

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 A94.05		INDEX NUMBER A67.10			EXHIBITS SUBMITTED TO THE BOARD				
HEARING DATE 22 AUG 02		CASE NUMBER FD2002-0132			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, and the right to submit an application to the AFBCMR.									
SIGNATURE OF RECORDER					SIGNATURE OF BOARD PRESIDENT				
INDORSEMENT					DATE: 22 AUG 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

FD02-0132

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 contends discharge was inequitable because it was too harsh in that he had to put up with prejudice and racial remarks. 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 drinking under age and for failure to remain in his room on telephone standby. Also, the applicant received three Letters of Reprimand for Assault and underage drinking and one Letter of Counseling for failing a dormitory inspection. In addition, the applicant received two Records of Individual Counseling for failure to follow directions and for being late to work. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members and concluded 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]

(Former AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 98/08/28 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 77/08/12. Enlmt Age: 20 1/12. Disch Age: 21 0/12. Educ: HS DIPL. AFQT: N/A. A-53, E-39, G-42, M-33. PAFSC: 2S031 - Supply Management Apprentice. DAS: 98/03/09.

b. Prior Sv: (1) AFRes 97/09/25 - 97/11/11 (1 month 17 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 97/11/12 for 4 yrs. Svd: 00 Yrs 09 Mo 17 Das, all AMS.

b. Grade Status: AB - 98/06/17 (Article 15, 98/06/17)
AMN - Unknown.

c. Time Lost: none.

d. Art 15's: (1) 98/06/17, Ellsworth AFB, SD - Article 92. You, who knew of your duties, on or about 02 May 98, were derelict in the performance of those duties in that you willfull failed to refrain from consuming alcoholic beverages while under the state legal drinking age of 21, as it was your duty to do. You, having knowledge of a lawful order issued by MSgt -----, Superintendent, Materiel Storage and Distribution, to remain in your room on telephone standby, an order which it was your duty to obey, did, on or about 01 May 98, fail to obey the same by leaving your room without contacting your supervisor. Reduction to AB, forfeiture of \$225.00 pay per month for 2 months, 45 days restriction, and 45 days extra duty. (No appeal) (No mitigation)

e. Additional: LOR, 12 JUN 98 - Assault.
LOC, 12 JUN 98 - Failed dormitory inspection.
LOR, 01 JUL 98 - Assault.
LOR, 11 AUG 98 - Underage drinking of alcoholic beverages.

f. CM: none.

g. Record of SV: none.

(Discharged from Ellsworth AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (00) Yrs (11) Mos (04) Das
TAMS: (00) Yrs (09) Mos (17) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/01/28.
(Change Discharge to Honorable)

Issue 1: The prejudice and or racial remarks I received by other airmen. (I myself heard the remarks but my other Airmen brought it to the base commanders attention themselves)

Issue 2: The lecturing of Major ----- stating that I must learn and accept being called a nigger. (I have witnesses family, Airmen).

Issue 3: I love the military I would rather rejoin the Air Force and truly earn my Honorable discharge then to seem simple and complain about it. I embarrassed myself my country and family.

Issue 4: I learned a lot and took a lot but I was a hard worker and a good student. Please consider me for an honorable discharge. Thank you for your time and patience.

ATCH

1. Certificate of Trainin.
2. Letter to Discharge Review Board.

02/07/09/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 28TH BOMB WING (ACC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

MEMORANDUM FOR 28 BW/CC

21 AUG 1998

FROM: 28 BW/JA

SUBJECT: Legal Review - Notification Discharge: [REDACTED]

1. I reviewed the attached administrative discharge package on Airman Basic [REDACTED] 28th Supply Squadron, and find it legally sufficient to support discharge. It also supports 28 SUPS/CC's recommendation to separate Respondent with an under honorable conditions (general) discharge without probation and rehabilitation (P & R).

2. On 12 Aug 98, 28 SUPS/CC initiated this separation action pursuant to AFI 36-3208, paragraph 5.49, for misconduct involving minor disciplinary infractions (Tab D). On 20 Aug 98, Respondent consulted legal counsel and submitted statements on his own behalf (Tab K).

3. The reasons for the proposed discharge action are:

a. On 27 Apr 98, Respondent assaulted Airman Christian [REDACTED] at the Bandit Inn Dining Facility on Ellsworth Air Force Base, South Dakota. For this Respondent received a Letter of Reprimand (LOR) on 29 May 98. This LOR established his unfavorable information file (UIF).

b. On 26-29 May 98, Respondent failed a dormitory room inspection by having the following discrepancies: a dirty room, dirty floors, clothes on the floor, and the floor needed to be vacuumed. The inspector felt the Respondent had not made any effort to clean. For this the Respondent received a Letter of Counseling (LOC) on 12 Jun 98.

c. Respondent who knew of his duties, at or near Ellsworth Air Force Base, South Dakota, on or about 2 May 98, was derelict in the performance of those duties in that he willfully failed to refrain from consuming alcoholic beverages while under the state legal drinking age of 21, as it was his duty to do. Additionally, Respondent, having knowledge of a lawful order issued by Master Sergeant [REDACTED] Superintendent, Material Storage and Distribution, to remain in his room on telephone standby, an order which it was his duty to obey, did, at Ellsworth Air Force Base, South Dakota, on or about 1 May 98, failed to obey the same by leaving his room without contacting his supervisor. For this Respondent was punished under Article 15 of the Uniform Code of Military Justice (UCMJ) on 17 Jun 98. This Article 15 was placed in his existing UIF.

d. On 6 Jun 98, investigation revealed Respondent assaulted Airman Basic [REDACTED] at Borglum Hall, Ellsworth Air Force Base, South Dakota. For this Respondent received an LOR on 1 Jul 98. This LOR was placed in his UIF.

e. On 6 Jun 98, investigation revealed Respondent consumed alcohol while under the legal drinking age of 21. Respondent knew this was against South Dakota law because this was the second time he committed this offense. For this Respondent received a LOR on 11 Aug 98.

4. This case was properly processed under AFI 36-3208, paragraph 5.49, for misconduct involving minor disciplinary infractions and the facts of this case meet the criteria for discharge under this paragraph. In a little less than one year of active duty military service, Respondent has compiled a record of misconduct which has resulted in one LOC, three LOR's, an Article 15 action, and several UIF entries. Moreover, Respondent has exhibited a major integrity problem - underage drinking. Respondent's misconduct supports a basis for administrative discharge and I concur with 28 SUPS/CC's recommendation to discharge him.

5. Respondent's service should not be characterized as honorable. After considering all the facts in this case, the negative aspects of Respondent's conduct outweigh the positive aspects of his military record, thereby warranting an under honorable conditions (general) discharge. Respondent's performance has not "been so meritorious that any other characterization would be clearly inappropriate" as required by AFI 36-3208, paragraph 5.48.4, for an honorable discharge. After considering all of the circumstances, I concur with the commander's determination that an under honorable conditions (general) discharge is appropriate.

6. As the separation authority, you must consider probation and rehabilitation (P & R). However, P & R is not appropriate in this case. Respondent has received numerous opportunities to change his disruptive behavior. Efforts at rehabilitation have not been effective and Respondent has not shown willingness to be rehabilitated. Retaining Respondent in probation status would degrade the good order and discipline of the unit.

7. As the Special Court-Martial Convening Authority, you may:

- a. Direct that Respondent be retained; or
- b. Direct that Respondent be separated with an under honorable conditions (general) discharge, with or without P & R; or
- c. Direct that the case be heard by a discharge board if you believe an under other than honorable conditions (UOTHC) discharge is appropriate; or
- d. Recommend to 8 AF/CC that Respondent be separated with an honorable discharge, with or without P & R.

RECOMMENDATION

8. Separate Airman Basis [REDACTED], under AFI 36-3208, paragraph 5.49, with an under honorable conditions (general) discharge, without P & R.

[REDACTED]
Lt Col, USAF

Staff Judge Advocate

Attachment:
Case File



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 28TH LOGISTICS GROUP (ACC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

FD 2002-0132

12 AUG 1998

MEMORANDUM FOR [REDACTED]

FROM: 28 SUPS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct involving 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 under honorable conditions (general). I recommend that your service be characterized as under honorable conditions (general).

2. My reasons for this action are:

a. On 27 Apr 98, investigation disclosed that you assaulted Airman [REDACTED] at the Bandit Inn Dining Facility on Ellsworth Air Force Base, South Dakota. For this you received a Letter of Reprimand (LOR) on 29 May 98. This LOR established your unfavorable information file (UIF).

b. On 26-29 May 98, you failed a dormitory room inspection by having the following discrepancies: a dirty shower, dirty room, dirty floors, clothes on the floor, and your room needed to be vacuumed. The inspector thought you had not made any effort to clean. For this you received a Letter of Counseling (LOC) on 12 Jun 98.

c. You, who knew of your duties, at or near Ellsworth Air Force Base, South Dakota, on or about 2 May 98, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcoholic beverages while under the state legal drinking age of 21, as it was your duty to do. Additionally, you, having knowledge of a lawful order issued by Master [REDACTED] Superintendent, Material Storage and Distribution, to remain in your room on telephone standby, an order which it was your duty to obey, did, at Ellsworth Air Force Base, South Dakota, on or about 1 May 98, failed to obey the same by leaving your room without contacting your supervisor. For this you were punished under Article 15 of the Uniform Code of Military Justice (UCMJ) on 17 Jun 98. Your punishment was a reduction to the grade of airman basic; forfeiture of \$225.00 pay per month for 2 months; restriction to Ellsworth AFB, SD, for 45 days; and 45 days extra duty. This Article 15 was placed in your UIF.

d. On 6 Jun 98, investigation revealed that you assaulted Airman Basic [REDACTED] Borglum Hall, Ellsworth Air Force Base, South Dakota. For this you received a Letter of Reprimand (LOR) on 1 Jul 98. This LOR was placed in your UIF.

e. On 6 Jun 98, investigation revealed that you consumed alcohol while you were under the legal drinking age of 21. You knew this was against South Dakota state law because this was the second time you committed this offense. For this you received a Letter of Reprimand (LOR) on 11 Aug 98.

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.

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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 [REDACTED] Area Defense Counsel, 5-2158, 1000 Ellsworth St Ste 1700 on 13 Aug 98 at 0930 hrs. You may consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me by 17 Aug 98 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 Exams Section of the Base Hospital at 13 Aug hrs on 0730 98 for the examination. This is a mandatory appointment, and you must be in uniform. For the examination, fast for 14 hours prior to the examination. If you wear glasses, bring them. If you wear contact lenses, remove them 24 hours prior to 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 your orderly room.

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

[REDACTED]

, USAF

Commander

Attachments:

1. Supporting documents
 - a. LOR/UIF - 29 May 98
 - b. LOC - 12 Jun 98
 - c. Art 15 - 17 Jun 98
 - d. LOR/UIF - 1 Jul 98
 - e. LOR - 11 Aug 98
2. Airman's Acknowledgment