

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0340

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant was offered a personal appearance before the Discharge Review Board but declined to exercise this right.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify upgrade of the discharge.

Issue. Applicant was discharged for minor disciplinary infractions. Member received two Articles 15 and three Letters of Reprimand. His misconduct included failure to go on numerous occasions, displaying disrespectful behavior towards a commissioned officer and senior noncommissioned officer, and using derogatory comments towards a fellow airman. The Board noted member was age 18 when his misconduct occurred, essentially the same age as other airmen who complete their enlistments without disciplinary infractions, and there was no evidence he did not know right from wrong. The applicant also states he would like to use the GI Bill and someday serve his country again in a responsible and honorable manner. The board was sympathetic to the impact the loss of an educational benefit was having on the applicant but this was not a matter of inequity or impropriety that would warrant an upgrade. The Board concluded the misconduct was a significant departure from 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 and that the characterization of the discharge received by the applicant was found to be appropriate.

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 7 Feb 02 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 21 Mar 82. Enlmt Age: 17 4/12. Disch Age: 19 10/12. Educ: HS DIPL. AFQT: N/A. A-77, E-76, G-68, M-71. PAFSC: 1W031A - Weather Forecaster. DAS: 16 Feb 01.

b. Prior Sv: (1) AFRes 5 Aug 99 - 4 Jul 00 (11 Mos 0 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as A1C 5 Jul 00 for 6 yrs. Svd: 1 Yr 7 Mos 3 Das, all AMS.

b. Grade Status: AMN - 11 Oct 01 (Vacation of Article 15, 11 Jan 02)

c. Time Lost: None.

d. Art 15's: (1) 11 Jan 02, Vacation, Shaw AFB, SC - Article 86. You, did on divers occasions between on or about 29 Nov 01 and on or about 25 Dec 01, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to AMN. (No appeal) (No mitigation)

(2) 11 Oct 01, Shaw AFB, SC - Article 86. You, did on divers occasions between on or about 24 Sep 01 and on or about 27 Sep 01, without authority, fail to go at the time prescribed to your appointed place of duty. Suspended reduction to the grade of AMN, and 15 days restriction. (No appeal) (No mitigation)

e. Additional: LOR, 08 Dec 01 - Failure to go, missed appointment, failure *copy* ~~*~~to properly follow set operations, displaying disrespectful behavior towards a commissioned officer and senior noncommissioned officer, and misuse of study time.

LOR, 19 Sep 01 - Late for work, fourth violation.

LOR, 28 Aug 01 - Using derogatory comments toward a fellow airman and failure to go.

f. CM: None.

g. Record of SV: None.

(Discharged from Shaw AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (2) Yrs (6) Mos (3) Das
TAMS: (1) Yr (7) Mos (3) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 8 Aug 02.
(Change Discharge to Honorable)

Issue: I am not taking issue with my discharge but wish to state that I realize that I behaved in an unacceptable manner during the last four months in the Air Force. I displayed poor judgement in my actions and have deeply regretted it ever since. I submit my actions in the last days of serves (sic) do not reflect the high regard I have for the Air Force and for my love of country. Though I believe there were some extenuating circumstance I am at fault for my poor judgement. I now hope that my actions and minor achievements as documented in the accompanying letters show my true desire to improve myself and to be a productive member of society. I am requesting this change in status so I might attend college using what VA benefits that I may have available to me to train as a surgical technologist. Additionally, with a change in status I am in hopes that someday I may, if possible, serve my country again in a responsible and honorable manner.

ATCH

1. Education Transcripts.
2. College Acceptance.
3. Letter of Employment.

18 Nov 02/cr



DEPARTMENT OF THE AIR FORCE
20th FIGHTER WING (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

2 FEB 2002

MEMORANDUM FOR 20 FW/CC

FROM: 20 FW/JA

SUBJECT: Legal Review of AFI 36-3208 Action — [REDACTED]

1. Basis for Action: The Commander, 28th Operational Weather Squadron, has recommended that [REDACTED] be separated from the service with a general discharge for misconduct — minor disciplinary infractions, under the provisions of AFI 36-3208, section H, paragraph 5.49. The Respondent is being processed according to the notification procedure.

2. Facts: The file reflects the following as reasons for discharge:

a. Between on or about 29 Nov 01 and on or about 25 Dec 01, on divers occasions, the Respondent failed to go at the time prescribed to his appointed place of duty. For these acts of misconduct, his previously suspended reduction to the grade of Airman was vacated on 11 Jan 02.

b. Between on or about 13 Nov 01 and on or about 7 Dec 01, the Respondent missed an appointment, arrived late for work, failed to properly follow set operations for issuing and canceling weather warnings, displayed disrespectful behavior toward a commissioned officer and a senior noncommissioned officer, and misused his supervised study time. For these acts of misconduct, he received a letter of reprimand (LOR), dated 8 Dec 01. Additionally, these incidents were placed in his previously established unfavorable information file (UIF), and he was placed on a control roster, dated 18 Dec 01.

c. Between on or about 24 Sep 01 and on or about 27 Sep 01, on divers occasions, the Respondent failed to go at the time prescribed to his appointed place of duty. For these acts of misconduct, he received Article 15 nonjudicial punishment action on 11 Oct 01. Punishment consisted of a suspended reduction to the grade of Airman, and restriction to Shaw Air Force Base, South Carolina for 15 days.

d. On or about 13 Sep 01, the Respondent arrived late for duty. For this misconduct, he received an LOR, dated 19 Sep 01. Additionally, this act of misconduct was placed in his previously established UIF, dated 20 Sep 01.

e. Between on or about 20 Aug 01 and on or about 21 Aug 01, the Respondent used provoking and reproachful remarks toward a fellow airman, and he failed to perform his official duty of taking a scheduled formal training exam. For these acts of misconduct, he received an LOR, dated 28 Aug 01. Additionally, a UIF was established, dated 28 Aug 01.

4. Respondent's Submission: After consulting with counsel, the Respondent elected to submit matters for your consideration. In a two-page letter, the Respondent asks you to first consider the detailed explanations for his misconduct, which are not meant to be excuses for his actions. He proceeds to describe his "side of the story" concerning the acts of misconduct set forth in paragraphs 2b and 2e above. He then states his initial reasons for joining the Air Force — to serve his country and because many family members had previously served in the military. After describing his brief career, the Respondent respectfully requests to be retained in order to have a chance to prove his abilities. He adds that, if this is not an option, he requests to be honorably discharged. Finally, the Respondent forwards two character

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reference statements for your review and consideration. The Respondent's submissions are located under Tab 7 of the attached case file.

5. Errors and Irregularities: This file contains no errors or irregularities.

6. Conclusions:

a. Pending receipt of the medical examination, this file is legally sufficient to support a discharge, pursuant to AFI 36-3208, chapter 5, paragraph 5.49. The Respondent's file reflects one vacation action, one Article 15 nonjudicial punishment actions, and three letters of reprimand. The Respondent's repeated instances of misconduct constitute a valid basis for his discharge.

b. The Respondent's commander has recommended that he receive a general discharge. I concur with this recommendation. A general discharge is appropriate when significant negative aspects of an airman's conduct or duty performance outweigh positive aspects of the airman's military record. In this case, the Respondent's numerous instances of misconduct constitute negative aspects of his military career that outweigh the positive. Therefore, a general discharge is appropriate.

c. The commander does not recommend Probation and Rehabilitation (P&R). I concur. Despite the rehabilitative efforts undertaken by unit supervisory personnel on his behalf, the Respondent has failed to adhere to Air Force standards of conduct. Only six short months after the Respondent arrived at Shaw AFB, his misconduct began. He engaged in altercations with a fellow airman, a senior noncommissioned officer, and a commissioned officer. He reported late for duty, and he missed appointments. His supervisors and commander took actions in an effort to rehabilitate him. If their diligent measures failed, further expenditures of effort will likely fail. Therefore, P&R is inappropriate in this case.

6. Options: As the Special Court-Martial Convening Authority in this case, you may:

a. Retain the Respondent in the Air Force;

b. Direct the Respondent be discharged with a general discharge, with or without P&R;

c. Recommend the Respondent be discharged with an honorable discharge, with or without P&R, and forward this case to the General Court-Martial Convening Authority (9 AF/CC) for his action; or

d. Direct this case be reinitiated pursuant to the board hearing procedures of AFI 36-3208, chapter 6, section C, if you feel a discharge under other than honorable conditions is warranted.

7. Recommendation: I recommend you separate the Respondent with a general discharge, without P&R.


Staff Judge Advocate

Attachment:
Case File



DEPARTMENT OF THE AIR FORCE
20th FIGHTER WING (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

16 JAN 02

MEMORANDUM FOR [REDACTED]

FROM: 28 OWS/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, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, paragraph 5.49. If my recommendation is approved, your discharge will be characterized as honorable or general. I recommend your discharge be characterized as general.

2. My reasons for this action are:

a. Between on or about 29 Nov 01 and on or about 25 Dec 01, on divers occasions, you failed to go at the time prescribed to your appointed place of duty. For these acts of misconduct, your previously suspended reduction to the grade of Airman was vacated on 11 Jan 02.

b. Between on or about 13 Nov 01 and on or about 7 Dec 01, you missed an appointment, arrived late for work, failed to properly follow set operations for issuing and canceling weather warnings, displayed disrespectful behavior toward a commissioned officer and a senior noncommissioned officer, and misused your supervised study time. For these acts of misconduct, you received a letter of reprimand (LOR), dated 8 Dec 01. Additionally, these incidents were placed in your previously established unfavorable information file (UIF), and you were placed on a control roster, dated 18 Dec 01.

c. Between on or about 24 Sep 01 and on or about 27 Sep 01, on divers occasions, you failed to go at the time prescribed to your appointed place of duty. For these acts of misconduct, you received Article 15 nonjudicial punishment action on 11 Oct 01. Punishment consisted of a suspended reduction to the grade of Airman, and restriction to Shaw Air Force Base, South Carolina for 15 days.

d. On or about 13 Sep 01, you arrived late for duty. For this misconduct, you received an LOR, dated 19 Sep 01. Additionally, this act of misconduct was placed in your previously established UIF, dated 20 Sep 01.

e. Between on or about 20 Aug 01 and on or about 21 Aug 01, you used provoking and reproachful remarks toward a fellow airman, and you failed to perform your official duty of taking a scheduled formal training exam. For these acts of misconduct, you received an LOR, dated 28 Aug 01. Additionally, a UIF was established, dated 28 Aug 01.

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 you are discharged, how your service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably not be allowed to enlist in any other branch of the armed forces.

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 Capt [REDACTED] Area Defense Counsel, 895-9530, on 17 Jan 02, at 0830 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 three days after receipt of the notification memorandum, 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.

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7. You must report to the Shaw AFB Hospital, Physical Examinations Section, between the hours of 1100 – 1300, Mon – Thurs, for a medical 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.

9. The Air Force is entitled to recoup a portion of educational assistance, special pay, or bonus monies which you received, if any, if you separate before completing the period of active duty you agreed to serve. This recoupment applies whether you voluntarily separate or are involuntarily separated. Recoupment will apply regardless of the basis for involuntary discharge, unless the reason is homosexual conduct. The recoupment in all cases is an amount that bears the same ratio to the total cost provided to you as the unserved portion of active duty bears to the total period of active duty you agreed to serve. If you dispute that you are indebted for educational assistance, a board or other authority will make findings and recommendations concerning the validity of the indebtedness.

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


 USAF
Commander

9 Attachments:

- 1. AF Form 366, 11 Jan 02 (Tab 4)
- 2. LOR, 8 Dec 01 (Tab 4)
- 3. AF Form 1058, 18 Dec 01 (Tab 4)
- 4. AF Form 3070, 11 Oct 01 (Tab 4)
- 5. LOR, 19 Sep 01 (Tab 4)
- 6. AF Form 1058, 20 Sep 01 (Tab 4)
- 7. LOR, 28 Aug 01 (Tab 4)
- 8. AF Form 1058, 28 Aug 01 (Tab 4)
- 9. Respondent's Receipt of Notification (Tab 5)