

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 GEN	PERSONAL APPEARANCE	X RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	

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

ISSUES A94.05	INDEX NUMBER A67.10	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 6 FEBRUARY 2002	CASE NUMBER FD2002-0241	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, with or 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: 8 April 2003
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

FD2002-0241

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

The applicant was offered a personal appearance before the Discharge Review Board (DRB), but declined to exercise this right through written notification.

The attached brief contains the available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge and change of RE code are denied.

The Board finds that the evidence of record does not substantiate an impropriety that would alone justify an upgrade of the discharge.

Issues. The member was separated with a general discharge after receiving two Article-15's and one Letter of Reprimand over the course of his 2 years and 14 days of military service, for two instances of underage consumption of alcoholic beverages (13 May 2000 and 10 August 2001), one charge of failure to go at the time prescribed to his appointed place of duty (Meade County Courthouse, Sturgis, South Dakota), and for failure to obey a lawful order to remove a healing post from his ear, and violation of AFI 36-2903, Dress and Personal Appearance, by wrongfully wearing earrings off-duty on a military installation, for which he received a suspended reduction to the rank of Airman Basic in June 2000, followed, in September 2001 with another suspended reduction to the grade of Airman, along with forfeiture of \$200.00 pay per month for 2 months, and 30 days extra duty. The applicant challenged the fairness of his initial Article-15, citing his "integrity" in self-reporting the incident which occurred at an off-base location. The applicant also challenged his "failure to obey" a lawful order, which he later followed, citing his attention was focused at the time on two other noncommissioned officers who were "yelling" at him for wearing an earring post. The applicant presented mitigating evidence of the charges of his failure to go to his prescribed place of duty, by submission of a copy of the written ticket to appear in a civilian court, with a reporting date, which differs from the date of his alleged offense. The applicant states that he did in fact attend his directed court appearance and remitted payment of his fine. For the dress and appearance violation, the applicant denies his guilt and countered that his was a case of mistaken identify, as there were four other individuals in his organization who are blonde males, one of whom could have been the violator. However, the DRB noted the following excerpt from an email transmission from the applicant's first sergeant to the officer who identified him as the violator which reads: "I spoke with [REDACTED], he admitted that he was wrong in wearing earrings, he also stated that he wasn't going to remove them either, further into the conversation he blatantly admitted that he didn't care about anything that he has done that has gotten him into trouble". The applicant has provided a facsimile request for correction of his current RE code, 4H, which he states is a "medical code". The applicant cited several positive aspects of his career, including a complimentary performance feedback document he received, dated 28 February 2001, comments for a "great job" by an Air Combat Command inspector, during a unit inspection, and his involvement in numerous base and community activities, such as the Youth Sports Coaches Association and the Airmen's Council. The DRB opined the applicant's misconduct was a significant departure from conduct expected of all military members and that the seriousness of his willful misconduct offset any positive aspects of his duty performance.

CONCLUSIONS: The Discharge Review Board (DRB) 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 DRB further concludes that there exists no legal or equitable basis for change of reason for discharge and change of RE code, thus the applicant's discharge should not be changed. Any alterations in the applicant's RE code, shall be for the correction of clerical errors only.

Attachment:

Examiner's Brief

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

[REDACTED]
[REDACTED]
(Former A1C) (HGH A1C)

(NO MEDICAL RECORDS)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/10/05 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, to Change the Reason and Authority for Discharge, and to Change the RE Code.

2. **BACKGROUND:**

a. DOB: 81/01/18. Enlmt Age: 17 10/12. Disch Age: 20 8/12. Educ: HS DIPL. AFQT: N/A. A-61, E-46, G-48, M-44. PAFSC: 1T131 - Aircrew Life Support Apprentice. DAS: 00/02/08.

b. Prior Sv: (1) AFRes 98/12/11 - 99/09/21 (9 months 11 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 99/09/22 for 4 yrs. Svd: 02 Yrs 00 Mo 14 Das, all AMS.

b. Grade Status: A1C - 01/01/22
AMN - 00/03/02

c. Time Lost: None.

d. Art 15's: (1) 01/09/07, Ellsworth AFB, SD - Article 86. You did, on or about 14 Aug 01, without authority, fail to go at the time prescribed to your appointed place of duty. Article 91. You, having knowledge of a lawful order issued by [REDACTED], to remove a healing post from your ear, ~~an order it was your duty to obey, did, on or~~ about 22 Aug 01, fail to obey the same. Article 92. You, did, on or about 19 Aug 01, violate a lawful general regulation, to wit: Table 2.5, item 7, AFI 36-2903, Dress and Personal Appearance, dated 8 Jun 98, by wrongfully wearing earrings off duty on a military installation. Suspended reduction to Amn. Forfeiture of \$200.00 pay per month for 2 months (in excess of \$100.00 pay per month for 2 months suspended). Thirty days extra duty, 30 days restriction, and a reprimand. (No appeal) (No mitigation)

(2) 00/06/09, Ellsworth AFB, SD - Article 92. You, who knew of your duties, on or about 13 May 00, 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. Article 134. You did, at or near Ellsworth AFB, SD, a place under exclusive federal jurisdiction, on or about 13 May 00, possess an open receptacle or package containing an alcoholic beverage while occupying a motor vehicle located upon a public highway in violation of South Dakota Codified Law 35-1-9.1, assimilated into federal law by 18 U.S. Code Section 13. Suspended reduction to AB, and forfeiture of \$50.00 pay per month for 2 months. Fourteen days extra duty. (No appeal) (No mitigation)

- e. Additional: LOR, 22 AUG 01 - Underage drinking.
- f. CM: none.
- g. Record of SV: 99/09/22 - 01/05/21 Ellsworth AFB 5 (Initial)
(Discharged from Ellsworth AFB)
- h. Awards & Decs: AFTR.
- i. Stmt of Sv: TMS: (02) Yrs (09) Mos (25) Das
TAMS: (02) Yrs (00) Mos (14) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/05/24
(Change Discharge to Honorable, Change the Reason and Authority for Discharge, and Change the RE Code.)

Issue 1: I believe that I should have never been discharged. Me and my boss never go along to begin with. As you can see from documentation, -----
-- never tried to get me into any trouble until my unit was assigned a sit in First Sergeant. There are many things that just do not add up. The dates on documentation do not make any sense. On -----'s statement towards my failure to report he has all information incorrect. He states on August 14 I did not appear at a court hearing, I did not even have a court hearing until the 21st of August in which I did appear and paid my fine. (A copy of the ticket proves this.) I would have never had this charge if he had his facts correct. Also on the charge for disobeying an NCO, they state I did not listen when he told me to remove my healing post, but they don't state that he asked me to remove the healing post, while I was being verbally (sic) disciplined (sic) by two other NCO's, -----, -----, and when the yelling was over I did remove it immediately. On the earring incident (sic), they have a statement from a ----- whom which (sic) I have never met saying he saw an airmen (sic), with earrings (sic) go into the shop off duty. He does (sic) not know me and I do not know him. He states in his email to ----- he does not know who this is. ----- falsely (sic) states I admitted to an action I know nothing about. There are about four other blond hair airmen it could have been.

I also would like to get a new reenlistment code.

ATCH

1. National Personnel Record Center Letter, 17 May 02.
2. Applicant Letter to the National Personnel Record Center, 20 Apr 02.
3. DD Form 214 (Member 1 & 4).
4. Letter of Reprimand, 22 Aug 01.
5. Uniform Traffic Ticket, 10 Aug 01.
6. Record of Nonjudicial Punishment Proceedings, 07 Sep 01.
7. Performance Feedback Worksheet, 20 Feb 01.
8. Enlisted Performance Report.
9. Record of Individual Counseling, 03 Oct 01.
10. Recommendation for Discharge, 21 Sep 01.
11. 1st Indorsement to 77 BS/CC Letter, 21 Sep 01, Recommendation for Discharge.
12. Unfavorable Information Folder Summary.
13. Email from 77 BS/MAO to 77 BS/DOL.
14. Memorandum For 77 BS/DOL, 28 Aug 01.

02/09/11/ia



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

FD 2002-0241

27 Sep 01

MEMORANDUM FOR 28 BW/CC

FROM: 28 BW/JA

SUBJECT: Administrative Discharge – Airman [REDACTED] 77 BS

1. I have reviewed the proposed discharge action case file and find it legally sufficient to support a decision to separate Respondent with an under honorable conditions (general) discharge without Probation and Rehabilitation (P & R).

2. **Background:**

a. Respondent is a 20-year-old Aircrew Life Support Apprentice Member assigned to the 77th Bomb Squadron. His TAFMSD is 22 Sep 99, and he began his four-year enlistment on 22 Sep 99. He was assigned to his present unit on 8 Feb 00.

b. Respondent's squadron section commander properly notified Respondent of his recommendation to separate Respondent under the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.49, for misconduct involving minor disciplinary infractions, with an under honorable conditions (general) discharge. Since Respondent is not entitled to a board hearing, this case has been properly pursued via the notification procedures of AFI 36-3208, Chapter 6, Section B.

3. **Evidence for the Government:** Respondent has a history of disciplinary problems and has failed to respond to any rehabilitative efforts.

a. Respondent, who knew of his duties, at or near Ellsworth Air Force Base, South Dakota, on or about 13 May 00, 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. Respondent did, at or near Ellsworth Air Force Base, South Dakota, a place under exclusive federal jurisdiction, on or about 13 May 00, possess an open receptacle or package containing an alcoholic beverage while occupying a motor vehicle located upon a public highway in violation of South Dakota Codified Law 35-1-9.1, assimilated into federal law by 18 U.S. Code Section 13. For these actions, Respondent was punished under Article 15, UCMJ, on 9 Jun 00. Punishment was suspended reduction to the grade of airman basic, forfeiture of \$50.00 pay per month for 2 months, and 14 days extra duty. The article 15 established Respondent's Unfavorable Information File (UIF).

b. Respondent, who knew of his duties, at or near Sturgis, South Dakota, on or about 10 Aug 01, 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. For this action, Respondent received a Letter of Reprimand (LOR) on 22 Aug 01.

c. Respondent did, at or near Sturgis, South Dakota, on or about 14 Aug 01, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Meade County Courthouse, Sturgis, South Dakota. Respondent, having knowledge of a lawful order issued by [REDACTED], to remove a healing post from his ear, an order which it was Respondent's duty to obey, did at or near Ellsworth Air Force Base, South Dakota, on or about 22 August 01, fail to obey the same. Respondent, did, at or near Ellsworth Air Force Base, South Dakota, on or about 19 Aug 01, violate a lawful general regulation, to wit: Table 2.5, item 7, Air Force Instruction 36-2903, Dress and Personal Appearance, dated 8 Jun 98, by wrongfully wearing earrings off duty on a military installation. For these actions, Respondent was punished under Article 15, UCMJ, on 7 Sep 01. Punishment was suspended reduction to the grade of airman, forfeiture of \$200.00 pay per month for 2 months, that portion of the punishment which called for forfeiture in excess of \$100.00 pay per month for 2 months was suspended, 30 days extra duty, 30 days restriction, and a reprimand. The article 15 was added to Respondent's UIF

4. **Evidence for the Respondent:** Respondent's unit properly notified Respondent of his right to submit statements in his behalf for your consideration (Tab D). On 21 Sep 01, Respondent waived his rights to consult counsel and to submit statements for your consideration (Tab H).

5. **Discussion:** During his military career, Respondent has engaged in minor disciplinary infractions necessitating his administrative discharge. He received one LOR, two Article 15s and two UIF entries. Respondent's misconduct is clearly incompatible with further military service. With regard to the characterization of his discharge, the negative aspects of Respondent's service outweigh any positive contributions he has made in his Air Force career. Accordingly, an under honorable conditions (general) discharge characterization is warranted. Therefore, I do not recommend P & R in conjunction with this discharge.

6. **Errors and Irregularities:** The 77 BS/CC recommendation to 28 BW/CC cites that Respondent's rank is airman first class, however, Respondent's rank is airman. ~~This is a mere typo~~ and does not affect these procedures in any way. Therefore, I note no errors or irregularities prejudicial to the Respondent's substantive or procedural rights.


7. **Options:** As separation authority in this case, you may:

- a. Direct retention, if you determine the evidence does not warrant discharge; or
- b. Forward this case to 8 AF/CC with the recommendation that the Respondent receive an honorable discharge with or without P & R; or
- c. Return this case to the unit for re-initiation, with the recommendation that the Respondent receive an under other than honorable conditions (UOTHC) discharge; or

d. Direct the Respondent's separation with an under honorable conditions (general) discharge with or without P & R.

8. **Recommendation:** Direct the Respondent's separation with an under honorable conditions (general) discharge without P & R. A proposed memorandum to that effect is attached for your signature.



, Colonel, USAF
Staff Judge Advocate

Attachments:

1. Proposed letter
2. Case file



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

21 SEP 2001

MEMORANDUM FOR [REDACTED]

FROM: 77 BS/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 AFPD 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 am recommending that your service be characterized as under honorable conditions (general).

2. My reasons for this discharge action are the following:

a. You, who knew of your duties, at or near Ellsworth Air Force Base, South Dakota, on or about 13 May 00, 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. You did, at or near Ellsworth Air Force Base, South Dakota, a place under exclusive federal jurisdiction, on or about 13 May 00, possess an open receptacle or package containing an alcoholic beverage while occupying a motor vehicle located upon a public highway in violation of South Dakota Codified Law 35-1-9.1, assimilated into federal law by 18 U.S. Code Section 13. For these actions, you were punished under Article 15, UCMJ, on 9 Jun 00. Punishment was suspended reduction to the grade of airman basic, forfeiture of \$50.00 pay per month for 2 months, and 14 days extra duty. The article 15 created your Unfavorable Information File (UIF).

b. You, who knew of your duties, at or near Sturgis, South Dakota, on or about 10 Aug 01, were derelict in the performance of those duties in that you failed to refrain from consuming alcoholic beverages while under the state legal drinking age of 21. For this action, you received a Letter of Reprimand (LOR) on 22 Aug 01.

c. You did, at or near Sturgis, South Dakota, on or about 14 Aug 01, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Meade County Courthouse, Sturgis, South Dakota. You, having knowledge of a lawful order issued by [REDACTED], to remove a hearing post from your ear, an order which it was your duty to obey, did at or near Ellsworth Air Force Base, South Dakota, on or about 22 August 01, fail to obey the same. You, did, at or near Ellsworth Air Force Base, South Dakota, on or about 19 Aug 01, violate a lawful general regulation, to wit: Table 2.5, item 7, Air Force Instruction 36-2903, Dress and Personal Appearance, dated 8 Jun 98, by wrongfully wearing earrings off duty on a military installation. For these actions, you were punished under Article 15, UCMJ, on 7 Sep 01. Punishment was suspended reduction to the grade of airman, forfeiture of \$200.00 pay per month for 2 months, that portion of the punishment which called for forfeiture in excess of

\$100.00 pay per month for 2 months was suspended, 30 days extra duty, 30 days restriction, and a reprimand. The article 15 was added to your UIF.

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 discharge 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 the [REDACTED] Area Defense Counsel, 385-2158, 1000 Ellsworth Street, Suite 1700 on 21 SEP 01 at 1400 hours. 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 26 SEP 01 at 1000 hours, 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 matters 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 Clinic on 21 SEP 01 at 1420 hours for the examination. This is a mandatory appointment and you must be in uniform. You must report at least 15 minutes in advance to this appointment to complete necessary paperwork.
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] Lt Col, USAF
Commander, 77th Bomb Squadron

Attachments:

1. Supporting documents
 - a. Article 15/UIF Entry - 9 Jun 00
 - b. LOR - 22 Aug 01
 - c. Article 15/UIF Entry - 7 Sep 01
2. Airman's Acknowledgment