

TYPE		PERSONAL APPEARANCE		X RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO							
	X							
MEMBERS SITTING				VOTE OF THE BOARD				
				HON	GEN	UOTHC	OTHER	DENY
								X
								X
								X
								X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD				
A95.00		A67.30		1	ORDER APPOINTING THE BOARD			
				2	APPLICATION FOR REVIEW OF DISCHARGE			
				3	LETTER OF NOTIFICATION			
HEARING DATE		CASE NUMBER		4	BRIEF OF PERSONNEL FILE			
30 MAY 02		FD2002-0024			COUNSEL'S RELEASE TO THE BOARD			
					ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE			
					TAPE RECORDING OF PERSONAL APPEARANCE HEARING			
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE 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					
INDORSEMENT				DATE: 30 MAY 02				
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					

AFHQ FORM 0-2077, JAN 00

(EF-V2)

Previous edition will be used.

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0024

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 the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was able to identify none that would justify a change of discharge.

ISSUE: The applicant submitted no issues and requested that the review be completed based on the available service record. The Board reviewed the entire record and found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The records indicated applicant had received a Letter of Reprimand for Adultery and found guilty by a Summary Court Martial for Adultery. The Board concluded the disciplinary infractions were a significant departure from the conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on 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) (HGH SRA)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 98/01/13 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 76/09/18. Enlmt Age: 17 10/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A. A-70, E-92, G-86, M- 4. PAFSC: 2A453 - Aircraft Command Control and Navigation Systems Journeyman. DAS: 95/08/10.

b. Prior Sv: (1) AFRes 94/08/12 - 94/08/23 (12 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 94/08/24 for 4 yrs. Svd: 03 Yrs 04 Mo 20 Das, all AMS.

b. Grade Status: AMN - 97/12/19 (SCM, 97/12/19)
SRA - 97/08/24
A1C/AMN - (EPR Indicates): 94/08/24-96/04/23

c. Time Lost: none.

d. Art 15's: (1) none.

e. Additional: LOR, 12 NOV 97 - Adultery.

f. CM: Summary Court Martial - 97 Dec 19

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

Specification: Having knowledge of a lawful order issued by 1Lt -
-----, to have no physical, verbal, or written contact with or
enter the work place of Ms. ----- or words to that effect, an
order which it was his duty to obey, did, within the territorial
limits of the continental United States, on or about 28 Nov 97,
fail to obey the same by wrongfully going to Texas with Mrs. -----

CHARGE 11: Article 134. Plea: Guilty. Finding: Guilty.

Specification: A married man, did, within the territorial
limits of the United States, on divers occasions between on or
about 13 Sep 97, and on or about 28 Nov 97, wrongfully have sexual
intercourse with Mrs. -----, a married women not his wife.
Sentence adjudged on 19 Dec 97: Reduction to E-2, forfeiture of

\$250.00 and 5 days confinement.

g. Record of SV: 94/08/24 - 96/04/23 Offutt AFB 5 (Initial)
96/04/24 - 97/04/23 Offutt AFB 5 (Annual)

(Discharged from Offutt AFB)

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

i. Stmt of Sv: TMS: (03) Yrs (05) Mos (02) Das
TAMS: (03) Yrs (04) Mos (20) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/01/09.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH
none.

02/04/15/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 55TH WING (ACC)
OFFUTT AIR FORCE BASE, NEBRASKA

9 January 1998

MEMORANDUM FOR 55 WG/CC

FROM: 55 WG/JA

SUBJECT: Legal Review: Administrative Discharge Action--
[REDACTED] 33 (C)

1. **INITIATION OF ACTION:** On 24 December 1997, the commander, 38th Reconnaissance Squadron, notified Amr [REDACTED] that he was recommending his discharge for **Misconduct--Commission of a Serious Offense** pursuant to AFPD 36-32 and AFI 36-3208, paragraph 5.52.3. The commander further recommended that [REDACTED] receive a general discharge without probation and rehabilitation (P&R).

2. **RESPONDENT:** The respondent is a 21 year old Aircraft Command Control Communications and Navigation Systems Apprentice. He has completed 3 years and 4 months of his **4-year** enlistment (TAFMSD: 24 August 1994) and was assigned to his unit on 10 August 1995.

3. **RESPONDENT'S SUBMISSION:** By letter, dated 31 December 1997, the respondent indicated he had consulted with Captain [REDACTED], Area Defense Counsel and waived his right to submit matters in his behalf.

4. **DISCUSSION:**

a. **Basis for Discharge:** Under AFI 36-3208, paragraph 5.52.3, airmen are subject to discharge for misconduct based on the commission of a serious offense if a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (MCM). In this case,

(1) On or about 28 November 1997, the respondent, having knowledge of a lawful order issued by [REDACTED], to have no physical, verbal or written contact with or enter the work place of [REDACTED] or words to that effect, an order which it was his duty to obey, did, within the territorial limits of the continental United States, fail to obey the same by wrongfully going to Texas with [REDACTED] in violation of Article 92, UCMJ.

(2) On divers occasions, between on or about 13 September 1997 and on or about 28 November 1997, the respondent, a married man, did, within the territorial limits of the United States, wrongfully have sexual intercourse with [REDACTED] a married woman not his wife, in violation of Article 134, UCMJ.

For these incidents, the respondent ~~was~~ convicted by *summary* court-martial on 12 December 1997. His sentence consisted of a reduction to the rank of airman, forfeiture of \$250.00 pay, and 5 days confinement.

(3) A punitive discharge is authorized under the MCM for both of the offenses for which the respondent was convicted. Accordingly, there is a sufficient basis for discharge.

b. **Propriety of Discharge:** The respondent's serious misconduct does not support continued military service. Discharge is appropriate.

c. **Characterization of Service:** Table 1.3 to AFI 36-3208 provides that discharges for misconduct may be characterized as honorable, general, or under other than honorable conditions. A general discharge is appropriate when significant negative aspects of an airman's conduct or duty performance outweigh positive aspects of the airman's military record. The respondent's serious incidents of misconduct outweigh the positive aspects of his military career. A general discharge is appropriate in this case.

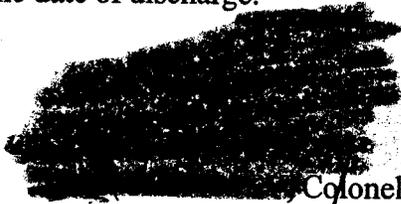
d. **Probation & Rehabilitation:** The respondent is eligible for P&R under AFI 36-3208, Chapter 7. The initiating commander does not recommend P&R. Due to the nature of the respondent's misconduct, it appears that he is unable or unwilling to adhere to ~~Air~~ Force standards. An additional opportunity for rehabilitation through P&R is not justified.

e. **Legal Sufficiency:** ~~██████████~~ has been afforded appropriate due process in that he received notice of the action and was given an opportunity to respond. Further, the procedural requirements of the applicable AFI have been satisfied. Finally, there is a sufficient factual basis for discharge under the paragraph cited. For these reasons, we find this action is legally sufficient. Some documents erroneously refer to ~~██████████~~ as a SrA. ~~██████████~~ was reduced in rank as the result of a *summary* court-martial prior to the initiation of this discharge. This discrepancy does not affect the legal sufficiency of the discharge.

5. **OPTIONS:** As the special court-martial convening authority, you may:

- a. Retain the respondent;
- b. Approve discharge with a general discharge with, or without, P&R;
- c. Return the file to the unit with a recommendation that the respondent be processed for discharge with an under other than honorable conditions discharge; or
- d. Forward the file to the general court-martial convening authority with a recommendation for an honorable discharge with, or without, P&R.

6. **RECOMMENDATION:** We recommend that the respondent be discharged with a general discharge without P&R, and due to the nature of his discharge, that he be barred from Offutt Air Force Base for a period of one year from the date of discharge.



Colonel, USAF
Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 55TH WING (ACC)
OFFUTT AIR FORCE BASE, NEBRASKA

ANI FOR SRA [REDACTED] 1 DEC 47

ROM: 38

SUBJECT: Letter of Notification

1. I am recommending your discharge from the United States Air Force for Misconduct-- Commission of a Serious Offense. The authority for my recommendation is AFPD 36-32 and AFI 36-3208, paragraph 5.52.3. I am recommending a general discharge.

2. My reasons for this action are:

a. On or about 28 November 1997, you, having knowledge of a lawful order issued by [REDACTED] to have no physical, verbal or written contact with or enter the work place of [REDACTED], or words to that effect, an order which it was your duty to obey, did, within the territorial limits of the continental United States, fail to obey the same by wrongfully going to Texas with [REDACTED]

b. On divers occasions, between on or about 13 September 1997 and on or about 28 November 1997, you, a married man, did, within the territorial limits of the United States, wrongfully have sexual intercourse with [REDACTED] a married woman not your wife.

For these incidents, you were convicted by summary court-martial on 12 December 1997. Your sentence consisted of a reduction to the rank of airman, forfeiture of \$250.00 pay, and 5 days confinement. (Atch 1-1)

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising special court-martial jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force. If you are discharged, you will be ineligible for reenlistment in the Air Force and probably any other branch of the military.

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 [REDACTED] Area Defense Counsel, Bldg 323C, RM 302, Phone 4-3939, at 0900 on 30 Dec 97. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 31 Dec 97 0830 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 **55th** Medical Group, Family Practice Section, at 1500 on 30 M:47 for the examination.
7. You have been scheduled for **an** initial separations appointment. You must report to the 55th Mission Support Squadron, Separations and Retirements Section, Room **235**, Bldg 323C, at 1200 on 24 DEC 97 with your escort.
8. Any personal information you furnish in rebuttal is covered by the Privacy Act of **1974**. A copy of **AFT 36-3208** is available for your use in the unit orderly room.
9. Execute the acknowledgment provided and return it to me immediately.

[REDACTED]

Lt Col, USAF

Commander, 38th Reconnaissance Squadron

Attachment:

Atch 1-1; Summary **Court Martial**, 15 Dec 97