

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

TYPE GEN	PERSONAL APPEARANCE	X RECORD REVIEW
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COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	NO	[REDACTED]		125 SOUTH MAIN, ROOM 1B28 MUSKOGEE, OK 47701	
X					

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

ISSUES A94.53	INDEX NUMBER A67.90	EXHIBITS SUBMITTED TO THE BOARD			
		1	ORDER APPOINTING THE BOARD		
		2	APPLICATION FOR REVIEW OF DISCHARGE		
		3	LETTER OF NOTIFICATION		
HEARING DATE 03-01-10	CASE NUMBER FD2002-0245	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 Washington, D.C.

Advise applicant of the decision of the Board and the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT
[REDACTED]	[REDACTED]
INDORSEMENT	DATE: 03-01-10

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

FD2002-0245

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

The applicant was offered a personal appearance before the Discharge Review Board 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 or that provided by applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issues. Applicant was discharged for misconduct, conduct prejudicial to good order and discipline. He had three Letters of Reprimand (LOR), four Records of Individual Counseling, and an Article 15. He had one Enlisted Performance Report rated an overall "3." His misconduct included multiple instances of failure to go and dereliction of duty, as well as failure to obey a lawful order, military dress and appearance violations, and driving under the influence of alcohol. These occurred over a 17-month period of time. The Board noted that when his misconduct occurred, member was the same age as other airmen who had adhered to the standards, and in spite of the unit's efforts to help member correct his deficiencies, he was not motivated enough to conform to standards and his misconduct continued. At the time of the discharge, applicant waived his right to submit statements on his own behalf, after consulting counsel. He was counseled by his unit several times in an effort to help him correct his deficiencies and had many opportunities to improve his behavior. He failed to respond to those rehabilitative efforts, so he was held accountable for his actions. No inequity or impropriety was found in this discharge in the course of the records review.

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

[REDACTED]

(Former AMN) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/03/08 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 79/01/26. Enlmt Age: 18 6/12. Disch Age: 21 1/12. Educ: HS DIPL. AFQT: N/A. A-68, E-53, G-46, M-48. PAFSC: 3E731 - Fire Protection Apprentice. DAS: 98/05/20.

b. Prior Sv: (1) AFRes 97/08/07 - 97/11/18 (3 months 12 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 97/11/19 Svd: 02 Yrs 03 Mo 20 Das, all AMS.

b. Grade Status: AMN - 99/04/30
AB - 98/10/30 (Article 15, 98/10/30)
AMN - 98/05/19

c. Time Lost: none.

d. Art 15's: (1) 98/10/30, Columbus AFB, MS - Article 111. You, did, on or about 16 Oct 98, on B Street, physically control a vehicle, to wit: a pickup truck, while the alcohol concentration of your breath was .10 grams of alcohol per 210 liters of breath or greater, as shown by chemical analysis. Reduction to Airman. Suspended forfeiture of \$200.00 pay per month for 2 months. Twenty days extra duty. (No appeal) (No mitigation)

e. Additional: LOR, 10 FEB 00 - Dereliction of duty.
MFR, 10 DEC 99 - Failure to meet training deadlines.
LOR, 05 OCT 99 - Dereliction of duty by not maintaining proper military dress and appearance standards.
LOR, 04 AUG 99 - Failure to go on two occasions.
RIC, 07 JUL 99 - Failure to obey a lawful order.
RIC, 25 JUN 99 - Missed three days of off duty mandatory study. Left early from mandatory off duty study time without permission.
RIC, 19 JUN 99 - Late for duty.
RIC, 29 SEP 98 - Failure to complete assigned duties.

f. CM: None.

g. Record of SV: 97/11/19 - 99/10/22 Columbus AFB 3 (Initial)

(Discharged from Columbus AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (02) Yrs (07) Mos (02) Das
TAMS: (02) Yrs (03) Mos (20) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/05/11.
(Change Discharge to Honorable)

Issue 1: Father a disabled Vet was in hospital after a major heart attack.
Son went home without thinking. Was charged AWOL.

Since he works with the community (sic) and assists the American Legion.

ATCH

1. DD Form 214.
2. SF 80, Request Pertaining to Military Records.

02/09/12/ia

FD2002-0295



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

MEMORANDUM FOR 14 FTW/CC

23 FEB 2000

FROM: 14 FTW/JA (Capt Guerrero)

SUBJECT: Legal Review of Administrative Discharge - [REDACTED]
[REDACTED] (14 CES)

1. **Overview:** On 15 Feb 00, 14 CES/CC initiated discharge action against [REDACTED] (herein, the respondent) for a Pattern of Misconduct, specifically, Conduct Prejudicial to Good Order and Discipline, in accordance with AFI 36-3208, para. 5.50.2. On 18 Feb 00, after consulting with his defense counsel, the respondent waived his right to submit matters for your consideration (See Atch 3 of Discharge Package). 14 CES/CC recommends you separate the respondent with a general discharge without probation and rehabilitation. After review, we concur.

2. **Personal History:** The respondent is 20 years old and single. On, 19 Nov 97, he enlisted in the Air Force for a four-year term. Columbus AFB is his first duty assignment. He has one Enlisted Performance Report with an overall rating of 3.

3. **Facts:** The salient facts from the respondent's file are as follows:

a. On 28 Sep 98, the respondent failed to complete his assigned duties. For this, his Crew Chief gave him a record of counseling, AF Form 174, 29 Sep 98.

b. On 16 Oct 98, the respondent was caught on base driving his vehicle while under the influence of alcohol. For this, the former 14 CES/CC imposed nonjudicial punishment under Article 15, UCMJ on him. His punishment consisted of a reduction to airman basic, suspended forfeiture of \$200.00 pay per month for 2 months, and 20 days extra duty, Article 15, 30 Oct 98.

c. On 14 Jun 99, the respondent left from his place of duty early without authority. For this, his supervisor verbally counseled him, see reference in record of counseling, AF Form 174, 25 Jun 99.

d. On 19 Jun 99, the respondent failed to report to his place of duty at the prescribed time. He was 50 minutes late. For this, the Assistant Chief of Operations of the Fire Department gave him a record of counseling, AF Form 174, 19 Jun 99.

e. On 16, 18, and 20 Jun 99, the respondent failed to go to mandatory study time. For this, his supervisor gave him a record of counseling, AF Form 174, 25 Jun 99.

f. On 7 Jul 99, the respondent failed to obey an order given to him by a noncommissioned officer to fix his stripes on his battle dress uniform. For this, his supervisor gave him a record of counseling, AF Form 174, 7 Jul 99.

g. On 31 Jul 99, the respondent failed to report to his place of duty at the prescribed time. He was about 30 minutes late. For this, the Assistant Chief of Operations of the Fire Department gave him a letter of reprimand (LOR), 4 Aug 99.

h. On 19 Sep 99, the respondent was derelict in the performance of his duties by failing to meet military dress and appearance standards. Specifically, he appeared at roll call with a wrinkled uniform and an unshaven face. For this, the current 14 CES/CC gave him an LOR, 5 Oct 99.

i. On 2 Dec 99, the respondent failed to meet a deadline to complete the P-22 pumper license training. For this, his supervisor verbally counseled him, MFR 10 Dec 99.

j. On 4 Feb 00, the respondent's dormitory room was found to be completely unsatisfactory during an inspection that he had been warned about. In fact, after the inspection he told his first sergeant that he did not care about the condition of his room. For this, 14 CES/CC gave him another LOR, 10 Feb 00.

4. **Matters Submitted by the Respondent:** After consulting with defense counsel, the respondent waived his right to submit matters for your consideration.

5. **Discussion:**

a. *Legal Sufficiency:* Airmen are subject to discharge for a pattern of misconduct, conduct prejudicial to good order and discipline, when there is a preponderance of the evidence that the respondent engaged in a pattern of misconduct that included conduct of a nature that tended to disrupt order, discipline, or morale within the military community. This type of misconduct usually involves causing dissent, disruption, and degradation of mission effectiveness (AFI 36-3208, para. 5.50.2). The evidence in this case shows a pattern of misconduct that disrupted good order and discipline. In September of 1998, the respondent started the disruption off by being derelict in the performance his duties and for which he received a record of counseling. Just a few weeks later, he was caught driving under the influence of alcohol. To punish him for this serious crime and in attempt to turn him around, the former 14 CES/CC imposed nonjudicial punishment on the respondent under Article 15, UCMJ. The punishment consisted of a reduction to airman basic, suspended forfeiture of pay, and 20 days extra duty. This slowed him down for a little while but he then continued to engage in additional misconduct. During the months of June and July of 1999, the respondent received four counselings and a reprimand for leaving work early, not showing up for work on time on several occasions, and disobeying an order. He again temporarily stopped the string of misconduct, but then started up again. He showed up for roll call unshaven and with a wrinkled uniform. The current

14 CES/CC then became personally involved by giving the respondent a stern LOR stating he would not tolerate this type of behavior any longer. Unfortunately, this did not deter the respondent. The final straw came when after being warned of an upcoming room inspection, the respondent's room was a mess. Worse yet, when the respondent's first sergeant questioned him about the room, the respondent told him that he was aware of the inspection but he did not care. At this point, 14 CES/CC gave him another LOR and initiated these discharge proceedings.

In summary, notwithstanding all of these rehabilitative attempts, the respondent has continued to commit misconduct and disrupt good order and discipline. The evidence is more than sufficient to support this discharge action.

b. *Characterization of Service:* Separation for a pattern of misconduct may result in an honorable, general, or under other than honorable conditions (UOTHC) discharge. In this case, the respondent's repeated misconduct makes an honorable discharge inappropriate. The only issue remaining is whether the respondent's misconduct merits a UOTHC or a general discharge. A general discharge is appropriate when a member's service has been honest and faithful, but significant negative aspects of the member's service outweigh the positive aspects (AFI 36-3208, para. 1.18.2). A UOTHC discharge is appropriate when the member's service is a significant departure from the conduct expected of airmen (AFI 36-3208, para. 1.18.3). 14 CES/CC recommends the respondent receive a general discharge characterization. We agree. Here, the numerous infractions committed by the respondent qualify as significant negative aspects of his short career outweighing any positive aspects but they are not serious enough to warrant a UOTHC discharge. Accordingly, a general discharge is appropriate.

c. *Training and Feedback:* The squadron reviewed the respondent's training records and feedback schedule and found no significant discrepancies.

d. *Probation and Rehabilitation (P&R):* First of all, the respondent has not requested P&R. Secondly, by continually ignoring the various rehabilitative attempts put forth by his chain of command, the respondent has shown he either cannot or will not be rehabilitated. P&R is appropriate where there is strong evidence the member could overcome his deficiencies and complete his enlistment. This is not the case here. After numerous attempts to turn the respondent around, his commander is now convinced that the respondent does not have rehabilitation potential in the Air Force. We concur.

Bottom line with respect to P&R, based on all of the chances the respondent has already been given, the commander believes probation and rehabilitation for this respondent would be a waste of time. We agree.

6. **Commander's Options:** As the separation authority you may:

- a. Direct the respondent be retained;

b. Direct the respondent be discharged with a general discharge, with or without the opportunity for P&R;

c. Recommend the respondent be discharged with an honorable discharge and forward the package with your justification to HQ 19 AF/CC for approval; or

d. Forward this case to a discharge board if you believe a UOTHC is appropriate.

7. Recommendation: 14 FTW/CC direct the respondent be separated from the Air Force with a general discharge without P&R.



h. On 19 Sep 99, you were derelict in the performance of your duties by failing to meet military dress and appearance standards. Specifically, you appeared at roll call with a wrinkled uniform and an unshaven face. For this, I personally gave you a letter of reprimand (See Atch 7).

i. On 2 Dec 99, you failed to meet a deadline to complete the P-22 pumper license training. For this, your supervisor verbally counseled you (See Atch 8).

j. On 4 Feb 00, your dormitory room was found to be completely unsatisfactory during an inspection that you had warning about. In fact, after the inspection you even told your first sergeant that you didn't care about the condition of your room. For this, I personally gave you another letter of reprimand (See Atch 9).

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 discharge 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 either [redacted] or [redacted] by telephone on 15 FEB 00 at 1430. The telephone number for Defense Counsel at Keesler AFB is DSN 597-2429 or (228) 377-2429. 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 COB 18 FEB 00 (three workdays from your receipt of this notification memorandum) 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 Columbus AFB Clinic, Physical Exam Section at 0930 on 16 Feb 00 for the examination.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act. A copy of AFI 36-3208 is available for your use in your unit orderly room.

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

[Large redacted signature block]

10 Attachments:

1. AF Form 174, 29 Sep 98
2. AF Form 3070, 30 Oct 98
3. AF Form 174, 25 Jun 99
4. AF Form 174, 19 Jun 99
5. AF Form 174, 7 Jul 99
6. LOR, 4 Aug 99
7. LOR, 5 Oct 99
8. MFR, 10 Dec 99
9. LOR, 10 Feb 00
10. Airman's Receipt of Notification Memorandum