

MEMBERS SITTING	VOTE OF THE BOARD				
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ISSUES A92.35	INDEX NUMBER A67.10, A67.50	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
HEARING DATE 02 09 19	CASE NUMBER FD2002-0080	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.

The AFRDB determined the applicant's reenlistment code (RE) would be changed to 3K and that the reason for discharge should be "Secretarial Authority"

The Board finds the evidence of record and that provided by the applicant substantiates an inequity or impropriety which justifies upgrading his discharge from general to honorable.

Advise applicant of the decision of the Board.

INDORSEMENT		DATE: 02 09 19
TO: SAE/MIBR 350 C STREET WEST SUITE 40 RANDOLPH AFB, TX 78150-1742	FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, FF WING 3 RD FLOOR ANDREWS AFB, MD 20762 7002	

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0080

GENERAL: The applicant appeals for upgrade of discharge to Honorable, change of reason for discharge, and change of reenlistment eligibility (RE) code.

The applicant appeared and testified before the Discharge Review Board (DRB) at Andrews AFB, MD on September 19, 2002.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions

Exhibit 6: Newspaper article

FINDINGS: The Board grants the relief requested.

Issue. The member received a general discharge for misconduct - minor disciplinary infractions. The misconduct included stealing a television, which was military property, adultery, and communicating threats. Applicant states the discharge was improperly based on insufficient evidence and a failure to conduct a proper investigation. After a thorough and complete consideration of the information submitted by the applicant, the applicant's compelling personal testimony, and information contained in the record, the Board concluded there was sufficient mitigation and extenuation to substantiate upgrade of the discharge, to change the reason for discharge, and to change the RE code. The Board agreed there was not enough information in the file to substantiate the issue of adultery or enough information to substantiate the issue regarding the communication of threats. However, the Board did find the stealing of the television was misconduct but the board did not find this to warrant the discharge that the member received. Specifically, the Board found the characterization was too harsh. However they did not condone the applicant's misconduct.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was not consistent with the procedural and substantive requirements of the discharge regulation and that the improprieties in this record require a change to his service characterization and re-enlistment code. The Board concludes the following changes should be made to the applicant's records: (1) the applicant's service characterization should be changed from "General" to "Honorable"; (2) the reason for discharge should be changed from "AFI 36-3208" to "Secretarial Authority"; and (3) that his re-enlistment code changed from "2B" to "3K".

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 01/05/22 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 78/10/10. Enlmt Age: 18 1/12. Disch Age: 22 7/12. Educ:HS DIPL. AFQT: N/A. A-54, E-43, G-46, M-50. PAFSC: 2T351 - Special Purpose Vehicle & Equipment Maintenance Journeyman. DAS: 00/08/29.

b. Prior Sv: (1) AFRes 96/11/22 - 97/02/12 (2 months 21 days) (Inactive).

(2) Enlisted as AB 97/02/13 for 4 yrs. Svd: 3 yrs 2 months 3 days, all AMS. AMN - 97/08/13. A1C - 98/06/13. SRA - 00/02/13. EPRs: 4,4.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SRA 00/04/17 for 6 yrs. Svd: 01 Yrs 01 Mo 05 Das, all AMS.

b. Grade Status: A1C - 01/04/16 (Article 15, 01/04/16)
SRA - 00/02/13
A1C - 98/06/13
AMN - 97/08/13

c. Time Lost: none.

d. Art 15's: (1) 01/04/16, Kunsan AB, Korea - Article 121. You did, on or about 23 Feb 01, steal an ----- television, military property, of a value of more than \$100.00, the property of the United States Armed Forces. Reduction to A1C. (No appeal) (No mitigation)

e. Additional: LOR, 09 APR 01 - Adultery.
LOR, 09 APR 01 - Communicating threats.

f. CM: none.

g. Record of SV: 99/10/13 - 00/07/08 McGuire AFB 5 (CRO)

(Discharged from Kunsan AB)

h. Awards & Decs: AFAM, AFLSAR, AFTR, HSM W/1 DEV, AFOUA W/2 DEVS, AFGCM.

i. Stmt of Sv: TMS: (04) Yrs (06) Mos (01) Das

TAMS: (04) Yrs (03) Mos (10) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/02/18.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Personal Statement.
2. Wife's Personal Statement.
3. Criminal Record.
4. Copy of Military Personnel Record.

02/06/19/ia



DEPARTMENT OF THE AIR FORCE
8TH FIGHTER WING (PACAF)
APO AP 96264-2090

MEMORANDUM FOR 8 FW/CC

7 MAY 01

FROM: 8 FW/JA

SUBJECT: Legal Review, Administrative Discharge, [REDACTED] 8 TRNS [REDACTED]

1. The attached package is legally sufficient to support the discharge of [REDACTED] for minor disciplinary infractions under AFI 36-3208, paragraph 5.49. I concur with the recommendation of [REDACTED] TRNS/CC, to separate [REDACTED] with a general discharge without an offer of probation and rehabilitation (P&R).

2. FACTS.

The reasons for this action are:

a. You did, at or near Kunsan AB, ROK, on or about 23 Feb 01 steal an RCA Television set that belonged to the United States Armed Forces. For this infraction you received an Article 15, dated 11 Apr 01. (Atch 2)

b. You, at or near Kunsan Air Base, Republic of Korea, between on or about 29 Aug 00 and on or about 9 Apr 01, engaged in sexual relations with a woman not your spouse. Your total lack of judgment in this type of relationship while yourself being married, is behavior totally unacceptable to the United States Air Force. For this infraction, you received a Letter of Reprimand (LOR), dated 9 Apr 01 (Atch 3), and an AF Form 1058/AF Form 1137 (UIF), was established. (Atch 5)

c. You did, at or near Kunsan Air Base, Republic of Korea, between on or about 29 Aug 00 and on or about 9 Apr 01 communicate two threats to [REDACTED]. The first threat was to the effect that "if [REDACTED] was pregnant you might have to hit her in the stomach (as implied by a hitting motion to her stomach) or push her down the stairs." And the second threat was "if you get me in trouble I'll kill you." For your unprofessional and threatening manner to another airman, you received a Letter of Reprimand (LOR), dated 9 Apr 01 which was placed in a UIF. (Atch 4 -5)

3. LAW.

a. A pattern of misconduct consisting solely of minor infractions in the current enlistment makes an airman subject to discharge. AFI 36-3208, ¶ 5.49.

b. A general discharge is appropriate if an airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. AFI 36-3208, ¶ 1.18.2.

c. An honorable discharge is appropriate if the quality of the airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate. AFI 36-3208, ¶ 1.18.1. An honorable discharge based on minor disciplinary infractions is allowed only if the member's record has been so meritorious that any other characterization would be clearly inappropriate. It requires the approval of the General Court-Martial Convening Authority. AFI 36-3208, ¶ 5.48.4.

d. An under other than honorable conditions (UOTHC) discharge is appropriate if the pattern of behavior or one or more acts or omissions constitutes a significant departure from the conduct expected of airmen. The member must have an opportunity for a hearing before an administrative discharge board. AFI 36-3208, ¶ 1.18.3.

c. Probation and Rehabilitation (P&R) conditionally suspends an administrative discharge in deserving cases. It gives the member a chance to show he is able to meet Air Force standards. AFI 36-3208, ¶ 7.2.1. It is offered to members who demonstrate a potential to serve satisfactorily, who have the capacity to be rehabilitated, and whose retention on active duty is consistent with good order and discipline. AFI 36-3208, ¶ 7.3.

4. DISCUSSION.

a. ██████████ recommends that ██████████ be discharged.

b. ██████████ and his counsel, ██████████ both submitted responses requesting that ██████████ not be discharged, but instead, be given a chance to rehabilitate himself. ██████████ cites AFI 36-3208 para 5.27, as authority that the AFI "requires that he be afforded every opportunity for rehabilitation." ██████████ is wrong. Section E, paragraph 5.27 talks about preprocessing actions for airman subject to discharge for unsatisfactory performance. This is generally the type of discharge for airmen who just don't do well at their job, or in PME, etc. ██████████ is being discharged for minor disciplinary infractions. This falls under section H, Misconduct of the AFI, not section E, Unsatisfactory Performance. Furthermore, paragraph 5.2.3 states "an alleged or established inadequacy in previous rehabilitative efforts does not provide a bar to separation." Despite ██████████'s assertions that discharge is not appropriate because there has not been sufficient rehabilitation, this discharge package is legally sufficient.

c. Additionally, this case could have been initiated under paragraph 5.52, Commission of a Serious Offense. Paragraph 5.47.7 states that if the reason for discharge is one serious offense, the counseling and rehabilitative requirements are not applicable. A serious offense is one in which a punitive discharge would be authorized for the offense under the MCM. In this case, the serious offense is theft. AFI 36-3208, para. 5.52. Theft of military property of a value of more than \$100 has a maximum punishment of a dishonorable discharge, forfeiture of all pay and allowances and confinement for 10 years. (Art 121, MCM). Therefore, the theft alone warrants a discharge. There is additional misconduct in this case which resulted in two LORs. This was the basis for initiating discharge for minor disciplinary infractions. A discharge proceeding under minor disciplinary infractions is legally sufficient.

d. If you conclude that [REDACTED] is to be discharged, you must also choose how to characterize his service. [REDACTED] has not met Air Force standards of acceptable conduct. The significant negative aspects of his conduct outweigh any positive aspects of his military record. Therefore a general discharge is appropriate in this case. His service is not otherwise so meritorious that an honorable discharge would be appropriate. Additionally, his conduct is not so egregious that an under other than honorable conditions discharge is warranted.

e. [REDACTED] does not recommend P&R. A court-martial could have resulted in a dishonorable discharge. [REDACTED] considered the entire record and determined that discharge was more appropriate. The offenses in this case are so severe that rehabilitation is not an option. Therefore, P&R is not appropriate in this case.

f. The discharge package is legally sufficient to support a general discharge without P&R. The package contains no errors or irregularities that adversely affect the legal sufficiency of the discharge or materially prejudice the rights of [REDACTED]. The recommended action is appropriate for the offenses, and it is consistent with the maintenance of good order and discipline.

g. You may:

- (1) Discharge [REDACTED] with a general characterization with or without an offer of P&R;
- (2) Recommend 7 AF/CC discharge [REDACTED] with an honorable characterization with or without an offer of P&R;
- (3) Direct reinitiation of the discharge as a board-entitled case if you determine a UOTHC characterization is warranted;
- (4) Withdraw this action and direct initiation of discharge under a more appropriate paragraph of AFI 36-3208; or
- (5) Retain [REDACTED] in the USAF.

5. **RECOMMENDATION.** Discharge [REDACTED] with a general discharge without an offer of P&R.

[REDACTED]

FD 2002-0080



DEPARTMENT OF THE AIR FORCE
8TH FIGHTER WING (PACAF)
APO AP 96264-2090

MEMORANDUM FOR: [REDACTED] TRNS

24 APR 2001

FROM: 8 TRNS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Minor Disciplinary Infractions. The authority for the action is AFPD 36-32 and AFI 36-3208, Chapter 5, paragraph 5.49. If my recommendation is approved, your service will be characterized as General, Under Honorable Conditions (General). I am recommending that your service be characterized as General.

2. My reasons for this action are:

a. You did, at or near Kunsan AB, ROK, on or about 23 Feb 01 steal an RCA Television set that belonged to the United States Armed Forces. For this infraction you received an Article 15, dated 11 Apr 01. (Atch 2)

b. You, at or near Kunsan Air Base, Republic of Korea, between on or about 29 Aug 00 and on or about 9 Apr 01 engaged in sexual relations with a woman not your spouse. Your total lack of judgment in this type of relationship while yourself being married, is behavior totally unacceptable to the United States Air Force. For this infraction, you received a Letter of Reprimand (LOR), dated 9 Apr 01 (Atch 3), and an AF Form 1058/AF Form 1137 (UIF), was established. (Atch 5)

c. You did, at or near Kunsan Air Base, Republic of Korea, between on or about 29 Aug 00 and on or about 9 Apr 01 communicate two threats to [REDACTED]. The first threat was to the effect that "if [REDACTED] was pregnant you might have to hit her in the stomach (as implied by a hitting motion to her stomach) or push her down the stairs." And the second threat was "if you get me in trouble I'll kill you." For your unprofessional and threatening manner to another airman, you received a Letter of Reprimand (LOR), dated 9 Apr 01 which was placed in a UIF. (Atch 4-5)

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 decide 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, and any special pay, bonus, or educational assistance funds may be subject to recoupment.

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. You should consult [REDACTED] through the local Area Defense Counsel, Building 301, 782-4848. 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 1430 27 Apr 2001 (3 duty days),

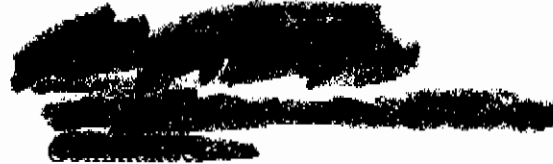
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unless you request and receive an extension for good cause shown. I will send your matters to the separation authority.

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 8th Medical Group Physical Examinations section, Kunsan AB, ROK at walk-in hrs on walk-in 2001. Take the attached medical clearance letter with you to the appointment.

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 at the Area Defense Counsel's office.



Attachments:

1. Acknowledgment of Receipt of Notification Memorandum
2. Article 15, dated 11 Apr 01
3. Letter of Reprimand, dated 9 Apr 01
4. Letter of Reprimand, dated 9 Apr 01
5. AF Form 1058, dated 13 Apr 01