

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) []	GRADE AMN	AFSN/SSAN []
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW				
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL				
<table border="1"> <tr> <td>YES</td> <td>NO</td> </tr> <tr> <td></td> <td>X</td> </tr> </table>	YES	NO		X		
YES	NO					
	X					

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

ISSUES A93.09	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 26 FEB 03	CASE NUMBER FD2002-0332	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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

INDORSEMENT	DATE: 26 FEB 03
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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

FD02-0332

GENERAL: The applicant appeals for upgrade of discharge to Honorable, to change the Reason and Authority for discharge, and to change the RE Code.

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 believes his discharge was too harsh because it was due to marital problems and not to duty performance. The record indicates the applicant received an Article 15 for wrongfully ignoring a no contact order with his wife and assault. He also received a Vacation action of a suspended bust under the UCMJ for willfully damaging a wall by throwing a picture against it. And, he received a Letter of Reprimand for a domestic dispute. The DRB took note of the applicant's duty performance as documented by his record. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. If the applicant can provide additional documented information to substantiate an issue, the applicant should consider exercising his right to make a personal appearance before the Board. If he should choose to exercise this right to a personal appearance hearing, the applicant should be prepared to provide the DRB with factual evidence of the inequity and any exemplary post-service accomplishments as well as any contributions to the community. The Board concluded the discharge was appropriate for the reasons that were the basis for this case. The characterization of the discharge received by the applicant was found to be appropriate. The Board found no evidence of any inequity or impropriety on which to base a decision to upgrade the 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 22 JUN 99 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for an Honorable Discharge, to Change the RE Code and Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 02 NOV 79. Enlmt Age: 18 4/12. Disch Age: 19 7/12. Educ: HS DIPL. AFQT: N/A. A-94, E-44, G-37, M-60. PAFSC: 3P031 - Security Apprentice. DAS: 18 DEC 98.

b. Prior Sv: (1) AFRes 27 MAR 98 - 28 JUL 98 (4 months 2 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 29 JUL 98 for 4 years. Svd: 00 Yrs 10 Mo 24 Das, all AMS.

b. Grade Status: AMN - 29 APR 99 (Article 15, Vacation, 18 May 99)

c. Time Lost: None.

d. Art 15's: (1) 18 May 99, Vacation, Minot AFB, ND - Article 108. You, did, on or about 12 May 99, without proper authority, willfully damage by throwing a picture against the wall, military property of the United States, the amount of said damage being in the sum of about \$45.00. Article 134. You, were, on or about 12 May 99, disorderly, which conduct was of a nature to bring discredit upon the armed forces. Reduction to Amn, and forfeiture of \$100.00 pay per month for one month. (No appeal) (No mitigation)

(2) 29 April 99, Minot AFB, ND - Article 92. You, having knowledge of a lawful order issued by SMSgt ----- to not have any contact with your wife, ----- until further notice, an order which it was your duty to obey, did, on or about 16 Apr 99, fail to obey the same by wrongfully returning to your residence at 105-4 Landing Court. Article 92. You, having knowledge of a lawful order issued by SMSgt ----- to not have any contact with your wife, ----- until further notice, an order which it was your duty to obey, did, from on or about 18 Apr 99 to on or about 21 Apr 99, fail to obey the same by wrongfully returning to your residence

at 105-4 Landing Court. Article 128. You, did, on or about 3 Apr 99, assault ----- by: slapping her hand with your open hand, knocking the glass she was holding out of her hand. Suspended reduction to Amn, forfeiture of \$100.00 pay per month for 2 months (\$100.00 pay per month for 1 month suspended), and a reprimand. (No appeal) (No mitigation)

e. Additional: LOR, 04 FEB 99 - Domestic dispute.

f. CM: None.

g. Record of SV: None.

(Discharged from Minot AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (02) Mos (26) Das
TAMS: (00) Yrs (10) Mos (24) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 30 Jul 02.

(Change Discharge to Honorable, Change the RE Code, and Change the Reason and Authority for Discharge)

Issue 1: To whom it may concern, I believe my discharge and reentry code is improper due to the facts leading up to my discharge wich (sic) was marital problems. I believe my discharge and reentry code should reflect my service not my home life. The reentry code of 2B will not allow me to ever serve my country again that I served so well with pride. Other than marital problem I have never dishonorable (sic) to the Air Force or my country. Furthermore I would like to mention that my wife and I was in a difficult situation, at the young age of 19 we were married with one child and one on the way in such a remote assignment 1500 miles away from home.

Issue 2: On 9/11/01 a horrific event took place, and all I could do was sit and cry wishing I was still able to fight and defend my country. I would love to have the opportunity to do so someday, but a 2B reentry code prevents me from doing so. I am asking that you please consider the enclosed documents when reviewing my reentry code and discharge.

ATCH

1. Area Defense Counsel Memorandum.
2. Response to Proposed Article 15 Vacation Action.
3. Response to Administrative Discharge Action.
4. Character Reference.

18 Nov 02/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 5TH BOMB WING (ACC)
MINOT AIR FORCE BASE, NORTH DAKOTA

U.S. AIR FORCE



1947 - 1997

MEMORANDUM FOR CC

FROM: JA

17 JUN 1999

SUBJECT: Legal Review - AFI 36-3208, Paragraph 5.49 Discharge,
Amn: [redacted]; 5 SFS, Minot AFB ND

1. I reviewed the administrative discharge action against Amn: [redacted] and find it legally sufficient to support his discharge from the Air Force.

2. BASIS FOR THE ACTION: Administrative action against Amn: [redacted] is based on misconduct pursuant to AFI 36-3208, Section H, paragraph 5.49 (Minor Disciplinary Infractions). The pattern of misconduct consists of the following acts:

a. On or about 22 Jan 99, Amn: [redacted] was involved in a physical altercation with his wife at his residence in base housing. He wrestled his wife to the ground during a verbal argument and caused minor bruising to her arm and side. After she escaped his grasp, she went into the kitchen and returned with a steak knife. Amn: [redacted] wrestled with her again causing his ear to be scratched/cut. His injury required medical treatment. He was given a Letter of Reprimand on 5 Feb 99. (Atch 1)

b. On or about 3 Apr 99, Amn: [redacted] assaulted his wife by slapping her hand with his open hand, knocking the glass she was holding out of her hand. He was given a no contact order on 3 Apr 99. On or about 16 Apr 99, Amn: [redacted] failed to obey an order given to him by the first sergeant not to have contact with his wife. He failed to obey this order by returning to his place of residence. On or about 18 Apr 99 through 21 Apr 99 Amn: [redacted] again failed to obey the same order by wrongfully returning to his residence. He was punished under Article 15 of the UCMJ on 28 Apr 99 and an Unfavorable Information File (UIF) was established. (Atch 1)

c. On or about 12 May 99, without proper authority, Amn: [redacted] willfully damaged military property of the United States by throwing a picture against a wall, resulting in a 5 1/2" x 2 3/4" hole in the wall. The amount of said damage was approximately \$45.00. Amn: [redacted] disorderly conduct was of a nature to bring discredit upon the armed forces. His suspended nonjudicial punishment was vacated on 20 May 99 and the vacation was added to his existing UIF. (Atch 1)

3. MATTERS SUBMITTED BY THE RESPONDENT: Amn: [redacted] consulted with Capt: [redacted], Area Defense Counsel on 10 Jun 99 and chose to submit statements on his own behalf. On 13 Jun 99, Amn: [redacted] submitted a written statement from himself and from the Area Defense Counsel. His response contained the following

information: He indicated that he received orders to Minot AFB and even though his gaining commander denied his orders he was still assigned to Minot AFB. He was married in Dec 98 and in Jan 99 he and his wife were involved in a domestic dispute. She was arrested and convicted for assault. Arriving at Minot AFB presented a challenging environment for his wife and himself. Being away from home, friends, and family was extremely stressful to their relationship. He stated he is greatly embarrassed by the events that have taken place over these few months, but he does not think his personal life has affected his job performance. If he is given a general discharge, it could have a negative effect on him and have an impact on his ability to get a good job. The stigma of an other than honorable discharge has negative connotations. He comes from a law enforcement family and it is his intent to patrol the streets of America.

4. **COMMANDER'S RECOMMENDATION:** The squadron commander has considered Amn: [redacted] written response and the character statements he submitted in response to the recommendation for discharge. However, the commander desires to proceed with the general discharge.

5. **DISCUSSION:** There are four questions that must be addressed before discharging Amn Cherry. They are as follows.

a. **BASIS FOR DISCHARGE:** In deciding whether Amn: [redacted] is to be discharged, you must first determine if there is a basis for discharge. In determining whether there is a basis for discharge, you may only consider the misconduct described in paragraph 2. Within the first six weeks on station, Amn: [redacted] was involved in a physical altercation with his wife in base housing. The facts derived from the investigation led the commander to conclude that Amn: [redacted] initiated the altercation by wrestling his wife to the ground in what had started as a verbal altercation. On 3 Apr 99, Amn: [redacted] was again involved in a physical altercation with his wife. Based on the violence of these two incidents, the commander gave Amn: [redacted] a no contact order. Amn: [redacted] violated this order on numerous occasions by returning to his residence. By definition, minor disciplinary infractions involve failure to comply with nonpunitive regulations or minor offenses under the UCMJ which result in counselings, letters of reprimand or Article 15's. Amn: [redacted] conduct falls within this definition of minor disciplinary infractions and thus, is a basis for discharge under AFI 36-3208, paragraph 5.49.

b. **APPROPRIATENESS OF DISCHARGE:** Next, you must determine whether Amn: [redacted] should be discharged. You may consider Amn: [redacted] entire military record when making this determination. Amn: [redacted] arrived at Minot AFB on 18 Dec 98. Less than a month after reporting for duty at Minot AFB, he received a Letter of Reprimand for a violent altercation with his wife at base housing. Less than two months later he was involved in another similar violent incident. He was immediately given a no contact order but returned to his residence less than two weeks later. He continued to violate the no contact order over the next five days. He was given an Article 15 on 28 Apr 99. The suspended punishment was then vacated because Amn: [redacted] was involved in disorderly conduct on 12 May 99 which resulted in damage to government

property. Amn: [] conduct shows a severe and persistent disregard for military standards and his actions are disruptive to good order and discipline. He has not only been involved in a pattern of violent misconduct but he has also repeatedly and purposefully violated a direct order from his commander which was given in an attempt to allay the violence at home. The commander has used various administrative and disciplinary tools to try and rehabilitate Amn: [] but to no avail. Given his entire military record - specifically his short time in the military coupled with his string of violent misconduct - Amn: [] should not remain in the Air Force.

(1) Amn: [] has 10 months active duty service. His current enlistment began on 29 Jul 98. He has not received an EPR evaluation in this enlistment. (Atch 5)

(2) On 10 Jun 99, the squadron commander recommended that Amn: [] be discharged with a general discharge. After reviewing the case file, I concur with that recommendation.

c. CHARACTERIZATION OF SERVICE: If you determine that Amn: [] should be discharged, you must also determine the characterization of discharge. Characterization of service will be determined solely by the member's military record during the current enlistment. Following are the three types of characterization of service.

(1) Under Other Than Honorable: An under other than honorable conditions discharge is appropriate when the airman's conduct is a serious departure from the standards expected of airmen. (A recommendation for an under other than honorable conditions discharge carries with it the right to an administrative discharge board.)

(2) General: If the case file does not demonstrate such a serious departure from expected standards, but significant negative aspects of an airman's conduct outweigh the positive aspects, then a general discharge is appropriate.

(3) Honorable: An honorable discharge is appropriate when the quality of a member's service record generally has met Air Force standards of acceptable conduct and performance of duty, or has been so meritorious that any other characterization would be clearly inappropriate.

In this case, Amn: [] misconduct has not been so deleterious as to warrant an under other than honorable conditions discharge. However, his repeated misconduct, when balanced with his military record during this current enlistment justifies the awarding of a general discharge.

d. PROBATION AND REHABILITATION: If you decide that discharge is warranted, you must also decide if probation and rehabilitation (P&R) is appropriate. Amn: [] commander does not recommend P&R. A1C: [] has failed to respond to repeated

rehabilitative measures. He has little concern for military standards and seems unwilling to change his behavior. Accordingly, P&R should not be offered in this case.

6. **ERRORS AND IRREGULARITIES:** There are no errors or irregularities which materially affect the procedural or substantive rights of the member.

7. **ACTION WHICH MAY BE TAKEN:** As the SPCM authority, your options are:

- a. Retain Amn: [] if the evidence does not support discharge; or,
- b. Return the case to the squadron for processing under a more appropriate provision; or,
- c. Return the case to the squadron to reinitiate the action to make him entitled to a discharge board hearing, if you believe that an under other than honorable conditions discharge may be warranted; or,
- d. Discharge Amn: [] with a general discharge, with or without suspension for probation and rehabilitation; or,
- e. Forward your recommendation with specific reasons for an honorable discharge, with or without suspension for P&R, to 8 AF/CC.

8. **RECOMMENDATION:** I recommend that you separate Amn: [] with a general discharge without suspension for probation and rehabilitation. If you concur, please sign the letter at attachment 1.

[Signature box]

Staff Judge Advocate U

Attachments:

- 1. Letter
- 2. Case File



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 5TH BOMB WING (ACC)
MINOT AIR FORCE BASE, NORTH DAKOTA

PD 2002-0332
U.S. AIR FORCE



1947 - 1997

MEMORANDUM FOR AMN: [REDACTED], 5 SFS

9 JUN 1999

FROM: 5 SFS/CC

SUBJECT: Letter of Notification - AFI 36-3208, Paragraph 5.49.

1. I am recommending your discharge from the United States Air Force for misconduct; specifically, minor disciplinary infractions. The authority for this action is AFI 36-3208, Section H, paragraph 5.49. If my recommendation is approved, your discharge will be characterized as general or honorable. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On or about 22 Jan 99, you were involved in a physical altercation with your wife at your residence in housing. You wrestled her to the ground during a verbal argument and caused minor bruising to her arm and side. After she escaped your grasp, she went into the kitchen and returned with a steak knife. You wrestled again and she somehow scratched/cut your ear requiring medical treatment. You were given a written no contact order on 3 Apr 99 and a Letter of Reprimand on 5 Feb 99. (Atch 3-5)

b. On or about 16 Apr 99, you failed to obey an order given to you by the first sergeant not to have contact with your wife. You failed to obey this order by returning to your place of residence. On or about 18 Apr 99 through 21 Apr 99 you failed to obey the same order by wrongfully returning to your residence. On or about 3 Apr 99, you assaulted your wife by slapping her hand with your open hand, knocking the glass she was holding out of her hand. You were punished under Article 15 of the UCMJ on 28 Apr 99 and an Unfavorable Information File (UIF) was established. (Atch 6-21)

c. On or about 12 May 99, without proper authority, you willfully damaged military property of the United States by throwing a picture against a wall. The amount of said damage was approximately \$45.00. Your disorderly conduct was of a nature to bring discredit upon the armed forces. Your suspended nonjudicial punishment was vacated on 20 May 99 and this was added to your existing UIF. (Atch 22-26)

3. The Letter of Notification with attachments will be forwarded to the separation authority in support of this recommendation. The Commander exercising SPCM jurisdiction (5 BW/CC) 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. 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 Captain [redacted], Area Defense Counsel, at his office, 300 Summit Drive, Room 306A, at ~~0800~~ ¹⁶⁰⁰ hours, on ~~16 Jun 99~~, 1999. 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 0920 hours, on 14 Jun, 1999, 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 5th Medical Group Hospital, 10 Missile Avenue, Minot AFB, ND at 1330 hours, on 14 Jun, 1999 for the examination. You must not drink alcoholic beverages 72 hours prior to the exam.
8. The Privacy Act Statement of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use in the Orderly Room.
9. Sign the attached acknowledgment and the Statement of Understanding and return them to me immediately.

[redacted signature box]

Commander, 5th Security Forces Squadron

Attachments:

1. Receipt of Letter of Notification
 2. Statement of Understanding
 3. No Contact Order, 3 Apr 99
 4. Letter of Reprimand, 4 Feb 99
 5. Response to Letter of Reprimand, 5 Feb 99
 6. AF FM 3070, Record of Nonjudicial Punishment Proceedings, 6 May 99
 7. AF FM 1168, Statement of Witness/Complainant, SSgt [redacted], 14 Apr 99
 8. AF FM 1168, Statement of Witness/Complainant, Amn [redacted], 14 Apr 99
 9. Blotter entry, no date/1422
 10. Blotter entry, not date/1713
 11. AF FM 1168, Statement of Witness/Complainant, TSgt [redacted], 14 Apr 99
 12. AF FM 3545, Incident Report, 3 Apr 99
- (Continued on next page)

13. AF FM 1168, Statement of Witness/Complainant, Ms [redacted] 3 Apr 99/1310
14. AF FM 1168, Statement of Suspect, A1C: [redacted], 3 Apr 99
15. No Contact Order, 3 Apr 99
16. AF FM 3545, Incident Report, 16 Apr 99
17. AF FM 1168, Statement of Witness/Complainant, Ms [redacted] 3 Apr 99/1423
18. AF FM 1168, Statement of Witness/Complainant, Amn [redacted], 16 Apr 99
19. AF FM 1168, Statement of Witness/Complainant, TSgt [redacted], 16 Apr 99
20. Memo for Record, SSgt [redacted], 21 Apr 99
21. Memo for Record, SMSgt [redacted], 19 Apr 99
22. AF FM 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment, 24 May 99
23. Blotter Entry, 12 May 99
24. AF FM 1168, Statement of Suspect, A1C: [redacted], 12 May 99
25. AF FM 1168, Statement of Witness/Complainant, Ms. [redacted], 12 May 99
26. AF FM 1168, Statement of Witness/Complainant, Ms. [redacted], 12 May 99