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22 OCT 02	FD2002-0177	4	4 BRIEF OF PERSONNEL FILE COUNSEL'S RELEASE TO THE BOARD				
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

FD02-0177

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 four Article 15's. The first one was for possessing marijuana; the second one was for being drunk on duty, the third for being disorderly and the fourth for operating a vehicle in a reckless manner, being disrespectful and disorderly. He also received six Letter's of Reprimand and ten Letter's of Counseling for speeding, disorderly conduct, uniform violations, failure to follow procedures, playing dominoes during commander's call, substandard duty performance, absent from his duty section without approval, failed to attend a supervisor safety course, failure to report a vehicle accident, writing worthless checks, late for duty and having a delinquent DPP account. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative/repetitive behavior. 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

FD2002-0177

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

(Former AB) (HGH SGT)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 87/11/19 UP AFR 39-10, para 5-46 (Misconduct - Pattern of Minor Disciplinary Infractions. Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 63/08/22. Enlmt Age: 17 1/12. Disch Age: 24 2/12. Educ: HS DIPL. AFQT: N/A. A-75, E-73, G-82, M-87. PAFSC: 47252 - General Purpose Vehicle Mechanic. DAS: 84/04/16.

b. Prior Sv: (1) AFRes 80/10/06 - 80/11/25 (1 Mo 20 Days) (Inactive).

(2) Enld as AB 80/11/26 for 4 yrs. Ext: 83/01/31 for 17 Mos. SVD: 4 Yrs 3 Mos 12 Days, all AMS. AMN - 81/05/26. A1C - 81/11/26. SRA -84/04/01. APRs: 7,7,8,9,9,9.

3. SERVICE UNDER REVIEW:

a. Reenld as SRA 85/03/08 for 6 yrs. Svd: 2 Yrs 8 Mo 12 Das, all AMS.

b. Grade Status: AB - 87/11/09 (Article 15, 87/11/09) SRA - 84/04/01 (Vacation, 86/05/29) SGT - 85/04/01 (Appointed)

- c. Time Lost: None
- d. Art 15's: (1) 87/11/09, Aviano AB, Italy, Article 111. Preliminary investigation has disclosed that you, did, on or about 22 Oct 87, on the North Perimeter Road adjacent to Building 941 operate a vehicle, to wit: a passenger car in a reckless manner by speeding through a posted stop sign and causing another vehicle operator to react and brake quickly to avoid a collision with your vehicle. Article 91. Further investigation has disclosed that you, on or about 22 Oct 97, were disrespectful in deportment toward Staff Sergeant -----, a noncommissioned officer, then known by you to be a noncommissioned officer, who was then in the execution of his office, by yelling, arguing and forcing him to direct you several times to produce your operator's license before you complied. Article 134. Further investigation has disclosed that you, were, on or about 22 Oct 87, disorderly. Reduction to the grade of AB, and forfeiture of \$300 pay. (No appeal) (No mitigation).

- (2) 87/03/23, Aviano AB, Italy, Article 134. Preliminary investigation has disclosed that you, were, on or about 27 Feb 87, disorderly. Suspended reduction to the grade of AIC, and extra duties for 10 days. (No appeal) (No mitigation)
- (3) 86/03/28, Aviano AB, Italy, Article 112. Preliminary investigation has disclosed that you, were, on or about 18 Mar 86, found drunk while on duty as a vehicle mechanic. Suspended reduction to the grade of A1C. (No appeal) (No mitigation).
- (4) 82/01/12, Luke AFB, AZ, Articles 134 & 92. You did, on or about 2 Dec 81, wrongfully have in your possession some quantity of marijuana. Further, you, having received a lawful order issued by Airman First Class ------- a security policeman then in the execution of his duties, to halt, an order which it was your duty to obey, did, on or about 2 Dec 81, fail to obey the same. Suspended reduction to the grade of AMN, and forfeiture of \$200.00. (No appeal) (No mitigation).

7

(CRO)

e. Additional: LOR, 27 MAR 87 - Excessive speeding resulting in a vehicle accident. LOR, 23 MAR 87 - Disorderly conduct. ROC, 19 FEB 87 - Violation of duty uniform standards. LOR, 17 FEB 87 - Failure to follow procedures. ROC, 2 FEB 87 - Playing dominoes during commander's call. ROC, 5 NOV 86 - Substandard duty performance. ROC, 20 AUG 86 - Absent from duty section without approval of supervisor. LOR, 16 MAY 86 - Failed to attend a supervisor safety course. ROC, 22 APR 86 - Failure to perform supervisory duties. ROC, 7 APR 86 - Uniform violation. LOR, 27 JAN 86 - Failure to report a vehicle accident. ROC, 16 JAN 86 - Writing worthless checks. ROC, 7 JAN 86 - Delinquent DPP account. ROC, 30 SEP 85 - Late for duty. LOR, 26 JUL 85 - Driving recklessly. ROC, 24 Jun 85 - Late for an appointment. CM: None. f. Record of SV: 85/02/10 - 86/02/09 Aviano AB g. 7 (Annual) 86/02/10 - 86/09/06 Aviano AB

> 86/09/07 - 87/03/08 Aviano AB 8 (CRO)

> > (Discharged from McGuire AFB)

h. Awards & Decs: AFOUA, AFGCM, AFOSTR, AFOLTR, AFLSAR, SAEMR, AFTR.

i. Stmt of Sv: TMS: (7) Yrs (1) Mo (14) Das TAMS: (6) Yrs (11) Mos (24) Das

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

NO ISSUES SUBMITTED.

ATCH None.

-

02/08/23/cr

F02002-0174



JA

DEPARTMENT OF THE AIR FORCE HEADQUARTERS SIXTEENTH AIR FORCE (USAFE) APO NEW YORK 09283-6000

REPLY TO ATTN OF:

4 May 1987

SUBJECT: Legal Review: Conditional Waiver of AFR 39-10 Administrative Discharge Board Hearing - SrA

^{TO:} CC

1. Basis for Action. On 17 April 87, the 40 TRNSPS/CC, Major **Mathematica**, initiated action to discharge SrA **Constant**, pursuant to AFR 39-10, paragraph 5-46 for minor disciplinary infractions. Major Wheatley recommended that SrA **Constant**, be furnished a Under Other Than Honorable Conditions(UOTHC) discharge without suspension for probation and rehabilitation (P&R). SrA **Constant** submitted a waiver of his right to a hearing before an administrative discharge board. This waiver is conditioned upon his receipt of no less than a general discharge. The 40 TACG/CC has recommended that you accept this waiver and separate the respondent with a general discharge without P&R.

2. <u>Summary of Evidence for the Government</u>. The basis for the discharge action is 18 minor disciplinary infractions committed within the previous two year period. The infractions consisted of incidents of being drunk in duty, reckless driving, being disorderly, AFR 35-10 violations, negligent duty performance, failures to go and financial irresponsibility. He received 6 letters of reprimand, 2 Article 15's, 10 records of counseling, and vacation of NCO status in connection with his misconduct.

Summary of Evidence for the Respondent

a. The respondent is entitled to wear the Air Force Training Ribbon, and the Air Force Longevity Service Award.

b. The respondent has received the following ratings on his APRs, in chronological order: 7, 7, 8, 9, 9, 9, 7, 7, 8.

4. <u>Errors and Irregularities</u>. the case file contains no errors or irregularities which substantially prejudice the material rights of the respondent. We have verified that in recommending acceptance of the waiver, the 40 TACG/CC understood the initiating commander had recommended a UOTHC discharge.

5. Options. As the separation authority in this action, you may

a. accept the respondent's conditional waiver and separate him from the Air Force with an honorable or general discharge, with or without P&R;



SEPTEMBER 18, 1947 Right People. Right Mission. Right Now.

FD2002-0177

b. reject the respondent's waiver, in which case he could elect to submit an unconditional waiver or to appear before an administrative discharge board; or

c. direct retention.

6. <u>Discussion</u>. The attached case file is legally sufficient to support discharge action under AFR 39-10, paragraph 5-46. Although a UOTHC is authorized, the normal characterization is General for a discharge under para 5-46. According to AFR 39-10, para 1-18, characterization of service as general is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. This fits well in this case. Suspension of the discharge for P&R is inappropriate because of the large number of rehabilitative measures which have already been attempted without success.

7. <u>Recommendation</u>. That you accept the respondent's conditional waiver and direct that SrA **second** be separated from the Air Force with a general discharge without suspension for P&R.

Assistant Staff Judge Advocate

I have read the discharge case file on SrA **Concerned and** I concur with the reviewer.

Staff Judge Advocate

ED 2002 - 0177



DEPARTMENT OF THE AIR FORCE HEADQUARTERS 40TH TACTICAL GROUP (USAFE) APO NEW YORK 09293-5000

REPLY TO ATTN OF: JA

APR 2 1 1987

SUBJECT: Legal Review - AFR 39-10 Administrative Discharge (Senior Airman)

70: CC

1. Legal Review: After a careful review of the above case, I find it to be legally sufficient to separate Senior Airman (Section) with a general discharge under AFR 39-10, paragraph 5-46, for minor disciplinary infractions.

2. Facts: On 17 April 1987, the 40th Transportation Squadron commander, Major control of the specifically, minor disciplinary infractions pursuant to AFR 39-10, paragraph 5-46. Major control recommended that Senior Airman to AFR 39-10, paragraph 5-46. Major control recommended that Senior Airman to affect the state of the state of the senior discharge without suspension for probation and rehabilitation (P & R). After consulting legal counsel, Senior Airman control submitted a conditional waiver, dated 20 April 1987, offering to forego an administrative discharge board hearing on the condition that he receive no less than a general discharge.

3. Summary of Evidence for the Government:

a. The basis for the discharge action is the following:

(1) On 22 March 1987, the respondent drove at an excessive speed causing a motor vehicle accident for which he received a letter of reprimand on 27 March 1987.

(2) On 27 February 1987, the respondent was disorderly for which he received an Article 15 on 23 March 1987 and a commensurate suspended reduction to the grade of Airman First Class (E-3) effective that date.

(3) On 20 February 1987, the respondent broke two windows and used vulgar language towards residents at Via Dante #1, Aviano, Italy, for which he received a letter of reprimand on 23 March 1987.

(4) On 19 February 1987, the respondent was not in uniform while at his duty station for which he received a record of counseling on that date.

(5) On 5 February 1987, the respondent failed to follow prescribed procedures in servicing a tire mounted on a split type wheel assembly, which caused the wheel to explode and injure him. For this offense, the respondent received a letter of reprimand on 17 February 1987.

(6) On 29 January 1987, the respondent was playing dominoes during commander's call for which he received a record of counseling on 2 February 1987.

FD 2002 - 0177

(7) The respondent's substandard duty performance caused him to receive a record of counseling on 5 November 1986.

(8) On 19 August 1986, the respondent improperly left his duty station without informing his supervisor for which he received a record of counseling on 20 August 1986.

(9) On 29 April 1986, the respondent failed to attend a supervisor safety course for which he received a letter of reprimand on 16 May 1986.

(10) On 22 April 1986, the respondent failed to ensure his bay orderly was on duty for which he received a record of counseling on that date.

(11) On 7 April 1986, the respondent's uniform was not in conformity with AFR 35-10 for which he received a record of counseling on that date.

(12) On 18 March 1986, the respondent was drunk while on duty as a vehicle mechanic for which he received an Article 15 on 28 March 1986 and a commensurate suspended reduction to the grade of Airman First Class (E-3) effective that date.

(13) The respondent wrote checks totalling \$47.50 against insufficient funds for which he was counseled on 16 January 1986.

(14) The respondent failed to report his 21 November 1985 motor vehicle accident for which he received a letter of reprimand on 27 January 1986.

(15) On 30 September 1985, the respondent failed to report for duty on time for which he received a record of counseling on that date.

(16) On 27 September 1985, the respondent reported one hour and fifteen minutes late for duty for which he received a record of counseling.

(17) On 16 July 1985, the respondent operated his vehicle on a nothoroughfare street and on 18 July 1985, the respondent sped over 50 kilometers per hour over the posted speed limit. For these offenses, the respondent received a letter of reprimand on 26 July 1985.

(18) On 20 June 1985, the respondent failed to attend his NCO Leadership School briefing at the scheduled time for which he received a record of counseling on 24 June 1985.

b. Additional Derogatory Data: The respondent was counseled on 7 January 1986 concerning his delinquent DPP account. On 23 May 1986, the respondent was relieved of his dorm chief responsibilities because of his poor performance in the position. On three occasions; 26 January 1982, 16 May 1986 and 9 June 1986, the respondent was denied the Air Force Good Conduct Medal. The respondent's NCO status was vacated on 29 May 1986. 4. <u>Summary of Evidence for the Respondent</u>: In approximately six years and five months of service, the respondent has received just under an "8" as an average of his overall ratings on his nine airman performance reports. The respondent has also received the Air Force Training Ribbon and the Air Force Longevity Service Award Ribbon. The respondent has submitted a conditional waiver of his right to an administrative discharge on the condition that he receive no less than a general discharge.

5. Errors and Irregularities: None.

6. <u>Discussion</u>: Based upon respondent's eighteen separate actions of minor misconduct, discharge is appropriate under AFR 39-10, paragraph 5-46. Administrative separation of respondent is long overdue. Two Article 15 actions, six letters of reprimand and ten counselings have been administered to this respondent. In spite of his hefty disciplinary record, the respondent's conditional waiver should be accepted. His overall service record has some positive aspects and may warrant a general discharge. Additionally, acceptance of the waiver saves the Covernment the time and expense of convening a discharge board.

7. <u>Commander's Options</u>: As the special court-martial convening authority in this action, you have the following options:

a. Reject the conditional waiver and direct the respondent to submit an unconditional waiver or request a board hearing within three workdays; or

b. Recommend acceptance of the conditional waiver and send the package to 16AF/CC for final action with one of the following recommendations:

(1) Retain the respondent in the United States Air Force;

(2) Discharge the respondent with an honorable discharge with or without suspension for probation and rehabilitation; or

(3) Discharge the respondent with a general discharge with or without suspension for probation and rehabilitation.

In addition, the letter to 16AF/CC must state why the conditional waiver should be accepted and how the member's military record warrants the type of discharge you recommend.

8. <u>Recommendation</u>: I recommend that you forward the conditional waiver to 16AF/CC with the recommendation that Senior Airman **and rehabilitation** be issued a general discharge without suspension for probation and rehabilitation due to the convenience to the government and Senior Airman **and rehabilitation** overall military record.

Acting Staff Judge Advocate

F02002-0177



DEPARTMENT OF THE AIR FORCE HEADQUARTERS 40TH TACTICAL GROUP (USAFE) APO NEW YORK 09293-5000

ATTN OF: 40 TRNSPS/CC

APR 17 1987

SUBJECT: Letter of Notification - Board Hearing

TO: SrA 40 TRNSPS/LGTM

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions according to AFR 39-10, under the provisions of paragraph 5-46. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

a. Your excessive speed caused you to have a motor vehicle accident on 22 Mar 87 for which you received a letter of reprimand on 27 Mar 87.

b. You were disorderly on 27 Feb 87 for which you received an Article 15 on 23 Mar 87 and a commensurate suspended reduction to the grade of A1C (E-3) effective that date.

c. You broke two windows and used vulgar language towards residents at Via Dante #1, Aviano, Italy, on 20 Feb 87, for which you received a letter of reprimand on 23 Mar 87.

d. You were not in uniform while at your duty station on 19 Feb 87 for which you received a record of counseling on 19 Feb 87.

e. You failed to follow prescribed procedures in servicing a tire mounted on a split type wheel assembly on 5 Feb 87, which caused the wheel to explode and injure you, for which you received a letter of reprimand on 17 Feb 87.

f. You were playing dominoes during commander's call on 29 Jan 87 for which you received a record of counseling on 2 Feb 87.

g. Your substandard duty performance caused you to receive a record of counseling on 5 Nov 86.

h. You improperly left your duty station without informing your supervisor on 19 Aug 86 for which you received a record of counseling on 20 Aug 86.

UNITED STATES AIR FORCE



SEPTEMBER 18, 1947 Right People. Right Mission. Right Now. i. You failed to attend a supervisor safety course on 29 Apr 86 for which you received a letter of reprimand on 16 May 86.

j. You failed to ensure your bay orderly was on duty on 22 Apr 86 for which you received a record of counseling on 22 Apr 86.

k. Your uniform was not in conformity with AFR 35-10 on 7 Apr 86 for which you received a record of counseling on 7 Apr 86.

1. You were drunk while on duty as a vehicle mechanic on 18 Mar 86 for which you received an Article 15 on 28 Mar 86 and a commensurate suspended reduction to the grade of A1C (E-3) effective that date.

m. You wrote checks totalling \$47.50 against insufficient funds for which you were counseled on 16 Jan 86.

n. You failed to report your 21 Nov 85 motor vehicle accident for which you received a letter of reprimand on 27 Jan 86.

o. You failed to report for duty on time on 30 Sep 85 for which you received a record of counseling on 30 Sep 85.

p. You reported one hour and fifteen minutes late for duty on 27 Sep 85 for which you received a record of counseling on 27 Sep 85.

q. You operated your vehicle on a no-throughfare street on 16 Jul 85 and you were speeding over 50 KMH over the posted speed limit on 18 Jul 85. For these offenses you received a letter of reprimand on 26 Jul 85.

r. You failed to attend your NCO Leadership School briefing at the scheduled time on 20 Jun 85 for which you received a record of counseling on 24 Jun 85.

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable conditions discharge. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force.

2.

FD2002-0177

4. You have the right to:

a. Consult legal counsel.

b. Present your case to an administrative discharge board.

c. Be represented by legal counsel at a board hearing.

d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.

e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You were scheduled for a medical examination which you received on 13 Apr 87, 0700 hours, at the flight surgeon's office. No further medical examination will be required.

6. Military legal counsel, Captain **An appointment** at the Area Defense Counsel's office, bldg 262, has been obtained to assist you. An appointment has been scheduled for you to consult him on 20 Apr 87 at 0900 Hrs. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFR 111-1. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

8. 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 at the Area Defense Counsel's office.

3.

F02002-0177

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

Commander, 40Th Transportation Sq

3 Atch Supporting documents for the 1. reasons for discharge a. Ltr of Reprimand, 27 Mar 87 b. Aritcle 15 Action, 23 Mar 87 c. Ltr of Reprimand, 23 Mar 87 d. Rec of Counseling, 19 Feb 87 e. Ltr of Reprimand, 17 Feb 87 f. Rec of Counseling, 2 Feb 87 g. Rec of Counseling, 5 Nov 86 h. Rec of Counseling, 20 Aug 86 i. Ltr of Reprimand, 16 May 86 j. Rec of Counseling, 22 Apr 86 k. Rec of Counseling, 7 Apr 86 1. Article 15 Action, 28 Mar 86 m. Rec of Counseling, 16 Jan 86 n. Ltr of Reprimand, 27 Jan 86 o. Rec of Counseling, 30 Sep 85 p. Rec of Counseling, 27 Sep 85 q. Ltr of Reprimand, 26 Jul 85 r. Rec of Counseling, 24 Jun 85

2. Documents containing derogatory information which are not listed in letter of notification

a. Denial of AF Good Conduct Medal 9 Jun 86

b. Vacation of NCO Status (AF Form 418), 29 May 86

c. Withdrawal from Dorm Chief Duty 23 May 86

d. Denial of AF Good Conduct Medal 16 May 86

e. AFEES DPP Program delinquency, 2 Jan 86

f. Denial of AF Good Conduct Medal 26 Jan 82

3. Airman's acknowledgement