

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		ADDRESS AND OR ORGANIZATION OF COUNSEL		
YES	NO					
	X					
MEMBERS SITTING		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD		
A94.05		A67.10		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	
HEARING DATE		CASE NUMBER				
5 JUN 03		FD01-00126				
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.						
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			
[REDACTED]			[REDACTED]			
INDORSEMENT				DATE: 5 JUN 03		
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				

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD01-00126

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

The applicant's appeal was heard before the Discharge Review Board (DRB), without counsel, at Scott AFB, IL on June 5, 2003. The applicant did not appear.

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

FINDINGS: Upgrade of discharge to Honorable is denied.

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

ISSUES: The applicant was discharged with a General Discharge for a pattern of Minor Disciplinary Infractions. Member received two Articles 15 for failure to go and operating a motor vehicle recklessly while intoxicated. He also received two Records of Individual Counseling for failing to go. Applicant claims he was made an example of and others did not receive the same punishment for the same violations. These two issues are without merit. The record does not indicate he was made an example of and his administrative actions were consistent with his violations. The Discharge Review Board opined that though the above-mentioned administrative actions occurred, the applicant had ample opportunity to change his negative behavior. The Discharge Review Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

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.

Attachment:
Examiner's Brief

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

(Former AB) MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 93/11/04 UP AFR 39-10, para 5-46 (Misconduct - Minor Disciplinary Infractions). Appeals for HON Disch.

2. **BACKGROUND:**

a. DOB: 72/03/12. Enlmt Age: 18 1/12. Disch Age: 21 7/12. Educ:HS DIPL. AFQT: N/A. A-48, E-82, G-66, M-88. PAFSC: 2A452 - Aircraft Communications and Navigation Systems Journeyman. DAS: 91/11/18.

b. Prior Sv: AFRes 90/05/01 - 91/01/06 (8 months 6 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 91/01/07 for 4 yrs. Svd: 2 Yrs 9 Mo 28 Das, all AMS.

b. Grade Status: AB - 93/09/28 (Article 15, 93/09/28)
AMN - 93/01/25 (Article 15, 93/01/25)
A1C - 92/05/07
AMN - 91/07/07

c. Time Lost: none.

d. Art 15's: (1) 93/09/28, Kwang Ju AB, Korea - Article 86 & 134. You did, o/a 15 Sep 93, w/o authority, fail to go at the time prescribed to your appointed place of duty. You were, o/a 15 Sep 93, as a result of wrongful previous overindulgences in intoxicating liquor or drugs, incapacitated for the proper performances of your duties. Rdn to AB, forfeiture of \$100.00 pay per month for two months, and 45 days restriction. (Appeal/Denied) (No mitigation)

(2) 93/01/25, Kadena AB, Korea - Article 111. You did, o/a 16 Jan 93, on Paris Avenue, operate a vehicle, to wit: a passenger car while drunk and in a reckless manner by driving at a speed in excess of 50 kilometers per hour. Rdn to Amn, forfeiture of \$188.00 per month for two months. (No appeal) (No mitigation)

e. Additional: UIF, 16 JAN 93 - DWI.
RIC, 15 SEP 93 - Failure to go.
RIC, 16 SEP 93 - Failure to go.
TRAFFIC TICKET, 16 JAN 93 - DWI.

f. CM: none.

g. Record of SV: 91/01/07 92/09/26 Kadena AB 4 (Initial)
 92/09/07 93/09/06 Kadena AB 3 (Annual)
 (Discharged from Travis AFB)

h. Awards & Decs: NDSM, AFTR, AFOSLTR.

i. Stmt of Sv: TMS: (3) Yrs (6) Mos (4) Das
 TAMS: (2) Yrs (9) Mos (28) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 00/09/25.
 (Change Discharge to Honorable)

Issue 1: The Honorable Members of the Board: On behalf of the above-mentioned service member, we are requesting a discharge upgrade to reflect an honorable discharge. The former service member (FSM) received a general discharge under honorable conditions. We contend that the FSM was discharged as a result of providing his command with the opportunity of using him as example. Thus, we contend that the FSM did not receive a fair and appropriate discharge. We are seeking an upgrade based on equitable relief.

We contend that the evidence of record does not indicate that the discharge the FSM received was fair, appropriate or just. We request that based on equity that the FSM be awarded a discharge upgrade.

The evidentiary record indicates the FSM was involved in an alcohol related set of circumstances that involved his entire squadron. However, it is hard to believe that the FSM is the only one who was punished for his actions. The record indicates that several members of higher rank and billet were also involved. However, the FSM was singled out by his command and was the only one punished.

Enclosed with this request are several statements from service members at the time of the incident. It displays that more than just the FSM was a part of the incident. Also enclosed are several letters of recommendation for the FSM. Prior to the incidents that led to his discharge, the FSM had received many accolades from his peers and his superiors.

The FSM did have a problem with alcohol while in service, yet he was not provided with any treatment or classes to help with the problem. Instead, he was quickly given a general discharge under honorable conditions. The FSM then entered civilian life with a problem. Also of record are reports of the FSM receiving multiple DUIs. After realizing he needed help the FSM got himself into rehab and has been clean and sober.

The FSM is currently enrolled in ----- Tech. He is also working at -----. The FSM has recently received many awards and remarks of excellence for his schoolwork and his current employment. The FSM with a lot of hard work and effort has managed to stay sober and better his life.

We contend that if the FSM had received treatment in service, which is the current practice of the Armed Forces for alcohol incidents, he would had

rehabbed in service and received an honorable discharge given his fine example prior to the incident.

We respectfully request that the FSM receive a discharge upgrade based on equity. The FSM has shown that he can succeed and overcome. In order of fairness and justice, we contend that a discharge upgrade is warranted.

ATCH

1. VA Letter to the DRB.
2. Applicant's Letter to the DRB.
3. Personal Statement.
4. DD Form 214.
5. Alcohol Awareness Report.
6. Police Report.
7. Article 15, 25 Sep 93.
8. Personal Statement.
9. NA Form 13044.
10. Certificate of Training.
11. Four Achievement Certificates & Student Grade Reports.
12. Certificate of Training.
13. Three Personal Statements.
14. Character Statement.
15. Three Airmen Proficiency Feedback Worksheets.
16. Three Letters of Appreciation.
17. Personal Statement.
18. Letter of Recommendation.
19. Three Letters of Appreciation.
20. Five Certificates of Training.
21. College Transcript.
22. Certificate of Appreciation.
23. RIC, 15 Sep 93.
24. RIC, 16 Sep 93.
25. Response to Article 15.
26. Five Character References.
27. Sortie Critique.
28. Three Letters of Appreciation.
29. Airmen Performance Feedback Worksheets.
30. Seven Character References.
31. Enlisted Performance Report.
32. Letter of Evaluation.
33. Enlisted Performance Report.
34. Notification Memorandum.
35. Article 15 & Response.
36. Two Traffic Tickets.
37. Alcohol Influence Report.
38. Notice of Temporary Suspension/Revocation of Driving Privileges.
39. Two Statements of Suspect/Witness/Complainants.
40. Alcohol Checklist.
41. Receipt of Prisoner or Detained Person.
42. Two Traffic Tickets.
43. Security Police Desk Blotter.
44. Notice of Revocation of Driving Privileges.

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- 45. Unfavorable Information Folder.
- 46. VA Form 21-22.

01/05/02/ia

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DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

FROM: 18 WG/JA
Unit 5141, Box 40
APO AP 96368-5141

22 October 1993

SUBJ: Legal Review - Administrative Discharge - AB [REDACTED]
[REDACTED], 909 AREFS (PACAF), Kadena AB, Japan

TO: 18 WG/CC

1. BASIS: Lt Col [REDACTED] has initiated this administrative discharge action against AB [REDACTED] for Misconduct-Minor Disciplinary Infractions. The authority for this action is AFR 39-10, paragraph 5-46. The initiating commander has recommended a general discharge without probation and rehabilitation. Colonel [REDACTED] concurs with this action.

2. GOVERNMENT'S EVIDENCE: AB [REDACTED] has engaged in misconduct consisting of minor disciplinary infractions, specifically:

a. On or about 16 Jan 93, he operated a vehicle while drunk and in a reckless manner by driving in excess of the posted speed limit. As a result, he received an Article 15 on 25 Jan 93. Punishment consisted of reduction to the grade of Airman and forfeitures of \$188.00 per month for two months (Tab 1-1).

b. On or about 15 Sep 93, he failed to go at the time prescribed to his appointed place of duty. Additionally, on or about 15 Sep 93, he wrongfully overindulged in intoxicating liquor or drugs which resulted in his being incapacitated to properly perform his duties. As a result, he received an Article 15 on 24 Sep 93. Punishment consisted of reduction to the grade of AB (Tab 1-2).

3. RESPONDENT'S EVIDENCE:

a. The respondent, a 21-year old airman, originally enlisted 7 Jan 91. His AQE scores are A-48, E-82, G-66, and M-88. This airman has received two evaluation reports. His most recent EPR, which closed out 6 Sep 93, rated him an overall 3. The airman is entitled to wear the medals, awards and ribbons outlined in the commander's recommendation.

b. The respondent was given the opportunity to consult with military defense counsel and has submitted a statement in response to this discharge action. AB [REDACTED] discusses the circumstances surrounding his last Article 15. He believes that the Article 15 was unjust and that he was not the only person that was late for duty. He requests that he be allowed to finish out this enlistment. He believes that he has learned from his mistakes and that he is capable of taking corrective measures so that they will not happen again.

4. ERRORS OR IRREGULARITIES: None noted.

5. DISCUSSION:

a. AFR 39-10, paragraph 5-46, authorizes the involuntary separation of airmen who engage in minor disciplinary infractions. AB [REDACTED] misconduct has resulted in two Article 15s, one for operating a vehicle while drunk and in a reckless manner by exceeding the speed limit and the other for failure to go, wrongful overindulgence in intoxicating liquor or drugs and being incapacitated for the proper performance of his duties. AB [REDACTED] actions show a serious disregard for the safety and well-being of others, both on duty and in the civilian community. Therefore, the requirements of the regulation are satisfied and discharge is justified.

b. Characterization of service as general is appropriate when significant negative aspects of an airman's conduct outweigh positive aspects of his or her military record. Based on the serious nature of AB Hergenreder's misconduct, characterization of his service as general is appropriate.

c. I concur with 909 AREFS/CC that probation and rehabilitation is not appropriate for this airman. AB [REDACTED] was given the opportunity to rehabilitate himself after his first Article 15. He did not take advantage of that opportunity and repeated his misconduct. There is no reason to believe that further rehabilitative efforts would be effective.

6. OPTIONS: As special court-martial convening authority, you may:

a. Retain AB [REDACTED], if you consider discharge unwarranted;

b. Direct a general discharge with or without probation and rehabilitation; or

c. Recommend that 5 AF/CC direct an honorable discharge with or without probation and rehabilitation.

7. RECOMMENDATION:

I recommend you direct a general discharge without probation and rehabilitation by signing the attached letter. The point of contact for this opinion is [REDACTED]

[REDACTED], Colonel, USAF
Staff Judge Advocate, 18th Wing

2 Atch
1. Discharge Letter
2. Case File

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 for your use in the orderly room.

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

, Lt Col, USAF
Commander, 909th Air Refueling Squadron

3 Atch

1. 25 Jan 93, Article 15;
- 24 Sep 93, Article 15
2. Airman's Receipt of Notification Letter
3. EPRs