

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	DOHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A95.00	INDEX NUMBER A67.10	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
HEARING DATE 27 AUG 02	CASE NUMBER FD2002-0142	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 IN 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 [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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ENDORSEMENT	DATE: 27 AUG 02
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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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD01-0142

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 two Article 15's for using his government credit card for unofficial purposes and wrongfully using his government computer to process pornography. Also, the applicant received a Vacation action on her reduction to Airman for using his government credit card for unofficial purposes. He also received two Letters of Counseling for failure to go, lying, missing a medical appointment and unauthorized use of a computer. 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 AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/10/30 UP AFI 36-3208, para 5.49 (Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 79/09/15. Enlmt Age: 19 0/12. Disch Age: 22 11/12. Educ: HS DIPLO. AFQT: N/A. A-31, E-29, G-18, M-60. PAFSC: 2A653 - Aircrew Egress Systems Specialist. DAS: 99/04/16.

b. Prior Sv: None

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/09/23 for 4 yrs. Svd: 3 Yrs 1 Mo 8 Das, all AMS.

b. Grade Status: AB - 01/09/20 (Art 15, 01/09/20)
 AMN - 01/07/31 (Art 15, Vacated, 01/09/10)
 A1C - 00/01/24
 AMN - 99/03/23

c. Time Lost: None

- d. Art 15's: (1) 01/09/20, Eielson AFB AK, Article 92. You, did, on or about 19 August 2001, violate a lawful general regulation, to wit: AFI 33-129, para 6.1.3, dated 4 April 2001, by wrongfully using your government-provided computer to process pornography. Reduced to the grade of AB, restriction to Eielson AFB for 14 days, and 14 days extra duty. (Appeal/Denied). (No mitigation).
- (2) 01/09/10, Vacation, Eielson AFB AK, Vacation, Article 92. You, who knew of your duties, at or near Las Vegas, Nevada, on divers occasions between on or about 4 May 2001 and on or about 5 May 2001, were derelict in the performance of those duties in that you willfully failed to refrain from using your Government issued travel card for official purposes only, as it was your duty to do. Reduced to the grade of AMN. (No appeal). (No mitigation).
- (3) 01/07/31, Eielson AFB AK, Article 92. You, who knew of your duties, at or near Las Vegas, Nevada, on divers occasions between on or about 4 May 2001 and on or about 5 May 2001, were derelict in the performance of

those duties in that you willfully failed to refrain from using your Government issued travel card for official purposes only, as it was your duty to do. Reduction to the grade of AMN (suspended until 30 January 2002), forfeiture of \$100.00 per month for 2 months, restriction to Eielson AFB for 21 days, and 21 days extra duty. (No appeal) (No mitigation).

e. Additional: LOC, 00/01/25 - Failure to go, lying, missed medical appointment.

LOC, 00/03/29 - Unauthorized use of a computer.

f. CM: None

g. Record of SV: 98/09/23 - 00/05/22 Eielson AFB 3 (Initial)
00/05/23 - 01/05/22 Eielson AFB 5 (Annual)

(Discharged from Eielson AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (3) Yrs (1) Mo (8) Das
TAMS: (3) Yrs (1) Mo (8) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/02/25.
(Change Discharge to Hon)

NO ISSUES SUBMITTED.

ATCH

1. SF 180, Request Pertaining to Military Records
2. Request for Character of Service Upgrade.

02/07/12cr



FD 2002-0142

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

17 Oct 01

MEMORANDUM FOR 354 FW/CC

FROM: 354 FW/JA
3112 Broadway Ave Unit 2B
Eielson AFB AK 99702-1881

SUBJECT: Legal Review of AEPD 36-32 and AFI 36-3208 Discharge Action [REDACTED]
[REDACTED] 354 MXS, PACAF

1. I have reviewed the discharge package of [REDACTED] and find that it is legally sufficient to support the proposed action. I concur with the recommendation of the unit commander that AB [REDACTED] receive a general discharge without probation and rehabilitation based on Misconduct -- Minor Disciplinary Infractions, AFI 36-3208, paragraph-5.49.

2. DISCUSSION: The following incidents form the basis for this action:

a. Between 14 Dec 99 and 25 Jan 00, he failed to get his body fat measurement as he was instructed, repeatedly lied to his supervisors about being measured, and missed a medical appointment. For these infractions, he received a Letter of Counseling, dated 25 Jan 00 (Tab 4, Atch 1).

b. On or about 27 Mar 00, he used his government computer to forward a chain letter in violation of base policy. For this infraction, he received a Letter of Counseling, dated 29 Mar 00 (Tab 4, Atch 2).

c. Between on or about 4 May 01 and 5 May 01, he repeatedly used his government issued travel card for unofficial purposes. For this offense, he received Article 15, nonjudicial punishment, dated 6 Aug 01, and an Unfavorable Information File was established (Tab 4, Atch 3).

d. On or about 19 Aug 01, he used his government computer to process pornography. For this offense, he received Article 15, nonjudicial punishment, dated 3 Oct 01 (Tab 4, Atch 4), which was added to his Unfavorable Information File.

3. All procedures required by AFI 36-3208 have been properly complied with, and the case has been appropriately processed. The unit followed the appropriate procedures and took the appropriate measures to assist AB [REDACTED] AB [REDACTED] is entitled to legal counsel. He is also entitled to submit statements in response to the Notification Memorandum. He sought legal counsel and has submitted matters for your review (Tab 6).

This communication is privileged as attorney work product and/or as an attorney-client communication, or is subject to another privilege recognized under law. Do not distribute, forward or retransmit without the prior approval of the Eielson AFB Legal Office.

4. IRREGULARITIES: In the discharge notification letter, the commander appears to have inadvertently failed to reference a vacation action he took against AB [REDACTED] for processing pornography on a government computer. He also did not include a copy of the AF Form 3212, Record of Supplementary Action Under Article 15, UCMJ, documenting that action. This vacation action relates back to the first Article 15, discussed in para 2.c. above, in which AB [REDACTED] received a suspended reduction to Airman. The underlying conduct supporting the vacation action was the same conduct for which AB [REDACTED] also received his second Article 15, discussed in para 2.b. above. Under the Manual For Court Martial, Part V, para 6.a.(5), a commander may both vacate a suspended punishment and impose additional nonjudicial punishment for a violation of a punitive article of the UCMJ.

Although the commander did not include evidence of this vacation action in this discharge package, [REDACTED] specifically refers to the action in his response to his second Article 15, in which he states, "Sir, I can not emphasize enough how sorry I am that I committed any of the offenses that resulted in me receiving nonjudicial punishment and a vacation action." The vacation action explains why AB [REDACTED] was an A1C when he received his first Article 15 and an Airman when he received his second Article 15. The fact that the vacation action was not specifically included in the discharge package does not render this discharge legally insufficient.

5. OPTIONS FOR THE SPECIAL COURT-MARTIAL CONVENING AUTHORITY: As Special Court-Martial Convening Authority, you are the separation authority for this action. You may:

- a. Retain the respondent in the Air Force.
- b. Direct the case be reinitiated under another paragraph, if you deem it appropriate.
- c. Recommend the respondent be separated with an honorable discharge, with or without probation and rehabilitation, and forward the case to 11 AF/CC for action.
- d. Direct the respondent be separated with a general discharge, with or without probation and rehabilitation.

6. RECOMMENDATION: [REDACTED] response to this discharge package is persuasive and is perhaps one of the strongest requests for retention and/or probation and rehabilitation this office has seen in recent memory. A review of his military record, however, indicate [REDACTED] commander already gave him a "second chance" at the time he imposed nonjudicial punishment on 6 August 2001. Rather than taking that opportunity to prove himself, less than two weeks later [REDACTED] instead decided to commit another offense under the UCMJ. In my opinion, additional attempts at rehabilitation will likely be met with similar results. Therefore, I concur with the unit commander's recommendation that [REDACTED] be separated with a general discharge, without the opportunity for probation and rehabilitation.

[REDACTED]
[REDACTED], USAF

Deputy Staff Judge Advocate

I concur.

[REDACTED]
[REDACTED]
[REDACTED] Staff Judge Advocate

Attachment:

[REDACTED] Discharge Package

PD 2002-0142

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES



10 OCT 01

MEMORANDUM FOR AHEAD [REDACTED] MXS, PACAF

FROM: 354 MXS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct - Minor Disciplinary Infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are as follows:

a. Between 14 Dec 99 and 25 Jan 00, you failed to get your body fat measurement as you were instructed, repeatedly lied to your supervisors about being measured, and missed a medical appointment. For these infractions, you received a Letter of Counseling, dated 25 Jan 00 (Atch 1).

b. On or about 27 Mar 00, you used your government computer to forward a chain letter in violation of base policy. For this infraction, you received a Letter of Counseling, dated 29 Mar 00 (Atch 2).

c. Between on or about 4 May 01 and 5 May 01, you repeatedly used your government issued travel card for unofficial purposes. For this offense, you received Article 15, nonjudicial punishment, dated 6 Aug 01, and an Unfavorable Information File was established (Atch 3).

d. On or about 19 Aug 01, you used your government computer to process pornography. For this offense, you received Article 15, nonjudicial punishment, dated 3 Oct 01 (Atch 4), which was added to your Unfavorable Information File.

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 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 education assistance funds may be subject to recoupment.

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 Capt [REDACTED] Area Defense Counsel, Building 3112, Room 155, Eielson AFB, Alaska, on 16 Oct 01 at 1030. 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 (3 duty days) 15 Oct 01 / 1030, 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 Examination Section, 354th Medical Group, Building 3349, at 1030 on 16 Oct for 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.

[REDACTED]
[REDACTED] USAF
Commander, 354 MXS

Attachments:

1. Ltr of Counseling, dtd 25 Jan 00
2. Ltr of Counseling, dtd 29 Mar 00
3. Article 15, dtd 6 Aug 01
4. Article 15, dtd 3 Oct 01