

## AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)	GRADE	AFSN/SSAN
[REDACTED]	[REDACTED]	[REDACTED]

TYPE	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	X	

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A01.01, A94.05	INDEX NUMBER A67.30	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 24 OCT 2003	CASE NUMBER FD2001-0525	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 RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

**REMARKS**  
 Case heard at the American Red Cross; Albany, New York.

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: 24 OCT 03
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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
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**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD2001-0525

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

The applicant was offered a personal appearance before the Discharge Review Board (DRB) and elected to exercise this right. However, the applicant failed to show for his personal appearance on the date agreed upon by the applicant and the DRB. Consequently, the applicant's case was adjudicated as a record review.

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

**ISSUES:** The applicant received a General Discharge (under Honorable conditions) as a result of a conviction by a Special Court-Martial, finding the applicant guilty on three specifications, his failure to obey a lawful order, resisting apprehension, and being drunk and disorderly. The applicant opined his discharge was improper due to the fact that he was not discharged during his Court-Martial and because he was still in training at the time of his offenses. However, AFI 36-3208 permits the involuntary administration discharge of members who are convicted at Court-Martial, but who are not adjudged a punitive separation at trial. The only limitation is on the characterization of military service, in that an Under Other Than Honorable discharge may not be approved in the administrative discharge processing without Secretary of the Air Force approval. In this case, the applicant received a General discharge. Additionally, the applicant's training status has no causal or mitigating relationship with either the offenses committed or the decision to execute the approved separation action.

**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)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/10/04 UP AFI 36-3208, para 5.50.1 (Misconduct - Discreditable Involvement with Military and Civil Authority). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 76/11/23. Enlmt Age: 23 6/12. Disch Age: 24 10/12. Educ:HS DIPL. AFQT: N/A. A-61, E-52, G-46, M-41. PAFSC: 2A631 - Aerospace Propulsion Apprentice. DAS: 00/08/21.

b. Prior Sv: (1) AFRes 00/05/31 - 00/06/28 (28 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 00/06/29 for 6 yrs. Svd: 01 Yrs 03 Mo 06 Das, of which AMS is 1 yr 3 months 6 days (excludes 1 month 15 days lost time).

b. Grade Status: AB - 01/07/09 (SPCMO#18, 01/08/03)  
 AMN/A1C - Unknown.

c. Time Lost: 01/06/25-01/09/09 (2 months 15 days)

d. Art 15's: none.

e. Additional: LOR, 05 JUN 01 - Violation of SAFBI 36-2902.  
 LOR, 29 JAN 01 - Dereliction of duty.  
 LOR, 29 JAN 01 - Violation of SAFBI 36-2902.  
 LOR, 12 JAN 01 - Failure to go.  
 LOR, 08 JAN 01 - Failure to go.  
 LOR, 20 DEC 00 - Violation of SAFBI 36-2902.  
 RIC, 21 SEP 00 - Talking in formation and talking back to a student leader.

f. CM: Special Court Martial No.18 - 01 August 03

CHARGE I: Article 92. Plea: Guilty. Finding: Guilty.

Specification: Having knowledge of a lawful order issued by A1C -----, to sit on the ground, an order which it was his duty to obey, did, at or near Sheppard AFB, Texas, on or about 15 Dec 00, fail to obey the same.

CHARGE II: Article 95. Plea: Guilty. Finding: Guilty.

Specification: Did, at or near Sheppard AFB, Texas, on or about

15 Dec 00, resist being apprehended by A1C ----- and A1C -----, armed force policemen, persons authorized to apprehend the accused.

CHARGE III: Article 134. Plea: Guilty. Finding: Guilty.

Specification: Was, at or near Sheppard AFB, Texas, on or about 15 Dec 00, drunk and disorderly. Sentence adjudged on 25 Jun 01: Confinement for 3 months, forfeiture of \$695.00 pay per month for 3 months, and reduction to E-1.

g. Record of SV: none.

(Discharged from Sheppard AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (01) Mos (19) Das  
TAMS: (01) Yrs (00) Mos (21) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/11/23.  
(Change Discharge to Honorable)

Issue 1: The discharge was improper due to the fact that I was not discharged during my Court Martial.

Issue 2: The discharge was improper because I was still in training at the time of the incident.

**ATCH**

1. Response to AFI 36-3208 Discharge Proceeding.
2. Character Reference.

02/01/30/ia



DEPARTMENT OF THE AIR FORCE  
AIR EDUCATION AND TRAINING COMMAND

FD 2001-0525

1 Oct 01

MEMORANDUM FOR 82 TRG/CC

FROM: 82 TRW/JAC

SUBJECT: Legal Review, Recommendation for Discharge [REDACTED]  
361 TRS

1. We have reviewed this discharge case file and find it legally sufficient to support discharge in accordance with the provisions of AFI 36-3208. Based upon our review, we conclude that the incidents documented within this file sufficiently support [REDACTED] discharge from the Air Force. We concur with the 361 TRS/CCQ that [REDACTED] should be discharged with an under honorable conditions (general) discharge in accordance with AFI 36-3208, paragraph 5.50.1 (discreditable involvement with military or civilian authorities).

2. Basis for Action. On 20 Sep 01, the 361 TRS/CCQ notified [REDACTED] that he was recommending that AB Tariuwa be discharged from the service due to his discreditable involvement with military or civilian authorities.

3. Evidence for the Commander. The preponderance of the evidence in the case file supporting the squadron section commander's recommendation consists of the following:

a. The respondent did, at or near Sheppard AFB TX, on or about 3 Jun 01 and on or about 4 Jun 01, violate a lawful general instruction, to wit: SAFBI 36-2902, paragraph 5.2.5, dated 15 Oct 97, by failing to return to and remain in his assigned dormitory from 2100 – 0400. For this misconduct, he received a Letter of Reprimand (LOR), on 5 Jun 01.

b. The respondent, who knew or should have known of his duties at Sheppard AFB TX, on or about 24 Jan 01, was derelict in the performance of those duties by disobeying a direct order and failing to report to building 1954 for details. For this misconduct, he received an LOR on 29 Jan 01.

c. The respondent did, at or near Sheppard AFB TX, on or about 21 Jan 01, violate a lawful general instruction, to wit: SAFBI 36-2902, paragraph 5.2.2, dated 15 Oct 97, by failing to remain in proper military uniform at all times and not wear civilian clothes on or off duty. For this misconduct and subparagraphs "d" and "e" below, he received an LOR on 29 Jan 01.

d. The respondent did, at or near Sheppard AFB TX, on or about 21 Jan 01, violate a lawful general instruction, to wit: SAFBI 36-2902, paragraph 2.1.12, dated 15 Oct 97, by smoking in an undesignated outside area.

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e. The respondent did, at or near Sheppard AFB TX, on or about 21 Jan 01, violate a lawful general instruction, to wit: SAFBI 36-2902, paragraph 5.2.5, dated 15 Oct 97, by failing to return to and remain in his assigned dormitory from 2100 – 0400.

f. The respondent did, at or near Sheppard AFB TX, on or about 11 Jan 01, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: [REDACTED]. For this misconduct and subparagraph “g” below, he received an LOR on 12 Jan 01.

g. The respondent did, at or near Sheppard AFB TX, on or about 8 Jan 01, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: [REDACTED].

h. The respondent did, at or near Sheppard AFB TX, on or about 5 Jan 01, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: morning details at 0600 and accountability at 0800, 1000, and 1130. For this misconduct and subparagraphs “i” and “j” below, he received an LOR on 8 Jan 01.

i. The respondent did, at or near Sheppard AFB TX, on or about 4 Jan 01, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: morning accountability at 0600.

j. The respondent did, at or near Sheppard AFB TX, on or about 3 Jan 01, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: details.

k. The respondent did, at or near Sheppard AFB TX, on or about 19 Dec 00, violate a lawful general instruction, to wit: SAFBI 36-2902, paragraph 5.2.5, dated 15 Oct 97, by failing to return to and remain in his assigned dormitory room from 2100 – 0400. For this misconduct, he received an LOR on 20 Dec 00.

l. The respondent, having knowledge of a lawful order issued by [REDACTED] to sit on the ground, an order which was his duty to obey, did, at or near Sheppard AFB TX, on or about 15 Dec 00, fail to obey same. For this misconduct and subparagraphs “m” and “n” below, he was found guilty by a Special Court-Martial on 25 Jun 01.

m. The respondent did, at or near Sheppard AFB TX, on or about 15 Dec 00, resist being apprehended by [REDACTED] and [REDACTED], armed force policemen, persons authorized to apprehend the accused.

n. The respondent was, at or near Sheppard AFB TX, on or about 15 Dec 00, drunk and disorderly.

o. The respondent did, at or near Sheppard AFB TX, on or about 15 Sep 00, talk in formation and talk back to a student leader. For this misconduct, he received an AF Form 174, Record of Individual Counseling, on 21 Sep 00.

4. Additional Information. The respondent is 24 years old, began his present enlistment on 29 Jun 00, and was assigned to his unit on 21 Aug 00. His ASVAB scores are as follows: A - 61, E - 52, G - 46, and M - 41. The respondent is entitled to wear the Air Force Training Ribbon. He has consulted with counsel and has submitted a statement for your consideration.

5. We note that attachment #21 of the Notification Memorandum has the wrong date. However, this administrative error does not affect the legal sufficiency of the discharge package and we concur with the squadron section commander's recommendation for an under honorable conditions (general) discharge

6. In accordance with AFI 36-3208, your options are to:

- a. Direct [REDACTED]
- b. Suspend an under honorable conditions (general) discharge and recommend Probation and Rehabilitation;
- c. Direct his discharge with an under honorable conditions (general) discharge.
- d. Recommend that [REDACTED] be discharged with an honorable discharge. If you determine an honorable discharge is appropriate, this file must be forwarded to 2 AF/CC because only a General Court Martial Convening Authority may approve an honorable discharge characterization when the basis for discharge is misconduct (AFI 36-3208, paragraph 5.48.4).

7. If you have any questions regarding this matter, please contact [REDACTED] at ext 6-7186.

[REDACTED]  
[REDACTED]  
Attorney Advisor

Attachment:  
Case File



DEPARTMENT OF THE AIR FORCE  
AIR EDUCATION AND TRAINING COMMAND

20 SEPT 2001

MEMORANDUM FOR [REDACTED]

FROM: 361 TRS/CCQ

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for discreditable involvement with military and civil authorities. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.50.1. If my recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reasons for this action are:

a. You did, at or near Sheppard AFB TX, on or about 3 Jun 01 and on or about 4 Jun 01, violate a lawful general instruction, to wit: Paragraph 5.2.5, SAFBI 36-2902, dated 15 Oct 97, by failing to return to and remain in your assigned dormitory room from 2100-0400 hours. For this misconduct, you received a Letter of Reprimand (LOR) on 5 Jun 01.

b. You, who knew of should have known of your duties at or near Sheppard AFB TX, on or about 24 Jan 01, were derelict in the performance of those duties by disobeying a direct order and failing to report to building 1954 for details. For this misconduct, you received an LOR on 29 Jan 01.

c. You did, at or near Sheppard AFB TX, on or about 21 Jan 01, violate a lawful general instruction, to wit: paragraph 5.2.2, SAFBI 36-2902, dated 15 Oct 97, by failing to remain in proper military uniform at all times and not wear civilian clothes on or off duty. For this misconduct and subparagraphs "d" and "e" below, you received an LOR on 29 Jan 01.

d. You did, at or near Sheppard AFB TX, on or about 21 Jan 01, violate a lawful general instruction, to wit: SAFBI 36-2902, dated 15 Oct 97, paragraph 2.1.12, by smoking in an undesignated outside area.

e. You did, at or near Sheppard AFB TX, on or about 21 Jan 01, violate a lawful general instruction, to wit: SAFBI 36-2902, dated 15 Oct 97, paragraph 5.2.5, by failing to return to and remain in your assigned dormitory from 2100 - 0400.

f. You did, at or near Sheppard AFB TX, on or about 11 Jan 01, fail to go to your appointed place of duty at the prescribed time, to wit: [REDACTED]. For this misconduct and subparagraph "g" below, you received an LOR on 12 Jan 01.

g. You did, at or near Sheppard AFB TX, on or about 8 Jan 01, fail to go to your appointed place of duty at the prescribed time, to wit: [REDACTED].

h. You did, at or near Sheppard AFB TX, on or about 5 Jan 01, fail to go to your appointed place of duty at the prescribed time, to wit: morning details at 0600 and accountability at 0800,

1000, and 1130. For this misconduct and subparagraphs "i" and "j" below, you received an LOR on 8 Jan 01.

i. You did, at or near Sheppard AFB TX, on or about 4 Jan 01, fail to go to your appointed place of duty at the prescribed time, to wit: Morning accountability at 0600.

j. You did, at or near Sheppard AFB TX, on or about 3 Jan 01, fail to go to your appointed place of duty at the prescribed time, to wit: details.

k. You did, at or near Sheppard AFB TX, on or about 19 Dec 00, violate a lawful general instruction, to wit: Paragraph 5.2.5, SAFBI 36-2902, dated 15 Oct 97, by failing to return to and remain in your assigned dormitory room from 2100-0400 hours. For this misconduct, you received an LOR on 20 Dec 00.

l. You, having knowledge of a lawful order issued by ~~\_\_\_\_\_~~, to sit on the ground, an order which it was your duty to obey, did, at or near Sheppard AFB TX, on or about 15 Dec 00, fail to obey the same. For this misconduct and subparagraphs "m" and "n" below, you were found guilty by a Special Court-Martial on 25 Jun 01.

m. You did, at or near Sheppard AFB TX, on or about 15 Dec 00, resist being apprehended by ~~\_\_\_\_\_~~ and ~~\_\_\_\_\_~~, armed force policeman, persons authorized to apprehend the accused.

n. You were, at or near Sheppard AFB TX, on or about 15 Dec 00, drunk and disorderly.

o. You did, at or near Sheppard AFB TX, on or about 15 Sep 00, talk in formation and talk back to a student leader. For this misconduct, you received an AF Form 174, Record of Individual Counseling, on 21 Sep 00.

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or 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 to reenlist in the Air Force and will probably be denied enlistment in any component of the armed forces. Any special pay, bonuses or education assistance will be subject to recoupment.

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 ~~\_\_\_\_\_~~, Area Defense Counsel, at BLDG 1638, on 21 Sep 01 at 1100 hours. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 25 SEPT 2001 01, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

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

6. You were scheduled for a medical examination on 17 Sep 01.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in the 361 TRS student administration office.

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

[REDACTED]  
[REDACTED] SAE  
Squadron Section Commander

Attachments:

1. LOR, 5 Jun 01
2. AF Form 1168, [REDACTED], 4 Jun 01
3. AF Form 1168, [REDACTED], 2 Jul 01
4. AF Form 1168, [REDACTED], 4 Jun 01
5. LOR, 29 Jan 01
6. LOR, 29 Jan 01
7. LOR, 12 Jan 01
8. MFR, [REDACTED], 18 Sep 01
9. AF Form 1168, A1C Case, 13 Jan 01
10. LOR, 8 Jan 01
11. LOR, 20 Dec 00
12. AF Form 1168, [REDACTED], 20 Dec 00
13. AF Form 1168, [REDACTED], 20 Dec 00
14. Special Court-Martial Order, 3 Aug 01 w/Article 64(a)
15. DD Form 490, 25 Jun 01 w/Article 64(a)
16. AF Form 1359, 25 Jun 01
17. DD Form 458, 1 May 01
18. Stipulation of Fact, 25 Jun 01
19. Unsworn Statement of [REDACTED], undated/unsigned
20. AF Form 174, 21 Sep 00
21. AF Form 1168, [REDACTED], 4 Jun 01
22. AF Form 1168, [REDACTED], 2 Jun 01
23. Student Training Report, 01005
24. LAFB Form 205, 15 Aug 01
25. AF Form 2098, 28 Jun 01
26. AF Form 2098, 14 Sep 01
27. Airman's Receipt to Notification Memorandum *wd*