

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

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	UOTIC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD		
A95.00	A67.10	1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE	CASE NUMBER	4	BRIEF OF PERSONNEL FILE	
21 FEB 03	FD2002-0320		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, 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: 21 FEB 03
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TO:	FROM:
SAF/MIBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	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

FD02-0320

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 the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was able to identify none that would justify a change of discharge.

ISSUE: The applicant submitted no issues and requested that the review be completed based on the available service record. The Board reviewed the entire record and found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The records indicated applicant received two Article 15's for failure to go and sleeping on his post. He also received a vacation action under the UCMJ for failure to go and dishonorably failing to pay just debts. In addition, he also received a Letter of Reprimand, and three Letters of Counseling for being late for formation, failure to go on two occasions, dereliction of duty and failure to obey a lawful order and wearing an earring in uniform. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative/repetitive behavior. The Board concluded the disciplinary infractions were a significant departure from the conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge.

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)

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

2. **BACKGROUND:**

a. DOB: 20 JAN 76. Enlmt Age: 22 4/12. Disch Age: 25 9/12. Educ: HS DIPL. AFQT: N/A. A-63, E-55, G-46, M-57. PAFSC: 3P031 - Security Forces Apprentice. DAS: 12 APR 98.

b. Prior Sv: (1) AFRes 11 JUN 98 - 28 JUL 98 (1 Month 18 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 29 JUL 98 for 4 yrs. Svd: 3 Yrs 2 Mos 21 Das, all AMS.

b. Grade Status: AMN - 29 AUG 98 (Vacation of Article 15, 02 MAR 01).
A1C - 09 NOV 99.
AMN - 29 JAN 99.

(Examiner's Note: Special Order (P-294, dated 29 May 01) for promotion to A1C effective 29 Jun 01 was published in error. Applicant was not eligible for promotion on this date due to a referral EPR that closed-out 28 Mar 01).

c. Time Lost: None

d. Art 15's: (1) 23 AUG 01, Hurlburt Field, FL - Article 113. You, on or about 20 Jul 01, being on post as a sentinel at the west side restricted area were found sleeping upon your post. Fifteen days extra duty. (No appeal) (No mitigation)

(2) 02 MAR 01, Vacation, Hurlburt Field, FL - Article 86. You did, on or about 10 Feb 01, fail to go at the time prescribed to your appointed place of duty. Article 134. You, being indebted to ----- in the sum of \$220.00, for transactions made against your account, which became due and payable on or about 1 Apr 99, did, from 1 Apr 99 to 13 Feb 01, dishonorably fail to pay said debt. Reduction to the grade of AMN. (No appeal) (No mitigation)

(3) 29 AUG 00, Hurlburt Field, FL - Article 86. you did, on or about 21 Jul 00, fail to go at the time

prescribed to your appointed place of duty. Suspended reduction to the grade of AMN, and 30 days extra duty. (No appeal) (No mitigation)

- e. Additional: LOC, 16 JUN 00 - Wearing earring in uniform.
LOC, 28 MAY 00 - Dereliction of duty and failure to obey a lawful order.
LOC, 28 MAY 00 - Failure to go on two occasions.
LOR, 17 NOV 99 - Late for formation.
- f. CM: None.
- g. Record of SV: 29 Jul 98 - 28 Mar 00 Hurlburt Field 3 (Initial)
29 Mar 00 - 28 Mar 01 Hurlburt Field 2 (Annual) **REF**

(Discharged from Hurlburt Field)
- h. Awards & Decs: AFTR, AFOUA W/VALOR.
- i. Stmt of Sv: TMS: (3) Yrs (4) Mos (9) Das
TAMS: (3) Yrs (2) Mos (21) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 26 JUL 02
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH

None.

14 NOV 02/cr



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 16th SPECIAL OPERATIONS WING (AFSOC)

MEMORANDUM FOR 16 SOW CC

05 OCT 2001

FROM: 16 SOW/JA

SUBJECT: Legal Review, Administrative Discharge, Amn [REDACTED]
[REDACTED], 16 SFS

1. **AUTHORITY FOR ACTION.** We have reviewed the attached administrative discharge package in accordance with AFD 36-32 and AFI 36-3208, and find that it is legally sufficient to support a finding that the respondent, [REDACTED], is subject to discharge for misconduct - minor disciplinary infractions, under AFI 36-3208, section H, paragraph 5.49.
2. **BACKGROUND.** [REDACTED] was served with the Notification Memorandum on 17 September 2001. He has acknowledged receipt of the Notification Memorandum, his rights to consult counsel, and to submit statements in his behalf. [REDACTED] consulted counsel and submitted a written statement. The package was returned for a legal review on 4 October 2001.
3. **BASIS FOR ACTION.** During this enlistment, the respondent has received two Article 15's, a Vacation of Suspended Nonjudicial Punishment, three Letters of Counseling, one Letter of Reprimand and the establishment of an Unfavorable Information File. The basis for these disciplinary and corrective actions were:
 - a. On or about 20 Jul 01, he was on post as a sentinel at the west side restricted area and was found sleeping upon his post.
 - b. On or about 10 Feb 01, he failed to go at the time prescribed to his appointed place of duty; and he, being indebted to NationsBank in the sum of \$220.00, dishonorably failed to pay said debt, from 1 Apr 99 to 13 Feb 01.
 - c. On or about 21 Jul 00, he failed to go at the time prescribed to his appointed place of duty.
 - d. On or about 16 Jun 00, he failed to meet the standards as set forth in AFI 36-2903.
 - e. On or about 28 May 00, he failed to obey a direct order of a noncommissioned officer and he was derelict in the performance of his duties in that he failed to conduct restricted area entry control point checks.
 - f. On or about 24 May 00 and on or about 25 May 00, he failed to go at the time prescribed to his appointed place of duty.

g. On or about 16 Oct 99 and 17 Oct 99, he failed to go at the time prescribed to his appointed place of duty.

4. **RESPONDENT'S MILITARY RECORD.** Respondent has been on continuous active duty since 29 Jul 98. [REDACTED] has received a rating of 2, 3 on his Enlisted Performance Reports. He is entitled to wear the Air Force Outstanding Unit Award with Valor Device and the Air Force Training Ribbon.

5. **RESPONDENT'S RESPONSE.** The respondent did submit a written statement. [REDACTED] stated that the incidents in his past are just that, in the past. The reason he got his first Article 15 was because he was home on leave and his car broke down and he could not return on time. He later received a vacation action because he did not report for duty due to the fact that his wife was ill and he needed to watch her and their children. [REDACTED] received his second Article 15 for failing to go to work, but he suffers from insomnia and is receiving medical attention.

6. ANALYSIS:

a. Basis for Discharge: There is a preponderance of the evidence to establish a basis for discharge under paragraph 5.49 of AFI 36-3208. Under paragraph 5.49, a pattern of infractions, including failure to comply with nonpunitive regulations or minor offenses under the UCMJ, makes an airman subject to discharge. Infractions of this type result in informal (reduced to writing) or formal counselings, letters of reprimand, or Article 15 nonjudicial punishments. The respondent's documented misconduct falls into this category and establishes a basis for discharge.

b. Should Respondent be Discharged? In accordance with paragraph 6.1, when a discharge is not mandatory, the member's potential for future useful service must be considered. A pattern of misconduct consisting solely of these infractions in the current enlistment makes an airman subject to discharge. You should consider the factors listed in paragraph 6.1.1 before making a final decision to discharge [REDACTED]. These factors include how the respondent's retention might affect military discipline, good order, and morale; whether the circumstances that are the basis of the discharge action will continue or recur; and the respondent's potential for advancement and leadership. [REDACTED] continued disregard for military standards and policies make his continued stay in the Air Force detrimental to good order, morale, and discipline of the 16 Security Forces Squadron. He has shown no potential for leadership or advancement. [REDACTED] should be discharged.

c. Characterization of Discharge: The squadron commander has recommended a General discharge. Table 1.3 provides that for a misconduct case, the authorized discharges are (1) an Honorable discharge, (2) a General discharge, or (3) a discharge under other than honorable conditions (UOTHC). However, in order to impose a UOTHC discharge, a member must be given the right to an administrative discharge board. For a case processed using notification procedures, as this one is, only an Honorable or a General discharge is authorized. If you believe a UOTHC discharge is appropriate, you have the option of convening an administrative discharge board. However, we do not recommend doing so. While [REDACTED] conduct has been unacceptable, it was not so extreme as to warrant an UOTHC discharge. On the other hand, an

Honorable discharge is not warranted either. An Honorable discharge should be reserved for those whose service is "so meritorious that any other characterization would be inappropriate" pursuant to AFI 36-3208, section B, para 1.18.1. As the Special Court-Martial Convening Authority, you may request an Honorable discharge, but only the General Court-Martial Convening Authority, AFSOC/CC, can approve it. We believe a General discharge is the most appropriate characterization of [REDACTED] misconduct. All of his misconduct outweighs the positive aspects of his relatively brief Air Force career. A General discharge should be imposed when "significant negative aspects of the airman's conduct or performance of duty outweigh the positive aspects of the airman's military record" pursuant AFI 36-3208, section B, paragraph 1.18.2. This accurately describes [REDACTED] service.

d. Probation and Rehabilitation: The initiating commander does not recommend probation and rehabilitation in this case. Paragraph 7.3 directs that probation and rehabilitation should be offered to airmen who have demonstrated a potential to serve satisfactorily, who have the capacity to be rehabilitated for continued military service, and whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. Prior to initiating this discharge, [REDACTED] commander gave him several opportunities for rehabilitation. These failed corrective opportunities afforded to [REDACTED] demonstrate that he is not a candidate for probation and rehabilitation.

7. **ERRORS AND IRREGULARITIES.** There are no errors or irregularities in the discharge package that would affect the legal sufficiency of this discharge action.

8. **OPTIONS.** As the Special Court-Martial Convening Authority, you may:

- a. Direct [REDACTED] retention in the United States Air Force;
- b. Direct that the respondent be discharged from the Air Force with a General discharge with or without probation and rehabilitation under AFI 36-3208, section H paragraph 5.49;
- c. Forward a recommendation for separation under paragraph 5.49 with an Honorable discharge to the General Court-Martial Convening Authority, AFSOC/CC (AFI 36-3208, para 5.56.2.1);
- d. Direct reinitiating the package to convene an administrative discharge board if you believe that a UOTHC discharge is warranted; or
- e. Order a program of probation and rehabilitation in accordance with Chapter 7.

9. RECOMMENDATION. We recommend you sign the attached letter at Tab A directing that [REDACTED] discharged from the United States Air Force with a General discharge without probation and rehabilitation.

[REDACTED]



DEPARTMENT OF THE AIR FORCE
16th SECURITY FORCES SQUADRON (AFSOC)

17 Sep 01-

MEMORANDUM FOR [REDACTED] 16 SFS

FROM: 16 SFS/CC

SUBJECT: Notification Letter – Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, more specifically, for minor disciplinary infractions. The authority for this action is AFD 36-32 and AFI 36-3208, section H, paragraph 5.49. If my recommendation for discharge is approved, your service will be characterized as Honorable or General. I am recommending your service be characterized as General.
2. My reasons for this action are based on the following:
 - a. On or about 20 Jul 01, you, being on post as a sentinel at the west side restricted area were found sleeping upon your post, for which you received punishment under Article 15, UCMJ, dated 23 Aug 01, which was filed in your Unfavorable Information File (UIF).
 - b. On or about 10 Feb 01, you failed to go at the time prescribed to your appointed place of duty; and you, being indebted to NationsBank in the sum of \$220.00, dishonorably failed to pay said debt, from 1 Apr 99 to 13 Feb 01, for which you received a Vacation of Suspended Nonjudicial Punishment, dated 2 Mar 01, which was filed in your UIF.
 - c. On or about 21 Jul 00, you failed to go at the time prescribed to your appointed place of duty, for which you received punishment under Article 15, UCMJ, dated 29 Aug 00, which was filed in your UIF.
 - d. On or about 16 Jun 00, you failed to meet the standards as set forth in AFI 36-2903, for which you received a Letter of Counseling (LOC), dated 16 Jun 00.
 - e. On or about 28 May 00, you failed to obey a direct order of a noncommissioned officer and you were derelict in the performance of your duties in that you failed to conduct restricted area entry control point checks, for which you received a LOC, dated 28 May 00.
 - f. On or about 24 May 00 and on or about 25 May 00, you failed to go at the time prescribed to your appointed place of duty, for which you received a LOC, dated 28 May 00.
 - g. On or about 16 Oct 99 and 17 Oct 99, you failed to go at the time prescribed to your appointed place of duty, for which you received a Letter of Reprimand (LOR), dated 17 Nov 99.

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. 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. I have made an appointment for you to consult the Area Defense Counsel, Hurlburt Field, FL, Bldg 90042, 4-5216/5217, on 17 Sep 01 at 1530 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 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 are scheduled for a medical examination and you should report to the Hurlburt Clinic at 0800 hrs on 19 Sep 01 for the examination.
8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 will be provided upon your request.



Attachments:

Documents supporting basis for discharge

1. AF Form 1137, undated (1p.)
2. AF Form 3070, dtd 23 Aug 01 (3p.)
3. AF Form 366, dtd 2 Mar 01 (2p.)
4. AF Form 3070, dtd 29 Aug 00 (3p.)
5. LOC, dtd 16 Jun 00 (2p.)
6. LOC, dtd 28 May 00 (1p.)
7. LOC, dtd 28 May 00 (1p.)
8. LOR, dtd 17 Nov 99 (1p.)
9. Airman's receipt of notification memorandum