

b. Grade Status: SSGT - 97/04/01

c. Time Lost: 10 Jul 97 - 7 Apr 98.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 93/12/13 - 94/12/12 Travis AFB 5 (Annual)
94/12/13 - 95/12/12 Travis AFB 5 (Annual)
95/12/13 - 96/12/12 Travis AFB 5 (Annual)

(Discharged from Travis AFB)

h. Awards & Decs: AFAM, AFCM, AAM, AFLSA (1OLC), AFTR, SASM (1OLC), AFOLTR, NDSM, HSM, CRM, NCOPMER, AFEM, AFOUTA (2OLC), AFGCM (1OLC).

i. Stmt of Sv: TMS: (8) Yrs (9) Mos (25) Das
TAMS: (7) Yrs (9) Mos (8) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/05/15.

(Change Discharge to Honorable)

Issue: My discharge was inequitable because it was based on one isolated incident in 89 months of service with no other adverse action.

ATCH

1. Applicant's Letter.
2. Patten College Transcripts.

02/08/26/cr



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS FIFTEENTH AIR FORCE (AMC)

30 MAR 1998

MEMORANDUM FOR 15 AF/CC

FROM: 15 AF/JA

SUBJECT: Administrative Discharge [REDACTED]
22nd Airlift Squadron, Travis AFB CA

1. INTRODUCTION

a. I reviewed the attached discharge file on the respondent [REDACTED] and find it legally sufficient to support his discharge for Misconduct - Civilian Conviction pursuant to AFI 36-3208, Section H, paragraph 5.51.

b. The basis of this action is [REDACTED] civilian conviction. On 4 Nov 97, he was convicted in the Superior Court of California, Solano County, pursuant to his plea, of abusing and endangering the health of a child and inflicting great bodily injury which resulted in the death of his two year old adopted son, [REDACTED], on 1 Jun 97. He was sentenced to 7 years confinement and a fine of \$1,400.00.

c. 22 AS/CC initiated this action on 20 Feb 98, recommending [REDACTED] be discharged for misconduct due to a civilian conviction pursuant to AFI 36-3208, paragraph 5.51 with an under other than honorable conditions (UOTHC) service characterization. The respondent received notice of this action the same day. On 20 Mar 98, [REDACTED] submitted an unconditional waiver of his right to have his case heard by a discharge board. He also waived his right to be represented by military counsel and to submit statements in his own behalf. On 26 Mar 98, 60 AMW/CC recommended you accept the respondent's unconditional waiver and separate him from the service with a UOTHC without probation and rehabilitation.

2. BASIS FOR DISCHARGE AND SERVICE CHARACTERIZATION

a. AFI 36-3208, Chapter 5 outlines the bases for involuntary separation of airmen. Paragraph 5.51 indicates airmen are subject to discharge for a civilian conviction when either a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial, or the sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation. The respondent's conviction meets both prongs of this provision.

b. According to AFI 36-3208, paragraph 5.48.1, individuals processed for separation under paragraph 5.51 should usually receive a UOTHC service characterization. This service characterization is appropriate when a pattern of behavior or one or more acts or omissions constitutes a significant departure from the conduct expected of airmen. A general (under honorable conditions) characterization is warranted if an airman's service has been honest and faithful yet significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. An honorable service characterization, in the context of a misconduct-based action, is warranted only when the member's record has been so meritorious that any other characterization would be clearly inappropriate.

3. PROBATION AND REHABILITATION (P&R)

P&R provides for a conditional suspension of an administrative discharge for cause in deserving cases and is based on the notion that an airman can change a pattern of behavior. Airmen should be offered the opportunity for P&R when it is reasonably possible to do so. An airman deserving P&R is one who has demonstrated a potential to serve satisfactorily, has the capacity to be rehabilitated, and whose retention on active duty is consistent with the maintenance of good order and discipline.

4. LEGAL ANALYSIS AND DISCUSSION

a. The respondent was accorded the procedural and substantive rights to which he is entitled under AFI 36-3208. However, there is one issue which requires discussion. Although the notification letter indicates SSgt Huff "must consult legal counsel before making a decision to waive any of [his] rights," AFI 36-3208, paragraph 6.13.1 contains no such requirement. In fact, it specifically lists the right to consult counsel as one of the rights that can be waived. Therefore, the respondent's decision not to discuss this discharge action with counsel does not in any way affect the validity and effectiveness of his unconditional waiver. Since the case file includes the respondent's acknowledgment that he received a copy of the notification memorandum which initiated this action and his receipt predates his unconditional board waiver, processing of the case based on that waiver may continue.

b. The 26 year old respondent has been in the Air Force since 2 Oct 89. His current enlistment began 14 Oct 94. He was assigned to his present unit on 20 May 93. He has received a total of seven performance reports with overall ratings, from oldest to most recent, as follows: "3", "4", "5", "4", "5", "5" and "5". [redacted] is entitled to wear: the Aerial Achievement Medal, the Air Force Commendation Medal, the Air Force Achievement Medal, the Air Force Outstanding Unit Award with one device, the Combat Readiness Medal, the Air Force Good Conduct Medal with one oak leaf cluster, the National Defense Service Medal, the Armed Forces Expeditionary Medal, the Southwest Asia Service Medal with one device, the Armed Forces Service Medal, the Humanitarian Service Medal, the Air Force Overseas Ribbon, the Air Force Longevity Service Ribbon with one device, the NCO Professional Military Education Graduate Ribbon, and the Air Force Training Ribbon. The respondent did not submit any statements with his unconditional waiver. There are no recoupment issues in this case. Pursuant to AFI 36-3208, paragraph 6.3.1 a medical examination is not required in this case.

c. The respondent's physical abuse of his two year old adopted son, [redacted], resulting in the child's death, warrants discharge with a UOTHC service characterization. The City of Vacaville police report, the Coroner's report and the other ancillary documents in the case file indicate [redacted] suffered multiple bruises, lacerations, internal injuries and head trauma. [redacted] was found guilty pursuant to a plea and is currently in jail, serving a 7-year sentence. The physical abuse inflicted upon [redacted] resulting in his death represents a significant departure from the conduct expected of airmen. Thus, a UOTHC is appropriate in this case. Given the nature of the offenses the respondent was convicted of and his adjudged sentence, P&R is not appropriate in this case.

5. OPTIONS OF THE DISCHARGE AUTHORITY

You may:

a. Accept the respondent's unconditional waiver of his rights associated with a discharge board and order him separated from the Air Force for Misconduct - Civilian Conviction with an honorable, general (under honorable conditions) or UOTHC service characterization with or without P&R; or

b. Rejeo [redacted] unconditional waiver and return the case for further administrative discharge processing in accordance with AFI 36-3208.

6. RECOMMENDATION

That you accept the respondent's unconditional waiver and order [redacted] separated from the Air Force for Misconduct - Civilian Conviction with a UOTHC service characterization without P&R.

[redacted]

I concur.

[redacted]

Attachments:

- 1. Proposed Memo
- 2. Case File [redacted]

cc:
60 AMW/JA

FD2002-0219



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

23 MAR 1998

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
232 U Street
Travis AFB CA 94535-2815

SUBJECT: Unconditional Waiver of Administrative Discharge Board Hearing
Under AFI 36-3208 [REDACTED]

1. **Introduction:** I have reviewed the discharge action pertaining to [REDACTED] (Respondent) and I find it legally sufficient to support the proposed action. On 20 Feb 98, the commander of the 22nd Airlift Squadron initiated discharge action against [REDACTED] pursuant to AFD 36-32 and AFI 36-3208, paragraph 5.51: Misconduct, Civilian Conviction, and recommended an under other than honorable conditions (UOTHC) discharge characterization without probation and rehabilitation (P&R). After a careful review of Respondent's case file on 20 Mar 98, the 60 OG/CC concurred with 22 AS/CC to proceed with the discharge action and her recommendation for a UOTHC discharge without P&R.

2. **Respondent's Personal Data:** This 26-year-old loadmaster with over 9 years of creditable military service enlisted in the Air Force under the Delayed Enlistment Program on 15 Sep 88 and has a current 4-year enlistment beginning on 14 Oct 94. He has received 7 EPRs, one of which shows overall ratings of "3," two of which show overall ratings of "4," and the remaining four EPRs show overall ratings of "5." Respondent has received favorable awards, including the Air Force Achievement Medal, Air Force Commendation Medal, Air Force Good Conduct Medal (1OLC), Aerial Achievement Medal, Combat Readiness Medal, Air Force Longevity Service Award (one device), National Defense Service Medal, Air Force Overseas Service Long Tour Ribbon, NCO Professional Military Education Ribbon, Armed Forces Expeditionary Medal, Southwest Asia Service Medal (one device), Armed Forces Service Medal, Humanitarian Service Medal, Air Force Training Ribbon, and Air Force Outstanding Unit Award (one device). A detailed summary of his personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter, dated 20 Mar 98.

3. **Respondent's Statement:** Based on his possible UOTHC discharge, NCO status, and creditable service of over 9 years, Respondent was personally served with a copy

of his discharge case file which informed him of his right to consult counsel, to request a hearing before an administrative discharge board, to be represented by counsel before a discharge board hearing, and to present written statements in addition to, or in lieu of, the board proceedings (Tab 1). On 20 Mar 98, Respondent unconditionally waived his right to consult counsel, to present his case before an administrative discharge board and to submit matters for the separation authority's consideration (Tab 3). The unconditional waiver subjects Respondent to possible receipt of a UOTHC discharge.

4. **Basis for Discharge:** This action is legally sufficient to support the recommended action under paragraph 5.51 of AFI 36-3208. Specifically, on or about 4 Nov 97, Respondent was convicted of abusing and endangering the health of a child, infliction of great bodily injury, in violation of Sections 273a(a) and 12022.7 of the State of California Penal Code. Respondent pled "no contest" to the charges. The City of Vacaville police reports and ancillary documentation indicate that Respondent abused his child, [REDACTED] resulting in his death on or about 1 Jun 97 in Vacaville, California (Atchs 2 through 15). For this offense, Respondent was sentenced to 7 years confinement in the California state corrections department and received a \$1,400 fine, as evidenced by the Superior Court of California, Solano County, Abstract of Judgment, dated 12 Jan 98 (Atch 1, Tab 1). Respondent is subject to discharge under paragraph 5.51 because his sentence by civilian authorities includes confinement for more than 6 months and because a punitive discharge is authorized for the same or a closely related offense under the Manual for Courts-Martial (MCM). As stated in the MCM, a similar offense under Article 128, UCMJ, includes as an authorized punishment a dishonorable discharge, 5 years confinement, and forfeiture of all pay and allowances.

5. **Appropriateness of Discharge:** Discharge is appropriate in this case based upon Respondent's civilian conviction and sentence to 7 years confinement. In fact, under AFI 36-3208, paragraph 5.51.3.2, Respondent must be discharged unless the commander determines Respondent should be retained and submits a request for retention. Airmen who have a civilian conviction involving an offense for which a punitive discharge and confinement for a year or more is authorized for the same or a closely related offense under the MCM must be processed for discharge or the commander must request a waiver of discharge. The commander has not submitted such a request for waiver of discharge, but instead has initiated discharge of Respondent. Respondent's assault upon his child resulting in his death and the ensuing civilian conviction support discharge.

6. **Characterization of Service:** Discharges under paragraph 5.51 are characterized as entry-level separation, honorable, general, or UOTHC (AFI 36-3208, Table 1.3). Respondent's service cannot be characterized as entry-level separation since he has over 9 years of total military service. A discharge should be honorable only if Respondent's service has met Air Force standards of acceptable conduct and performance of duty or has been so meritorious that any other characterization would be clearly inappropriate. Respondent does not meet this standard. A general

discharge characterization is appropriate when negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record; and a UOTHC is warranted when a member's improper acts are a "significant departure" from conduct expected of airmen. Assaulting a child so severely that he dies is a significant departure from the conduct expected of airmen and warrants a UOTHC discharge.

7. **Probation and rehabilitation (P&R):** Although P&R is permissible, it is inappropriate in Respondent's case due to the extremely serious nature of the offense committed. His criminal conduct and resulting civilian conviction tend to disrupt order, discipline, or morale within the military and bring discredit to the Air Force in the civilian community. I do not believe Respondent has the capacity to be rehabilitated for completion of his enlistment.

8. **Options:** Pursuant to paragraph 5.56.2 and 5.56.2.1 of AFI 36-3208, the General Court-Martial Convening Authority approves or disapproves conditional and unconditional board hearing waivers for misconduct cases, and must personally act on discharges resulting in UOTHC. As the Special Court-Martial Convening Authority, your options are to:

a. Direct this action be withdrawn and retain the respondent.

b. Forward the case file to 15 AF/CC with a recommendation that the unconditional waiver be accepted and Respondent be discharged with an honorable, general, or UOTHC discharge with or without P&R.

9. **Recommendation:** Forward the case file to 15 AF/CC with a recommendation that the unconditional waiver be accepted and Respondent be discharged with a UOTHC discharge without P&R.



Attachment:

- 1. Proposed Action
- 2. Case File 

I concur.





DEPARTMENT OF THE AIR FORCE
22D AIRLIFT SQUADRON (AMC)

FD2002-0219

20 FEB 1998

MEMORANDUM FOR [REDACTED]

FROM: 22 AS/CC
510 Airlift Drive
Travis AFB CA 94535-2631

SUBJECT: Notification Letter - Board Hearing

1. I am recommending your discharge from the United States Air Force for Misconduct, Civilian Conviction, according to AFPD 36-32 and AFI 36-3206, paragraphs 5.51. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. The basis on which I am initiating this action is that on or about 4 Nov 97, you were convicted of abusing and endangering the health of a child, infliction of great bodily injury, in violation of Sections 273a(a) and 12022.7 of the State of California Penal Code. You pled "no contest" to the charges. The enclosed police reports and ancillary documentation indicate that you abused your child, [REDACTED] resulting in his death on or about 1 Jun 97 in Vacaville, California (Atchs 2 through 15). For this offense, you were sentenced to 7 years confinement in the California state corrections department and received a \$1,400 fine, as evidenced by the Superior Court of California, Solano County, Abstract of Judgment, dated 12 Jan 98 (Atch 1, Tab 1).

3. This discharge action could result in your separation with a characterization of under other than honorable conditions (UOTHC) discharge. I am recommending that you receive a UOTHC discharge. The commander exercising 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.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board "subject to your availability."
- 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 making a decision to waive any of your rights.

5. Military legal counsel [REDACTED] Airlift Drive, Bldg 381, Suite D-100, Travis Air Force Base, California, DSN: 837-4569; Commercial: (707) 424-4569 has been obtained to assist you. Call her between the hours of 0730 – 1630, Monday through Friday. 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 AF1 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 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will 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 the board hearing.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208, can be made available for your use (upon request).

8. 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.

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

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

[REDACTED SIGNATURE]

Attachments:

1. Superior Court of California, Abstract of Judgment, 12 Jan 98
2. Crime Report, Case No. 97-05186, pages 1 – 8, 1 Jun 97
3. Crime Report, Case No. 97-05186, pages 9 – 13, 1 Jun 97
4. Crime Report, Case No. 97-05186, pages 14 – 16, 1 Jun 97
5. Crime Report, Case No. 97-05186, pages 20 – 32, 1 Jun 97
6. Crime Report, Case No. 97-05186, pages 33 – 34, 1 Jun 97
7. Crime Report, Case No. 97-05186, pages 44 – 54, 1 Jun 97
8. Crime Report, Case No. 97-05186, pages 55 – 58, 1 Jun 97
9. Death Investigation, Disposition, Page 68, 11 Jun 97
10. Death Investigation, Disposition, Page 69, 11 Jun 97
11. Crime Report, Case No. 97-05186, pages 71 – 78, 1 Jun 97
12. Crime Report, Case No. 97-05186, pages 87 – 89, 1 Jun 97
13. Crime Report, Case No. 97-05186, pages 90 – 93, 1 Jun 97

- 14. Office of the Coroner, Solano County, pages 211 – 219, 2 Jun 97
- 15. Primerica Life Insurance Company, w/Transcribed Statement, pages 79 - 86
- 16. Other Derogatory Data:
 - Establishment of SSF, 18 Jul 97