

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

MEMBER SITTING	VOICE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A93.21	INDEX NUMBER A67.10	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	
HEARING DATE 23 Sep 2003	CASE NUMBER FD-2002-0163		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE	
			TAPE RECORDING OF PERSONAL APPEARANCE	

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

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 RECORD [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT		DATE: 9/23/2003
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-2002-0163
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GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) 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 nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issue 1. Applicant was discharged for minor disciplinary infractions and for unsatisfactory performance. The records indicated the applicant received three Letters of Reprimand, three Records of Individual Counseling and an Unfavorable Information File for misconduct. He was also placed on the Control Roster. The misconduct included five instances of being late for duty, disobeying a lawful order, making a false statement, and failing to pay a just debt. Additionally, member failed his End of Course Examination with a score of 48%, and before discharge was recommended, his supervisor worked closely with him reviewing test material, to no avail. Applicant contends he suffered from a sleep disorder which sometimes caused his tardiness. The records review disclosed no documents supporting this contention, nor did applicant submit any substantial documented evidence of such other than his personal assertions. In the absence of such evidence, the Board finds this issue without merit. The DRB opined that through the unit's administrative actions, the applicant had ample opportunities to change his negative behavior and improve his performance. The Board concluded the misconduct was a significant departure from conduct expected of all military members, and therefore the characterization of the discharge received by the applicant was appropriate. In summary, the Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge.

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 A1C) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 01/05/03 UP AFI 36-3208, para 5.49 & 5.26.3 (Misconduct - Minor Disciplinary Infractions & Unsatisfactory Performance). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 80/01/02. Enlmt Age: 18 7/12. Disch Age: 21 4/12. Educ:HS DIPL. AFQT: N/A. A-51, E-54, G-64, M-40. PAFSC: 3V032 - Visual Information Apprentice. DAS: 98/12/29.

b. Prior Sv: (1) AFRes 98/09/01 - 98/11/09 (2 months 9 days)(Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 98/11/10 for 4 yrs. Svd: 02 Yrs 05 Mo 24 Das, all AMS.

b. Grade Status: A1C - 00/07/10
AMN - 99/09/10

c. Time Lost: none.

d. Art 15's: none.

e. Additional: LOR, 12 JUL 00 - Late for duty.
LOR, 15 SEP 00 - Failure to go and disobeying an order.
LOR, 23 OCT 00 - Late for duty, making a false statement,
and failure to pay just debt.
LOC, 01 FEB 01 - Late for duty.

f. CM: none.

g. Record of SV: 98/11/10 - 00/07/09 Bolling AFB 5 (Initial)

(Discharged from Bolling AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (02) Yrs (08) Mos (03) Das
TAMS: (02) Yrs (05) Mos (24) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/03/30.
(Change Discharge to Honorable)

Issue 1: I was enlisted in the United States Airforce from November 10,

1998 till May 4, 2001. I was discharged for misconduct and my status of discharge was Other than Honorable Conditions. The reason of Discharge was Career Development Course (CDC) Failure, and Failure to go. I failed my CDC's twice. When I failed the second time, I was asked if I wanted to stay in the military by my supervisor, SSgt ----- . I was told that if I wanted to continue my military career, she (SSgt -----) would take the proper steps so that I could. At that time I decided to desist my military career (sic). Upon my discharge my Commander decided to discharge me for failure to go. During my time in the military I was sometimes late to work. In my medical records I have documented files where I went to the clinic for a sleeping disorder. I was put on a eating diet to correct the situation. With that in mind I do not believe that my discharge nor my re-entry code is fair. I also believe that if I was given the option of continuing my career, even if its a year later, I should be able to do so.

ATCH

1. Two Character References.
2. Neurology Department Sleep Laboratory Questionnaire.
3. Medical Documents.
4. Congressional Correspondence.

02/07/31/ia



DEPARTMENT OF THE AIR FORCE
11TH WING

MEMORANDUM FOR HQ 11 SPTG/CC

APR 26 2001

FROM: HQ 11 WG/JA
20 MacDill Blvd Suite 207
Bolling AFB DC 20332

SUBJECT: Legal Review - Administrative Discharge of [REDACTED],
[REDACTED], 11th Communications Squadron, Bolling AFB, DC

1. I have reviewed the referenced AFI 36-3208 action. [REDACTED] (hereafter "respondent"), is a 21 year old member who has been on active duty since 10 November 1998. The 11 CS/CC has initiated discharge proceedings under the provisions of AFPD 36-32 and AFI 36-3208, paragraphs 5.26.3 and 5.49, for failure to progress in On-The-Job Training (OJT) and Minor Disciplinary Infractions. The respondent was notified of these proceedings on 10 April 2001, consulted counsel, and has not submitted a statement for your consideration. The file is legally sufficient to support discharge.

2. Evidence supporting discharge:

a. On or about 21 August 2000 and on or about 24 October 2000 he failed his Career Development Course Examination which is required for upgrade training.

b. On or about 11 July 2000, he was late for duty. For this misconduct, he received a Letter of Reprimand dated 12 July 2000. He was also late for duty three times in the previous three months.

c. On or about 13 September 2000, he was scheduled to attend a Personal Financial Management Class which he failed to attend. He also disobeyed an order from his First Shift to not allow people in his dorm room who were discharged from the Air Force for drug use/possession and barred from base. For this misconduct, he received a Letter of Reprimand dated 15 September 2000.

d. On 15 September 2000, he made a false official statement when he asked his supervisor to let him go to his bank in Virginia to get money he stated would be used to pay his DPP bill before the late payment notification. On 26 September 2000, his supervisor received a notification from AAFES about an outstanding DPP bill. To date, he has not provided his supervisor with a receipt confirming payment. On or about 18 October 2000, he reported to duty twenty-five minutes late. He was also counseled and reprimanded several times in four months for lateness. For this misconduct, he

received a Letter of Reprimand dated 23 October 2000. This Letter of Reprimand was placed in an Unfavorable Information File and he was placed on a Control Roster.

e. On or about 31 January 2001, he was two hours and twenty-five minutes late for duty which caused him to be 20 minutes late to a scheduled job for the USAF Band. For this misconduct, he received a Letter of Counseling dated 1 February 2001.

3. Information on the Respondent: The respondent has one Enlisted Performance Report (EPR) on file. The respondent has been awarded the Air Force Training Ribbon and the Outstanding Unit Award.

4. Medical Information: The report of medical assessment on the respondent is within the package.

5. Discharge Considerations: This discharge action raises four issues for your consideration: Is the respondent subject to discharge; if the respondent is subject to discharge, should the respondent be discharged; if discharged, what is the appropriate characterization of service; and whether the respondent should be offered Probation and Rehabilitation IAW AFI 36-3208 Chapter 7.

a. The Respondent is Subject to Discharge: Under the provisions of AFI 36-3208, paragraph 5.49, an enlisted member is subject to discharge when he or she has engaged in a pattern of misconduct consisting of infractions that involve failure to comply with non-punitive regulations or minor offenses under the UCMJ. Infractions of this type, as a rule, result in informal or formal counseling, letters of reprimand, or Article 15 nonjudicial punishments. The facts set forth in paragraph 2 above support discharge under this provision of the AFI. On at least five separate occasions, the respondent engaged in misconduct resulting in a Letter of Counseling and three Letters of Reprimand.

b. Under the provisions of AFI 36-3208, paragraph 5.26.3, an enlisted member is subject to discharge when he or she has failed to progress in On-The-Job Training. A1C [REDACTED] was given ample opportunity to study and prepare for his Career Development Course. A1C [REDACTED] supervisor worked closely with him reviewing the test material. Despite these measures, A1C [REDACTED] failed the examination twice.

c. The Respondent Should be Discharged: The respondent should be discharged because he has demonstrated that he is unwilling to conform to the standards expected of airmen in the United States Air Force. The respondent has had ample opportunity to conform to military standards after receiving a Letter of Counseling and three Letters of Reprimand. However, the respondent has blatantly failed on numerous occasions to take advantage of those opportunities. Therefore, the respondent should be discharged.

d. Appropriate Service Characterization: Under the provisions of AFI 36-3208, the

respondent may be discharged with a service characterization of Honorable, General or Under Other Than Honorable Conditions (UOTHC).

(1) Under paragraph 1.18, a General Discharge is appropriate when the member's service has been honest and faithful but is outweighed by significant negative aspects of the member's record. The facts in this case support a service characterization of General.

(2) An Honorable Discharge is given when the quality of the 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. In this case, an Honorable Discharge is not warranted because of the frequency of the respondent's misconduct, given his 2 years and 2 months on active duty. There is no evidence that the respondent's "service is otherwise so meritorious that any other characterization would be inappropriate."

(3) A UOTHC discharge is appropriate when the reason for separation is "a significant departure from the conduct expected of airman." Such examples include use of force/violence to produce serious bodily injuries/death or acts of omissions that endanger the health/welfare of other Air Force members. In this case, the respondent's misconduct does not warrant a UOTHC discharge.

e. Probation and Rehabilitation: Probation and Rehabilitation under the provisions of Chapter 7 should not be offered to the respondent in this case, because the respondent has been given ample opportunity (as demonstrated by the rehabilitation efforts set forth in paragraph 2 above) to show meet Air Force standards; yet, he repeatedly demonstrated he is unwilling to meet Air Force standards.

6. Options: You have the following options with respect to this discharge:

a. Retain the respondent in the Air Force by returning the package to the Initiating commander and terminating the discharge proceedings; or

b. Order the separation of the respondent with a General Discharge with or without offering Probation and Rehabilitation; or

c. Forward the package to HQ 11 WG/CC with a recommendation that the respondent be discharged with an Honorable or UOTHC Discharge.

7. Recommendations: The commander recommended you separate the respondent with a General Discharge without Probation and Rehabilitation. I agree. This may be accomplished by signing the attached document.

A large black rectangular redaction box covers the signature of the Staff Judge Advocate.

Staff Judge Advocate

Attachments:

1. Draft Discharge Order
2. 11 CS/CC Recommendation
3. A1C Richle's waiver, dtd 10 Apr 01
4. Discharge Package



DEPARTMENT OF THE AIR FORCE
11TH WING

MEMORANDUM FOR A1C [REDACTED]
11 CS

10 Apr 01

FROM: 11 CS/CC
20 MacDill Blvd Suite 102
Bolling AFB DC 2032-0403

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Failure to progress in On-the-Job Training (OJT) and for Minor Disciplinary Infractions. The authority for this action is AFDPD 36-32 and AFI 36-3208, paragraphs 5.26.3 and 5.49. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as ~~(honorable)~~ (general) without probation and rehabilitation.

2. My reasons for this action are:

a. On or about 21 August 2000 and on or about 24 October 2000 you failed your Career Development Course Examination which is required for upgrade training (Atch 1).

b. On or about 11 July 2000, you were late for duty. You were also late for duty three times in three months for which you received verbal counseling and a Letter of Counseling. For this misconduct, you received a Letter of Reprimand dated 12 July 2000 (Atch 2).

c. On or about 13 September 2000, you were scheduled to attend a Personal Financial Management Class which you failed to attend. You also disobeyed an order from your First Shirt to not allow people in your dorm room who were discharged from the Air Force for drug use/possession and barred from base. For this misconduct, you received a Letter of Reprimand dated 15 September 2000 (Atch 3).

d. On or about 18 October 2000, you reported to duty twenty-five minutes late. On 15 September 2000, you made a false official statement when you asked your supervisor to let you go to your bank in Virginia to get money you stated would be used to pay your DPP bill before the late payment notification. On 26 September 2000, your supervisor received a notification from AAFES about an outstanding DPP bill (Atch 4). To date, you have not provided your supervisor with a receipt confirming payment. You were also counseled and reprimanded several times in four months for lateness. For

this misconduct, you received a Letter of Reprimand dated 23 October 2000 (Atch 5). This Letter of Reprimand was placed in an Unfavorable Information File and you were placed on a Control Roster (Atch 6).

e. On or about 31 January 2001, you were two hours and twenty-five minutes late for duty which caused you to be 20 minutes late to a scheduled job for the USAF Band. For this misconduct, you received a Letter of Counseling dated 1 February 2001 (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 or a higher authority will decide whether you will be discharged or retained in the Air Force. If you are 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 counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult the Area Defense Counsel, Captain [REDACTED] 1430 Arnold Avenue, Andrews AFB MD 20762, (240) 857-6624 on Tuesday, 10 April 2001, at 1300 hours. You may consult civilian counsel at your own expense.

5. You have been scheduled for a medical examination. You must report to the Bolling AFB Clinic (Family Practice Section), Bldg 1300, at 1620 hours on Tuesday, 10 April 2001 for the examination.

6. You have the right to submit a statement on your own behalf. Any statements you want the separation authority to consider must reach me within 3 duty days of receipt of this notification, unless you request and receive an approved extension. I will send any documents you submit to the separation authority.

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

8. 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 your orderly room.

[REDACTED]
Commander, 11 CS

Attachments:

1. Memorandum from Education and Training Flight and AF Form 623a

2. LOR, dtd 12 July 2000
3. LOR, dtd 15 September 2000
4. Letter from AAFES
5. LOR, dtd 23 October 2000
6. UIF, dtd 27 October 2000
7. LOC, dtd 1 February 2001