

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE AMN	AFSN/SSAN [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
			UOTHIC	OTHER
				DENY
				X
				X
				X
				X
				X
ISSUES A95.00		INDEX NUMBER A67.10		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 14 JAN 03		CASE NUMBER FD2002-0324		
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 [REDACTED]			SIGNATURE OF BOARD PRESIDENT [REDACTED]	
INDORSEMENT			DATE: 14 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

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. In addition, the applicant received six Letters' of Reprimand for sleeping on duty (twice), failure to go (twice), and disobeying a direct order. He also received a Record of Individual Counseling and two Memorandums For Record for failing an upgrade exam, sleeping during a training class, disrespectful towards an NCO and sleeping on duty (twice). 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

MISSING DOCUMENTS

(Former AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/09/22 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 78/09/27. Enlmt Age: 19 9/12. Disch Age: 21. Educ: HS DIPL. AFQT: N/A. A-79, E-72, G-82, M-65. PAFSC: X1A031 - In-Flight Refueling Apprentice. DAS: 99/03/28.

b. Prior Sv: (1) AFRes 98/07/16 - 98/07/28 (13 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AMN for 6 yrs. Svd: 2 Yrs 1 Mo 24 Das, all AMS.

b. Grade Status: AMN - 00/08/04 (Article 15, 00/08/04)
 A1C - 98/09/12

c. Time Lost: None.

d. Art 15's: (1) 00/08/25, Vacation, McConnell AFB, KS - Article 86. You did, on or about 21 Aug 00, without authority, fail to go at the time prescribed to your appointed place of duty. Forfeiture of \$150.00 pay per month for two months. (No appeal) (No mitigation)

(2) 00/08/04, McConnell AFB, KS - Article 86. You did, on or about 7 Jul 00, without authority, fail to go at the time prescribed to your appointed place of duty Article 107. You did, on or about 7 Jul 00, with intent to deceive, make to SSgt -----, an official statement, to wit: you were late to duty because you were discussing an issue with your dorm manager, which statement was totally false, and was then known by you to be so false. Reduction to AMN, and suspended forfeiture of \$250.00 pay per month for two months. (Appeal denied) (No mitigation)

e. Additional: (EXAMINER'S NOTE: INFORMATION OBTAINED FROM NOTIFICATION MEMORANDUM)

LOR, 22 AUG 00 - Failure to go.
LOR, 12 JUL 00 - Disobeyed a direct order.
MFR, 10 JUL 00 - Sleeping on duty.
LOR, 25 JAN 00 - Sleeping on duty.
LOR, 2 MAR 00 - Failure to go.
LOR, 5 FEB 99 - Failure to go.
MFR, 3 FEB 99 - Sleeping on duty.
LOR, 1 DEC 98 - Sleeping during a training class and lying
about it to supervisor.
RIC, 19 NOV 98 - Failed upgrade exam, sleeping during a
training class, and disrespectful towards
an NCO.

f. CM: None.

g. Record of SV: 98/07/29 - 00/03/28 McConnell AFB 3 (Initial) REF
(Discharged from McConnell AFB)

h. Awards & Decs: AFOUA, AFTR.

i. Stmt of Sv: TMS: (2) Yrs (2) Mos (7) Das
TAMS: (2) Yrs (1) Mo (24) Das

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

NO ISSUES SUBMITTED.

ATCH
None.

02/11/22/cr



**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 22D AIR REFUELING WING (AMC)
STAFF JUDGE ADVOCATE
McCONNELL AIR FORCE BASE, KANSAS**

MEMORANDUM FOR 22 ARW/CC

FROM: 22 ARW/JA

SUBJECT: Involuntary Discharge - [REDACTED]

1. **FACTS AND CIRCUMSTANCES:** On 15 Sep 00, [REDACTED] Commander of the 349th Air Refueling Squadron, recommended that [REDACTED] be involuntarily discharged from the United States Air Force pursuant to AFI 36-3208, paragraph 5.49, for minor disciplinary infractions. [REDACTED] recommended that [REDACTED] be given an under honorable conditions (general) discharge without probation and rehabilitation.

2. **EVIDENCE:**

a. Evidence for the Government. During his enlistment in the Air Force, [REDACTED] has engaged in a pattern of minor disciplinary infractions. A brief description of these infractions follows:

(1) On or about 16 Nov 98, [REDACTED] failed an upgrade training exam. Furthermore, on or about 16 Nov 98, he was derelict in his duties, in that he slept during a training class. Finally, on or about 16 Nov 98, he was disrespectful towards an NCO by not following his instruction to stand in the back of the class. An AF Form 174 (Record of Individual Counseling), dated 19 Nov 98, evidences these failures.

(2) On or about 25 Nov 98, [REDACTED] failed an upgrade training exam. Furthermore, on or about 25 Nov 98, he was derelict in his duties, in that he slept during a training class. Also, [REDACTED] lied to his supervisor when his supervisor questioned him about it. A Letter of Reprimand (LOR), dated 1 Dec 98, evidences these failures.

(3) On or about 1 Feb 99, [REDACTED] failed to go to his appointed place of duty. Furthermore, on or about 1 Feb 99, he was derelict in his duties, in that he was sleeping on duty. These failures are evidenced by an LOR, dated 5 Feb 99; [REDACTED] response, dated 10 Feb 99; and a Memorandum for Record (MFR) by [REDACTED] dated 3 Feb 99.

(4) On or about 22 Dec 99, [REDACTED] was derelict in his duties, in that he was sleeping on duty. An LOR, dated 25 Jan 00, evidences this failure.

(5) On divers occasions between 28 Feb 00 and 1 Mar 00, [REDACTED] failed to go to his appointed place of duty. He was directed back to work by personnel at sick call but did not return nor report to duty for the next two days. An LOR, dated 2 Mar 00, evidences these failures.

(6) On or about 20 Jun 00, [REDACTED] disobeyed a direct order by his superior commissioned officer. An LOR, dated 12 Jul 00, evidences this failure.

(7) On or about 10 Jul 00, [REDACTED] was derelict in his duties, in that he was sleeping on duty while aboard an in-flight aircraft. An MFR, dated 10 Jul 00, evidences this failure.

(8) On or about 7 Jul 00, [REDACTED] failed to go to his appointed place of duty. Furthermore, on or about 7 Jul 00, he made a false official statement to [REDACTED]. These actions are evidenced by an AF Form 3070 (Record of Nonjudicial Punishment Proceedings), dated 18 Aug 00; an AF Form 1058 (Unfavorable Information File Action), dated 17 Aug 00; and AF Form 1137 (Unfavorable Information File Summary), undated.

(9) On or about 21 Aug 00, [REDACTED] failed to go to his appointed place of duty. An LOR, dated 22 Aug 00; an AF Form 366 (Record of Proceedings of Vacation of Suspended Nonjudicial Punishment), dated 28 Aug 00; and an AF Form 1058, dated 25 Aug 00, evidence this failure.

b. Evidence for the Respondent. On 12 Sep 00, [REDACTED] acknowledged his right to counsel and to submit written statements in his own behalf. On 13 Sep 00, [REDACTED] waived his right to counsel and did not submit matters in his own behalf.

3. **DISCUSSION:** As the separation authority, you must make four determinations: (1) whether a basis for discharge exists; (2) whether an involuntary discharge is appropriate in this case; (3) if discharge is appropriate, how the discharge should be characterized; and (4) whether probation and rehabilitation (P&R) is appropriate.

a. Basis for Discharge: AFI 36-3208, paragraph 5.49, states that airmen who engage in a pattern of minor disciplinary infractions are subject to discharge. The offenses listed above make Amn [REDACTED] subject to discharge under this provision.

b. Appropriateness of Discharge: AFI 36-3208, paragraph 6.1.1, lists the factors that you must consider in making this determination. Among those factors are the seriousness of the circumstances that make [REDACTED] subject to discharge, whether those circumstances are likely to continue or recur, and whether he has the ability to perform his duties effectively now and in the future. [REDACTED] has committed several infractions during his enlistment. He has demonstrated an unwillingness or inability to comply with the standards required of Air Force members. He has failed to take advantage of the second chances his unit offered him. His continued misconduct demonstrates that he is unsuitable for military service. After a letter of counseling, six LORs and an Article 15, the unit has exhausted their attempts at rehabilitation. It is likely that he will continue to commit offenses if retained, and, as a result would be unable to perform his duties effectively. Therefore, discharge is appropriate.

c. Characterization of the Discharge: AFI 36-3208, paragraph 1.17.3, requires that you consider the airman's age, length of service, grade, aptitude, physical and mental condition and the standards of acceptable conduct and performance for airmen in determining the proper characterization. Paragraph 1.18.2 states that when an airman's service has been faithful on the whole, yet significant negative aspects of the airman's conduct or performance of duty outweigh the positive aspects of his record, an under honorable conditions (general) discharge is appropriate. [REDACTED] series of offenses in this enlistment put him far below the level of acceptable conduct. These offenses demonstrate his disregard for good order and discipline. A general discharge accurately reflects his service.

d. Probation and Rehabilitation: Under AFI 36-3208, paragraph 7.3; a member must have the potential to serve satisfactorily and the capacity to be rehabilitated before an offer of P&R is appropriate. [REDACTED] consistent history of offenses despite the corrective efforts of his squadron indicates that an offer of P&R would not be appropriate in this case.

4. **RECOMMENDATION**: The evidence in the file is factually and legally sufficient to support [REDACTED] recommendation. I recommend you sign the attached letter directing [REDACTED] be involuntarily discharged from the United States Air Force pursuant to AFI 36-3208, paragraph 5.49, with an under honorable conditions (general) discharge without probation and rehabilitation.

[REDACTED]

Attachments:

1. Letter Directing Discharge
2. AFI 36-3208 Discharge Package

I have carefully reviewed the foregoing legal opinion in the case of [REDACTED] I concur with the recommendations contained therein and adopt them as my own.

[REDACTED]



**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 22D AIR REFUELING WING (AMC)
STAFF JUDGE ADVOCATE
McCONNELL AIR FORCE BASE, KANSAS**

MEMORANDUM FOR: [REDACTED]

FROM: 349 ARS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Minor Disciplinary Infractions, in accordance with AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as either honorable or under honorable conditions (general). I am recommending that your discharge be characterized as under honorable conditions (general).

2. My reasons for this action are:

a. You, on or about 16 Nov 98, failed an upgrade training exam. Furthermore, on or about 16 Nov 98, you were derelict in your duties, in that you slept during the training class. Finally, on or about 16 Nov 98, you were disrespectful towards an NCO by not following his instruction to stand in the back of the class. An AF Form 174 (Record of Individual Counseling), dated 19 Nov 98, evidences these failures.

b. You, on or about 25 Nov 98, failed an upgrade training exam. Furthermore, on or about 25 Nov 98, you were derelict in your duties, in that you slept during the training class. Also, you lied to your supervisor when he questioned you about it. A Letter of Reprimand (LOR), dated 1 Dec 98, evidences these failures.

c. You, on or about 1 Feb 99, failed to go to your appointed place of duty. Furthermore, on or about 1 Feb 99, you were derelict in your duties, in that you were sleeping on duty. These failures are evidenced by an LOR, dated 5 Feb 99; your response, dated 10 Feb 99; and a Memorandum for Record (MFR) by SSgt: [REDACTED] dated 3 Feb 99.

d. You, on or about 22 Dec 99, were derelict in your duties, in that you were sleeping on duty. An LOR, dated 25 Jan 00, evidences this failure.

e. You, on divers occasion between 28 Feb 00 and 1 Mar 00, failed to go to your appointed place of duty. You were directed back to work by personnel at sick call but did not return nor report for the next two days. An LOR, dated 2 Mar 00, evidences these failures.

f. You, on or about 20 Jun 00, disobeyed a direct order by your superior commissioned officer. An LOR, dated 12 Jul 00, evidences this failure.

g. You, on or about 10 Jul 00, were derelict in your duties, in that you were sleeping on duty while aboard an in-flight aircraft. An MFR, dated 10 Jul 00, evidences this failure.

h. You, on or about 7 Jul 00, failed to go to your appointed place of duty. Furthermore, on or about 7 Jul 00, you made a false official statement to [REDACTED]. These actions are evidenced by an AF Form 3070 (Record of Nonjudicial Punishment Proceedings), dated 18 Aug 00; an AF Form 1058 (Unfavorable Information File Action), dated 17 Aug 00; and AF Form 1137 (Unfavorable Information File Summary), undated.

i. You, on or about 21 Aug 00, failed to go to your appointed place of duty. These actions are evidenced by a Letter of Reprimand (LOR), dated 22 Aug 00; an AF Form 366 (Record of Proceedings of Vacation of Suspended Nonjudicial Punishment), dated 28 Aug 00; and an AF Form 1058, dated 25 Aug 00.

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. You are ineligible for reenlistment in the Air Force if your discharge is approved.

4. You have the right to consult military counsel. Military legal counsel will be made available to assist you, at no expense to you. I have made an appointment for you to consult with the Area Defense Counsel (ADC) at McConnell AFB KS on _____ 00 at _____ L. You can contact the ADC at ext. 4375. You may consult civilian counsel at your own expense.

5. You have the right to submit matters in your own behalf. Any statements you want the separation authority to consider must reach me by _____ 00 at _____ L unless you request and receive an extension for good cause shown. Any statements or other matters you submit will be forwarded 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 **mandatory** medical appointment. You are to report to the 22d Medical Squadron, Physical Exams Section, on _____ 00 at _____ L. Take your medical records with you.

8. If you live in base housing, you must contact the housing office immediately upon receipt of this notification.

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 squadron orderly room.

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



Attachments:

1. Receipt of Notification Memorandum
2. Statement of Understanding
3. AF Form 174, dated 19 Nov 98
4. LOR, dated 1 Dec 98
5. LOR, dated 5 Feb 99
6. Your response, dated 10 Feb 99
7. MFR by [REDACTED] dated 3 Feb 99
8. LOR, dated 25 Jan 00
9. LOR, dated 2 Mar 00
10. LOR, dated 12 Jul 00
11. MFR, dated 10 Jul 00
12. AF Form 3070, dated 18 Aug 00
13. AF Form 1058, dated 17 Aug 00
14. AF Form 1137, undated
15. LOR, dated 22 Aug 00
16. AF Form 366, dated 28 Aug 00
17. AF Form 1058, dated 25 Aug 00.