

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE A1C	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	UOTHC	OTHER	DENY
[REDACTED]							X
							X
							X
							X
							X
ISSUES A94.05		INDEX NUMBER A94.05		EXHIBITS SUBMITTED TO THE BOARD			
HEARING DATE 21 FEB 03		CASE NUMBER FD2002-0335		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			
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 RECORDER [REDACTED]			SIGNATURE OF BOARD PRESIDENT [REDACTED]				
INDORSEMENT			DATE: 21 FEB 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

FD02-0335

GENERAL: The applicant appeals for upgrade of discharge to Honorable, 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 contends that his discharge was too harsh and states that the JAG and his unit commander believed that he lied about what his plans were for his terminal leave. He also believes that he was wrongfully accused of malingering and making a false official statement. He concludes that he would like to be able to reenter the Air Force to complete the term for which he signed up for. The record indicates the applicant received an Article 15 for making a false official statement and feigning a headache for the purpose of avoiding his duties. He also received four Letters of Counseling for failure to go, failure to wear proper safety protection, a traffic citation for driving on an expired license and having no proof of insurance, and failure to show up for roll call; a Letter of Admonishment for failure to follow orders, and a Letter of Reprimand for failure to go. 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

[REDACTED]

(Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02 APR 01 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge, to Change the RE Code and Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 06 Dec 77. Enlmt Age: 17 /9/12. Disch Age: 23 3/12. Educ: HS DIPL. AFQT: N/A. A-83, E-87, G-84, M-81. PAFSC: 2A353A - Tactical Aircraft Maintenance Journeyman. DAS: 19 Jul 00.

b. Prior Sv: (1) AFRes 23 Sep 95 - 13 Aug 96 (10 months 21 days) (Inactive).

(2) Enlisted as A1C 14 Aug 96 for 4 yrs. Extended 27 Apr 99 for 11 months. Svd: 3 yrs 0 mos 23 days, all AMS. SRA - 14 DEC 98. EPRs: 5,4.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SRA 7 Sep 99 for 6 yrs. Svd: 1 Yr 6 Mos 26 Das, all AMS.

b. Grade Status: A1C - 9 Jan 01 (Article 15, 9 Jan 01)

c. Time Lost: None.

d. Art 15's: (1) 9 Jan 01, Edwards AFB, CA - Article 107. You, did, on or about 19 Dec 00, with intent to deceive, make to SMS -----, an official statement, to wit: that you were going to South Carolina during your permissive temporary duty for house/job hunting or words to that effect, which statement was totally false, and was then known by you to be so false. Article 115. You, did, on divers occassions between on or about 28 Jan 00 and on or about 21 Dec 00, for the purpose of avoiding your duty as a dedicated crew chief feign a headache. Reduction to the grade of A1C, forfeiture of \$312.00 pay, 14 days extra duty, and a reprimand.
(Appeal/Denied) (No mitigation)

e. Additional: LOR, 26 SEP 00 - Failure to go.
LOC, 15 SEP 00 - Failure to show up for roll call.
LOA, 05 APR 00 - Failure to follow orders.
LOC, 21 MAR 00 - Traffic citation for driving on expired license and no proof of insurance.
LOC, 08 FEB 00 - Failure to wear proper safety protection.

LOC, 24 AUG 99 - Failure to go.

f. CM: None.

g. Record of SV: 16 Jan 99 - 15 Jan 00 Edwards AFB 4 (Annual)
16 Jan 00 - 15 Jan 00 Edwards AFB 2 (Annual) **REF**

(Discharged from Edwards AFB)

h. Awards & Decs: AFLSAR, AFTR, MBOB.

i. Stmt of Sv: TMS: (5) Yrs (6) Mos (11) Das
TAMS: (4) Yrs (7) Mos (20) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 18 Jul 02.

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

Issue 1: Please see attached letter. Also, more character references are going to be submitted within one month.

ATCH

1. Request for Discharge Upgrade, 20 Jul 02.
2. Character Reference.

20 Nov 02/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE FLIGHT TEST CENTER (AFMC)
EDWARDS AIR FORCE BASE, CALIFORNIA

MEMORANDUM FOR 95 ABW/CC [REDACTED]

15 February 2001

FROM: AFFTC/JA

SUBJECT: Legal Review-Administrative Discharge Under AFI 36-3208, para 5.50.2,
[REDACTED]

1. **Background:** This discharge action is being processed against the respondent, [REDACTED] FR243-51-7485, 412 TS, for a Pattern of Misconduct (Conduct Prejudicial to Good Order and Discipline), AFI 36-3208, para 5.50.2. The package is legally sufficient subject to proper medical clearance. The respondent acknowledged that military legal counsel was made available to him and he consulted with counsel. (Atch 3)

[REDACTED] is the subject of a Medical Evaluation Board (MEB) recommendation for discharge based on a 95th Medical Group diagnosis that renders him medically disqualified for worldwide duty. If the proposed misconduct discharge is approved, the completed discharge package will be forwarded to HQ AFMPC/DPMARS2, Randolph AFB, for dual action processing to determine whether this discharge or the medical discharge should be executed (AFI 36-3208, para 4.7.3).

2. **Analysis:** Enlisted members are subject to involuntary discharge for a pattern of misconduct consisting wholly or in part of misconduct more serious than that considered under AFI 36-3208, para 5.49 (minor disciplinary infractions). In the case under consideration, the respondent committed the following infractions and offenses:

a. On 24 Aug 99, the respondent failed to report to his place of duty, as evidenced by a Letter of Counseling dated 24 Aug 99. (Atch 1.1)

b. On 8 Feb 00, the respondent was derelict in the performance of his duty in that he failed to wear proper safety protection, as evidenced by a Letter of Counseling dated 8 Feb 00. (Atch 1.2)

c. On 19 Feb 00, the respondent drove on base without a driver's license or proof of insurance, as evidenced by a Letter of Counseling dated 21 Mar 00. (Atch 1.3)

d. On 5 Apr 00, the respondent failed to report back to his place of duty, as evidenced by a Letter of Admonishment dated 5 Apr 00. (Atch 1.4)

e. On 15 Sep 00, the respondent failed to report to his place of duty, as evidenced by a Letter of Counseling dated 15 Sep 00. (Atch 1.5)

f. On 17, 21, 26, 27, 28 and 31 Jul 00, the respondent reported to work late, as evidenced by a Memorandum from [REDACTED] dated 20 Sep 00. (Atch 1.6)

g. On 1, 7, 23, 28 and 29 Aug 00 and 5, 7 and 8 Sep 00, the respondent failed to go to his appointed place of duty, for which he received a Letter of Reprimand dated 26 Sep 00 which established an Unfavorable Information File dated 29 Sep 00. (Atch 1.7)

h. On 19 Dec 00, the respondent made a false official statement and did, on divers occasions from 28 January 2000 to 21 December 2000, feign headaches for the purpose of avoiding his duties, for which he received nonjudicial punishment (Article 15) as evidenced by an AF Form 3070 dated 9 Jan 01. (Atch 1.8)

3. **Discussion of Respondent's Background:** 14 Aug 96, the respondent joined the Air Force for a term of 4 years. On 15 Jun 99, he arrived at Edwards AFB, California. The respondent is authorized to wear the Air Force Longevity Service Award and the Air Force Training Ribbon. Since arriving at Edwards the respondent has received one Article 15, one Letter of Reprimand, four Letters of Counseling, and establishment of an Unfavorable Information File.

4. **Basis for Discharge:** There is sufficient evidence to support a discharge of the respondent for a Pattern of Misconduct (Conduct Prejudicial to Good Order and Discipline), AFI 36-3208, para 5.50.2. The respondent has engaged in a pattern of misconduct which includes failing to go to his appointed place of duty and malingering. The respondent has had ample opportunity to change his behavior and has not done so.

The Letter of Counseling discussed in paragraph 2a (Atch 1.1) predates the current enlistment period and, therefore, can not properly be considered either as part of the basis for the discharge or for characterization of any discharge ordered. However, it is proper to consider item 2a (Atch 1.1) in determining whether, in light of all of the other evidence, the respondent *should* be discharged. See AFI 36-3208, para 1.20.1

5. **Discussion of Respondent's Statement:** The respondent acknowledged that military legal counsel was made available to him and that he consulted with counsel. The respondent and defense counsel have submitted statements for consideration (Atch 3).

Respondent's counsel claims, and we agree, that one of the documents in this discharge package, attachment 1.1, is from a prior enlistment and, thus, it is not proper to use that document for determining the basis nor the characterization of his discharge.

Respondent claims that some of his statements or submissions in response to disciplinary actions should have been, and were not, included with those documents in the discharge package. Review of respondent's personnel files disclosed a response to his 26 September 2000 LOR which was not in the discharge notification package. This document has been appended to attachment 1.7.

Respondent's counsel claims that the attachments to respondent's response to his 9 January 2001 Article 15 Non-Judicial Punishment action were a part of the record and should have been included in his discharge package. To the contrary, paragraph 14.3 of AFI 51-202 states that "[e]vidence and other materials considered as a basis for imposing punishment, or vacating suspended punishment, or submitted by the offender in mitigation, extenuation, or defense or on appeal are not part of the record." However, in light of counsel's express desire to include those

documents in the package, they have been appended to respondent's response to the discharge notification at attachment 3.

Respondent's counsel asserts that attachment 1.6 should not properly be considered. Without necessarily agreeing, but accepting *arguendo* counsel's position, the package is legally sufficient to support a discharge without considering the additional information in attachment 1.6.

Finally, respondent claims that his alleged migraine headaches are a legitimate medical condition which interfere with his ability to perform his duties rather than malingering as they were described in his 9 January 2001 Non-Judicial Punishment (Atch 1.8). This was respondent's position in his Article 15 response and on appeal, but his immediate commander and group commander found contrary to his position.

6. **Characterization of Discharge:** If you determine the respondent should be discharged, you must determine how to characterize the respondent's service during his current enlistment. The respondent's commander, [REDACTED], recommends the respondent be discharged under honorable conditions (general). According to AFI 36-3208, para 1.18.2, an airman's service should be characterized as under honorable conditions (general) when significant negative aspects of the airman's conduct or duty performance outweigh positive aspects of the airman's military record. Further, when an airman is discharged for misconduct, an honorable discharge is only merited when an airman's record "... has been so meritorious that any other characterization would be clearly inappropriate." AFI 36-3208, Chapter 5, Section H, para 5.48.4. The respondent has had a reasonably short career and the negative aspects of his conduct outweigh the positive aspects of his military record. I concur with the Commander's recommendation the respondent be discharged under honorable conditions (general). For the reasons cited in paragraph 4, above, care should be taken to avoid consideration of material listed in paragraph 2a (Atch 1.1) in determining the appropriate characterization of any discharge ordered.

7. **Probation and Rehabilitation:** Pursuant to AFI 36-3208, Chapter 7, the Probation and Rehabilitation (P&R) program provides an opportunity for airmen subject to involuntary separation to remain in the Air Force until their normal date of separation. Based on this program, execution of the approved discharge is conditionally suspended for no less than 6 months but not more than 12 months. This gives the member a chance to show that he or she is able to meet Air Force Standards. The suspended discharge will be automatically canceled after completion of the period stated on the P&R notification, unless the suspension has been vacated, or action to vacate it has been initiated. [REDACTED] recommends against P&R. I concur. The respondent has been given ample opportunity to adhere to standards and has not done so. Moreover, his failures have been repeated. He has not demonstrated the kind of attitude that would support a recommendation for P&R.

8. **95 ABW/CC Options:** As separation authority in this case, you may:

- a. Retain the respondent
- b. Discharge the respondent with an under honorable conditions (general) discharge for Conduct Prejudicial to Good Order and Discipline (AFI 36-3208, para 5.50.2) with or without P&R;

c. Recommend to HQ AFFTC/CC that the respondent receive an honorable discharge for Conduct Prejudicial to Good Order and Discipline (AFI 36-3208, para 5.50.2), with or without P&R;

d. Return the package to the unit for further processing if you determine that the discharge should be characterized as under other than honorable conditions.

9. **Recommendation:** The respondent's squadron commander, [REDACTED] recommends that the respondent be discharged with an under honorable conditions (general) discharge for a Pattern of Misconduct (Conduct Prejudicial to Good Order and Discipline), AFI 36-3208, para 5.50.2. Based on the respondent's conduct, I agree with the respondent's commander and recommend the respondent be discharged under honorable conditions (general) without probation and rehabilitation. If you concur, please sign and date the letter located at Tab 1.

[REDACTED]

95 ABW Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 412TH TEST WING (AFMC)
EDWARDS AIR FORCE BASE, CALIFORNIA

2 Feb 01

MEMORANDUM FOR AIC [REDACTED]

FROM: 412 TS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for a Pattern of Misconduct (Conduct Prejudicial to Good Order and Discipline). The authority for this action is AFPD 36-32 and AFI 36-3208, para 5.50.2. If my recommendation is approved, your discharge will be characterized as honorable or general. I am recommending that your service be characterized as under honorable conditions (general).

2. My reasons for discharging you for minor disciplinary infractions are:

a. On 24 Aug 99, you failed to report to your place of duty, as evidenced by a Letter of Counseling dated 24 Aug 99. (Atch 1.1)

b. On 8 Feb 00, you failed to wear proper safety protection, as evidenced by a Letter of Counseling dated 8 Feb 00. (Atch 1.2)

c. On 19 Feb 00, you were cited for driving without a driver's license or proof of insurance, as evidenced by a Letter of Counseling dated 21 Mar 00. (Atch 1.3)

d. On 5 Apr 00, you failed to report back to your place of duty, as evidenced by a Letter of Admonishment dated 5 Apr 00. (Atch 1.4)

e. On 15 Sep 00, you failed to report to your place of duty, as evidenced by a Letter of Counseling dated 15 Sep 00. (Atch 1.5)

f. On 17, 21, 26, 27, 28 and 31 Jul 00, you reported to work late, as evidenced by a Memorandum from [REDACTED] dated 20 Sep 00. (Atch 1.6)

g. On 1, 7, 23, 28 and 29 Aug 00 and 5, 7 and 8 Sep 00, you failed to go to your appointed place of duty, for which you received a Letter of Reprimand dated 26 Sep 00 which established an Unfavorable Information File dated 29 Sep 00. (Atch 1.7)

h. On 19 Dec 00, you made a false official statement and did, on divers occasions, feign a headache for the purpose of avoiding your duties, for which you received an AF Form 3070 (Article 15) dated 9 Jan 01. (Atch 1.8)

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 convening authority (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. 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 [REDACTED] at Bldg 2670 on 5 Feb 01 at 1100. 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 1630 9 Feb 01 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 Physical Examination Section, Flight Surgeon's Office, Bldg 3925 at 0730 on 5 Feb 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 is available for your use in the Orderly Room.

[REDACTED]

Attachments:

1. Notification Memorandum
 - 1.1 LOC dated 24 Aug 99
 - 1.2 LOC dated 8 Feb 00
 - 1.3 LOC dated 21 Mar 00
 - 1.4 LOA dated 5 Apr 00
 - 1.5 LOC dated 15 Sep 00
 - 1.6 Memorandum from [REDACTED] dated 20 Sep 00
 - 1.7 LOR dated 26 Sep 00; UIF dated 29 Sep 00
 - 1.8 AF Form 3070 (Article 15) dated 9 Jan 01
2. Airman's Receipt of Notification/Recoupment Memorandum
3. Airman's Statement
4. EPRs