

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AIC	AFSN/SSAN [REDACTED]
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TYPE GEN	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	X	

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	U/OTH	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A93.01, A93.19, A94.53	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 03-04-09		CASE NUMBER FD2002-0352			

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 <i>[Signature]</i>	SIGNATURE OF BOARD PRESIDENT <i>[Signature]</i>
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INDORSEMENT		DATE: 03-04-14
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

FD2002-0352

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 the applicant substantiates an inequity or impropriety that would justify a change of the discharge.

Issues. Applicant was discharged for minor disciplinary infractions. He had three Articles 15, a Letter of Reprimand, and a Letter of Counseling. His misconduct included several instances of underage possession and use of alcohol, an incident of failure to go, and two offenses of playing loud music in the dormitory. At the time of the discharge, member consulted counsel and submitted a statement in his own behalf in which he explained he got caught in stop loss, otherwise he would have been separated at the completion of his term of service in October 2001. He had a civilian job waiting and processed a waiver, which was denied. Member then asked his First Sergeant if there was anything he could do but didn't realize he would end up with a general discharge. Member asked to be retained long enough to separate with an honorable characterization of service at the conclusion of the stop loss period. The Board noted member did not dispute the occurrence of the infractions, and was given several opportunities to correct his behavior but was either unwilling or unable to do so. Member was the same age as other airmen who successfully complete their terms of service without any disciplinary infractions, and there was no evidence member didn't know right from wrong or was immature. Because he was responsible for his actions he was held accountable for them. The Board did not find sufficient mitigation to warrant an upgrade, and no inequity or impropriety was found in this discharge in the course of the records review.

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 A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 13 Feb 02 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 9 Aug 79. Enlmt Age: 17 8/12. Disch Age: 22 6/12. Educ: HS DIPL. AFQT: N/A. A-58, E-72, G-62, M-39. PAFSC: 2E251 - Electronic Computer and Switching Systems Journeyman. DAS: 5 Jul 98.

b. Prior Sv: (1) AFRes 6 May 97 - 8 Jul 97 (2 Mos 3 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 9 Jul 97 for 4 yrs. Ext: 3 Months on 28 Feb 01. Svd: 4 Yrs 7 Mos 5 Das, all AMS.

b. Grade Status: A1C - 11 SEP 00
AMN - 11 NOV 99
AB - 11 MAY 99 (Article 15, 11 May 99)
A1C - 9 NOV 98
AMN - Unknown

c. Time Lost: None.

- d. Art 15's: (1) 2 Aug 01, Lackland AFB, TX - Article 86. You, did, on or about 19 Jul 01, without authority, fail to go at the time prescribed to your appointed place of duty. Suspended reduction to AMN, forfeiture of \$272.00 pay, and restriction for 7 days. (No appeal) (No mitigation)
- (2) 11 May 99, Lackland AFB, TX - Article 92. You, who knew of your duties, on or about 18 Apr 99, were derelict in the performance of those duties in that you willfully failed to refrain from drinking alcohol while under the age of 20 years old, as it was your duty to do. Reduction to the grade of AB. (No appeal) (No mitigation)
- (3) 24 Jul 98, Lackland AFB, TX - Article 92. You, did, on or about 10 Jul 98, fail to obey a lawful general regulation, to wit: paragraph 1.1.2, Air Force Instruction #34-219, dated 1 Aug 97, by wrongfully consuming alcohol while under the legal age limit in the state of Texas. Fourteen days extra duty.

(No appeal) (No mitigation)

- e. Additional: (EXAMINER'S NOTE: LOR MISSING FROM FILE. INFORMATION OBTAINED FROM LEGAL REVIEW)

LOR, 22 MAY 01 - Two complaints of loud music in dormitory room.
LOC, 05 APR 01 - Four complaints of loud music in dormitory room.

- f. CM: None.

- g. Record of SV: 9 Jul 97 - 08 Mar 99 Kelly AFB 4 (Initial)
9 Mar 99 - 08 Mar 00 Kelly AFB 4 (Annual) REF
9 Mar 00 - 17 Apr 01 Lackland AFB 4 (Annual)

(Discharged from Lackland AFB)

- h. Awards & Decs: AFTR, AFLSAR W/1BOLC, AFOUA W/1BOLC.

- i. Stmt of Sv: TMS: (4) Yrs (9) Mos (8) Das
TAMS: (4) Yrs (7) Mos (4) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 1 Aug 02.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF

ATCH

1. Applicant's Issues.
2. Four Character References.

22 Nov 02/cr



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

29 JAN 2002

MEMORANDUM FOR 37 TRW/CC

FROM: 37 TRW/JA

SUBJECT: Legal Review, Administrative Discharge,
[REDACTED] CPSG

1. **Authority for Action:** I have reviewed the attached administrative discharge case file regarding the respondent, A1C [REDACTED]. His commander, [REDACTED], recommends a General (Under Honorable Conditions) discharge characterization pursuant to AFI 36-3208, Chapter 5, paragraph 5.49, Minor Disciplinary Infractions. Paragraph 5.56 indicates that you, as the Special Court-Martial Convening Authority (SPCMCA), personally approve or disapprove the recommendations for a notification discharge (not board entitled) under paragraph 5.49 that results in a General service characterization. The proposed discharge is supported by a preponderance of the evidence. Therefore, the file is legally sufficient, subject to a medical determination that the respondent is qualified for worldwide duty and separation. He is not entitled to an administrative board hearing based on time in service, grade, or any other factors.

2. **Respondent's Military Record:** The respondent has been on active duty since 09 Jul 97. [REDACTED] has been assigned to his present unit since 5 Jul 98. [REDACTED]'s overall ratings on his Enlisted Performance Reports (EPRs) are as follows: 9 Jul 97 - 8 Mar 99 (4 -referral), 9 Mar 99 - 8 Mar 00 (4) and 9 Mar 00 - 17 Apr 01 (4). His awards and decorations include the Air Force Training Ribbon and Air Force Longevity Service Award.

3. **Respondent's Response:** On 28 Dec 01, the respondent consulted with counsel and has submitted statements on his behalf for your consideration.

4. **Analysis:**

a. **Basis and Propriety of Discharge:** AFI 36-3208, paragraph 5.49, authorizes the involuntary separation of airmen who engage in a pattern of misconduct involving violations of nonpunitive regulations or minor offenses under the UCMJ. According to the instruction, the subject misconduct will have ordinarily resulted in informal or formal counselings, letters of reprimand, or nonjudicial punishment under Article 15, UCMJ. The evidence in this case supports [REDACTED] involuntary separation under paragraph 5.49. On 10 Jul 98, [REDACTED] failed to obey a lawful general regulation, to wit: paragraph 1.1.2. Air Force Instruction 34-219, dated 1 Aug 97, by wrongfully consuming alcohol while under the legal age limit in the state of Texas. For this misconduct, he received an Article 15, dated 24 Jul 98. His punishment was 14 days extra duty. On 18 Apr 99, [REDACTED] was derelict in the performance of his duties, in that, he willfully failed to refrain from drinking alcohol while under the age of 20 years old, as it was his duty to do. For this misconduct, he received an Article 15, dated 11 May 99. His punishment was a reduction to the grade of Airman Basic (E-1). On 3 Apr 01, A1C Jones failed to obey dormitory policies, by disturbing other dormitory residents with the use of excessively loud music. For this misconduct, he received a Letter of Counseling dated 5 Apr 01. On 21 May 01, [REDACTED] failed to turn his music down in Bldg. 2009 on two occasions. For this misconduct, he received a Letter of Reprimand dated 22 May 01 which was placed in a UIF dated 23 Jul 01. On 19 Jun 01, [REDACTED] failed to go, at the prescribed time, to his appointed place of duty, to wit: Cryptologic Systems Group, 250 Hall Blvd, Ste 215. For this misconduct, [REDACTED] received an Article 15, dated 2 Aug 01. His punishment was a suspended reduction to the grade

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of Airman (E-2), forfeiture of \$272.00 pay and restriction to Lackland Air Force Base for 7 days. [REDACTED] has engaged in a pattern of behavior that consistently falls below Air Force standards of conduct. He may therefore be lawfully separated under paragraph 5.49.

b. Propriety of Discharge In accordance with paragraphs 6.1 and 5.47, the decision to retain or separate the respondent should be based upon respondent's conduct and ability to meet required standards of duty performance and discipline. You may consider respondent's entire military record in deciding whether he should be discharged or retained. Based on my review of the evidence presented in this discharge package, the respondent should be discharged from the Air Force.

c. Characterization of Discharge: The possible service characterizations in this case are Honorable, General (Under Honorable Conditions), and Under Other Than Honorable Conditions (UOTHC). The initiating commander recommended a General service characterization. Characterization of service as General is appropriate when an airman's service has been honest and faithful but significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects. A service characterization of Honorable is appropriate when the airman's quality of service generally has met Air Force standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate. A UOTHC characterization is appropriate when behavior constitutes a significant departure from the conduct expected of airmen. Significant negative aspects of [REDACTED] conduct outweigh the positive aspects of his military record. Accordingly, characterization of [REDACTED] service as General is appropriate.

d. Probation and Rehabilitation (P&R): I concur with CPSG/CCQ that P&R is not appropriate for this airman. The squadron gave [REDACTED] ample opportunity for rehabilitation. He did not take advantage of those opportunities as shown by his repeated misconduct. There is no reason to believe that further rehabilitative efforts would be successful.

e. Errors and Irregularities: The Notification Memorandum, dated 27 Dec 01, paragraph 2(b), states [REDACTED] received an LOR dated 22 May 01 for failing to turn his music down on two occasions. The LOR has been misplaced and has not been found. [REDACTED] appeared at the 37 TRW/JA office on Thursday, 17 Jan 02 and made a statement that he did receive the LOR dated 22 May 01 for failing to turn his music down on two occasions, however he could not find his copy of the LOR. The respondent was notified that the LOR was considered as one reason for this discharge action. Although a copy of the 22 May 01 LOR should be included in this package, absence of a copy does not prohibit the unit from considering the offense as a basis for discharge pursuant to AFI 36-3208, paragraph 5.49. [REDACTED] admitted receiving the LOR on 22 May 01, the LOR is mentioned in the 23 Jul 01 UIF, and the respondent has been notified that it was part of the reason for discharge. Therefore, the misconduct may be used as part of the basis for discharge pursuant to paragraph 5.49. The misplaced LOR is erroneously listed on the Notification Memorandum as an attachment. Also, the UIF dated 23 Jul 01 is included in the discharge package, but not listed as an attachment. Finally, the Notification Memorandum indicates that it is from the CPSG/CCF (First Sergeant), who is not authorized to initiate discharge. In reality, it is from, and signed by the CPSG/CCQ, 1Lt Lamont, respondent's section commander who is authorized to initiate discharge. Nevertheless, I find no errors that substantially prejudice the rights of the respondent.

5. Options: You may:

- a. direct retention in the United States Air Force;
- b. direct a General discharge from the Air Force, with or without P&R, under paragraph 5.49;

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c. forward a recommendation for separation under paragraph 5.49 with an Honorable discharge, with or without P&R, to 2 AF/CC; or

d. direct reinitiation of the package to convene an administrative discharge board if you believe a UOTHC discharge is warranted.

6. **Recommendation:** Sign the attached memorandum directing [REDACTED] discharge from the Air Force with a General (Under Honorable Conditions) discharge without P&R.

[REDACTED]
Staff Judge Advocate

Attachments:

1. Proposed Memorandum
2. Case File

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DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

MEMORANDUM FOR [REDACTED]

FROM: CPSG/CCF

27 Dec 01

SUBJECT: Notification Memorandum


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

2. My reason for this action is:

- a. On or about 19 Jun 01, you failed to go at the prescribed time to your appointed place of duty, to wit: Cryptologic Systems Group, 250 Hall Blvd, Ste 215. As a result, you received an Article 15, dated 2 Aug 01. Your punishment was reduction to the grade of Airman (E-2), suspended until 29 January 2002, after which time it will be remitted without further action, unless sooner vacated. Forfeiture of \$272.00 pay. Restriction to Lackland Air Force Base as defined by the perimeter fence for 7 days.
- b. On or about 21 May 01, you failed to turn your music down in Bldg 2009 on two occasions. As a result you received a Letter of Reprimand dated 22 May 01.
- c. On or about 3 Apr 01, you failed to abide by dormitory policies, by disturbing other dormitory residents with the use of excessive music. As a result you received a Letter of Counseling dated 5 Apr 01.
- d. On or about 18 Apr 99, you were derelict in the performance of those duties in that you willfully failed to refrain from drinking alcohol while under the age of 20 years old, as it was your duty to do. As a result, you received an Article 15, dated 11 May 99. Your punishment was reduction to the grade of Airman Basic, with new date of rank of 11 May 99.
- e. On or about 10 Jul 98, you failed to obey a lawful general regulation, to wit: paragraph 1.1.2. Air Force Instruction 34-219, dated 1 August 1997, by wrongfully consuming alcohol while under the legal age limit in the state of Texas. As a result, you received an Article 15 dated 24 Jul 98. Your punishment was 14 days extra duty.

3. Copies of the documents to be forward 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, if you are discharged, and 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 counsel. Military Legal Counsel has been obtained for you. I have made an appointment for you to consult ADC at Building 1000, on 28 Dec 01 at 0900 hours. You may consult civilian counsel at your own expense. If employed, civilian counsel must be readily available.
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 2 Jan 02, 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 statement 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  Room _____ at 1300 on 28 Dec 01 with your medical, immunization, and dental records 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 at the CPSG Orderly Room.


Section Commander

Attachments:

1. LOC, 3 Apr 01
2. LOR, 22 May 01
3. AF Form 3070, 2 Aug 01
4. AF Form 3070, 11 May 99
5. AF Form 3070, 24 Jul 98