

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN			
[REDACTED]		AB	[REDACTED]			
TYPE	PERSONAL APPEARANCE		X RECORD REVIEW			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION				
YES	NO					
	X					
		ADDRESS AND OR ORGANIZATION OF COUNSEL				
MEMBERS SITTING		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD		
A95.00		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 NOV 02		FD2002-0264			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, and the right to submit an application to the AFBCMR.						
SIGNATURE OF RECORDER			SIGNATURE OF BOARD PRESIDENT			
[REDACTED]			[REDACTED]			
INDORSEMENT			DATE: 5 NOV 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

FD02-0264

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 three Article 15's, one for entering a dormitory living quarters of a female, one for driving while drunk, and the third one for operating a vehicle when told not to. He also received a Letter of Reprimand for having sexual intercourse with a woman not his wife. 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

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

[REDACTED]
(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 93/11/24 UP AFR 39-10, para 5-46 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 70/03/21. Enlmt Age: 21 5/12. Disch Age: 23 8/12. Educ: HS DIPL. AFQT: N/A. A-76, E-54, G-82, M-54. PAFSC: 4Y051 - Dental Assistant Journeyman. DAS: 92/04/27.

b. Prior Sv: (1) AFRes 91/08/29 - 91/12/09 (3 Mos 11 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AMN 91/12/10 for 4 yrs. Svd: 1 Yr 11 Mos 15 Das, all AMS.

b. Grade Status: AB - 93/06/23 (Vacation of Article 15, 93/08/18)
AMN - 93/06/23 (Article 15, 93/06/23)
A1C - 92/10/10

c. Time Lost: None.

d. Art 15's: (1) 93/08/18, Vacation, Ellsworth AFB, SD, Article 90. Preliminary investigation has disclosed that you, having received a lawful command from Lt Col -----, your superior commissioned officer, then known by you to be your superior commissioned officer, to not operate a vehicle that possesses a state registration in your name on any property within the jurisdiction of Ellsworth AFB without written permission from the installation commander, or words to that effect, did, on or about 30 Jul 93, willfully disobey the same. Reduction to the grade of AB. (No appeal) (No mitigation)

(2) 93/06/23, Ellsworth AFB, SD, Article 111. Preliminary investigation has disclosed that you did, on or about 11 Jun 93, near the Main Gate, operate a vehicle, to wit: a passenger vehicle, while drunk. Reduction to the grade of AMN. Suspended reduction to the grade of AB, and 45 days extra duty. (No appeal) (No mitigation)

(3) 92/03/05, Sheppard AFB, TX, Article 92. You, did, on or about 21 Feb 92, violate a lawful general

regulation, to wit: paragraph 2j, Sheppard Technical Training Center Regulation 52-2, Vol 1, dated 2 Oct 90, by entering AB ----- dormitory living quarters. Suspended reduction to the grade of AB, forfeiture of \$100.00, and 30 days Correctional Custody. (No appeal) (No mitigation)

e. Additional: LOR, 10 NOV 93 - Sexual intercourse with a woman not his wife.

f. CM: None.

g. Record of SV: None.

(Discharged from Ellsworth AFB)

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (2) Yrs (2) Mos (26) Das
TAMS: (1) Yr (11) Mos (15) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/06/17.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH

None.

02/09/27/cr



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

FROM: JA- [REDACTED]

22 Nov 93

SUBJ: Legal Review - Notification Discharge: [REDACTED]

TO: CC

1. I have reviewed the attached administrative discharge case file on [REDACTED], 28th Medical Group and find it legally sufficient to support discharge. It also supports 28 MG/CCQ's recommendation to separate the respondent with a general discharge without a conditional suspension of the discharge for a period of Probation and Rehabilitation (P & R).
2. On 17 Nov 93, 28 MG/CCQ initiated this separation action pursuant to AFR 39-10, paragraph 5-46, for misconduct involving minor disciplinary infractions. On the same date, [REDACTED] received and acknowledged notification of this action. On 17 Nov 93, [REDACTED] waived his rights to submit statements on his own behalf after consulting legal counsel.
3. The reasons for the proposed discharge action are:
 - a. On or about 15 Oct 93, [REDACTED] did, wrongfully have sexual intercourse with [REDACTED], a woman not his wife. For this offense, he was given a Letter of Reprimand (LOR) on 10 Nov 93 which was placed in his Unfavorable Information File (UIF), and he was placed on a control roster.
 - b. On or about 30 Jul 93, AB McNeil, having received a lawful command from [REDACTED], his superior commissioned officer, then known by him to be his superior commissioned officer, to not operate a vehicle that possesses a state registration in his name on any property within the jurisdiction of Ellsworth AFB without written permission from the installation commander, or words to that effect, did, at Ellsworth AFB, South Dakota, willfully disobey the same. For this offense, he received a vacation of suspended nonjudicial punishment under Art 15 on 18 Aug 93 which was placed in his UIF.
 - c. On or about 11 Jun 93, [REDACTED] did, at Ellsworth AFB, South Dakota, near the main gate, operate a vehicle, to wit: a passenger vehicle, while drunk. For this offense, he received nonjudicial punishment under Art 15 on 23 Jun 93 which was placed in his UIF.
4. The respondent is 23 years old. He entered active duty on 10 Dec 91 for a term of four years. He was demoted from Airman to Airman Basic under a vacation of suspended nonjudicial punishment under Art 15 on 18 Aug 93.
5. As noted above, the respondent waived his right to submit statements on his own behalf for your consideration after consulting legal counsel (See Tab 3).

6. After reviewing the entire case file, I have determined that the respondent is subject to discharge and should be separated from the service. The respondent has a history of misconduct which includes driving while drunk, disobeying the lawful order of a superior commissioned officer, and adultery. Such actions demonstrate an inability to maintain the high standards expected of airman. Consequently, the respondent's separation is in the best interests of the Air Force. Furthermore, the respondent's misconduct makes his presence on Ellsworth AFB undesirable and I recommend that he be debarred from the base.

7. After considering all the facts in this case, I believe the negative aspects of the respondents conduct outweigh the positive aspects of his military record. Accordingly, I concur with his squadron section commander's recommendation that [REDACTED] service be characterized as general (under honorable conditions).

8. As the separation authority, you must consider Probation and Rehabilitation (P & R). However, in my opinion P & R is clearly not appropriate in this case. The respondent has received informal and formal counselings, to include a Letter of Reprimand, nonjudicial punishment under Art 15, and a vacation of nonjudicial punishment under Art 15. These efforts at rehabilitation have not been effective. Retaining the respondent in probation status would only serve to upset good order and discipline.

9. As the Special Court-Martial Convening Authority, you may:

- a. Direct that the respondent be retained;
- b. Recommend to 8 AF/CC that the respondent be separated with an honorable discharge, with or without P & R;
- c. Direct that the respondent be separated with a general discharge, with or without P & R; or
- d. Direct that the case be reinitiated and processed according to AFR 39-10, Chapter 6, Section C, if you believe that an Under Other Than Honorable Conditions (UOTHC) discharge is appropriate.

RECOMMENDATION

10. That you separate the [REDACTED] under AFR 39-10, paragraph 5-46, with a general discharge, without P & R. I further recommend that you sign the enclosed 28 SPS letter debarring the respondent from Ellsworth AFB.

[REDACTED]
[REDACTED] 1st Col, USAF
Staff Judge Advocate

1 Atch
Case File



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

FD 2002-0264

17 Nov 93

FROM: 28 MG/CCQ

SUBJ: Notification Letter

TO: [REDACTED]

1. I am recommending your discharge from the United States Air Force for misconduct involving minor disciplinary infractions. The authority for this action is AFR 39-10, paragraph 5-46. 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:

a. On or about 15 Oct 93, you did, wrongfully have sexual intercourse with [REDACTED], a woman not your wife. For this offense, you were given a Letter of Reprimand (LOR) on 10 Nov 93 which was placed in your Unfavorable Information File (UIF), and you were placed on a control roster.

b. On or about 30 Jul 93, you, having received a lawful command from Lt Col Tomei, your superior commissioned officer, then known by you to be your superior commissioned officer, to not operate a vehicle that possesses a state registration in your name on any property within the jurisdiction of Ellsworth AFB without written permission from the installation commander, or words to that effect, did, at Ellsworth AFB, South Dakota, willfully disobey the same. For this offense, you received a vacation of suspended nonjudicial punishment under Art 15 on 18 Aug 93 which was placed in your UIF.

c. On or about 11 Jun 93, you did, at Ellsworth AFB, South Dakota, near the main gate, operate a vehicle, to wit: a passenger vehicle, while drunk. For this offense, you received nonjudicial punishment under Art 15 on 23 Jun 93 which was placed in your UIF.

Copies of 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.

3. 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] at Bldg 1208 on 17 Nov 93 at 0830 hrs. You may consult civilian counsel at your own expense.

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4. You have the right to submit statements on your own behalf. Any statement you want the separation authority to consider must reach me by 22 Nov 93 unless you request and receive an extension for good cause shown. I will send any statement that you submit to the separation authority for his consideration.

5. Failure to consult legal counsel or submit statements in your own behalf will constitute a waiver of these rights.

6. You are scheduled for a medical examination. You must report to the Physical Exams Section of the Base Hospital at 1800 hrs on 16 Nov 93 for the examination.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 2. A copy of AFR 39-10 is available in your orderly room.

8. Execute the attached acknowledgment and return it to me immediately.


Squadron Section Commander, 28 MG

3 Atchs

1. Supporting documents
 - a. LOR/UIF/CR - 10 Nov 93
 - b. Vacation of Suspended Nonjudicial Punishment/UIF w/atchs - 18 Aug 93.
 - c. Art 15/UIF w/atchs - 23 Jun 93
2. Other Derogatory Data
3. Airman's Acknowledgment