

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE A1C	AFSN/SSAN [REDACTED]
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left;">COUNSEL</th> <th rowspan="2" style="text-align: left;">NAME OF COUNSEL AND OR ORGANIZATION</th> <th rowspan="2" style="text-align: left;">ADDRESS AND OR ORGANIZATION OF COUNSEL</th> </tr> <tr> <td style="width: 5%;">YES</td> <td style="width: 5%;">NO</td> </tr> <tr> <td></td> <td style="text-align: center;">X</td> <td></td> <td></td> </tr> </table>		COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL	YES	NO		X			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL									
YES	NO											
	X											

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

ISSUES A94.06	INDEX NUMBER A67.10	EXHIBITS SUBMITTED TO THE BOARD		
		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 RATIONAL 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]
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INDORSEMENT	DATE: 11 Oct 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

FD02-0172

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: The discharge is upgraded to Honorable; however, the reason for discharge and RE Code will not be changed.

ISSUE: The applicant does not contest his discharge. He admits that he made mistakes and is only asking for an upgrade for the sole purpose of obtaining his G.I. Bill benefits. The records indicated the applicant received a General discharge for Misconduct – Minor Disciplinary Infractions. He received an Article 15 for drinking and driving and two Letters of Reprimand for failure to obey a lawful order and violation of a general regulation. After a thorough and complete consideration of the information submitted by the applicant, and information contained in the record, the Board concluded there was sufficient mitigation and extenuation to substantiate upgrade of the discharge. The Board did not however agree to change applicant's reason for discharge or his reenlistment code.

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.

However, in view of the foregoing findings, the board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge. The applicant's characterization should be changed to Honorable under the provisions of Title 10, USC 1553.

Attachment:
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
 AIR FORCE DISCHARGE REVIEW BOARD
 ANDREWS AFB, MD

[REDACTED]
 (Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/07/05 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 80/04/05. Enlmt Age: 17 8/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A. A-70, E-44, G-34, M-28. PAFSC: 3E131 - Heating, Ventilation, Air Conditioning Apprentice. DAS: 00/05/03.

b. Prior Sv: (1) AFRes 97/12/30 - 98/06/16 (5 Mos 17 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/06/17 for 4 yrs. Svd: 3 Yrs 0 Mo 19 Das, all AMS.

b. Grade Status: A1C - 00/04/01
 AMN - 99/12/09 (Article 15, 99/12/09)
 A1C - 99/10/17
 AMN - 98/12/17
 AB - 98/06/17

c. Time Lost: None

d. Art 15's: (1) 99/12/09, Andersen AFB, Guam, Article 111. You, did, on or about 11 Nov 1999, while near the Main Gate, Building 2404, physically control a vehicle, to wit: a passenger car, while drunk. Reduction to the grade of AMN, and 30 days extra duty. (Appeal/Denied) (No mitigation).

e. Additional: LOR, 12 JUN 01 - Failure to obey a lawful order
 LOR, 19 MAR 01 - Violation of a general regulation

f. CM: None

g. Record of SV: 98/06/17 - 00/04/30 Andersen AFB 5 (Initial)
 00/05/01 - 00/12/17 Patrick AFB 4 (CRO)

(Discharged from Patrick AFB)

h. Awards & Decs: AFTR, AFOLTR, AFEM, AFOUA.

i. Stmt of Sv: TMS: (3) Yrs (6) Mos (6) Das
 TAMS: (3) Yrs (0) Mos (19) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/16
(Change Discharge to Honorable)

Issue: I'am (sic)trying to get my discharge upgraded to honorable for the sole purpose of attending college. I live in Austin, TX rent is high and so is school. I'm working two jobs now and I still cannot afford to go to school. I would like to futher (sic) my education. I payed \$1200.00 for my G.I. Bill and I really need it. I know I made mistakes in my military career but I took (sic) full responsibility and stood up for my actions. In return all I'm asking is for some support to help me survive as a civilian. I have learned a great deal from the military but I can not survive in the civilian world with out a good education.

ATCH

1. DD Form 149

02/07/25/cr

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DEPARTMENT OF THE AIR FORCE
45TH SPACE WING (AFSPC)

25 Jun 01

MEMORANDUM FOR A1C [REDACTED]

FROM: 45 CES/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct, specifically Minor Disciplinary Infractions. The authority for this 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 Honorable or Under Honorable Conditions (General). I am recommending your service be characterized as Under Honorable Conditions (General).

2. My reasons for this action are the following:

a. On 4 Jun 01, you failed a dormitory room inspection conducted by [REDACTED] 45 CES/CCF. This was your fourth room inspection failure in less than 3 months, for which you received a Letter of Reprimand (LOR), dated 12 Jun 01.

b. On 11 Nov 00, you violated a lawful general regulation at or near Brevard County, FL, by drinking alcohol while under the minimum legal drinking age of 21 years of age. You were stopped by the civilian police on the Pineda Causeway for speeding and underage drinking. For this misconduct you received an LOR, dated 19 Mar 01. An Unfavorable Information File (UIF) was established, and this LOR was filed in the UIF.

c. On 11 Nov 99, you did at or near Andersen AB, Guam, near the Main Gate, Building 2404 physically control a vehicle, to wit: a passenger car, while drunk. For this misconduct you received Nonjudicial Punishment under Article 15, UCMJ, dated 9 Dec 99. The imposed punishment consisted of reduction to the grade of airman and 30 days extra duty.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Courts-Martial 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. I have made an appointment for you to consult with [REDACTED] Area Defense Counsel, Bldg 423, Suite N-115, Patrick Air Force Base, Florida, phone

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DSN 854-4423, at 0900 hrs on 27 Jun 01. 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 0900, 28 JUN 01, unless you request and receive an extension for good cause shown. I will send any submissions 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 45th Medical Group, Physical Exam Section, Patrick AFB, at 1330 hrs on 25 June 01 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 at the office of the Area Defense Counsel, Bldg 423, Suite N-115.


Commander, Lt Col, USAF

Attachments:

1. LOR, dtd 12 Jun 01
2. AF Form 1058, dtd 3 Apr 01
3. LOR, dtd 19 Mar 01
4. AF Form 3070, dtd 9 Dec 99

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DEPARTMENT OF THE AIR FORCE
45TH SPACE WING (AFSPC)

MEMORANDUM FOR 45 SW/CC

FROM: 45 SW/JA

SUBJECT: Legal Review of AFI 36-3208 Separation Action - [REDACTED]
[REDACTED], 45 CES

1. I have reviewed the attached AFI 36-3208 separation action concerning [REDACTED] and find it legally sufficient.
2. BACKGROUND: On 25 Jun 01, [REDACTED], 45 CES/CC initiated this action pursuant to AFD 36-32, *Military Retirements and Separations* (14 Jul 93), and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section H, Paragraph 5.49, Misconduct, specifically for Minor Disciplinary Infractions. 45 CES/CC recommended that [REDACTED] be discharged with an Under Honorable Conditions (General) discharge. [REDACTED] is not entitled to have his case heard before an administrative discharge board.
3. SUMMARY OF THE EVIDENCE:
 - a. On 4 Jun 01, [REDACTED] failed a dormitory room inspection conducted by [REDACTED], 45 CES/CCF. This was his fourth room inspection failure in less than 3 months, for which he received a Letter of Reprimand (LOR), dated 12 Jun 01.
 - b. On 11 Nov 00, [REDACTED] violated a lawful general regulation at or near Brevard County, Florida, by drinking alcohol while under the minimum legal drinking age of 21 years of age. He was stopped by the civilian police on the Pineda Causeway for speeding and underage drinking. For this misconduct, he received an LOR, dated 19 Mar 01. An Unfavorable Information File (UIF) was established, and this LOR was filed in the UIF.
 - c. On 11 Nov 99, he did at or near Andersen AB, Guam, near the Main Gate, physically control a vehicle, to wit: a passenger car, while drunk. For this misconduct he received Nonjudicial Punishment under Article 15, Uniform Code of Military Justice, dated 9 Dec 99. The Imposed punishment consisted of reduction to the grade of airman and 30 days extra duty.
 - d. [REDACTED] is unmarried and has no children. He has been in the Air Force for 3 years. He has two Enlisted Performance Reports (EPR), with an overall rating of "4" on the report dated 22 Dec 00 and an overall rating of "5" on the report dated 16 May 00. [REDACTED] is entitled to wear the following awards and decorations: Armed Forces Expeditionary Medal, Air Force Overseas Short Tour Ribbon and Air Force Training Ribbon.

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4. DISCUSSION:

a. The evidence in the case file supports an Under Honorable Conditions (General) Discharge. AFI 36-3208, Section H, paragraph 5.49 provides that airmen are subject to discharge based on a pattern of misconduct in the current enlistment. If discharged he may receive a discharge characterization of Under Honorable Conditions (General) or Honorable.

b. ██████████ is not entitled to have his case heard before an administrative discharge board.

(1) An Honorable Discharge indicates a separation from the Air Force with honor. It means the member has satisfactorily completed a commitment to the Air Force by meeting or exceeding the required standards of duty performance and personal conduct. When a member is being discharged for misconduct, the General Court-Martial (GCM) Convening Authority must approve a recommendation for an Honorable Discharge. ██████████ record is not one of a person meeting such high standards.

(2) A General Discharge is a separation from the Air Force with honor, but to a lesser degree than the Honorable Discharge. This discharge is given when normally faithful service is marred by negative aspects of a person's duty performance or personal conduct, but the negative aspects definitely outweigh the good. Given ██████████ repeated reprimands and nonjudicial punishment, the negative aspects of his conduct and duty performance clearly outweigh any positive aspects of his military record.

c. ██████████ submitted a statement in his behalf. In his statement he acknowledges that he had "no excuse" for his alcohol-related problems, but states that he has quit drinking. He asks that you look at the circumstances surrounding his failed room inspections. He gives excuses for why his room was not clean. However, it should be noted that when 45 CES/CC issued him the LOR, ██████████ was given 3 days to submit a response but never did. He concludes by asking that you consider giving him an honorable discharge so that he can go to college and get a good job. This is not a proper consideration for granting an Honorable Discharge under AFI 36-3208, paragraph 1.17. Based upon the serious disciplinary infractions in his record within the period of his current enlistment, the evidence in the case file supports 45 CES/CC's recommendation that ██████████ receive an Under Honorable Conditions (General) Discharge.

d. Although ██████████ is eligible for Probation and Rehabilitation (P&R), it is not warranted. According to AFI 36-3208, paragraph 7.3, P&R should be considered when: "(a) the airman has demonstrated a potential to serve satisfactorily; (b) the airman has the capacity to be rehabilitated for continued military service or for completion of the current enlistment; and (c) the airman's retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force." By repeatedly engaging in misconduct and failing to perform his duties as required, ██████████ demonstrated he lacks the basic integrity required for continued service in the Air Force. Rehabilitative efforts have been undertaken by 45 CES/CC, to no avail.

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45 CES/CC recommends [REDACTED] be discharged with a service characterization of Under Honorable Conditions (General). He also recommends against P&R. I concur that P&R should be denied

5. OPTIONS: As the discharge authority, you may:

a. Retain [REDACTED] in the Air Force;

b. Discharge [REDACTED] from the Air Force with an Under Honorable Conditions (General) Discharge, with or without probation and rehabilitation IAW AFI 36-3208; or

c. Recommend to 14 AF/CC that he discharge [REDACTED] from the Air Force with a service characterization of Honorable, with or without P&R, IAW AFI 36-3208.

6. RECOMMENDATION: I recommend you discharge [REDACTED] with a service characterization of Under Honorable Conditions (General).

[REDACTED]
[REDACTED], Major, USAF
Acting Staff Judge Advocate

Attachment:
Separation Case File