

TYPE GEN		PERSONAL APPEARANCE		X RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO							
	X							
MEMBERS SITTING [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]				VOICE OF THE BOARD				
				HON	GEN	UOTHC	OTHER	DENY
								X
								X
								X
								X
ISSUES A94.53, A94.05, A92.37		INDEX NUMBER A67.90		EXHIBITS SUBMITTED TO THE BOARD				
HEARING DATE 02-06-27		CASE NUMBER FD2002-0049		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			
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 [REDACTED]			SIGNATURE OF BOARD PRESIDENT [REDACTED]					
INDORSEMENT				DATE: 02-06-27				
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

FD2002-0049

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

The applicant was offered a personal appearance before the Discharge Review Board but declined to exercise this right.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither the evidence of record or that provided by applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issues. Applicant was discharged for misconduct, conduct prejudicial to good order and discipline. He had three Letters of Reprimand, two Articles 15, and a vacation of suspended punishment. His misconduct included four incidents of failure to go to his place of duty, a failed dormitory room inspection, and setting off fireworks inside the dormitory. At the time of the discharge, applicant consulted counsel but failed to submit a statement in his own behalf. The Board noted that member was sent to correctional custody as part of the punishment for his first Article 15. While there, he got an unsatisfactory rating and had numerous Letters of Counseling for failing to follow the rules, failing to obey lawful orders, falling asleep on duty, and disrespect to a noncommissioned officer. Correctional custody was member's opportunity for rehabilitation, yet he performed unsatisfactorily therein, and one of his correctional custody incidents thus resulted in his vacation of suspended punishment. And, subsequent to that, he had yet another incident of misconduct. The applicant's continued misconduct was of a serious nature and was intolerable. Members who continue to commit such acts are held accountable for their behavior. There is no evidence of record that applicant didn't know right from wrong or was immature. Furthermore, he was of the same age as the majority of first-term airmen who properly adhere to Air Force standards of conduct. No inequity or impropriety was found in this discharge in the course of the records review.

Applicant now states he was told he would get an automatic upgrade after one year. While this is a common issue, the Board noted it is one likely based on miscommunication. While a discharge may be upgraded after 6 months, an upgrade is by no means automatic. A discharge is only upgraded if the individual and the Board can establish an inequity or impropriety took place at the time of the discharge. In this case, none was found, so the Board denied the appeal.

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 AMN)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 90/01/09 UP AFR 39-10, para 5-47b (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 70/08/27. Enlmt Age: 17 9/12. Disch Age: 19 4/12. Educ: HS DIPL. AFQT: N/A, A-45, E-74, G-57, M-63. PAFSC: 81130 - Apprentice Security Specialist. DAS: 88/04/08.

b. Prior Sv: (1) AFRes 88/06/24 - 88/10/16 (3 months 23 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 88/10/17 for 4 yrs. Svd: 01 Yrs 02 Mo 23 Das, all AMS.

b. Grade Status: AB - 89/11/06 (Article 15, Vacation, 89/12/07)
AMN - 89/04/17

c. Time Lost: none.

d. Art 15's: (1) 89/12/15, Minot AFB, ND - Article 86. Preliminary investigation has disclosed that you, did, on or about 8 Dec 89, without authority, fail to go at the time prescribed to your appointed place of duty. Forfeiture of \$300.00 pay per month for 2 months (suspended until 14 Jun 90), 45 days restriction, and 45 days extra duty. (No appeal) (No mitigation)

(2) 89/12/07, Vacation, Minot AFB, ND - Article 86. Preliminary investigation has disclosed that you, did, on or about 12 Nov 89, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to AB, and forfeiture of \$200.00 pay per month for 2 months. (No appeal) (No mitigation)

(3) 89/11/06, Minot AFB, ND - Article 92. Preliminary investigation has disclosed that you, who should have known of your duties, on or about 27 Oct 89, were derelict in the performance of those duties in that you willfully failed to refrain from setting off fireworks in building 207, as it was your duty to do so. Reduction to AB (suspended until 5 May 90), forfeiture of \$200.00 pay per month for 2 months (suspended until 5 May 90), and 30 consecutive days Correctional Custody.

e. Additional: LOR, 28 JUL 89 - Failed dorm room inspection.
LOR, 26 JUN 89 - Failure to go.

f. CM: none

g. Record of SV: none.

(Discharged from Minot AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (06) Mos (16) Das
TAMS: (01) Yrs (02) Mos (23) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/01/27.
(Change Discharge to Honorable)

Issue 1: Upon discharge from the Air Force, I was informed that after a year, my General Discharge under Honorable Conditions would be upgraded to Honorable Discharge. I recently went to review records at the downtown Court house and my records weren't available.

I am sending this application to try and retrieve the correct type of discharge I was awarded by the Air Force.

ATCH
none.

02/05/16/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 57TH AIR DIVISION (SAC)
MINOT AIR FORCE BASE, NORTH DAKOTA 58705-5000



REPLY TO
ATTN. OF:

3 January 1990

SUBJECT **Legal Review**, AFR 39-10, Paragraph 5-47b, [REDACTED], **857 SPS**
[REDACTED]

TO: CC

1. The Commander, **857 SPS**, has recommended that respondent be discharged prior to the expiration of his term of enlistment because of misconduct, more specifically, conduct prejudicial to good order and discipline pursuant to AFR 39-10, paragraph 5-47b. The commander has recommended that subject be given a general discharge.

2. [REDACTED], age **19**, enlisted in the United States Air Force on 17 October 1988, for a term of four years. [REDACTED] has no prior service. Since being assigned to Minot Air Force Base, [REDACTED] failed to go at the time prescribed to his appointed place of duty on at least four separate occasions. In addition, he failed to maintain his dormitory room in a proper manner. Finally, [REDACTED] was derelict in the performance of his duties in that he failed to refrain from setting fireworks off in his dormitory room.

3. [REDACTED], after being counseled by Captain [REDACTED] a judge advocate, concerning the rights and privileges extended under AFR 39-10, decided to submit statements in his own behalf. However, no statements were received from AB [REDACTED] within the required time frame. If you should receive any statements directly from him before you render your decision, in an abundance of caution, you should consider them.

4. As discharge authority, your options are:

- a. Retain the respondent;
- b. Return the case to the squadron for processing under a more appropriate provision;
- c. Discharge the respondent with a general discharge, with or without suspension for probation and rehabilitation; or,
- d. Forward your recommendation for an honorable discharge, with or without suspension for probation and rehabilitation to **15 AF/CC**.

5. The file is legally sufficient to support AB [REDACTED] discharge from the United States Air Force. AB [REDACTED] misconduct demonstrates an unwillingness to conform to Air Force standards. He is, therefore, subject to discharge and it is in the best interest of the Air Force to separate AB [REDACTED] at this time. Probation and rehabilitation is not appropriate. The commander used various disciplinary and rehabilitative tools including letters of reprimand and nonjudicial punishment in response to AB [REDACTED] misconduct without

achieving the desired results. In addition, AB [REDACTED] was unable to complete rehabilitation in correctional custody in a satisfactory manner. There is no indication that further attempts at rehabilitation within the Air Force will be effective. A general discharge is appropriate. AB [REDACTED] misconduct makes an honorable discharge inappropriate, but it was not so egregious as to justify an under other than honorable conditions discharge. Accordingly, it is recommended that the discharge be executed and AB [REDACTED] be furnished a general discharge without suspension for probation and rehabilitation.

[REDACTED]
[REDACTED]
[REDACTED] Lt Col, USAF

Staff Judge Advocate

FD 2002 0049



DEPARTMENT OF THE AIR FORCE
857TH SECURITY POLICE SQUADRON (SAC)
MINOT AIR FORCE BASE, NORTH DAKOTA 58705-5000



REPLY TO
ATTN. OF CC

28 Dec 89

SUBJECT. Letter of Notification

TO A- [REDACTED]

1. I am recommending your discharge from the United States Air Force for a pattern of misconduct, more specifically, conduct prejudicial to good order and discipline pursuant to AFR 39-10, paragraph 5-47b. If my recommendation is approved, your discharge will be characterized as an honorable or general. I am recommending your service be characterized as general.

2. My reasons for this discharge action are:

a. On or about 8 December 1989, you did at Minot Air Force Base, ND, without authority, fail to go at the time prescribed to your appointed place of duty. For this, you recieved nonjudicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ) on 15 December 1989.

b. On 12 November 1989, you did, while in correctional custody, without authority, fail to go at the time prescribed to your appointed place of duty. For this the suspended nonjudicial punishment imposed 6 November 1989 was vacated on 7 December 1989.

c. On 27 October 1989, you were derelict in the performance of you duties in that you failed to refrain from setting off fireworks in the dormitory. For this you received nonjudicial punishment under Article 15 of the UCMJ on 6 November 1989.

d. On 25 July 1989, during a scheduled inspection, you failed to maintain your dormitory room in the proper manner even though you had been previously directed to clean-up the dormitory room. For this you received a Letter of Reprimand on 28 July 1989.

e. On 26 June 1989, you did, without authority, fail to go at the time prescribed to a mandatory formation evidenced by a Letter of Reprimand dated 29 June 1989.

f. On 24 June 1989, you did, without authority, fail to go at the time prescribed, to a mandatory formation, to wit: Flight Training Class. For this you received a Letter of Reprimand, dated 26 June 1989.

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 the Area Defense Counsel, at their office, Bldg 475, Room 306A, on 28 Dec 89 1989 at 0900 hours. 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 0730 hours 3 JAN 1989 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 857th Strategic Hospital, Physical Exams Section, at 0800 hours on 26 December 1989 for the examination.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 6. A copy of AFR 39-10 is available for your use in the Orderly Room.

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



, Major, USAF
Commander

2 Atch

1. Supporting Documents for the Reasons for Discharge
 - a. AF Fm 3070, dtd 15 Dec 89
 - b. AF Fm 366, dtd 7 Dec 89
 - c. AF Fm 3070, dtd 6 Nov 89 w/atch statements and police reports (9 pgs); Rehab Failure Ltr, dtd 30 Nov 89 (2 pgs)
 - d. LOR, dtd 28 Jul 89
 - e. LOR, dtd 29 Jun 89
 - f. LOR, dtd 26 Jun 89
2. Airman's Receipt of Notification