

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

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

ISSUES A94.05, A93.19, A92.35	INDEX NUMBER A67.10	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
HEARING DATE 03-01-03	CASE NUMBER FD2002-0298	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

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 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.

SIC [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 03-01-06
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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

FD2002-0298

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 the applicant substantiates an impropriety or inequity that would justify an upgrade of the discharge to honorable.

Issues. Applicant was discharged for minor disciplinary infractions. He had two Articles 15, two letters of reprimand (LORs), and an unfavorable information file. His misconduct included two instances of sleeping on post, driving drunk and recklessly, and failure to follow written instructions. There were also two memos for record documenting housing inspection failures and failure to turn in his alert A bag when required. At the time of the offenses, in reply to his first Article 15, member admitted he committed the offense of sleeping on post and requested a suspended punishment and extra duty due to financial concerns, a request that was granted. For his second Article 15, the DWI, his blood alcohol content was .17, and he again admitted he committed the offense, had no excuses, and offered an apology. Applicant now contends he made one mistake in 3 years of service, that being drinking and driving. He fails to mention however the other offenses he committed. At the time of the discharge, member consulted counsel and submitted a statement in his own behalf requesting an honorable discharge. The Board noted member was counseled several times in an effort to help him correct his deficiencies, and had multiple opportunities to improve his behavior but failed to respond to those rehabilitative efforts. The Board further noted that member was the same age as other airmen who had adhered to the standards when his misconduct occurred, and he knew right from wrong. He was responsible for his actions, and therefore was held accountable for them. No inequity or impropriety was found in this discharge in the course of the records review.

Applicant cited his desire to receive his G.I. Bill education benefits as justification for an upgrade. While the Board was sympathetic to the impact of the loss of these benefits on applicant, this is not a matter of equity or propriety that warrants an upgrade.

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 AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02/02/11 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 79/10/04. Enlmt Age: 19 0/12. Disch Age: 22 4/12. Educ: HS DIPL. AFQT: N/A. A-41, E-52, G-55, M-58. PAFSC: 3P051 - Security Forces Journeyman. DAS: 99/07/13.

b. Prior Sv: (1) AFRes 98/11/10 - 99/02/09 (3 Mos) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 99/02/10 for 6 yrs. Svd: 3 Yrs 0 Mos 2 Das, all AMS.

b. Grade Status: AB - 02/01/04 (Article 15, 02/01/04)
A1C - 99/03/26

c. Time Lost: None.

d. Art 15's: (1) 02/01/04, Travis AFB, CA - Article 111. You, did at the intersection of Kansas Street and First Street, operate a vehicle, to wit: a passenger car, while drunk, in a reckless manner by driving at a high rate of speed and failing to stop at a posted stop sign at the intersection of Kansas Street and First Street. Reduction to the grade of AB, suspended forfeiture of \$552.00 pay per month for 2 months, a reprimand, restriction for 45 days, and 45 days extra duty. (No appeal) (No mitigation)

(2) 01/05/08, Travis AFB, CA - Article 113. You, on or about 21 Mar 01, being posted as a sentinel as Close Boundary Sentry outside the TACAMO area were found sleeping upon your post. Suspended reduction to the grade of AMN, and 14 days extra duty. (No appeal) (No mitigation)

e. Additional: LOR, 16 MAR 01 - Failure to follow written instructions.
MFR, 26 NOV 00 - Failed base housing inspection.
MFR, 16 DEC 99 - Failure to turn in equipment.
LOR, 6 OCT 99 - Sleeping on duty.

f. CM: None.

g. Record of SV: 99/02/10 - 00/10/09 Travis AFB 4 (Initial)
00/10/10 - 01/10/09 Travis AFB 3 (Annual) REF

(Discharged from Travis AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (3) Yrs (3) Mos (2) Das
TAMS: (3) Yrs (0) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/06/06.
(Change Discharge to Honorable)

Issues: I am requesting an upgrade in my discharge to honorable for the purpose of obtaining VA educational benefits. I was discharged because of one drinking and driving incident. I do not feel that my discharge should be classified as general under honorable conditions for one mistake in three years.

ATCH
None.

02/10/23/cr

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

80 JAN 2002

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
[REDACTED]SUBJECT: Legal Review of Administrative Discharge Under AFI 36-3208,
[REDACTED], 60th Security Forces Squadron

1. **Introduction:** This action is legally sufficient. On 22 Jan 02, the 60 SFS/CC initiated discharge action against [REDACTED] (Respondent) pursuant to AFI 36-3208, paragraph 5.49, Misconduct, Minor Disciplinary Infractions, and recommended a general service characterization without probation and rehabilitation. The 60 SPTG/CC concurred. This 22-year-old respondent has over 35 months of active duty service and two EPRs with overall ratings of "4 and "3" (referral). He has been awarded the Air Force Training Ribbon. A detailed summary of his personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter, dated 28 Jan 02. After conferring with counsel, Respondent submitted a statement requesting that you consider granting him an honorable discharge. Respondent stated that it would be difficult to find a good job that would allow him to support his family and pay bills if his service is characterized as general (Tab 3).

2. **Basis for Discharge:**

a. On or about 6 Oct 99, Respondent was found sleeping while on post as a Close-in-Sentry on a "Priority A" aircraft. For this, he received a letter of reprimand (LOR), dated 6 Oct 99.

b. On or about 21 Feb 01, Respondent failed to follow AFMAN 31-2222, by not issuing verbal commands prior to using Oleoresin Capsicum (OC) pepper spray on a subject. He also failed to use physical restraining techniques or handcuffs on a subject, thereby endangering both his life and the lives of innocent bystanders. For this, Respondent received an LOR, dated 16 Mar 01.

c. On or about 21 Mar 01, Respondent was found sleeping while on post as a sentinel at Close Boundary Sentry outside the TACAMO area, in violation of Article 113, UCMJ. For this, he received an Article 15, dated 3 May 01, which was placed in an unfavorable information file (UIF). Punishment consisted of a suspended reduction to the grade of airman and 14 days of extra duty.

d. On or about 12 Dec 01, Respondent operated a passenger car while drunk, recklessly driving at a high rate of speed and failing to stop at a posted stop sign, in violation of Article 111, UCMJ. For this misconduct, Respondent received an Article 15, dated 20 Dec 01, which was placed in his existing UIF. Punishment consisted of reduction to the grade of airman basic, suspended forfeiture of \$552.00 pay per month for 2 months, 45 days restriction to base, a reprimand, and 45 days of extra duty.

3. **Appropriateness of Discharge:** Airmen in the active military service are required to maintain, at all times, the high standards of personal conduct set for Air Force members. They occupy a unique position in society, representing the military 24 hours a day. This special status carries with it a permanent obligation to uphold and maintain the dignity and good reputation of the Air Force at all times and in all places. Minor disciplinary infractions in the current enlistment make an airman subject to discharge. Infractions under paragraph 5.49 may involve failure to comply with nonpunitive regulations or minor offenses under the UCMJ. Respondent's disciplinary infractions listed in paragraph 2 support discharge under the provisions of AFI 36-3208, paragraph 5.49, for Misconduct, Minor Disciplinary Infractions. If you are convinced there is a basis for discharge, you may look at Respondent's entire military record to decide whether it is appropriate to discharge him at this time. Given Respondent's infractions, there are sufficient grounds for discharge.

4. **Characterization of Service:**

a. Pursuant to AFI 36-3208, table 1.3, discharges under paragraph 5.49 may be characterized as honorable, general, or under other than honorable conditions (UOTHC). An honorable characterization is reserved for those airmen whose service has met Air Force standards of acceptable conduct and performance of duty, and whose service has been so meritorious that any other characterization would be clearly inappropriate. While Respondent asks that you consider granting him an honorable discharge, his record does not meet this standard.

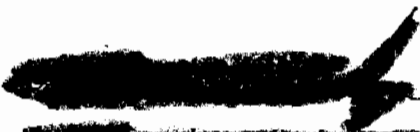

b. The 60 SFS/CC recommended a general service characterization. I agree. A general discharge is appropriate if an airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh any positive aspects of the airman's military record. A UOTHC discharge, instead, is appropriate when the grounds for discharge are based on a member's acts or omissions that significantly depart from conduct expected of airmen. A general discharge is more appropriate here because there are significant negative aspects in Respondent's record that outweigh the positive aspects of his military career. Over a 2-year period, Respondent received two LORs and two Article 15s (placed in UIF) for misconduct. Additionally, he received a referral EPR. Other derogatory information in Respondent's case file consists of two memoranda for failing to turn in mobility equipment at the appointed time and failing to maintain his living quarters within standards. Given Respondent's infractions and his time in the Air Force, it is unlikely that a board of officers would recommend a UOTHC discharge. Accordingly, I concur with both commanders' recommendations for a general discharge.

5. **Probation and Rehabilitation (P&R):** P&R is clearly inappropriate in this case. According to AFI 36-3208, paragraph 5.2, airmen should have an opportunity to overcome their deficiencies before discharge action is initiated. A commander's efforts to rehabilitate an airman may include formal or informal counseling, control roster action, punishment under Article 15, UCMJ, a change in duty assignment, demotion, additional training or duty, retraining, or other administrative action. P&R should be offered, when it is reasonably possible to do so, to those airmen (a) who have demonstrated a potential to serve satisfactorily, (b) who have the capacity to be rehabilitated for continued military service or for completion of the current enlistment, and (c) whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. Respondent has already had numerous chances to correct his behavior, as reflected in the written reprimand and nonjudicial punishments he has received, and he has failed to change despite these. Retaining Respondent, even in a probationary status, would most likely not produce the desired results, but would be contrary to the maintenance of good order and discipline at Travis AFB.


6. **Options:** As the Special Court-Martial Convening Authority, you may personally approve or disapprove recommendations for any discharges processed by notification according to chapter 6, section B, and resulting in a general discharge under section H. Your options are to

- a. direct that this action be withdrawn and retain Respondent;
- b. discharge Respondent with a general discharge, with or without P&R;
- c. forward the case to the 15 AF/CC with a recommendation for an honorable discharge, with or without P&R; or
- d. direct reinitiation of processing, pursuant to AFI 36-3208, chapter 6, Section C - Board Hearing or Board Waiver, if you believe a UOTHC is warranted.

7. **Recommendation:** Discharge Respondent with a general discharge, without P&R, by signing the letter at Attachment 1.


 USAF
Staff Judge Advocate

Attachments:

1. Proposed Letter
2. Case File ()

DEPARTMENT OF THE AIR FORCE
60TH SECURITY FORCES SQUADRON (AMC)

MEMORANDUM FOR [REDACTED]

1/22/02

FROM: 60 SFS/CC
[REDACTED]

SUBJECT: Notification Memorandum

1. I am recommending you be discharged from the United States Air Force pursuant to AFI 36-3208, paragraph 5.49, Misconduct, Minor Disciplinary Infractions. If my recommendation is approved, your service may be characterized as Honorable, General, or Under Other than Honorable Conditions. I am recommending that your service be characterized as General.

2. My reasons for this action are:

a. On or about 6 Oct 99, you were found sleeping while on post as a Close-in-Sentry on a "Priority A" aircraft. For this, you received a letter of reprimand (LOR), dated 6 Oct 99 (Atch 1, Tab 1).

b. On or about 21 Feb 01, you failed to follow AFMAN 31-2222, by not issuing verbal commands prior to using Oleoresin Capsicum (OC) pepper spray on a subject. You also failed to use physical restraining techniques or handcuffs on the subject, thereby endangering both your life and the lives of innocent bystanders. For this, you received an LOR, dated 16 Mar 01 (Atch 2, Tab 1).

c. On or about 21 Mar 01, you were found sleeping while on post as a sentinel at Close Boundary Sentry outside the TACAMO area, in violation of Article 113, UCMJ. For this, you received an Article 15, dated 3 May 01. Punishment consisted of a suspended reduction to the grade of airman and 14 days of extra duty (Atch 3, Tab 1).

d. On or about 12 Dec 01, you operated a passenger car while drunk, recklessly driving at a high rate of speed and failing to stop at a posted stop sign, in violation of Article 111, UCMJ. For this misconduct, you received an Article 15, dated 20 Dec 01. Punishment consisted of reduction to the grade of airman basic, suspended forfeiture of \$552.00 pay per month for 2 months, 45 days restriction to base, a reprimand, and 45 days of extra duty (Atch 4, Tab 1).

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 are to 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 monies, or education assistance funds may be subject to recoupment.

4. You have the right to consult with an attorney. Military legal counsel has been obtained to assist you. I have made an appointment for you to speak with [REDACTED] Area Defense Counsel, 540 Airlift Drive, Bldg. 381, Suite D-100, Travis AFB, California, 94535-2479, DSN [REDACTED], Commercial, [REDACTED], on 24 Jan 02 at 0900. You may also consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you wish the separation authority to consider must reach me by (three workdays from service of this letter) 25 Jan 02, no later than 1530 hours, unless you request and receive an extension for good cause. I will send the separation authority any documents you submit.

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

7. Any personal information you furnish in rebuttal will be covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in the Orderly Room.

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

[REDACTED] USAF
Commander

Attachments:

- 1. LOR, 6 Oct 99
- 2. LOR, 16 Mar 01
- 3. AF Form 3070, 3 May 01
- 4. AF Form 3070, 20 Dec 01
- 5. Other Pertinent Information:
 - MFR, 16 Dec 99
 - MFR, 26 Nov 00 w/1 Atch