

## AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <b>[REDACTED]</b>	GRADE <b>AMN</b>	AFSN/SSAN <b>[REDACTED]</b>
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TYPE	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	<b>RECORD REVIEW</b>							
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YES	NO								
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MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	LOTHC	OTHER	DENY
<b>[REDACTED]</b>	<input checked="" type="checkbox"/>				
<b>[REDACTED]</b>	<input checked="" type="checkbox"/>				
<b>[REDACTED]</b>	<input checked="" type="checkbox"/>				
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ISSUES <b>A94.06</b>	INDEX NUMBER <b>A67.10</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="padding: 2px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width: 5%; padding: 2px; text-align: center;">1</td> <td style="padding: 2px;">ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="padding: 2px; text-align: center;">2</td> <td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="padding: 2px; text-align: center;">3</td> <td style="padding: 2px;">LETTER OF NOTIFICATION</td> </tr> <tr> <td style="padding: 2px; text-align: center;">4</td> <td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">TAPF RECORDING OF PERSONAL APPEARANCE HEARING</td> </tr> </tbody> </table>	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		TAPF RECORDING OF PERSONAL APPEARANCE HEARING
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HEARING DATE <b>3 JUN 03</b>	CASE NUMBER <b>FD01-00091</b>																	

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 Scott AFB, Illinois.  
  
 \* Change Reason to Secretarial Authority  
  
 Advise applicant of the decision of the Board.

SIGNATURE OF RECORDER <b>[REDACTED]</b>	SIGNATURE OF BOARD PRESIDENT <b>[REDACTED]</b>
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INDORSEMENT	DATE: <b>3 JUN 03</b>
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 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

**GENERAL:** The applicant appeals for upgrade of discharge to Honorable.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Scott AFB, IL on June 3, 2003. The following observers were present at the hearing with the concurrence of the applicant and the approval of the Board President: Ms. [REDACTED], a friend of the applicant.

The following additional exhibits were submitted at the hearing:

- Exhibit 5: 3 Universal Technical Institute Progress Reports
- Exhibit 6: Washington Mutual One Year of Service Award
- Exhibit 7: College of Lake County Honor List Award
- Exhibit 8: 1 Character Reference Letter
- Exhibit 9: 1 Employee of the Month Nomination
- Exhibit 10: 1 Employee of the Month Letter
- Exhibit 11: 2 Certificates of Appreciation
- Exhibit 12: 6 Shining Star Awards

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

**FINDINGS:** The discharge is upgraded to Honorable, and the reason for discharge is changed to Secretarial Authority.

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

**ISSUES:** The applicant was discharged with a General Discharge for Misconduct – Minor Disciplinary Infractions. The applicant's central issue is that he feels he should have, instead, received a medical discharge. The applicant's disciplinary infractions included one instance of academic failure, unauthorized smoking in his dormitory room, unauthorized use of a cellular telephone while in attendance at technical training school, receipt of a traffic citation for speeding, one failed dormitory room inspection, and tossing a fire extinguisher resulting in damage to government property. The DRB noted it is the latter incident, which precipitated the decision of the applicant's commander to initiate and execute separation action. Significant to the member's case, he suffered from a sleep disturbance, which was later diagnosed as Narcolepsy after his separation. The applicant testified to previously receiving "approximately 20" letters of reprimand or counseling, for either falling asleep on the job or being late for work due to inability to awaken on time. Upon discovery of the member's sleep disturbance (called sleep apnea at the time of his separation) his commander revoked all disciplinary actions, which bore a causal relationship to the applicant's medical condition. The applicant offered additional testimony, which led the DRB to believe he was also targeted by an unknown party or parties for his minority racial status, resulting in physical injury. The applicant testified that he never experienced a sleep disorder before military service or during Basic Military Training. It was not until the applicant experienced an assault, after being distracted by a racial slur ("hey chink"), at which time his head was slammed onto the concrete by an unknown assailant, while on base, and resulting facial fractures, did the applicant experience frequent unexpected lapses in his wakefulness. Medical records documentation supports the existence of a sleep disturbance of an "unknown cause". Since separating from military service, the member has been diagnosed with Narcolepsy, known for its unexpected lapses in wakefulness. The applicant opined, although the previous non-judicial punishments resulting from his sleep disturbance were revoked by his commander and were not listed as a basis for his discharge, the commander may have yet considered these facts in his final decision to separate the applicant. The Board opined had it not been for the member's provoked tossing or throwing of a fire

extinguisher down a hallway, his other minor disciplinary infractions, would likely not have resulted in his separation from active military service.

**CONCLUSIONS:** The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation.

However, in view of the foregoing findings, the Board also concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge. The applicant's characterization for discharge should be changed to Honorable under the provisions of Title 10, USC 1553, and the reason for separation changed to Secretarial Authority. The applicant's existing RE code remains unchanged.

Attachment:  
Examiner's Brief

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

(Former AMN) MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/03/31 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 80/08/23. Enlmt Age: 18 4/12. Disch Age: 19 7/12. Educ:HS DIPL. AFQT: N/A. A-76, E-74, G-74, M-41. PAFSC: 3P031 - Security Apprentice. DAS: 99/10/16.

b. Prior Sv: AFRes 99/01/21 - 99/02/16 (26 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 99/02/17 for 4 yrs. Svd: 1 Yrs 1 Mo 15 Das, all AMS.

b. Grade Status: AMN - 99/08/17

c. Time Lost: none.

d. Art 15's: none.

e. Additional: LOC, 28 JAN 00 - Damage to government property.  
LOC, 14 JAN 00 - Traffic citation.  
LOC, 09 SEP 99 - Failure to obey lawful order.  
LOC, 07 SEP 99 - Failed room inspection.  
LOR, UNDATED - Failure to obey.  
LOR, 29 JUL 99 - Disobey written order.  
AETC FORM 173, 12 AUG 99 - Academic failure.

f. CM: none.

g. Record of SV: none.

(Discharged from Mountain Home AFB)

h. Awards & Decs: AFTR.

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

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 00/12/07.  
(Change Discharge to Honorable)

Issue 1: I should've (sic) a medical discharge when instead I got an honorable/general discharge. There was more than enough proof to prove a

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medical discharge. During tech school on LAFB, I fractured my head in 6 places. This resulted in having sleep Apendy Hypersance. This was the reason for which I fell asleep during duty hours and for this I was punished unjustly. They blamed me for being irresponsible to go get proper sleep at night when in fact it was clinically proven to have sleeping disorders.

ATCH  
none.

01/02/28/ia

FDO1-00091



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 366TH WING (ACC)  
MOUNTAIN HOME AIR FORCE BASE, IDAHO

24 MAR 2000

MEMORANDUM FOR 366 WG/CC

FROM: 366 WG/JA

SUBJECT: Legal Review, AFI 36-3208 Discharge – Amn [REDACTED]  
[REDACTED] 366th Security Forces Squadron

1. **Initiation of Action:** This action was initiated by the 366th Security Forces Squadron Commander, Maj [REDACTED], on 15 Mar 00, against Amn [REDACTED] (Respondent) pursuant to AFD 36-32 and AFI 36-3208, paragraph 5.49: Minor Disciplinary Infractions. He recommends a general discharge characterization without probation and rehabilitation (P&R).

2. **Respondent's Personal Data:** This 19-year-old Respondent has approximately one year and one month of creditable service. A detailed summary of Respondent's personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter.

3. **Basis for Discharge:** Airmen are subject to discharge under AFI 36-3208, paragraph 5.49, based on a pattern of misconduct consisting solely of those infractions in the current enlistment. Respondent in this matter committed the following misconduct:

<u>Date</u>	<u>Incident</u>	<u>Action</u>
16 Jan 00	-Threw fire extinguisher -Damaged government property	LOC 28 Jan 00
9 Jan 00	Traffic citation for speeding	LOC 14 Jan 00
6 Sep 99	Failed to obey a lawful order	LOC 9 Sep 99
3 Sep 99	Failed room inspection	LOC 7 Sep 99
26 Aug 99	-Failed to obey a lawful order -Failed to go	LOR Not dated
12 Aug 99	Failed objectives in technical school	Student Counseling 12 Aug 99

25 Jul 99

Disobeyed a written order

LOR  
29 Jul 99

4. **Respondent's Statement:** Respondent was informed of his right to seek counsel and to submit matters in response to this action. The Respondent submitted a statement. He believes that his misconduct is not serious enough to warrant a discharge. He states that if his commander had really wanted to discharge him with the listed offenses, he would have initiated a discharge in January when the Respondent received his last Letter of Counseling. He believes that he is being discharged for the wrong reason. He is requesting a medical discharge. (See Tab 4).

5. **Irregularities:** None.

1) **Discussion:**

a. The Respondent's Commander, Maj [REDACTED], initiated an Article 15 on 7 Feb 00 for 2 specifications of Failure to Go. After reviewing the evidence presented by the Respondent, Maj [REDACTED] decided that an Article 15 was inappropriate on 16 Feb 00. The Respondent submitted medical evidence that he has a sleeping disorder, sleep apnea. Sleep testing was done on 10 Jan 00 in Boise, ID to determine whether he actually has a sleep disorder. He presented medical evidence that due to this disorder, he sometimes has trouble waking up. He stated that he has trouble falling into a deep, restful sleep. When he does actually go into this deep sleep, he stated that he has difficulty waking up. He also presented evidence that due to his sleep disorder, he falls asleep on the job. As a result of this new evidence, Maj [REDACTED] also decided to revoke all of the Respondent's Letters of Reprimand and Letters of Counseling that might be connected to his sleep disorder. The Respondent had numerous LOCs and LORs for failing to go and for falling asleep on the job. The Respondent has numerous counselings and reprimands and has only been with the squadron since 16 Oct 99. He cannot perform his duties in Security Forces.

b. When this discharge package was initiated, the Respondent was counseled to seek a Medical Evaluation Board (MEB) to determine whether he would be eligible for a medical discharge. On 16 Mar 00, the Respondent went to his scheduled discharge physical at the Hospital and informed Lt [REDACTED], Physician Assistant with the Gold Panel, that he wanted a MEB. Lt [REDACTED] investigated the Respondent's request to determine whether he would qualify for a MEB. Lt [REDACTED] determined that a MEB was not appropriate because the Respondent does not have a condition that would medically disqualify him from the service. The Respondent claimed that he has Attention Deficit and Hyperactivity Disorder (ADHD) and that he has sleep apnea. Lt [REDACTED] determined that ADHD is not a condition that merits a MEB. He also determined that the Respondent's sleep apnea does not qualify as a condition for a MEB. He spoke at length with the Respondent's sleep disorder doctor, Dr. [REDACTED]. To qualify for a MEB, the Respondent must have obstructive sleep apnea, not just sleep apnea. After an in-depth evaluation, Dr. [REDACTED] could not diagnose the Respondent with obstructive sleep apnea. The Respondent has sleep apnea but he does not have obstructive sleep apnea. There is a significant medical difference between the two conditions. Lt [REDACTED] therefore, determined that a MEB would be inappropriate.

c. In addition, as this process was underway, the Respondent had a tonsillectomy on 24 Feb 00. Dr. [REDACTED], surgeon at Mountain Home AFB, performed the surgery. The Respondent was on convalescent leave after the surgery. The Respondent has recovered and is back at work.

d. The Respondent is not a productive member of the squadron. In the 5 months he has been stationed here, he has disregarded repeated attempts at rehabilitation by the squadron. His misconduct is severe enough to warrant a discharge. Once you have determined that there is a sufficient basis for the discharge, then you must evaluate whether the Respondent should be discharged. Within the year and 1 month that he has been on active duty, he has received 4 LOCs and 2 LORs. This does not include the LOCs and LORs that were revoked because they might have been connected with his sleep condition. This also does not include the Article 15 that was pulled by Maj Bateman.

- 1) The underlying conduct of the last LOC received on 28 Jan 00, was severe enough to warrant more severe punishment. He threw a fire extinguisher down the hall and damaged government property.
- 2) His second LOC received on 9 Jan 00, was for speeding on the installation. He is a member of the security forces squadron and is expected to set the example.
- 3) His third LOC on 6 Sep 99 was for failing to obey a lawful order when he used his cell phone in front of his squadron at technical school, after being specifically told not to use a cell phone.
- 4) He received a LOC on 7 Sep 99 for failing his room inspection.
- 5) On 26 Aug 99 he received LOR for failing to obey a lawful order and failing to go to his appointed place of duty.
- 6) He received a Student Record of Academic/Nonacademic Counseling and Comments for failing two objectives.
- 7) His first LOR was received on 29 Jul 99 for disobeying a written order when he smoked in his room.

e. Repeated efforts by his squadron to counsel and correct his behavior were ineffective. Clearly, the squadron has placed the Respondent on notice of what is expected behavior. In addition, the squadron provided Respondent ample opportunities to correct and to conform his behavior to Air Force standards. His conduct has affected the unit mission. He is a liability to his unit and to the Air Force. He cannot be depended on. He does not have a medical condition that would warrant a medical discharge. The Respondent is a below average performer. His misconduct warrants a discharge. His squadron and the Air Force cannot afford to retain or retrain this member. The Respondent's discharge is legally sufficient



7. **Characterization of Discharge:** Paragraph 1.18 of AFI 36-3208 provides guidance on the types of service characterization for administrative discharges. An "honorable" discharge is appropriate when "the quality of an airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate" (para 1.18.1). An "under honorable conditions (general)" discharge is appropriate when an airman's service has been honest and faithful but "significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record" (para 1.18.2). An "under other than honorable conditions" discharge is warranted when "a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airman" (para 1.18.3). The Respondent's service, as evidenced by the matters supporting this discharge action, is most appropriately characterized as under honorable conditions (general) because his acts of misconduct outweigh the positive aspects of his short military record. He was given numerous opportunities to correct his behavior and failed to do so. He has only been in a little over one year and has performed below average. His misconduct outweighs any positive aspect of his very short Air Force career.



8. **Probation and Rehabilitation (P&R):** The squadron commander does not recommend P&R and I concur with this decision. The suitability of persons to serve in the Air Force is judged on the basis of their conduct and their ability to meet required standards of duty performance and discipline. Severe rehabilitative attempts, including four LOCs, two LORs, and a Student Record of Academic/Nonacademic Counseling and Comments Form by the squadron and technical school have proven futile and the Respondent has demonstrated through his actions that he cannot be depended upon. The impact of Respondent's continued military service would be detrimental to the work center and the overall mission of the squadron. He has been given a chance to rehabilitate himself but he has ignored all rehabilitation by the squadron. His continued service would hurt the mission.

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



- a. Direct this action be withdrawn and retain respondent;
- b. Discharge Respondent with a general discharge with or without P&R;
- c. Recommend to the General Court-Martial Convening Authority, HQ 12 AF/CC, approval of an honorable discharge; or
- d. Recommend a UOTHC discharge and order the case be processed according to board procedures.

Pool-00091

10. **Recommendation:** Discharge Respondent with a general discharge without P&R.

  
 Capt, USAF  
Chief, Administrative Law

I concur.

  
 Lt Col, USAF  
Staff Judge Advocate

2 Attachments:

1. Proposed 366 WG/CC Memo
2. Case File

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 366TH WING (ACC)  
368 GUNFIGHTER AVE, STE 432  
MOUNTAIN HOME AFB, IDAHO 83648-5299

15 MAR 2000

MEMORANDUM FOR AMN [REDACTED] 366 SFS

FROM: 366 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for 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 can be characterized as honorable, general, or under other than honorable conditions (UOTHC). I am recommending your service be characterized as general.

2. My reasons for this action are:

a. On or about 16 Jan 00, you threw a fire extinguisher down the hall and damaged government property. As a result, you received a Letter of Counseling (LOC) on 28 Jan 00. (Tab 1, Atch 1).

b. On or about 9 Jan 00, you received a traffic citation for speeding on the base installation. As a result, you received a LOC on 14 Jan 00. (Tab 1, Atch 2).

c. On or about 6 Sep 99, you failed to obey a lawful order. You were briefed that you were not allowed to have cellular phones or pagers while assigned to the 343rd Military Training Flight. You disregarded the order and used your cell phone in front of the squadron. As a result, you received a LOC on 9 Sep 99. (Tab 1, Atch 3).

d. On or about 3 Sep 99, you failed your room inspection knowing the 343rd Military Training Flight standards. As a result, you received a LOC on 7 Sep 99. (Tab 1, Atch 4).

e. On or about 26 Aug 99, you failed to obey a lawful order and failed to go to your appointed place of duty, as prescribed. As a result, you received a Letter of Reprimand (LOR), which is not dated. (Tab 1, Atch 5).

f. On or about 12 Aug 99, you received a Student Record of Academic/Nonacademic Counseling and Comments form in that you failed objectives 30h and 30b on the Land Navigation process check. (Tab 1, Atch 6).

g. On or about 25 Jul 99, you disobeyed a written order when you smoked in your room. As a result, you received a LOR on 29 Jul 99. (Tab 1, Atch 7).

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction will decide whether you will be discharged or retained in the Air Force. If you are discharged, he will also determine how your service will be characterized. If 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 made an appointment for you to consult with the Area Defense Counsel on 16 Mar 00 at 0930 hours in building 512. The number is 828-2675. 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 within three workdays of the date of this memorandum unless you request and receive an extension for good cause shown. I will forward 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 Examination Section at the hospital on Mountain Home AFB. Your scheduled medical examination is on 16 Mar 00 at 0845 hours. You must be in uniform. If you wear glasses, wear them to the scheduled examination.

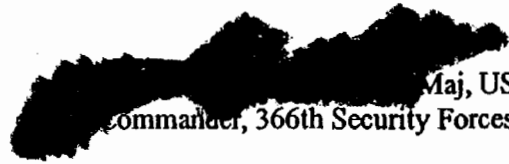
8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available at the Area Defense Counsel's office or your squadron orderly room.

9. You will surrender your ID card to me immediately. Proceed with a copy of this letter to the Military Personnel Flight, Customer Service, Building 512, Mountain Home AFB no later than 1600 15 Mar 00 where you will be issued a temporary ID card valid for 90 days. If the discharge action is still pending at the end of 90 days, another temporary ID card will be issued to you until the case is finalized.

10. A copy of this letter also authorizes you to proceed to the Security Forces, Pass and Registration Section, Building 7001, Visitor Control Center, no later than 1630 15 Mar 00 where you will turn in your Mountain Home AFB vehicle sticker and your USAF vehicle decal. They will issue a temporary permit good for 90 days. If the discharge action is still pending at the end of 90 days, another temporary vehicle decal will be issued to you until the case is finalized.

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11. Finally, proceed with a copy of this letter to the Traffic Management Office (TMO), in Building 512, immediately after receiving your separation orders from the Separations Section at the MPF for arranging shipment of your household goods.



Maj, USAF  
Commander, 366th Security Forces Squadron

7 Attachments:

1. LOC, dtd 28 Jan 00
2. LOC, dtd 14 Jan 00
3. LOC, dtd 9 Sep 99
4. LOC, dtd 7 Sep 99
5. LOR, dtd unknown
6. Student Counseling, dtd 12 Aug 99
7. LOR, dtd 29 Jul 99