

TYPE		PERSONAL APPEARANCE	X RECORD REVIEW
		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO		
	X		

MEMBERS SITTING				
MON	GEN	DOTBC	OTHER	DENY
				X
				X
				X
				X
				X

ISSUES A92.35	INDEX NUMBER A67.10, A67.50	1 ORDER APPOINTING THE BOARD
		2 APPLICATION FOR REVIEW OF DISCHARGE
		3 LETTER OF NOTIFICATION
		4 BRIEF OF PERSONNEL FILE
HEARING DATE 02 05 29	CASE NUMBER FD2002-0018	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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR

SIGNATURE OF RECORDER [Redacted]

SIGNATURE OF BOARD PRESIDENT [Redacted]

TO: SAF/MIBR
550C 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 WMG, 3RD FLOOR
ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

FD2002-001⁸

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 is denied.

The board finds that neither the 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. Applicant contends discharge was inequitable because it was too harsh. The information provided by the applicant and contained in his records was carefully reviewed by the DRB. The records indicated the applicant received two Article 15s, four Letters of Reprimand and two Letters of Counseling for misconduct. The misconduct included failure to go and failure to obey a lawful order. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct outweighed the otherwise satisfactory performance of this member. The characterization of the discharge received by the applicant was found to be appropriate.

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) (HGH SRA)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 00/08/10 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 73/03/26. Enlmt Age: 23 11/12. Disch Age: 27 4/12. Educ: HS DIPL. AFQT: N/A. A-92, E-86, G-88, M-90. PAFSC: 2A353B - Tactical Aircraft Maintenance Journeyman. DAS: 97/10/28.

b. Prior Sv: (1) AFRes 97/03/05 - 97/03/11 (7 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as A1C 97/03/12 for 4 yrs. Svd: 03 Yrs 04 Mo 29 Das, all AMS.

b. Grade Status: A1C - 00/06/01 (Article 15, 00/06/01)
 SRA - 99/07/12

c. Time Lost: none.

d. Art 15's: (1) 00/06/01, Hill AFB, UT - Article 86. You did, on or about 19 May 00, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to A1C. (Appeal/Denied) (No mitigation)

(2) 99/11/15, Hill AFB, UT - Article 86. You did, on 22 Oct 99, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to A1C (suspended until 14 May 00), forfeiture of \$150.00 pay per month for 2 months (suspended until 14 May 00), and 10 days extra duty. (No appeal) (No mitigation)

e Additional: LOR, 28 DEC 99 - Failure to obey a lawful order.
 LOR, 07 DEC 99 - Failure to go.
 LOR, 08 SEP 99 - Failure to go.
 LOR, 27 AUG 99 - Failure to go.
 LOC, 15 JUN 99 - Failure to go.
 LOC, 21 DEC 98 - Failure to go.

f. CM: none.

g. Record of SV: 97/03/12 - 98/10/31 Hill AFB 4 (HAF Dir)

98/11/01 - 99/10/31 Hill AFB 2 (Annual) REF

(Discharged from Hill AFB)

h. Awards & Decs: AFOUA, AFEM, AFTR.

i. Stmt of Sv: TMS: (03) Yrs (05) Mos (06) Das
 — — TAMS: (03) Yrs (04) Mos (29) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 01/05/28.
 (Change Discharge to Honorable)

Issue 1: I would like to thank you for considering this petition to upgrade my discharge. I have little additional information to present to you. I would point out that there are inconsistencies in my record that I feel should be emphasized. They are follows:

1. I experienced a period of depression that forced me to ask for psychological assistance. I was then placed on prescribed medication - which had a side effect on my physical wellness and caused chronic fatigue. Yet when a Command Directed Evaluation was performed, nothing was found wrong. The CDC was performed after being medicated for a month and the medication was not stopped. The fatigue was directly responsible for my tardiness, which was in turn responsible for my first Article 15.

2. It was and is my belief that the second Article 15 that was imposed as non-judicial punishment for being late was not completely thought out. My rebuttal could not have been given full consideration as I handed it in at 1000 hrs and the decision was announced at 1400 hrs on the same day. The decision was rendered by a newly assigned commander, whom I had never even met. I feel the decision was determined before I set foot in the office to hear my rights.

I take full responsibility for any mistakes I have made. I also do not want to question my chain of command. I do, however, question why, when an airman shows integrity and honor, his opinion and his counsel's opinion are ignored.

I point out for the record that I was never given the copies I asked for (and have the rights to) of all documents that were filed as part of my appeal. I also would like to know why a rebuttal to my rebuttal was allowed and submitted during the appeal process. My opinion and that of my counsel is that the Squadron had made their case and I had made mine. We did not believe that there were to be additions after I had stated my case. Fairness was lacking, in my opinion.

I am prepared to accept your decision and feel confident that the decision will be just.

Thank you for your time and consideration.

FD2002-0018

ATCH

1. Applicant's Issues.

02/04/09/ia



FD 2002-0018

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS OGDEN AIR LOGISTICS CENTER (AFMC)
HILL AIR FORCE BASE, UTAH

20 July 2000

MEMORANDUM FOR 75 ABW/CC

FROM: OO-ALC/JA

SUBJECT: Administrative Discharge Legal Review
[REDACTED] (FS)

1. I have reviewed the attached discharge package concerning [REDACTED] (respondent) and find it legally sufficient.
2. Background: On 28 June 2000, the 34th Fighter Squadron Commander notified the respondent that he was recommending the respondent's discharge from the Air Force for minor disciplinary infractions, under AFPD 36-32 and AFI 36-3208, paragraph 5.49. In his 6 July 2000 memorandum, the commander recommends you discharge the respondent with a general discharge.
3. Evidence for the Commander: The evidence supporting the commander's recommendation consists of the following:
 - a. On or about 19 May 2000, the respondent failed to report to his appointed place of duty at the time prescribed. For this misconduct, he received an Article 15, dated 1 June 2000. (Atch 1a)
 - b. On or about 28 December 1999, the respondent failed to obey an order given to him by [REDACTED] to provide documentation concerning a veterinarian bill. For this misconduct, he received a Letter of Reprimand (LOR), dated 28 December 1999. (Atch 1b)
 - c. On or about 7 December 1999, the respondent failed to report to his appointed place of duty at the time prescribed. For this misconduct, he received an LOR, dated 7 December 1999. (Atch 1c)
 - d. On or about 22 October 1999, the respondent failed to report to his appointed place of duty at the time prescribed. For this misconduct, he received an Article 15, dated 15 November 1999 which was placed in his existing Unfavorable Information File (UIF). (Atch 1d)
 - e. On or about 2 September 1999, the respondent failed to report to his appointed place of duty at the time prescribed. For this misconduct, he received an LOR, dated 8 September 1999 and a UIF was established dated 15 October 1999. (Atch 1e)
 - f. On or about 26 August 1999, the respondent failed to report to his appointed place of duty at the time prescribed. For this misconduct, he received an LOR, dated 27 August 1999. (Atch 1f)
 - g. On or about 10 June 1999 and again on or about 14 June 1999, the respondent failed to report to his appointed place of duty at the time prescribed. For these acts of misconduct, he received a Letter of Counseling (LOC), dated 15 June 1999. (Atch 1g)

h. On or about 16 December 1998 and again on or about 21 December 1998, the respondent failed to report to his appointed place of duty at the time prescribed. For these acts of misconduct, he received an LOC, dated 21 December 1998.

4. Evidence for the Respondent: The respondent sought legal counsel and submitted a written ~~statement for your consideration.~~

5. Errors or Irregularities: None

6. Discussion: Under ~~AFED~~ **AFED 36-32** and **AFI 36-3208**, paragraph 5.49, an airman may be administratively discharged in the current enlistment for minor disciplinary infractions. The respondent's conduct clearly meets this standard. The respondent has been late to work on 13 separate occasions. For this misconduct, progressive disciplinary measures have been used in an attempt to rehabilitate him. The respondent has received 2 LOCs, 3 LORs, and 2 Article 15s. However, despite these rehabilitative efforts, the respondent has failed to conform his conduct. —

In the statement submitted by the respondent in response to this administrative discharge action, he attempts to minimize his chronic tardiness and blame his supervisors for the imposition of the administrative actions that have been taken against him. The facts, however, are clear. The respondent has been repeatedly late, has been given ample opportunity to reform his conduct, and has failed to do so. Further, the respondent's statement in paragraph 2d of his response that following his Article 15, dated 15 November, that there were no additional incidents for the next six months, is inaccurate. During that time period, the respondent received an LOR for being late to work on 7 Dec 99 (Atch 1c), and an additional LOR for failing to obey a lawful order on 28 Dec 99 (Atch 1b). Finally, the respondent's argument that his latest Article 15, dated 19 May, was improper is simply unfounded. He received the Article 15 for failure to go. He was supposed to report to work at 0700 and did not call to state that he was sick until 0715. The commander fairly imposed punishment, and the appellate authority appropriately denied his appeal. The respondent has been given enough chances to conform to standards. Administrative discharge is now appropriate.

The appropriate characterization of this discharge is general. Under paragraph 1.18.2 of **AFI 36-3208**, a general discharge is warranted when significant negative aspects of an airman's conduct or duty outweigh the positive aspects of the airman's military record. In this case, the respondent's chronic tardiness outweighs any positive aspects of his service.

7. Coordination: This discharge action was coordinated with the 388th OG Commander, Colonel ~~_____~~ and he concurs.

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

a. Terminate this action by directing the respondent be retained in the Air Force.

b. Recommend to the General Court-Martial Convening Authority that the respondent be discharged with an honorable characterization, with or without P&R.

d. Order the respondent be discharged with a general discharge characterization, with or without an offer of P&R.

9. **Recommendation:** I recommend that you order the respondent be discharged from the Air Force with a general characterization, without P & R, under AF1 36-3208, paragraph 5.49, minor disciplinary infractions.

[Redacted Signature] USAF
Chief, Adverse Actions

I concur (~~non-concur~~) with the discharge recommendation.

[Redacted Signature] Colonel, USAF
Staff Judge Advocate

Attachment:
Case File

FD 2002-0018



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 388TH FIGHTER WING (ACC)
HILL AIR FORCE BASE, UTAH

28 JUN 2000

MEMORANDUM FOR [REDACTED]

FROM: 34 FS/CC

SUBJECT: Notification Letter

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

2. My reasons for this action are:

a. On or about 19 May 2000, you failed to report to your appointed place of duty at the time prescribed. For this misconduct, you received an Article 15, dated 1 June 2000. (Atch 1a)

b. On or about 28 December 1999, you failed to obey an order given to you by [REDACTED] to provide documentation concerning a veterinarian bill. For this misconduct, you received a Letter of Reprimand (LOR), dated 28 December 1999. (Atch 1b)

c. On or about 7 December 1999, you failed to report to your appointed place of duty at the time prescribed. For this misconduct, you received an LOR, dated 7 December 1999. (Atch 1c)

d. On or about 22 October 1999, you failed to report to your appointed place of duty at the time prescribed. For this misconduct, you received an Article 15, dated 15 November 1999 which was placed in your existing Unfavorable Information File (UIF). (Atch 1d)

e. On or about 2 September 1999, you failed to report to your appointed place of duty at the time prescribed. For this misconduct, you received an LOR, dated 8 September 1999 and a UIF was established dated 15 October 1999. (Atch 1e)

f. On or about 26 August 1999, you failed to report to your appointed place of duty at the time prescribed. For this misconduct, you received an LOR, dated 27 August 1999. (Atch 1f)

g. On or about 10 June 1999 and again on or about 14 June 1999, you failed to report to your appointed place of duty at the time prescribed. For these acts of misconduct, you received a Letter of Counseling (LOC), dated 15 June 1999. (Atch 1g)

h. On or about 16 December 1998 and again on or about 21 December 1998, you failed to report to your appointed place of duty at the time prescribed. For these acts of misconduct, you received an LOC, dated 21 December 1998.

3. 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 determine 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.

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 with the Area Defense Counsel, [REDACTED] at building 1205, on [REDACTED] at [REDACTED]. 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 by 5 July 00, 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. You must report to the physical exam section of the base clinic on [REDACTED], between 1300 and 1500 for the 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 for your use in the unit orderly room.

[REDACTED]
Li Col, USAF
Commander

Attachments:

1. a. AF Form 3070, dtd 1 Jun 00/Reponse
- b. LOR, dtd 28 Dec 99
- c. LOR, dtd 7 Dec 99
- d. AF Form 3070, dtd 15 Nov 99
- e. LOR, dtd 8 Sep 99, AF Form 1058, dtd 15 Oct 99
- f. LOR, dtd 27 Aug 99
- g. LOC, dtd 15 Jun 99
- h. LOC, dtd 21 Dec 98
2. Airman's Receipt of Notification Letter