

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE AB	AFSN/SSAN ██████████
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TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
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YES	No	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
	X		

MEMBER SITTING	HON	GEN	UOTHC	OTHER	DENY
██████████					X
██████████					X
██████████					X
██████████					X
██████████					X

ISSUES A94.11 A93.31 A93.15	INDEX NUMBER A67.90	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td>2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td>3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td>4</td><td>BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td>COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td>TAPE RECORDING OF PERSONAL APPEARANCE</td></tr> </table>	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
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HEARING DATE 14 Apr 2004	CASE NUMBER FD-2002-0348
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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 ██████████

TO:
SAF/MRBR
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, 3RD FLOOR
ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2002-0348

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

The applicant was scheduled for a personal appearance before the Discharge Review Board (DRB) at Fort Gillem, Georgia, in April 2004, but failed to respond to formal notification of the hearing date and did not request a postponement.

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 nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issues 2 and 3. Applicant contends he was treated unfairly and disciplined due to his ethnic and sexual background. The records indicated the applicant was discharged for conduct prejudicial to good order and discipline after receiving two Articles 15, a vacation of suspended punishment, an Unfavorable Information File, and a referral "1" Enlisted Performance Report documenting misconduct. His infractions included wearing an earring on a military installation, two incidents of underage drinking, and driving while under the influence of alcohol. Applicant's two EPRs both documented his poor judgment, apparent inability to adapt to military life, and lack of improvement after counseling. At the time of the discharge, applicant consulted counsel and submitted a statement requesting retention, or in the alternative, an honorable discharge. The DRB was unable to find merit in applicant's claim of ethnic or sexual bias against him, and opined that through the unit's multiple administrative actions, the applicant had ample opportunity to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members and the characterization of the discharge received by the applicant was appropriate.

Issues 1 and 4. Applicant infers his discharge was too harsh because it was based on an isolated incident and he was not given a chance to prove himself in the work section. However, the record indicates the discharge was based on repeat misconduct and no inequity or impropriety in his discharge was found in the records review. The Board concluded the discharge was appropriate for the reasons which were its basis and applicant's misconduct appropriately characterized his term of service.

If he can provide additional documented information to substantiate an issue, the applicant should consider exercising his right to make a personal appearance before the Board. If he should choose to exercise this right, the applicant should be prepared to provide the DRB with factual evidence of the inequity and any exemplary post-service accomplishments as well as any contributions to the community.

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 22 Feb 02 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 1 Jul 81. Enlmt Age: 17 8/12. Disch Age: 20 7/12. Educ: HS DIPL. AFQT: N/A. A-34, E-60, G-72, M-51. PAFSC: 4N051 - Medical Service Journeyman. DAS: 12 Jun 00.

b. Prior Sv: (1) AFRes 26 Mar 99 - 3 Nov 99 (7 Mos 8 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 4 Nov 99 for 4 yrs. Svd: 2 Yrs 3 Mos 19 Das, all AMS.

b. Grade Status: AB - 10 Jan 02 (Article 15, 10 Jan 02)
AMN - 23 Jul 01 (Vacation, Article 15, 10 Jan 02)
A1C - 4 Mar 01
AMN - Unknown

c. Time Lost: None.

d. Art 15's: (1) (Examiner's Note: The Article 15, dated 10 Jan 02, indicates the applicant violated Articles 111, 134, and 92 (two incidents). However, based on the legal review, the Article 15 should have stated one violation, Article 92, drinking under the age of 21 years on 23 Dec 01)

10 Jan 02, Travis AFB, CA - Article 92. You, who knew of your duties, on or about 23 Dec 01, was derelict in the performance of those duties in that you willfully failed to refrain from consuming or possessing alcohol until over the age of 21 years, as it was your duty to do. Reduction to the grade of AB, forfeiture of \$300.00 pay per month for 2 months, and 30 days extra duty. (Appeal denied) (No mitigation)

(2) 10 Jan 02, Vacation, Travis AFB, CA - Article 92. You, who knew of your duties, on or about 17 Nov 01, was derelict in the performance of those duties in that you willfully failed to refrain from consuming or possessing alcohol until over the age of 21 years, as it was your duty to do. Article 111. You, did, on or

about 17 Nov 01, at the Base Main Gate physically control a passenger car, while drunk. Article 134. You, did, on or about 17 Nov 01, wrongfully possess a certain instrument purporting to be a Florida State identification card bearing the name ----- you, the said -----, then well knowing the same to be false. Reduction to the grade of AMN. (No appeal) (No mitigation)

(3) 23 Jul 01, Travis AFB, CA - Article 92 - You, did, on or about 18 Jun 01, violate a lawful general regulation, to wit: Table 2.5 of Air Force Regulation 36-2903, dated 8 Jun 98, by wrongfully wearing an earring while on a military installation. Suspended reduction to the grade of AMN, and forfeiture of \$100.00 pay per month for 2 months. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 4 Nov 99 - 3 Jul 01 Travis AFB 3 (Initial)
4 Jul 01 - 10 Jan 02 Travis AFB 1 (Dir by HAF) REF

(Discharged from Travis AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (2) Yrs (10) Mos (27) Das
TAMS: (2) Yrs (3) Mos (19) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Aug 02.
(Change Discharge to Honorable)

Issue 1: I was given an article 15 for having an earring in my ear on my off duty time at the gym. The offence was also my first time wearing an earring.

Issue 2: I was treated unfairly and I was constantly given extra tasks off duty. My Chief in the hospital also called me a Taliban.

Issue 3: My supervisor showed favoritism (sic) to other female workers on the floor.

Issue 4: I wasn't given a chance to excel in my work place. I was always being told I was slow.

ATCH

1. Applicant's Letter.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

FD2002-0348

15 FEB 2002

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
510 Mulheron Street
Travis AFB CA 94535-2406

SUBJECT: Legal Review of Administrative Discharge Under AFI 36-3208,
AB [REDACTED] 60th Surgical Operations Squadron

1. **Introduction:** This action is legally sufficient. On 7 Feb 02, the 60 MSGS/CC initiated discharge action against AB [REDACTED] (Respondent) pursuant to AFI 36-3208, paragraph 5.50.2, A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline, and recommended a general service characterization without probation and rehabilitation. The 60 MDG/CC concurred. This 20-year-old respondent has over 27 months of active duty service and a referral EPR with an overall rating of "1." He has been awarded the Air Force Training Ribbon. A detailed summary of his personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter, dated 12 Feb 02. After conferring with counsel, Respondent submitted a statement seeking retention in the Air Force or an honorable service characterization, if discharged. Respondent states that following his alcohol-related incident, he has completed Substance Abuse classes and attended Alcoholics Anonymous (AA) meetings. He states he has given up alcohol because he would like to stay in the Air Force until the expiration of his term of service in November 2003 (Tab 3).

2. **Basis for Discharge:**

a. On or about 18 Jun 01, Respondent violated AFI 36-2903, Table 2.5, dated 8 Jun 98, a lawful general regulation, by wrongfully wearing an earring while on a military installation, in violation of Article 92, UCMJ. For this, he received an Article 15, dated 17 Jul 01, which was placed in an unfavorable information file (UIF) on 23 Jul 01. Punishment consisted of a suspended reduction to the grade of airman and forfeiture of \$100.00 pay per month for 2 months.

b. On or about 17 Nov 01, Respondent was derelict in the performance of his duties in that he willfully failed to refrain from consuming or possessing alcohol until the age of 21 years, in violation of Article 92, UCMJ.

c. On or about 17 Nov 01, Respondent drove a passenger car, while drunk, in violation of Article 111, UCMJ.

d. On or about 17 Nov 01, Respondent wrongfully possessed a false Florida State Identification Card bearing the name of [REDACTED], in violation of Article 134, UCMJ. For the misconduct described in paragraphs 2b through 2d, Respondent's suspended reduction to the grade of airman was vacated 10 Jan 02. The vacation action was placed in his existing UIF.

e. On or about 23 Dec 01, Respondent was derelict in the performance of his duties in that he willfully failed to refrain from consuming or possessing alcohol until the age of 21 years, in violation of Article 92, UCMJ. For this, Respondent received an Article 15, dated 27 Dec 01, which was placed in his existing UIF on 24 Jan 02. Punishment consisted of reduction to the grade of airman basic, forfeiture of \$300.00 pay per month for 2 months, and 30 days of extra duty.

3. **Appropriateness of Discharge:** Airmen are subject to discharge when there is evidence of one or more acts or patterns of misconduct. This includes conduct of a nature that tends to disrupt order, discipline, or morale within the military community. It also usually involves behavior that tends to cause dissent, disruption, or a deterioration of mission effectiveness. Respondent's misconduct, listed in paragraph 2, is of such a character and clearly warrants discharge. If you are convinced, based on Respondent's aforementioned behavior, there is a basis for discharge, you may then look at his entire military record to decide whether it is appropriate to discharge him at this time. Given Respondent's pattern of misconduct, there are sufficient grounds for discharge and, in light of his record as a whole, it is appropriate to do so at this time.

4. **Characterization of Service:**

a. Pursuant to AFI 36-3208, table 1.3, discharges under paragraph 5.50.2 may be characterized as honorable, general, or under other than honorable conditions (UOTHC). An honorable characterization is reserved for those airmen whose service has met Air Force standards of acceptable conduct and performance of duty, and whose service has been so meritorious that any other characterization would be clearly inappropriate. While Respondent asks that you consider granting him an honorable discharge, his record does not meet this standard.

b. The 60 MSGS/CC recommended a general service characterization. I agree. A general discharge is appropriate if an airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh any positive aspects of the airman's military record. A UOTHC discharge, instead, is appropriate when the grounds for discharge are based on a member's acts or omissions that significantly depart from conduct expected of airmen. A general discharge is more appropriate here because there are significant negative aspects in Respondent's record that outweigh the positive aspects of his military career. Over a 5-month period, Respondent received two Article 15s and a vacation (placed in UIF) for misconduct. Additionally, he received a referral EPR. Given Respondent's infractions and his time in the Air Force, it is unlikely that a board of officers would recommend a UOTHC


discharge. Accordingly, I concur with both commanders' recommendations for a general discharge.


5. **Probation and Rehabilitation (P&R):** P&R is clearly inappropriate in this case. According to AFI 36-3208, paragraph 5.2, airmen should have an opportunity to overcome their deficiencies before discharge action is initiated. A commander's efforts to rehabilitate an airman may include formal or informal counseling, control roster action, punishment under Article 15, UCMJ, a change in duty assignment, demotion, additional training or duty, retraining, or other administrative action. P&R should be offered, when it is reasonably possible to do so, to those airmen (a) who have demonstrated a potential to serve satisfactorily, (b) who have the capacity to be rehabilitated for continued military service or for completion of the current enlistment, and (c) whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. Respondent has already had numerous chances to correct his behavior, as reflected in the nonjudicial punishments he has received, and he has failed to change despite these. Further, Respondent attended Substance Abuse classes and AA meetings. Retaining Respondent, even in a probationary status, would most likely not produce the desired results, but would be contrary to the maintenance of good order and discipline at Travis AFB.

6. **Options:** As the Special Court-Martial Convening Authority, you may personally approve or disapprove recommendations for any discharges processed by notification according to chapter 6, section B, and resulting in a general discharge under section H. Your options are to

- a. direct that this action be withdrawn and retain Respondent;
- b. discharge Respondent with a general discharge, with or without P&R;
- c. forward the case to the 15 AF/CC with a recommendation for an honorable discharge, with or without P&R; or
- d. direct reinitiation of processing, pursuant to AFI 36-3208, chapter 6, section C - Board Hearing or Board Waiver, if you believe a UOTHC is warranted.

7. **Recommendation:** Discharge Respondent with a general discharge, without P&R, by signing the letter at Attachment 1.


 Colonel, USAF
 Staff Judge Advocate

- Attachments:
- 1. Proposed Letter
 - 2. Case File (AB )



DEPARTMENT OF THE AIR FORCE
60TH SURGICAL OPERATIONS SQUADRON (AMC)

FD2002-0348

7 FEB 2007

MEMORANDUM FOR AB [REDACTED] 60 MSGS

FROM: 60 MSGS/CC
101 Bodin Circle
Travis AFB CA 94535-1800

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force pursuant to AFI 36-3208, paragraph 5.50.2, Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline. If my recommendation is approved, your service may be characterized as Honorable, General, or Under Other than Honorable Conditions. I am recommending that your service be characterized as General.
2. My reasons for this action are:
 - a. On or about 18 Jun 01, you violated AFI 36-2903, Table 2.5, dated 8 Jun 98, a lawful general regulation, by wrongfully wearing an earring while on a military installation, in violation of Article 92, UCMJ. For this, you received an Article 15, dated 17 Jul 01, which was placed in an unfavorable information file (UIF) on 23 Jul 01. Punishment consisted of a suspended reduction to the grade of airman and forfeiture of \$100.00 pay per month for 2 months (Atch 1, Tab 1).
 - b. On or about 17 Nov 01, you were derelict in the performance of your duties in that you willfully failed to refrain from consuming or possessing alcohol until over the age of 21 years, in violation of Article 92, UCMJ (Atch 2, Tab 1).
 - c. On or about 17 Nov 01, you physically controlled a passenger car, while drunk, in violation of Article 111, UCMJ (Atch 2, Tab 1).
 - d. On or about 17 Nov 01, you wrongfully possessed a false Florida State identification card bearing the name of [REDACTED] in violation of Article 134, UCMJ. For the misconduct described in paragraphs 2b through 2d, your suspended reduction to the grade of airman was vacated 10 Jan 02. The vacation action was placed in your existing UIF (Atch 2, Tab 1).
 - e. On or about 23 Dec 01, you were derelict in the performance of your duties in that you willfully failed to refrain from consuming or possessing alcohol until over the age of 21 years, in violation of Article 92, UCMJ. For this, you received an Article 15, dated 27 Dec 01, which was

placed in your existing UIF on 24 Jan 02. Punishment consisted of reduction to the grade of airman basic, forfeiture of \$300.00 pay per month for 2 months, and 30 days of extra duty (Atch3, Tab 1).

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 are to 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, and any special pay, bonus monies, or education assistance funds may be subject to recoupment.

4. You have the right to consult with an attorney. Military legal counsel has been obtained to assist you. I have made an appointment for you to speak with **Captain [REDACTED] Area Defense Counsel, 540 Airlift Drive, Bldg. 381, Suite D-100, Travis AFB, California, 94535-2479, DSN 837-4569; Commercial, (707) 424-4569, on 8 Feb 02 at 1030.** You may also consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you wish the separation authority to consider must reach me by (three workdays from service of this letter) 12 FEB 02, no later than 1515 hours, unless you request and receive an extension for good cause. I will send the separation authority any documents you submit.

6. If you fail to consult with counsel or to submit statements on your own behalf, your failure will constitute a waiver of your right to do so.

7. You have been scheduled for a separation physical examination on 11 FEB 02 at 1130. You also have an appointment at the Internal Medicine Clinic on 11 FEB 02 at 1500 to consult with Dr. Cordero.

8. Any personal information you furnish in rebuttal will be covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in the Orderly Room.

9. Execute the acknowledgment and return it to me immediately.

[REDACTED SIGNATURE]

Colonel, USAF, MC

Commander

Attachments:

- 1. AF Form 3070, 23 Jul 01 w/Atchs
- 2. AF Form 366, 10 Jan 02 w/Atchs
- 3. AF Form 10 Jan02 w/Atchs