

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div>		GRADE AB	AFSN/SSAN <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div>
TYPE GEN	PERSONAL APPEARANCE	X RECORD REVIEW	
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	NO		
	X		
MEMBERS SITTING		VOTE OF THE BOARD	
		HON	GEN
		UOTHC	OTHER
		DENY	
<div style="background-color: black; width: 100%; height: 1.2em;"></div>			X
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ISSUES		INDEX NUMBER	
A93.01, A93.03, A94.53		A67.10	
HEARING DATE		CASE NUMBER	
02-12-09		FD2002-0267	
		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		SIGNATURE OF BOARD PRESIDENT	
<div style="background-color: black; width: 100%; height: 1.2em;"></div>		<div style="background-color: black; width: 100%; height: 1.2em;"></div>	
INDORSEMENT		DATE: 02-12-09	
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

FD2002-0267

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant was offered a personal appearance before the Discharge Review Board but declined to exercise this right.

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

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither the evidence of record or that provided by applicant substantiates an inequity or impropriety that would justify a change of discharge.


Issues. Applicant was discharged for minor disciplinary infractions. He had three Records of Individual Counseling, four Letters of Reprimand, and an Article 15. His misconduct included three instances of failure to go, sleeping on duty, smoking in a government vehicle while transporting live munitions, and failing to follow proper technical order procedures while working on munitions. At the time of the discharge, member consulted counsel and waived his right to submit statements in his own behalf. Member now infers the discharge was inappropriate because he was inexperienced and received insufficient supervision. The board found this issue without merit. The Board noted member had eight incidents in a 9-month period, thus clearly establishing a pattern of misconduct. The Board further noted that member was the same age as other airmen who adhere to the standards when his misconduct occurred, and he knew right from wrong. He was counseled repeatedly in an effort to help him correct his deficiencies and had many opportunities to improve his behavior. He failed to respond to those rehabilitative efforts. He was responsible for his own actions, and therefore was held accountable for them. No inequity or impropriety was found in this discharge in the course of the records review.

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

 (Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 89/11/01 UP AFR 39-10, para 5-46 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 69/10/09. Enlmt Age: 17 9/12. Disch Age: 20 0/12. Educ: HS DIPL. AFQT: N/A. A-40, E-65, G-57, M-73. PAFSC: 41131 - Apprentice Missile Maintenance Specialist. DAS: 88/11/14.

b. Prior Sv: (1) AFRes 87/07/10 - 88/06/21 (11 months 12 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 88/06/22 for 6 yrs. Svd: 01 Yr 04 Mos 10 Das, all AMS.

b. Grade Status: AB - 89/10/06 (Article 15, 89/10/06).
A1C - 88/08/05.

c. Time Lost: None.

d. Art 15's: (1) 89/10/06, Ellsworth AFB, SD - Article 92. Preliminary investigation has disclosed that you, who knew of your duties, on or about 20 Sep 89, were derelict in the performance of those duties in that you negligently failed to follow proper technical procedures as outlined in TO 00-5-1(1-8), as it was your duty to do. Reduction to AB. (No appeal) (No mitigation)

e. Additional: LOR, 06 OCT 89 - Sleeping on duty.
LOR, 24 AUG 89 - Failure to go.
RIC, 15 AUG 89 - Late CDCs.
RIC, 08 AUG 89 - Smoking in a government vehicle.
LOR, 07 AUG 89 - Failure to go.
LOR, 31 MAY 89 - Late to work.
RIC, 28 FEB 89 - Failure to attend scheduled training.

f. CM: None.

g. Record of SV: None.

(Discharged from Ellsworth AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (02) Yrs (03) Mos (22) Das
TAMS: (01) Yr (04) Mos (10) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/06/19.
(Change Discharge to Honorable)

Issue 1: My undesirable discharge was inequitable because I was given an Article 15 for not upholding to my supervisory responsibilities. At the time of Article 15 I was only a 3 level and and (sic) Airman 1st class. In the PFE Manual it states that a 3 level and Airman 1st class have no supervisory responsibilities.

Issue 2: My undesirable discharge was improper due to separations by AFR 39-10 pattern of minor disciplinary infractions. I feel that if my superiors had realized this that I would not have been separated so hastily; Due to Article 15.

Issue 3: At the time of incident my topside team chief Sgt ----- decided he would ride on other truck. When we returned to Base he did not follow-up on myself or Airman ----- . This is a lack of supervisory responsibilities. I was new to Airforce (sic) and totally regret my discharge. Yet Sgt ----- was not held accountable for nothing.

Issue 4: My family has given their lives to the Air Force. My father and two brothers all who have made the Air Force their life. I felt that I showed (sic) our good name by all that happened but I was young and no-one had directed me in the rite (sic) path to defend myself. I love my country and still love the Air Force for what she has done for my family.

ATCH
None.

02/09/26/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 12TH AIR DIVISION (SAC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA 57706-5000



REPLY TO
ATTN. OF: JA

24 October 1989

SUBJECT: Legal Review of AFR 39-10 Discharge: AB [REDACTED]

TO: CC

1. I have reviewed the attached AFR 39-10 separation case file concerning AB [REDACTED], 44 OMMS, and find it legally sufficient.

2. BACKGROUND: On 18 Oct 89, 44 OMMS/CC initiated this separation action pursuant to AFR 39-10, paragraph 5-46, for misconduct. The commander recommended a general discharge without probation and rehabilitation (P & R). On the same date, [REDACTED] received and acknowledged notification of this action. On 19 Oct 89, the respondent waived his right to submit statements after consulting with legal counsel.

3. SUMMARY OF THE EVIDENCE:

a. The reasons for the proposed discharge action include the following: (1) on 20 Sep 89, [REDACTED] was derelict in the performance of his duties by failing to follow Tech Order procedures; (2) on 22 Sep 89, he fell asleep while transporting a Priority A resource and components; (3) on 16 Aug 89, he failed to go to his appointed place of duty; (4) on 8 Aug 89, he failed to turn in his CDCs after being told to do so by his supervisor; (5) on 8 Aug 89, he was observed smoking in a GOV in violation of 44 SMW policy; (6) on 4 Aug 89, he failed to go to the Wing Commander's Call after being told twice to do so; (7) on 30 May 89, he was almost an hour late for work; and (8) on 28 Feb 89, he failed to report back to his scheduled training class.

b. The respondent is 20 years old, and has one year and three months of active military service. His record contains no EPRs or APRs due to his brief time in service. He has received one Article 15, five Letters of Reprimand, and three Letters of Counseling for his acts of misconduct.

4. DISCUSSION:

a. In my opinion, the respondent's record of misconduct provides a sufficient basis for discharge and indicates that he should be separated from the service.

b. In considering the appropriate characterization of service, I note the commander's recommendation, the Article 15, and the numerous adverse administrative actions. Viewed in its totality, [REDACTED]'s record during this current term of service constitutes such a significant negative aspect as to outweigh the positive features of his military record, thereby warranting a general discharge.

c. The respondent's record of numerous deficiencies and his failure to conform to standards after repeated efforts to rehabilitate him indicate that he received preprocessing rehabilitation under paragraph 5-2, and furthermore, that the respondent is not a suitable prospect for P & R. In addition, any continued retention in a probationary status would be prejudicial to good order and discipline.

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

- a. Retain the respondent;
- b. Recommend that respondent be separated with an honorable discharge, with or without an offer of P & R, and forward the case to 8 AF/CC for final action;
- c. Direct the respondent be separated with a general discharge, with or without an offer of 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 issuance of an under other than honorable conditions discharge may be warranted.

6. RECOMMENDATIONS: I recommend that you separate AB Sperling under AFR 39-10, paragraph 5-46, with a general discharge, without an offer of P & R. I also recommend that you direct 812 CSG/CC to issue a letter barring AB Sperling from Ellsworth AFB.


Deputy Staff Judge Advocate

1 Atch
Case File

I concur.


Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 44TH STRATEGIC MISSILE WING (SAC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA 57706-5000



REPLY TO
ATTN. OF: 44 OMMS/CC

18 October 1989

SUBJECT: Notification Letter

TO: AB [REDACTED]

1. I am recommending your discharge from the United States Air Force for misconduct. The authority for this action is AFR 39-10, para 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 20 Sep 89, you were derelict in the performance of your duties by negligently failing to follow proper technical procedures.

b. On or about 22 Sep 89, you failed to remain awake while transporting a Priority A resource and components.

c. On or about 16 Aug 89, you failed to go at the time prescribed to your appointed place of duty, to wit: A SAC video session at Ellsworth AFB.

d. On or about 8 Aug 89, you failed to turn in your CDCs after being told to do so by your supervisor.

e. On or about 8 Aug 89, you were observed smoking in a GOV a violation of the 44 SMW policy against smoking in GOVs.

f. On or about 4 Aug 89, you failed to go to the Wing Commander's call after being told twice by [REDACTED] to do so.

g. On or about 30 May 89, you reported 55 minutes late for duty.

h. On or about 28 Feb 89, you failed to report back to your scheduled training class.

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.

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 Capt [REDACTED] at Bldg 2405 on 19 Oct 89 at 0815 hrs. You may consult civilian counsel at your own expense.

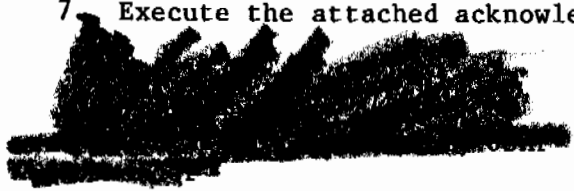
Peace is our Profession

4. You have the right to submit statements in your own behalf. Any statement you want the separation authority to consider must reach me by 23 OCT 89, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. You were scheduled for a medical examination on 17 Oct 89 at 0815.

6. 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 in your orderly room.

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



3 Atchs

1. Doc Supporting Recommendation for Discharge
2. Doc containing other Derogatory Info
3. Amn's Receipt of Notification Letter