

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE AMN	AFSN/SSAN [REDACTED]			
TYPE GEN	X 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 A01.14, 28.00, 93.02, 93.22, 93.34, 94.02, 94.06, 94.12		INDEX NUMBER A67.90		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	
					TAPE RECORDING OF PERSONAL APPEARANCE HEARING	
HEARING DATE 6 MAR 03		CASE NUMBER FD2002-02228		APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.		
REMARKS						
<p>Case heard at Washington, DC.</p> <p>+ Change RE Code</p> <p>* Change Reason and Authority for discharge</p> <p>Advise applicant of the decision of the Board.</p>						
SIGNATURE OF RECORDER [REDACTED]			SIGNATURE OF BOARD PRESIDENT [REDACTED]			
INDORSEMENT				DATE: 7 MAR 03		
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			

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0228

GENERAL: The applicant appeals for upgrade of discharge to honorable and for a change in the RE Code and the Reason and Authority for discharge.

The applicant's case was considered by the Discharge Review Board (DRB), at Andrews AFB, MD, on March 6, 2003. The applicant appeared before the DRB but did not have counsel. [REDACTED] the applicant's father, also appeared and testified on behalf of the applicant.

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

FINDINGS: The DRB grants the requested relief.

The DRB finds that the evidence of record and that provided by the applicant substantiates an inequity and an impropriety that would justify an upgrade of the discharge.

ISSUES: The applicant was discharged with a general service characterization from the Air Force for misconduct or more specifically, conduct prejudicial to good order and discipline. He had a letter of reprimand (LOR) for possessing alcohol as a minor (he was prosecuted by civilian authorities), an LOR for failing a room inspection, a record of individual counseling (RIC) for failing to obey an order to study his technical orders (TOs), an Article 15 for leaving his duty section without permission and for a false official statement related to his departure, and an Article 15 for failure to go for being over an hour late to work. Shortly after arriving at his duty station (2 months), the applicant injured his back severely enough to be placed on profile for over a year. The injury was so severe, there were discussions concerning a medical evaluation board for the applicant. As a result of his injuries, he was unable to perform his maintenance duties and was required to perform light duty instead.

CONCLUSIONS: The DRB concludes that the discharge was not consistent with the substantive and procedural requirements of the discharge regulation and was an abuse of discretion by the discharge authority.

It appeared to the DRB that the applicant was unjustly and inequitably treated by the leadership of his unit. From the beginning of his testimony, the applicant acknowledged responsibility for his misconduct. Therefore, there was no doubt as to the applicant's actions. Indeed, he noted that his discharge was ultimately his own doing because had he not engaged in the misconduct, he would not have been subject to disciplinary actions. He felt, rather, he had not been given a chance to prove he could be a contributing member of the unit and the Air Force. In that regard, he was seeking what amounted to a second chance. However, without an inequity or impropriety, the discharge would stand and the applicant would not be given another opportunity to serve. The focus, then, turned to the actions of his superiors. The DRB concluded that the applicant's superiors were taking disciplinary action out of proportion to the misconduct and were taking disciplinary action in the absence of misconduct. For example, the DRB felt the LOR for the applicant's first failed room inspection was excessive. The RIC for failure to obey an order was inappropriate because the evidence indicated that under the circumstances, the applicant did not actually fail to obey an order - the DRB was not convinced the direction to read the TOs was understood to have been an order or even that it could properly be considered an order. The evidence indicated that the Article 15 for leaving work without permission and for false statement appeared to be based on a misunderstanding rather than an intent to deceive. The genesis for the unit's reaction to the applicant's behavior appears to have been the back injury. The applicant's superiors were simply reacting to what they perceived as a malingering airman. The applicant was thought to be an airman who was not pulling his weight and who was more interested in avoiding work than doing work. In that way, the applicant was prejudiced by the

back injury. When viewed in that context, the harsh reactions to the applicant's behavior and the apparent unwillingness of the unit to work with the applicant make sense. Moreover, the exaggerated response to some of the applicant's behavior caused other incidents to take on even greater significance. For example, an Article 15 is not the typical response for a first-time failure to go. Likewise, while an LOR is an appropriate response to a civilian arrest for drinking under age, this behavior is so common and the circumstances of the accused's violation were so benign that this misconduct would not have served as a basis for discharge. In the end, all of this led to the inequitable treatment of the applicant and impropriety in the administration of the disciplinary actions.

The applicant's presentation and demeanor convinced the DRB he deserved a second chance to contribute to the Air Force and serve his country. At one point, the applicant stated, "If I get my chance to go back in, I will give my 200 percent and I can assure you of that." The DRB is taking the applicant at his word and will grant the opportunity for him to give his 200 percent.

Having found inequity and impropriety, the DRB grants the requested relief and orders the characterization of service to be upgraded to honorable, that the reason and authority for discharge be changed to Secretarial Authority, and that the RE Code be changed to 3K.

Attachment:
Examiner's Brief

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

[REDACTED]
[REDACTED]
(Former AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/05/24 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge, to Change the RE Code, and Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 79/05/13. Enlmt Age: 19 3/12. Disch Age: 21 0/12. Educ: HS DIPL. AFQT: N/A. A-41, E-65, G-64, M-81. PAFSC: 2A531G - Aerospace Maintenance Specialist. DAS: 99/05/20.

b. Prior Sv: (1) AFRes 98/09/12 - 98/12/15 (3 months 4 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/12/16 for 4 yrs. Svd: 01 Yrs 05 Mo 09 Das, all AMS.

b. Grade Status: AB - 00/04/27 (Article 15, 00/04/27)
AMN - 99/06/16

c. Time Lost: none.

d. Art 15's: (1) 00/04/27, Grand Forks AFB, ND - Article 86. You, did, on or about 12 April 00, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to AB, forfeiture of \$465.00 pay, and 14 days extra duty. (No appeal) (No mitigation)

(2) 00/03/16, Grand Forks, ND - Article 86. You, did, on or about 01 Mar 00, without authority, go from your appointed place of duty. Article 107. You, did, on or about 01 Mar 00, with intent to deceive, make to TSgt - ----- an official statement, to wit: that you had a physical therapy appointment at 0930, which statement was totally false, and was known by you to be so false. Restriction to Grand Forks AFB for 30 days, and 15 days extra duty. (No appeal) (No mitigation)

e. Additional: ROC, 31 JAN 00 - Failure to obey a lawful order.
LOR, 27 JAN 00 - Failed inspection.
LOR, 09 DEC 99 - Civil arrest for possessing alcoholic beverages under age.

f. CM: none.

g. Record of SV: none.

(Discharged from Grand Forks AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (08) Mos (13) Das
TAMS: (01) Yrs (05) Mos (09) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/24.

(Change Discharge to Honorable, Change the RE Code, and Change the Reason and Authority for Discharge)

Issue 1: I would like to review and discuss all medical records from my time of service.

Issue 2: I would like to review and discuss the events surrounding my discharge.

Issue 3: The reason for requesting my discharge upgrade is specifically for my reenlistment into the armed forces.

ATCH
none.

02/09/03/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 319TH AIR REFUELING WING (AMC)
GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

MAY 11 2000

MEMORANDUM FOR 319 ARW/CC

FROM: 319 ARW/JA

SUBJECT: AFI 36-3208 Discharge Legal Review - [REDACTED]

1. We have reviewed and found legally sufficient the attached AFI 36-3208 discharge package, contingent upon the inclusion of a medical report clearing the respondent for separation. The respondent is eligible for separation per AFI 36-3208, paragraph 5.50.2 (pattern of misconduct prejudicial to good order and discipline), and should be separated with a general discharge.

2. 319 AGS/CC initiated this action on 18 Apr 00 because the respondent has willfully committed the following acts of misconduct:

a. On or about 12 Apr 00, without authority, he failed to go at the time prescribed to his appointed place of duty, to wit: Building 629. For this misconduct he received an Article 15 dated 27 Apr 00. His punishment consisted of reduction to the grade of airman basic, forfeiture of \$465.00 pay, and 14 days of extra duty. (Attachment A)

b. On or about 1 Mar 00, without authority, he went from his appointed place of duty, to wit: Building 629. Further, on or about 1 Mar 00, he made a false official statement to his supervisor stating he had a physical therapy appointment at 0930. For this misconduct, he received an Article 15 dated 16 Mar 00. His punishment consisted of 30 days restriction to Grand Forks AFB, 15 days extra duty, and the establishment of an Unfavorable Information File. (Attachment B)

c. On 28 Jan 00, he failed to obey a lawful order given to him by his supervisor to read technical orders relating to the core tasks in his Career Field Education and Training Plan. For this misconduct, he received an ROC dated 31 Jan 00. (Attachment C)

d. On 6 Jan 00, he failed an inspection of his dormitory room. For this, he received an LOR dated 27 Jan 00. (Attachment D)

e. On or about 4 Dec 99, he was arrested downtown for the offense of being a minor in possession of alcohol. For this misconduct, he received an LOR dated 9 Dec 99. (Attachment E)

[REDACTED]


3. The respondent is subject to discharge per AFI 36-3208, paragraph 5.50.2 (pattern of misconduct prejudicial to good order and discipline). 319 AGSS/CC recommends a general discharge without probation and rehabilitation.

4. The respondent is 20 years old and began his first and only four-year enlistment on 16 Dec 98. He has not yet received an EPR. The respondent consulted with counsel and waived his rights to submit a statement on his own behalf.

5. Since this is a notification case, the respondent may receive only an honorable or general discharge, unless you choose to refer this case to a discharge board. The respondent's repeated incidents of misconduct are significant negative aspects of his service record that far outweigh any period of satisfactory duty performance. The various acts of misconduct by [REDACTED] have shown he is not willing to change his behavior. [REDACTED] has received two Articles 15, two LORs, an ROC, and a UIF. None of these rehabilitative efforts have caused [REDACTED] to change his behavior. [REDACTED] has proven that he cannot live up to the standards expected of a member of the Air Force and that he should be discharged. Because of the seriousness and frequency of the misconduct, the respondent should receive a general discharge. No substantive or procedural errors have materially prejudiced the respondent's rights in this case.

6. If you determine that the allegations against the respondent support discharge and that he should be discharged, you must decide whether or not his discharge should be suspended for a period of probation and rehabilitation (P&R). P&R is appropriate when it appears the airman can change his pattern of behavior. In this case, retention on active duty would not be consistent with the maintenance of good order and discipline. We do not recommend this respondent receive P&R.

7. As SPCM separation authority, you may:

- a. Retain the respondent;
 - b. Approve the respondent's separation with a general discharge with or without probation and rehabilitation;
 - c. Forward the case to 15 AF/CC recommending separation with an honorable discharge with or without probation and rehabilitation; or
 - d. Direct reinitiation of the action if you determine that an under other than honorable conditions discharge is the only appropriate service characterization in this case.
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8. I recommend you approve the respondent's separation with a general discharge without P&R.

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I concur.

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Staff Judge Advocate

A large, dark, irregularly shaped redaction covering what appears to be a signature or name.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 319TH AIR REFUELING WING (AMC)
GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

05 MAY 2000

MEMORANDUM FOR [REDACTED]

FROM: 319 AGS/CCQ

SUBJECT: Notification Letter

1. I am recommending your discharge from the United States Air Force for a pattern of misconduct prejudicial to good order and discipline. The authority for this action is AFPD 36-32 and AFI 36-3208 in accordance with paragraph 5.50.2. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On or about 12 Apr 00, without authority, you failed to go at the time prescribed to your appointed place of duty, to wit: Building 629. For this misconduct you received an Article 15 dated 27 Apr 00. Your punishment consisted of reduction to the grade of airman basic, forfeiture of \$465.00 pay, and 14 days of extra duty. (Attachment A)

b. On or about 1 Mar 00, without authority, you went from your appointed place of duty, to wit: Building 629. Further, on or about 1 Mar 00, you made a false official statement to your supervisor stating you had a physical therapy appointment at 0930. For this misconduct, you received an Article 15 dated 16 Mar 00. Your punishment consisted of 30 days restriction to Grand Forks AFB, 15 days extra duty, and an Unfavorable Information File was established. (Attachment B)

c. On 28 Jan 00, you failed to obey a lawful order given to you by your supervisor to read technical orders relating to the core tasks in your Career Field Education and Training Plan. For this misconduct, you received an ROC dated 31 Jan 00. (Attachment C)

d. On 6 Jan 00, you failed an inspection of your dormitory room. For this, you received an LOR dated 27 Jan 00. (Attachment D)

e. On or about 4 Dec 99, you were arrested downtown for the offense of being a minor in possession of alcohol. For this misconduct, you received an LOR dated 9 Dec 99. (Attachment E)

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 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.

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. You have been scheduled an appointment at the Office of the Area Defense Counsel at Building 306 on 5 May 00 at 1000 hours. 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 by 10 May 00 at 0900 hours unless you request and receive an extension for good cause shown. I will send 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 319th Medical Group on 11 May 00 at 1300 hours for the examination.

8. Deliver to me immediately your military identification card(s). I have requested that your temporary identification card(s) be issued IAW AFI 36-3026(I), paragraph 4.2. You will report to me by COB 5 May 00, to verify that you have received your temporary identification card(s).

9. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A Privacy Act statement is attached. A copy of AFI 36-3208 is available for your use in the squadron orderly room.

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



4 Attachments:

1. Privacy Act Statement
2. Supporting Documents
 - a. Article 15 dated 27 Apr 00
 - b. Article 15 dated 16 Mar 00
 - c. ROC dated 31 Jan 00
 - d. LOR dated 27 Jan 00
 - e. LOR dated 9 Dec 99
3. Respondent's Data
4. Personnel Data