

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN
[REDACTED]		AMN	[REDACTED]

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

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD			
A93.01	A67.10	1	ORDER APPOINTING THE BOARD		
		2	APPLICATION FOR REVIEW OF DISCHARGE		
		3	LETTER OF NOTIFICATION		
HEARING DATE	CASE NUMBER	4	BRIEF OF PERSONNEL FILE		
2 JUL 02	FD2002-0048		COUNSEL'S RELEASE TO THE BOARD		
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
			TAPE RECORDING OF PERSONAL APPEARANCE <i>HEARING</i>		

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
[REDACTED]	[REDACTED]

INDORSEMENT	DATE: 2 JUL 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

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0048

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.

ISSUE: Applicant does not contest his discharge. He states that he was just 19 years old when he joined the Air Force and didn't know how to control himself. 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 the applicant received an Article 15 for unlawfully striking another airman and for being disorderly. He also received a Vacation action on a suspended bust for unlawfully grabbing another airman. Also, the applicant received a Letter of Counseling for failing a dormitory inspection and a Memorandum For Record due to a lack of initiative concerning his up-grade training. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. **Also,** the DRB recognized the applicant was 21 years of age when the discharge took place. However, there is no evidence he was immature or did not know right from wrong. The Board opined the applicant was older than the vast majority of first-term members who properly adhere to the Air Force's standards of conduct. The Board concluded the misconduct was a significant departure from conduct expected of all military members and that the characterization of the applicant's discharge was appropriate due to the 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

[REDACTED]
[REDACTED]

(Former AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/09/01 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 79/09/07. Enlmt Age: 19 6/12. Disch Age: 21 11/12. Educ:HS DIPL. AFQT: N/A. A-76, E-32, G-50, M-20. PAFSC: 33731 - Fire Protection Apprentice. DAS: 99/10/09.

b. Prior Sv: (1) AFRes 99/03/15 - 99/03/30 (16 days (Inactive)).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 99/03/31. Svd: 02 Yrs 05 Mo 01 Das, all AMS.

b. Grade Status: AMN - 01/03/06 (Article 15, 01/07/11)
A1C - 00/07/30
AMN - 99/09/30

c. Time Lost: none.

d. Art 15's: (1) 01/07/11, Vacation, Aviano Italy - Article 128. You did, on or about 19 Jun 01, unlawfully grab A1C -----, in the crotch area with your hand. Reduction to Amn. (No appeal) (No mitigation)

(2) 01/03/06, Aviano AB, Italy - Article 128. You did, on or about 3 Jan 01, unlawfully strike AB ----- on the back with your fist. Article 134. You were, on or about 03 Jan 01, disorderly. Reduction to **Amn** (suspended until 5 Sep 01), 27 days extra duty, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOC, 01 DEC 00 - Failed dormatory inspection.

f. CM: none.

g. Record of SV: 99/03/31 - 00/11/29 Aviano A3 4 (Initial
(Discharged from Scott AFB)

h. Awards & Decs: AFTR, NATOM, AFOSLTR.

i. Stmt of Sv: TMS: (03) Yrs (05) Mos (17) Das

TAMS: (02) Yrs (05) Mos (01) Das

4. **BASIS** ADVANCED FOR REVIEW: Appln (DD **Fm 293**) dtd 02/01/26.
(Change Discharge to Honorable)

Issue 1: I was a nineteen year old punk when I joined the Air Force. I was told by **my** recruiter that I wouldn't have to go overseas if I didn't want to and the first place I went was Aviano, Italy. I didn't know how to control myself. All **I'm** asking for is a second chance because I want to join the National Guard.

ATCH
none.

02/05/15/ia



DEPARTMENT OF THE AIR FORCE
31ST FIGHTER WING (USAFE)

9 August 2001

MEMORANDUM FOR 31 FW/CC

FROM: 31 FW/JA

SUBJECT: Legal Review, Administrative Discharge Action, Amn [REDACTED] 31 CES

1. This file has been reviewed and is forwarded to you for action as the Separation Authority in accordance with AFI 36-3208, paragraph 5.56, Separation Authority. The Respondent's commander has recommended discharge in accordance with AFI 36-3208, paragraph 5.49, Minor Disciplinary Infractions, with an under honorable conditions (general) discharge characterization. We concur with this recommendation and find this file to be legally sufficient to separate Respondent provided he is found medically fit for separation.

2. **FACTS:** On 19 Jun 01, Lt Col [REDACTED] 31CES/CC, initiated action to discharge Amn [REDACTED] for minor disciplinary infractions, pursuant to AFD 36-32 and AFI 36-3208, para. 5.49. The Respondent is not entitled to a board hearing and this case is being processed by the notification procedure in Section B, Chapter 6, AFI 36-3208. The Respondent received written notice of the commander's recommendation for discharge, the reasons for the discharge, and of the least favorable type of separation authorized. See Attachment 2. He was also provided copies of the documents supporting the recommendation for discharge and advised of his rights to consult with counsel, to submit statements in his own behalf, or to waive any of these rights. Amn [REDACTED] consulted with military defense counsel and submitted a statement in response to this discharge action in which he asked for an honorable discharge. See Attachment 7. On 27 July 2001, Lt Col [REDACTED] recommended that Amn [REDACTED] be given an under honorable conditions (general) discharge without suspension for probation and rehabilitation. See Attachment 1. Col [REDACTED] 31 SPTG/CC, concurred on 27 July 2001.

3. **SUMMARY OF EVIDENCE FOR THE GOVERNMENT:** The basis for this discharge action lies under the provisions of AFI 36-3208, para. 5.49, for minor disciplinary infractions, summarized as follows:

a. On or about 19 June 2001, the Respondent assaulted a fellow airman. Specifically, he was involved in an altercation during which he grabbed the other airman's crotch. For this offense, the Respondent's previous suspended nonjudicial punishment consisting of reduction to the grade of airman was vacated on 11 July 2001;

b. On or about 3 Jan 01, the Respondent assaulted a fellow airman. Specifically, he struck another airman on the back with his fist. For this offense, on 6 March 2001 the

This legal opinion is privileged and is provided for command use only. It should not be released to the public in general or to the subject of this review in particular.

Respondent received nonjudicial punishment under Article 15, UCMJ, consisting of a suspended reduction to the grade of airman, 27 days extra duty, and a reprimand;

c. On or about 28 November 2000, the Respondent failed a scheduled dormitory inspection. Specifically, he failed to maintain his kitchen and bathroom according to Air Force standards for cleanliness. He also had clothing strewn across his room, trash in his room, and an unmade bed. For this offense the Respondent received a Letter of Counseling (LOC) on 1 December 2000.

4. SUMMARY OF EVIDENCE FOR THE RESPONDENT: The Respondent is a 21-year-old airman who began his active duty on 31 March 1999. He was assigned to his present unit on 9 October 1999. His AOE scores are A-76, E-32, G-50, and M-20. He has earned a rating of 4 on his EPR. Amn [REDACTED] is entitled to wear the Air Force Training Ribbon and the NATO Medal. After consulting with military defense counsel, the respondent submitted a response to this discharge action in which he requests consideration for an honorable discharge. See Attachment 7. Although Amn [REDACTED] concedes that he does not feel right in the Air Force, he feels positive towards the Air Force and feels that he has paid for his mistakes already.

5. DISCUSSION: In determining whether there is a basis for Amn [REDACTED] discharge, you may consider the commander's recommendation memorandum and the information contained in Attachments 2 and 3 of the case file setting forth the disciplinary infractions. If you determine that there is sufficient basis for discharge, you may consider all documentation reflecting the Respondent's entire military career to determine if he should be discharged. The Respondent is a first-term airman so you may consider his entire military record to determine the characterization of the discharge if you determine separation is appropriate.

a. The evidence in this case supports a discharge pursuant to AFD 36-32 and AFI 36-3208, para. 5.49, for minor disciplinary infractions. In the short time since Amn [REDACTED] enlisted in the Air Force, he has repeatedly exhibited disregard for his responsibilities and for Air Force standards, to the detriment of good order and discipline. The time span, number, and range of his offenses constitute a pattern of minor disciplinary infractions that subject Amn [REDACTED] to discharge from the military.

b. Characterization of an airman's discharge should be based on the frequency and seriousness of the infractions in the current enlistment. An airman's age, length of service, and the standards of acceptable conduct and performance of duty for airmen are other appropriate considerations. In accordance with AFI 36-3208, para. 1.18.2, an under honorable conditions (general) discharge is warranted when an airman's service has been honest and faithful, but when significant negative aspects of his conduct or performance of duty outweigh the positive aspects of his military record. Amn [REDACTED] disciplinary infractions overshadow the positive aspects of his service. Through his failures to show the proper respect for his fellow airmen and to follow regulations as required, Amn [REDACTED] has demonstrated his inability or unwillingness to adapt to the military lifestyle and its demands. In addition, his two assaults on fellow airmen are examples of Amn [REDACTED] intentional misconduct that fall far short of the standards of conduct expected of Air Force members. His service has not been so meritorious

that an honorable discharge is appropriate. Amn [REDACTED] service record warrants an under honorable conditions (general) discharge.

c. **An** offer of probation and rehabilitation (P & R) is based on the principle of conditional suspension of an administrative discharge for cause in deserving cases, giving the member a chance to show that he is able to meet Air Force standards. Consideration of probation and rehabilitation should be based on the member's potential for rehabilitation and further useful military service. Given the Respondent's repeated assaults and his failure to improve his behavior after **corrective measures** were taken, we do not recommend probation and rehabilitation. Amn [REDACTED] has received nonjudicial punishment under Article 15, UCMJ, a vacation of his **suspended nonjudicial** punishment, and an LOC. He not only has repeatedly violated standards, he appears to be unwilling to accept responsibility and modify his overall behavior. As such, we believe that further rehabilitative efforts would likely be ineffectual. The Respondent has not requested consideration for P & R. Neither the squadron commander nor **group commander recommended** P & R. We agree that the best interests of the Air Force are served by Amn [REDACTED] discharge without P & R.

6. OPTIONS: In accordance with AFI 36-3208, para. 5.56, you may, **as** the Special Court-Martial Convening Authority:

- a. Retain Amn [REDACTED] if you consider the discharge unwarranted;
- b. Direct that Amn [REDACTED] be discharged for minor disciplinary infractions with an under honorable conditions (general) service characterization, with or without probation and rehabilitation;
- c. Recommend that Amn [REDACTED] be discharged for minor disciplinary infractions, with an honorable service characterization, **with** or without probation and rehabilitation, and forward this package to the 16AF/CC, the General Court-Martial Convening Authority, for approval; or
- d. Direct re-initiation of the discharge action if an under other than honorable conditions (UOTHC) discharge is warranted.

7. RECOMMENDATIONS: We recommend that you direct the respondent's separation for minor disciplinary infractions with an under honorable conditions (general) service characterization, and without the offer of probation and rehabilitation. A proposed memorandum for your signature is enclosed.

[REDACTED SIGNATURE]

[REDACTED], Captain, USAF
Chief, Civil Law

1st Ind, 31 FW/SJA, Legal Review of [REDACTED] Discharge, 9 Aug 01

MEMORANDUM FOR 31 FW/CC

I concur.

[REDACTED]

[REDACTED], Lt Col, USAF
Staff Judge Advocate

Attachments:

Case File

1. Commander's Recommendation
2. Notification Memorandum
3. Supporting Documentation:
 - a. Vacation of suspended nonjudicial punishment, 11 Jul 01 w/atchs
 - b. Article 15, 6 Mar 01 w/ atchs
 - c. LOC, 1 Dec 00
4. Member's Acknowledgment of Receipt of Notification Memorandum
5. Enlisted Performance Report
6. Other Derogatory Data
 - a. Verbal Counseling, 1 May 01
 - b. Verbal Counseling, 18 Jun 00
7. Member's Response



DEPARTMENT OF THE AIR FORCE
31ST FIGHTER WING (USAF)

MEMORANDUM FOR: AMN [REDACTED] 31 CES

FROM: 31 CES/CC

SUBJECT: Notification Memorandum

1. I **am** recommending your discharge from the United States Air Force for minor disciplinary infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, para. 5.49. If my recommendation is approved, your service will be characterized **as** honorable or **as** under honorable conditions (general). I **am** recommending that your service be characterized **as** under honorable conditions (general).
2. My reasons for this action are **as** follows:
 - a. On or about 19 Jun 01, you assaulted a fellow airman. Specifically, you were involved in an altercation during which time you did grab the other airman's crotch. For this offense, your previous suspended nonjudicial punishment consisting of reduction to the grade of airman was vacated on 11 Jul 01;
 - b. On or about 3 Jan 01, you assaulted a fellow airman. Specifically, you did strike another airman on his back with your fist. For this offense, you received nonjudicial punishment under Article 15, UCMJ, on 6 Mar 01 consisting of a suspended reduction to the grade of airman, 27 days extra duty, and a reprimand;
 - c. On or about 28 Nov 00, you failed a scheduled dormitory inspection. Specifically, you failed to maintain your kitchen and bathroom according to Air Force standards for cleanliness. You also had clothing strewn across **your** room, trash in your room, and an unmade bed. For this offense you received a Letter of Counseling (LOC) on 1 Dec 00.
3. I have attached copies of the documents that will be forwarded to the separation authority. 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, the characterization of your service. If you are discharged, you will be ineligible for reenlistment in the Air Force and probably will be denied enlistment in **any** component of the armed forces. In addition, any special pay, bonus, or education assistance funds may be subject to recoupment.
4. You have the right to consult legal counsel. Military legal counsel **has** been obtained to assist you. I have made an appointment for you to consult Capt [REDACTED] Area 2, at Building 224, on 19 Jul 2001, at 1500 hours. You may consult civilian counsel at your own expense.

"Return With Honor"

5. You have the right to submit statements in your own behalf. Any statements that you want the separation authority to consider must reach me by 1600 hours on 24 Jul 01 2001, 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 two medical examinations. You must report to 31MDG/SGOAF (Physical Exams) on 23 Jul, 2001, at 0930 hours. Your second appointment is on 24 Jul, 2001, at 1400 hours. You will need to report *15 minutes prior* to your appointments and pick up your medical records.

8. **Any** personal information that **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 **as well as** in the Area Defense Counsel's office.

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



Lt Col, USAF
Commander, 31st Civil Engineering Squadron

Date: 19 Jul 01

Attachments:

1. Supporting Documentation:
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