

TYPE		X PERSONAL APPEARANCE		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				
				X				
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD				
A92.36		A67.10		1	ORDER APPOINTING THE BOARD			
				2	APPLICATION FOR REVIEW OF DISCHARGE			
				3	LETTER OF NOTIFICATION			
HEARING DATE		CASE NUMBER		4	BRIEF OF PERSONNEL FILE			
5 SEP 02		FD2002-0247			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 Andrews AFB, MD								
Advise applicant of the decision of the Board, and the right to submit an application to the AFBCMR.								
SIGNATURE OF RECORDER				SIGNATURE OF BOARD PRESIDENT				
INDORSEMENT				DATE: 5 SEP 02				
TO:				FROM:				
SAF/MIBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742				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				

AFHQ FORM 0-2077, JAN 00

(EF-V2)

Previous edition will be used.

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0247

GENERAL: The applicant appeals for upgrade of discharge to Honorable, change of reason for discharge and change of reenlistment eligibility code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, MD on September 5, 2002. The following witnesses also testified on the applicant's behalf: Mrs. [REDACTED] (his wife) and Mrs. [REDACTED] (his mother).

The following additional exhibits were submitted at the hearing:

Exhibit 6: binder containing 129 pages of documentation.

FINDINGS: The discharge is upgraded to Honorable, and the reason for discharge is changed to Secretarial Authority.
Change of reenlistment code is denied.

The Board finds that evidence of record and that provided by the applicant substantiates an injustice that justifies upgrade of the discharge.

ISSUES: The applicant's issues are listed in the attached brief. The applicant contends that his discharge was inequitable because he was singled out as a result of cultural differences with his supervisors and received disciplinary action for minor infractions other airman were not disciplined for. He feels the positive aspects of his career outweighed the negative aspects and that he was not given due process during his discharge process. The record indicates the applicant received an Article 15 for making a false official statement and willfully disobeying an order to report. In addition, the applicant also received five Letters of Reprimand for being late for duty, wearing an earring in uniform, failure to go, dereliction of duty and being late for duty, one Letter of Admonishment for being disrespectful to an NCO, and a Letter of Counseling for missing an appointment. After a thorough review of the record and listening to testimony during this hearing, the Board concluded that the applicant had been singled out and was inequitably disciplined for minor infractions. The DRB took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other information contained in the records. They found that the positive aspects of the applicant's duty performance outweighed the negative and concluded that the characterization of the member's service justified an upgrade to honorable. The board concluded that the basis for the Article 15 punishment was accurate and that the applicant was afforded proper due process during his discharge proceeding.

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 evidence of the record and testimony finds inequitable disciplinary action and service deserving of characterization as honorable.

In view of the foregoing findings the Board further concludes that there exists an equitable basis for upgrade of discharge, thus the applicant's discharge should be changed to Honorable and the reason to Secretarial Authority.

Attachment
Examiner's Brief

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

FD2002-0247

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

1. MATTER UNDER REVIEW: Appl rec'd a Gen Dish fr USAF 98/02/17 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for HON Disch & Change Reason and Auth for Disch.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 02/03/28.

b. The AFDRB reviewed case on 02/05/13 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 02/05/29. (Change Discharge to Hon & Change Reason and Auth for Disch)

ISSUE 1: My discharge was inequitable because I was not treated fair/equal to other Airmen within my squadron and the Air Force.

ISSUE 2: I was not given due process when being separated from service due to time restraints of notice and discharge, which failed to allow my request through the ADC to appear before the base commander prior to separating and being discharged.

ISSUE 3: I was separated for minor infractions related to incidents caused by initial discrimination based on origin (sic) when I PCS'd to Ellsworth AFB, SD.

ISSUE 4: I had challenges with adaption (sic) to stateside duty based on the minor infractions only at Ellsworth AFB, SD. I did not receive any derogatory infractions @ any other assignment in my military career. Note: Every infraction involved the same individuals and only occurred at Ellsworth AFB.

ISSUE 5: My discharge was inequitable to characterize my discharge as general due to above listed issues. And my positive aspects of my career especially foreign duty achievements, as well as accomplishments, out weigh the negative aspects.

FD2002-0247

Atch

Color Guard Award Certificate.

02/08/05/ai

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

[REDACTED] (Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 98/02/17 UP AFI 36-3208, para 5.49 (Minor Disciplinary Infractions). Appeals for Honorable Discharge and a Change in Reason & Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 76/03/13. Enlmt Age: 18 0/12. Disch Age: 21 11/12. Educ: HS DIPL. AFQT: N/A. A-51, E-81, G-74, M-60. PAFSC: 3P031 - Security Apprentice. DAS: 96/02/29.

b. Prior Sv: (1) AFRes 94/04/08 - 94/07/05 (2 months 28 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as 94/07/06 for 4 yrs. Svd: 03 Yrs 07 Mo 12 Das, all AMS.

b. Grade Status: A1C - 98/01/16 (Article 15, 98/01/16)
SRA - 97/07/06
A1C - 95/11/06
AMN - 95/01/06

c. Time Lost: none.

d. Art 15's: (1) 98/01/16, Ellsworth AFB, SD - Article 107. You did, on or about 31 Dec 97, with intent to deceive, make to MSgt -----, an official statement, to wit: you stated you were at home in your on base quarters or words to that effect, which statement was totally false and was then known by you to be so false. Article 90. You, having received a lawful command from Captain ----, your superior commissioned officer, then known by you to be your superior commissioned officer, to respond to his office no later than 1530 hours on 31 Dec 97, or words to that effect, did, on or about 31 Dec 97, willfully disobey the same. Reduction to A1C, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOA, 22 MAR 96 - Disrespect to an NCO.
LOR, 03 APR 96 - Late for duty.
LOR, 04 APR 96 - Wearing an earring in uniform.
LOC, 28 JAN 97 - Missed appointment.
LOR, 20 APR 97 - Failure to go.
LOR, 11 JUN 97 - Dereliction of duty.
LOR, 18 JUL 97 - Late for duty.

f. CM: none.

g. Record of SV: 94/07/06 - 96/10/15 Ellsworth AFB 4 (HAF Dir)
96/10/16 - 97/10/15 Ellsworth AFB 2 (Annual) REF

(Discharged from Ellsworth AFB)

h. Awards & Decs: AFAM, AFTR, AFOSSTR, NDSM, SAEMR, AFEM, AFGCM.

i. Stmt of Sv: TMS: (03) Yrs (10) Mos (18) Das
TAMS: (03) Yrs (07) Mos (12) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/11/09.

(Change Discharge to Honorable and Change the Reason & Authority for Discharge)

Issue 1: My discharge was inequitable because the alleged disciplinary infractions were very minor in comparison with the meritorious aspects of my service record.

Issue 2: It was inequitable to separate me without a period of probation and rehabilitation five months prior to the expiration of my enlistment, in light of the minor nature of the alleged disciplinary infractions, the distance in time between most of these incidents and the recommendation to discharge, and the otherwise meritorious nature of my service.

Issue 3: It was inequitable to characterize my discharge as general when positive aspects of my service outweighed its insignificant minor aspects.

Issue 4: See submission of Counsel attached to Brief.

ATCH

1. Submission of Counsel.
2. Memorandum for Department of Veterans Affairs.
3. Memorandum for Board of Discharge Review.
4. Two Letters of Recommendation.

02/03/28/ia



FD2002-0247

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



09 FEB 1998

MEMORANDUM FOR 28 BW/CC

FROM: 28 BW/JA

SUBJECT: Legal Review - Notification Discharge: [REDACTED]

1. I reviewed the attached administrative discharge package on [REDACTED] 28th Security Forces Squadron, and find it legally sufficient to support discharge. It also supports 28 SES/CC's recommendation to separate Respondent with an under honorable conditions (general) discharge without probation and rehabilitation (P & R).
2. On 27 Jan 98, 28 SFS/CC initiated this separation action pursuant to AFI 36-3208, paragraph 5.49, for misconduct involving minor disciplinary infractions (Tab D). On 4 Feb 98, Respondent consulted legal counsel and submitted statements on his own behalf (Tabs H & K).
3. The reasons and supporting documentation for the proposed discharge action (TAB D) are:
 - a. On 22 Mar 96, Respondent made a mockery of an official military post check and was disrespectful to an NCO by placing a pear in his mouth and leaving it there during the entire post briefing. For this he received a Letter of Admonishment (LOA) on 22 Mar 96.
 - b. On 28 Mar 96, Respondent was thirty minutes late for duty. For this he received a Letter of Reprimand (LOR) on 3 Apr 96.
 - c. On 3 Apr 96, while in uniform, Respondent was observed wearing an earring. At that time, [REDACTED] informed Respondent that it was not an authorized uniform item. On 4 Apr 96 the Commander noticed that Respondent was wearing a healing post earring in his ear. This was in violation of AFI 36-2903 and constituted a direct violation of [REDACTED] order. For this he received an LOR on 4 Apr 96.
 - d. On 27 Jan 97, Respondent missed an appointment for flight level training. For this Respondent received a Letter of Counseling (LOC) on 28 Jan 97.
 - e. On 14 Apr 97, Respondent failed to report for duty. For this he received an LOR on 20 Apr 97. This established his Unfavorable Information File (UIF).
 - f. On 11 Jun 97, Respondent was derelict in the performance of his duties, as the armorer, in that he failed to report to duty in time to ensure that the oncoming element was armed

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and ready for duty. Respondent should have known that he would need to report early to ensure that his duties were complete. For this he received an LOR on 11 Jun 97, and he was placed onto the Control Roster.

g. On 12 Jul 97, Respondent was 42 minutes late for duty. For this he received an LOR dated 18 Jul 97.

h. On or about 31 Dec 97, Respondent told [REDACTED] that he was at home in his on base quarters, or words to that effect. Subsequently, investigation revealed that his statement was totally false and was known by him, on 31 Dec 97, to be so false. Moreover, his superior commissioned officer, [REDACTED] ordered him to report to his office no later than 1530 on 31 Dec 97. Respondent disobeyed [REDACTED] order by failing to report. For his actions, he was punished under Article 15 of the UCMJ on 16 Jan 98. This Article 15 action was placed in his UIF.

4. This case was properly processed under AFI 36-3208, paragraph 5.49, for misconduct involving minor disciplinary infractions. The facts of this case meet the criteria for discharge under this paragraph and section. 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. 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.


5. As the separation authority, you must consider probation and rehabilitation (P & R), and Respondent, in his letter at Tab H, requests P & R. However, P & R is not appropriate in this case. Respondent has received numerous opportunities to change his disruptive behavior. He has received many forms of counseling including one LOA, one LOC, five LOR's, and punishment under Article 15 of the UCMJ. These efforts at rehabilitation have not been effective, and Respondent has not shown willingness to be rehabilitated until learning of this discharge action. Respondent's most recent incident of misconduct, described at 3(h) above, calls into question Respondent's integrity. Retaining Respondent in probation status would degrade the good order and discipline of the unit.

6. 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; or
- d. Recommend to 8 AF/CC that Respondent be separated with an honorable discharge, with or without P & R.

RECOMMENDATION

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

Attachment:
Case File



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

FD2002-0247

27 JAN 1998

MEMORANDUM FOR [REDACTED]

FROM: 28 SFS/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 recommend that your service be characterized as under honorable conditions (general).

2. My reasons for this action are:

a. On 22 Mar 96, you made a mockery of an official military post check and were disrespectful to an NCO by placing a pear in your mouth and leaving it there during the entire post briefing. For this you received a Letter of Admonishment (LOA) on 22 Mar 96.

b. On 28 Mar 96, you were thirty minutes late for duty. For this you received a Letter of Reprimand (LOR) on 3 Apr 96.

c. On 3 Apr 96, while in uniform, you were observed wearing an earring. At that time, [REDACTED] informed you that it was not an authorized uniform item. On 4 Apr 96 the Commander noticed that you were wearing a healing post earring in your ear. This was in violation of AFI 36-2903 and constituted a direct violation of [REDACTED] order. For this you received an LOR on 4 Apr 96.

d. On 27 Jan 97, you missed an appointment for flight level training. For this you received a Letter of Counseling (LOC) on 28 Jan 97.

e. On 14 Apr 97, you failed to report for duty. For this you received an LOR on 20 Apr 97. This established your Unfavorable Information File (UIF), and you were placed on the Control Roster.

f. On 11 Jun 97, you were derelict in the performance of your duties, as the armorer, in that you failed to report to duty in time to ensure that the on-coming element was armed and ready for duty. You should have known that you would need to report early to ensure that your duties were complete. For this you received a LOR on 11 Jun 97.

g. On 12 Jul 97, you were 42 minutes late for duty. For this you were received an LOR dated 18 Jul 97. This LOR was placed in your UIF.

h. On or about 31 Dec 97, you told [REDACTED] that you were at home in your on base quarters, or words to that effect. Subsequently, investigation revealed that your statement was totally false and was known by you, on 31 Dec 97, to be so false. Moreover, your superior commissioned officer [REDACTED] ordered you to report to his office no later than 1530 on 31 Dec 97. You disobeyed [REDACTED] order by failing to report. For your actions, you were punished under Article 15 of the UCMJ on 16 Jan 98. This Article 15 action was placed in your UIF.

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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.

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, Building 2405 on 27 Jan 98 at 1500. 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 31 JAN 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 0830 hrs on 29 Jan 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, and if you wear contacts, 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.



Attachments:

1. Supporting documents
 - a. LOA - 22 Mar 96
 - b. LOR - 28 Mar 96
 - c. LOR - 4 Apr 96
 - d. LOC - 28 Jan 97
 - e. LOR/UIF/CR - 20 Apr 97
 - f. LOR - 11 Jun 97
 - g. LOR - 18 Jul 97
 - h. Art 15 - 23 Jan 98
2. Airman's Acknowledgment