

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AB	AFSN/SSAN [REDACTED]
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TYPE	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	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 A94.08; A92.22;A92.06;A93.02	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 4 FEB 03	CASE NUMBER FD2002-0185	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 RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.

REMARKS
Case heard at Travis AFB, California.

Advise applicant of the decision of the Board.

SIGNATURE OF RECORDING OFFICER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 4 FEB 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 RD FLOOR ANDREWS AFB, MD 20762-7002
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0185

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Travis AFB, CA on February 4, 2003.

The following additional exhibits were submitted at the hearing: Exhibit 5: Applicant's Contentions; Exhibit 6: AFI 36-3208 Excerpt; Exhibit 7: 341 SFS/CC Notification Memorandum; Exhibit 8: Porterville Chief of Police Letter, 25 Nov 02; Exhibit 9: Basic Peace Officer training Certificate, 6 Jul 02; Exhibit 10: College of the Sequoias Certification Letter, 6 Jul 02; Exhibit 11: Tulare-Kings Police Academy Course Completion Certificate, 11 Feb 02.

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

FINDINGS: The Board grants the requested relief.

The Board finds that neither the evidence of record or that provided by the applicant substantiates an impropriety that would justify upgrade of the discharge. However, after a thorough review of the record, the Board finds that the applicant's character of discharge is inequitable.

ISSUES: The applicant was discharged with an Under Other Than Honorable Discharge for Discharge in Lieu of Court-martial. The record indicates the applicant received nonjudicial punishment under Article 15, UCMJ on two occasions for two failures to go, underage drinking, consuming alcohol within eight hours of duty, and making a false official statement. He also received two letters of reprimand – one for unlawful possession of alcohol and the other for soliciting another to commit a crime (vandalism), vandalism (using a baseball bat to smash the back window on the truck owned by his minor girlfriend's father), and obstruction of justice (by telling a friend to say nothing about the vandalism). Notwithstanding the applicant's equivocation regarding his misconduct and his troubling attempt to shift blame for his actions on to other Air Force personnel, the Board determined the applicant engaged in the misconduct alleged. Moreover, the applicant's abject unwillingness to accept responsibility for his conduct—to include attempts to blame his superiors for his alcohol consumption and his incomprehensible failure to make restitution to the victim for the damage to the car he admitted he caused—was of extreme concern to the Board and suggested a troubling lack of character. The Board, nevertheless, felt obligated to upgrade the characterization of service. The Board determined that the applicant's commander was in the process of discharging the applicant for Misconduct with a general service characterization. For reasons that could not be ascertained by reviewing the file, the very same misconduct then became the subject of a court-martial when charges were preferred against the applicant. There was utterly no documentation in the applicant's file explaining why discharge proceedings were halted and court-martial charges were preferred. Moreover, there was no documentation in the file explaining how the same misconduct then came to be used to justify a service characterization of under other than honorable conditions. While it is Air Force policy to characterize service as UOTHC when granting a request for discharge in lieu of court-martial, that label must still be an accurate description of the individual's service. Air Force policy alone is simply not sufficient to justify the UOTHC service characterization in this case. Simply put, such a characterization does not correctly describe the applicant's service. The command's initial decision to characterize the same service as general reinforces this point. The absence of any explanation for the command's decision to alter the characterization of service for the worse compelled the Board to give the applicant the benefit of the doubt under these unique circumstances.

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.

However, in view of the foregoing findings, the Board also concludes that the overall quality of applicant's service is more accurately reflected by a General discharge and that equitable considerations necessitated an upgrade. The applicant's characterization for discharge should be changed to general under the provisions of Title 10, USC 1553.

Attachment:
Examiner's Brief

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

[REDACTED]

(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 01/11/07 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for General Disch.

2. **BACKGROUND:**

a. DOB: 82/08/05. Enlmt Age: 17 6/12. Disch Age: 19 3/12. Educ:HS DIPL. AFQT: N/A. A-76, E-88, G-80, M-79. PAFSC: 3P031 - Security Apprentice. DAS: 00/12/11.

b. Prior Sv: (1) AFRes 00/02/15 - 00/06/20 (4 months 6 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 00/06/21 for 6 yrs. Svd: 01 Yrs 04 Mo 17 Das, all AMS.

b. Grade Status: AB - 01/08/02 (Article 15, 01/08/02)
AMN - 01/06/11 (Article 15, 01/06/11)
A1C - 00/08/04

c. Time Lost: none.

d. Art 15's: (1) 01/08/02, Malmstrom AFB, MT - Article 86. You did, on or about 5 Jul 01, without authority, go from your appointed place of duty. Article 107. You did, on or about 5 Jul 01, with intent to deceive, make to TSgt -----, Dorm Manager, an official statement, to wit: you had a smoking cessation class which started at 0800 and would be complete at 1200, or words to that effect, which statement was false in that you were not enrolled in a smoking cessation class, and was then known by you to be so false. Reduction to AB, forfeiture of \$521.00 pay per month for 2 months, and a reprimand. (Appeal/Denied) (No mitigation)

(2) 01/06/11, Malmstrom AFB, MT - Article 86. You did, on or about 4 May 01, without authority, fail to go at the time prescribed to your appointed place of duty. You did, on or about 5 May 01, without authority, fail to go at the time prescribed to your appointed place of duty. Article 92. You did, on or about 5 May 01, fail to obey a lawful general regulation, to wit: AFI 31-201, Chapter 3, paragraph 3.1.6, dated 28 Apr 99, by wrongfully consuming alcohol within 8 hours of a duty tour. You, who knew of your duties, on or about 5 May

01, were derelict in the performance of those duties in that you willfully failed to refrain from drinking alcoholic beverages while under the age of 21 years, as it was your duty to do. Reduction to Amn, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOR, 19 APR 01 - Unlawful possession of alcohol.
LOR, 31 JUL 01 - Soliciting another to commit a crime.

f. CM: none.

g. Record of SV: none.

(Discharged from Malmstrom AFB)

h. Awards & Decs: AFTR, SAEMR.

i. Stmt of Sv: TMS: (01) Yrs (08) Mos (23) Das
TAMS: (01) Yrs (04) Mos (17) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/02.
(Change Discharge to General)

Issue 1: The acts for which I was charged in the Court Martial proceedings were clearly not of the severity listed under 1.18.3 of AFI 36-3208.

Issue 2: I clearly made positive contributions to the Air Force during my service. Character letters may be found in my application for Discharge In Lieu of Court Martial from supervisors which I served under.

Issue 3: My records will show that I recieved (sic) all 5's (sic) upon completion of basic training for my performance as element leader. Furthermore, I recieved (sic) the distinguished (sic) graduate award upon completion of technical school. I also passed my hazmat certification and was a certified entry controler (sic) at Malmstrom.

Issue 4: Since my discharge I am now attending the ----- Police Academy. My performance has been exemplary. I ask that the black mark of a UOTH not be left with me to hinder my goal of becoming a law enforcement officer.

ATCH

1. AFI 36-3208.
2. Enrollment in Police Academy.
3. Police Academy Correspondenct.

02/08/12/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 341ST SPACE WING (AFSPC)

MEMORANDUM FOR 341 SFS (ATTN: AB [REDACTED])

FROM: 341 SFS/CC

SUBJECT: Notification Memorandum

1. Pursuant to AFPD 36-32 and AFI 36-3208, paragraph 5.50.2, I am recommending your discharge from the United States Air Force for pattern of misconduct (conduct prejudicial to good order and discipline). If my recommendation is approved, your service will be characterized as either honorable or general. I am recommending a general discharge.

2. My reasons for this action are:

a. On 15 Apr 01, you were cited by the Great Falls Police Dept for the offense of Unlawful Possession of Alcohol (minor in possession). In addition, you failed to provide your location to the Malmstrom 911 dispatcher when you were ordered to do so. For this misconduct, you received a Letter of Reprimand (LOR) dated 19 Apr 01 and an Unfavorable Information File (UIF) was established.

b. On or about 4 May 01, you failed to go at the time prescribed to your appointed place of duty, to wit: Bldg 500. In addition, on or about 5 May 01, you failed to go at the time prescribed to your appointed place of duty, to wit: Bldg 500. Further, on or about 5 May 01, you failed to obey a lawful general regulation, to wit: AFI 31-201, para 3.1.6, by wrongfully consuming alcohol within 8 hours of a duty tour. Finally, on or about 5 May 01, you were derelict in the performance of those duties in that you willfully failed to refrain from drinking alcoholic beverages while under the age of 21 years, as it was your duty to do. For this collective misconduct, you received an Article 15 dated 11 Jun 01 with punishment reducing you to the grade of Airman and a reprimand. This Article 15 was placed in your UIF.

c. On 21 Jul 01, you were observed smashing the window of [REDACTED] suburban. After smashing the window, you fled the scene and went back to your apartment. Further, on 22 Jul 01, you telephoned [REDACTED] instructing him to keep his mouth shut. This act is considered soliciting another to commit a crime. For this misconduct, you received an LOR dated 31 Jul 01.

d. On or about 5 Jul 01, you did, without authority, go from your appointed place of duty, to wit: Bldg 631. In addition, on or about 5 Jul 01, you made an official statement, to wit: you had a smoking cessation class, which statement was false in that you were not enrolled in a smoking cessation class. For this misconduct, you received an Article 15 dated 2 Aug 01, with punishment reducing you to the grade of Airman Basic, forfeiture of \$521.00 pay per month for 2 months and a reprimand. This Article 15 was placed in your UIF.

3. Copies of the attached documents will be forwarded to the separation authority in support of this recommendation. The commander exercising SPCM jurisdiction or a 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 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 have made an appointment for you to consult the Area Defense Counsel, x4723, 7015 Goddard Drive, Bldg 145, Room 144 on _____ at _____. You may consult civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. You have 3 duty days from the date of this letter (COB _____), to provide me with any statements you want the separation authority to consider. You may request and receive an extension for good cause shown. I will send all submitted statements 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 must receive a medical examination. You are scheduled for a medical examination at the 341st Medical Group Physical Examination Section, x4453, on _____ at _____ hours. You **MUST** be in uniform for this appointment. If you wear glasses, you must also bring them to this appointment.
8. Any personal information you provide in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208, *Administrative Separation of Airmen*, is available for your use at your orderly room.
9. Execute the attached acknowledgement and return it to me immediately.

Commander

Attachments:

1. Supporting documents:
 - a. LOR dated 19 Apr 01 w/ UIF Action
 - b. Art 15 dated 11 Jun 01 w/UIF Action
 - c. LOR dated 31 Jul 01 w/UIF Action
 - d. Art 15 dated 2 Aug 01 w/ UIF Action
 - e. Documents in Attachment 6
2. Airman's Receipt of Notification Memorandum