


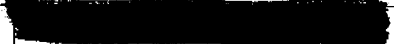


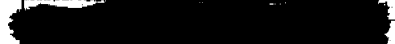

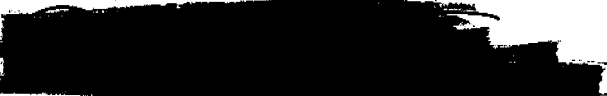


AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) 		GRADE AMN	AFSN/SSAN 				
TYPE	PERSONAL APPEARANCE		X 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
							X
							X
							X
							X
							X
ISSUES A94.05		INDEX NUMBER A67.10		EXHIBITS SUBMITTED TO THE BOARD			
				1	ORDER APPOINTING THE BOARD		
				2	APPLICATION FOR REVIEW OF DISCHARGE		
				3	LETTER OF NOTIFICATION		
HEARING DATE 9 Jan 03		CASE NUMBER FD2002-0317		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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.							
SIGNATURE OF BOARD MEMBER 				SIGNATURE OF BOARD PRESIDENT 			
INDORSEMENT					DATE: 9 Jan 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

FD02-0317

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 the available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

The board finds that neither evidence of record nor that provided by the applicant substantiates an inequity or impropriety, which would justify a change of discharge.

ISSUE: Applicant contends that his discharge was too harsh and believes there is insufficient evidence of a pattern of misconduct. He also states that his job performance was excellent and his record since discharge has been commendable. He concludes by saying his ability to serve was impaired by his abuse of alcohol on his off duty time which he attributes to his youth and immaturity. The record indicates the applicant received two Article 15's for stealing and being drunk and disorderly, disrespectful in language and using provoking words towards a female. He also received a Verbal Counseling for disregarding a stop sign, a traffic ticket for failure to stop at a stop sign, and a Record of Individual Counseling for making a false official statement. The DRB took note of the applicant's duty performance as documented by his performance reports and other information contained in the records. They found the significant negative aspects of the applicant's conduct outweigh positive aspects of his military record. The DRB recognized the applicant was 22 years of age when the discharge took place. However, there is no evidence he was immature or did not know right from wrong. The Board opined the applicant was older than the vast majority of first-term members who properly adhere to the Air Force's standards of conduct. The Board found no evidence of any inequity or impropriety on which to base a decision to upgrade the discharge. The characterization of the applicant's discharge was appropriate due to the misconduct.

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 AMN) (HGH A1C)

(MISSING DOCUMENTS)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/04/19 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 78/08/24. Enlmt Age: 18 4/12. Disch Age: 22 7/12. Educ: HS DIPL. AFQT: N/A. A-79, E-63, G-66, M-56. PAFSC: 1C651 - Space Operator Journeyman. DAS: 97/11/21.

b. Prior Sv: (1) AFRes 97/01/22 - 97/05/27 (4 months 6 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 97/05/28 for 4 yrs. Svd: 03 Yrs 10 Mos 22 Das, all AMS.

b. Grade Status: AMN - 01/03/12 (Article 15, 01/03/12)
 A1C - Unknown.
 AMN - 99/05/28 (Article 15, 99/05/28)
 A1C - 98/09/28
 AMN - 97/11/28

c. Time Lost: None.

d. Art 15's: (1) 01/03/12, Schriever AFB, CO - Article 91. You, on or about 17 Feb 01, were disrespectful in language toward SSgt -----, a noncommissioned officer, then known to you to be a superior noncommissioned officer, who was then in the execution of his office by saying to him, "Hey dude, I'm not bothering a fucking person in this god damned dorm;" "Yeah, whatever man, I still don't understand why I gotta fucking turn down my radio;" "I don't give a fuck, why do I gotta turn down my music?;" "There you go dude, just so some fucking person can be happy, I turned it down," or words to that effect. You, on or about 17 Feb 01, were disrespectful in language toward TSgt -----, a noncommissioned officer, then known to you to be a superior noncommissioned officer, who was in the execution of his office by saying to him, "What the fuck do you want now?;" "Why the fuck are you up here harassing me again;" "What the fuck, don't you people have anything better to fucking do then fucking harass me?;" and "Why are you mother fuckers harassing me?," or words to that effect.

Article 117. You did, on or about 17 Feb 01, wrongfully use provoking words, to wit: "I know it was you bitch. I don't complain when you play your negro music," and "Well I hope you're happy you fucking bitch," or words to that effect towards AB -----.
 Article 134. You were, on or about 17 Feb 01, drunk and disorderly. Reduction to Amn, and a reprimand. (No appeal) (No mitigation)

- (2) 99/05/28, Schriever AFB, CO - Article 81. You did, between on or about 1 Feb 99 and on or about 31 Mar 99, conspire with A1C ----- and A1C ----- commit an offense under the UCMJ, to wit: larceny of sporting goods, of a value of more than \$100.00, the property of -----, and in order to effect the object of the conspiracy you did steal sporting goods from -----.
 You did, between on or about 1 Feb 99 and on or about 31 Mar 99, conspire with SSgt -----, SrA -----, A1C -----, and Amn ----- to commit an offense under the UCMJ, to wit: larceny of sporting goods of a value of more than \$100.00, the property of -----, and in order to effect the object of the conspiracy you did steal sporting goods from -----.
 Article 121. You did, on divers occasions between on or about 1 Feb 99 and on or about 31 Mar 99, steal sporting goods, of a value of more than \$100.00, the property of -----.
 Reduction to Amn, forfeiture of \$200.00, 45 days extra duty, and a reprimand. (No appeal) (No mitigation)

- e. Additional: RIC, 15 DEC 00 - Making a false official statement.
 DD 1048, 01 APR 00 - Failure to stop at a stop sign.
 VBC, 23 DEC 99 - Disregarding a stop sign.

f. CM: None.

- g. Record of SV: 97/05/28 - 99/01/29 Schriever AFB 5 (Initial)
 99/01/30 - 00/01/29 Schriever AFB 3 (Annual)REF
 00/01/30 - 00/06/15 Schriever AFB 5 (CRO)
 00/06/15 - 01/04/05 Schriever AFB 2 (HAF Dir)REF

(Discharged from Schriever AFB)

h. Awards & Decs: AFTR, AFOUA, AFGCM.

i. Stmt of Sv: TMS: (04) Yrs (02) Mos (28) Das
 TAMS: (03) Yrs (10) Mos (22) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/07/22.
 (Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Two Letters of Reference.
3. College Transcript.
4. Record of Nonjudicial Punishment, 12 Mar 01.
5. Two Enlisted Performance Reports.

02/11/07/ia

Memorandum

To: Discharge Review Board
From: [REDACTED]
Date: July 22, 2002
Re: Application for the Review of Discharge or Dismissal from the Armed Forces of the United States

Dear Ladies and Gentlemen of the Review Board,
I would like to apply for your review of my discharge from the Air Force. I received a General Discharge (under honorable conditions). I would like to apply to the Board to change my discharge to an honorable discharge. I was discharged one month prior to my normal ETS. Below is a summary of the basis of my application:

1. I showed potential for further service.

In AFI36-3208, Section 5.1 states, "Commanders and supervisors identify airmen who show a likelihood for early separation. They should make reasonable efforts to help these airmen meet Air Force standards. Airmen who do not show a potential for further service should be discharged." It is my contention that I did in fact show a potential for further service as evidenced by my statement to the Response to Discharge notification, letters from two officers in my section and by [REDACTED] own words in the Article 15.

In the attached record of nonjudicial punishment proceedings dated 6 March 2001 issued by [REDACTED] he states the following in Item 6 at the back sheet. "You are hereby reprimanded. I am very disappointed in you to say the least. On 17 Feb 01, you exhibited a serious lack of judgement and maturity. I am proud of my squadron and its reputation. You have damaged that reputation by your unprofessional conduct. You are in a career field that requires the maintenance of the highest standards of personal conduct and behavior. *If you want to remain in this career field and progress, you had better take this opportunity to reexamine your judgement and behavior and ensure this is an isolated incident.*" From this statement, I would infer that if I wanted to remain in this career field I would be given the opportunity to change my behavior and prove this was an isolated incident. This Article 15 was issued on 19 Mar 01 and I was notified on 10 Apr 01 that I was to be discharged for misconduct (minor disciplinary infractions). In my attached statement of response to Discharge Notification Memorandum dated 12 April 01, I stated that it is my intention to continue my military career in the National Guard. I believe I had potential for further service and so did my direct superiors as evidenced by their following statements:

In the attached letter dated 8 Mar 01 from [REDACTED] he states, "I believe that if [REDACTED] is given the opportunity to take positive steps in addressing his alcohol problem he and the United

July 22, 2002

States Air Force will be better for it. If [REDACTED] was not in my section I would be the worse for it."

In the attached letter dated 18 Apr 01 from [REDACTED] he states, "I am fully aware of the trouble [REDACTED] has gotten himself into with the events that took place in February. I spoke with [REDACTED] about the incident and believe it was directly related to an alcohol problem. Given the opportunity [REDACTED] can and will overcome this problem. [REDACTED] still has a strong desire to serve his country whether it is on active duty or in the Air National Guard. It is my recommendation that you consider the responsible acts of AIC [REDACTED] related to his job performance and consider upgrading his discharge."

2. There is insufficient evidence of a pattern of misconduct.

In Section 5.49, Minor Disciplinary Infractions of AFI36-3208 it states that a pattern of misconduct makes an Airman subject to discharge. The record of misconduct that [REDACTED] provided is the following:

- a. On 21 May 99, I received an Article 15 for larceny of sporting goods for a value of \$100. (A fellow airman worked at a sporting goods store and offered "discounts" to approximately 50 friends. I used very poor judgement in accepting this "discount".
- b. On 16 Dec 99, I received a traffic ticket for failure to stop at a stop sign.
- c. On 1 Apr 00, I received a traffic ticket for failure to stop at a stop sign.
- d. On 15 Dec 00, I received a counseling statement for making a false statement about recurring training.
- e. On 9 Mar 01, I received an Article 15 for drunk and disorderly conduct.

I would submit that the two article 15s, two traffic tickets and one counseling statement do not show a pattern of misconduct. The incidents were unrelated and occurred over a 4-year period.

3. Job performance was excellent.

In the letters provided by [REDACTED] my job performance was commendable and contributed to the success of the section.

4. My record since my discharge has been commendable

I have enrolled at Wake Technical Institute in Raleigh, NC and have received an excellent grade average. Attached is my transcript of my first semester.

5. My ability to serve was impaired by outside circumstances as described below:

I abused alcohol on my off duty time which I attribute to my youth and immaturity and the prevalent culture of drinking in the barracks.. I did not realize at the time that alcohol was impairing my judgement and becoming a serious problem. In May 1999, my drinking problem escalated after the suicide of my best friend and section colleague, [REDACTED] I believe alcohol abuse became a means to cope.

Conclusion

July 22, 2002

I realize that as to the issue of equity for my discharge, I am not privy to information regarding discharge for other service members due to similar circumstances. However, I cannot help but wonder if my ETS date of 27 May 01 influenced the decision of the commander to not afford me the "reasonable efforts to help airmen meet Air Force standards" (i.e. alcohol treatment program and opportunity to change my behavior) as he knew I was not going to re-enlist for active duty. The question of fairness could be considered in the hypothetical situation of my having one or two years of service left instead of 4 weeks. I served 3 years and 11 months. Would I have been treated the same and discharged early or would I have been given the opportunity to, as [REDACTED] said, "remain in this career field and progress, reexamine my judgement and ensure this was an isolated incident"? His statements and then subsequent action seem contradictory. I was not given the opportunity and the only conclusion I can make is he was aware of my intent to not re enlist and wanted to punish me further by not allowing me to receive an honorable discharge. I would like the opportunity of continuing my service in the Air Force National Guard. By not having an honorable discharge, I am prevented from enlisting.

I have attached my evaluations and record documents to show you that I did not deserve to be discharged from the Air Force in this manner. I am proud of my service and would appreciate the opportunity of serving in the National Guard. I appeal to you to change this discharge to an honorable one.

I want to thank you for your consideration of this matter.

FD 2002-0317



DEPARTMENT OF THE AIR FORCE

50TH SPACE WING (AFSPC)

RE WLC

MEMORANDUM FOR 50 SW/CC

FROM: 50 SW/JA
210 Falcon Parkway, Ste 2104
Schriever AFB CO 80912-2104

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

1. I have reviewed the administrative discharge action pertaining to [REDACTED] (respondent), 241-57-0302, for legal sufficiency. There has been substantial compliance with the applicable substantive and procedural provisions of AFI 36-3208. This action was initiated on 10 Apr 01 to administratively separate respondent from the United States Air Force pursuant to AFI 36-3208, chapter 5, section H, paragraph 5.49, misconduct (minor disciplinary infractions). The statutory basis for this action is 10 U.S.C. § 1169 and a legal review is required by AFI 36-3208, paragraph 6.12.1.
2. The recommendation for discharge is based upon the information contained in paragraph 2 of the notification memorandum. The notification memorandum alleges that [REDACTED] violated Articles 81, 91, 117 and 134 of the Uniformed Code of Military Justice, made two traffic violations, and made a false official statement. In my opinion, there is sufficient misconduct in the current enlistment to form a basis for discharge.
3. The respondent is 22 years old and enlisted on 28 May 97 for a term of 4 years, and has a total of 3 years and 11 months active service. After consulting with the Area Defense Counsel, the respondent has submitted a statement for your consideration.
4. Errors and Irregularities: There are no errors or irregularities that prejudice respondent or deprive him of any substantial rights.
5. As Discharge Authority, you are empowered to:
 - a. Approve the discharge and issue a general discharge certificate;
 - b. Recommend an honorable discharge and forward the case file to 14 AF/CC for disposition;
 - c. Approve a general discharge, but suspend its execution for a period of up to one year for probation and rehabilitation; or

d. Order respondent to be retained in the Air Force.

6. Based on the misconduct, from the current enlistment referred to above, the recommended service characterization of a general discharge is appropriate. Finally, there does not seem to be any reasonable expectation of rehabilitation for the respondent that would warrant probation and rehabilitation. He has been given numerous attempts to improve his conduct without improvement.

7. I recommend you direct respondent be separated from the United States Air Force with a general discharge without probation and rehabilitation and that paragraph 5.49 be cited as the basis for this action. A general discharge is appropriate when significant negative aspects of the member's conduct outweigh positive aspects of his military record. AFI 36-3208, paragraph 1.18.2. Moreover, respondent's history of misconduct shows a stubborn resistance to comply with the law and Air Force Standards. Probation and rehabilitation is inappropriate because of respondent's continued and repeated improper conduct despite attempts at correction.

8. Please contact me at 567-5050, if you have any questions or need additional information.



MEMORANDUM FOR [REDACTED] SOPS (AFSPC)

FROM: 4 SOPS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct (minor disciplinary infractions). The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as general.

2. My reasons for this action are:

a. Between on or about 1 Feb 99 and on or about 31 Mar 99 you violated Article 81, UCMJ, by conspiring with Airmen First Class [REDACTED] Airmen First Class [REDACTED] to commit larceny of sporting goods from Jumbo Sports. For these offenses you received an Article 15 with reduction to the grade of Airmen, forfeiture of \$200.00 pay per month for 2 months and 45 days extra duty. (atch 1a)

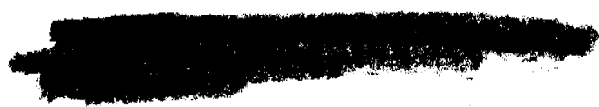
b. On or about 16 Dec 99, at or near Colorado Springs, CO, you received a Uniform Summons and Complaint or Penalty Assessment for disregarding a stop sign. For this offense you received verbal counseling from your squadron First Sergeant on 23 Dec 99. (atch 1b)

c. On or about 1 Apr 00, at or near Peterson Air Force Base, CO, you received an Armed Forces Traffic Ticket from [REDACTED] 21 Security Forces, for failure to stop at a stop sign. (DD Form 1048, atch 1c)

d. On or about 15 Dec 00 you made a false official statement about your December recurring training. For this offense you received a Record of Individual Counseling. (AF Form 174, atch 1d)

e. On or about 17 Feb 01, you violated Article 91, UCMJ, in that you were disrespectful in language to both [REDACTED]. You also violated Article 117, UCMJ, by using provoking words towards [REDACTED] and Article 134 by being drunk and disorderly. For these offenses you received an Article 15 with reduction to the grade of Airman (E-2). An Unfavorable Information File was established on 6 Apr 01. (atch 1e)

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Court-Martial jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force and, if 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 at Peterson AFB CO on 11 Apr 01 at 1300 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 within 3 workdays from the date you receive this memorandum of notification 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. It has been noted that you have already been seen by Peterson AFB Flight Medicine clinic on 26 Feb 01 at 1440 hrs for your medical examination.
8. You must report to MPF Separations immediately to receive a briefing.
9. 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 unit orderly room.



Attachments:

1. Derogatory Data:
 - a. Article 15, 21 May 99
 - b. Uniformed Summons & Complaint or Penalty Assessment, 16 Dec 99
 - c. DD Form 1408, 1 Apr 00
 - d. AF Form 174, 15 Dec 00
 - e. Article 15, 6 Mar 01 & UIF 6 Apr 01