

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE A1C	AFSN/SSAN [REDACTED]
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TYPE GEN	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW				
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">YES</td> <td style="width: 50%;">NO</td> </tr> <tr> <td></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	YES	NO		<input checked="" type="checkbox"/>		
YES	NO					
	<input checked="" type="checkbox"/>					

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UO/HC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A92.01, A92.02, A95.00	INDEX NUMBER A61.00	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 6 FEB 03	CASE NUMBER FD2002-0380			

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 Travis AFB, CA

Advise applicant of the decision of the Board, and the right to submit an application to the AFBCMR.

SIGNATURE OF RECORDER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 6 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

CASE NUMBER

FD2002-0380

GENERAL: The applicant appeals for upgrade of discharge to honorable and for a change in the reason and authority for the discharge and in the RE code.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at [REDACTED] CA on February 6, 2003. HS, the applicant's father, also appeared and testified on behalf of the applicant.

The following additional exhibits were submitted at the hearing: Exhibit 5: Applicant's Contentions; Exhibit 6: Character Letter from [REDACTED] Community Presbyterian Church, 3 Feb 03; Exhibit 7: Character Letter from [REDACTED] Wilbur Police Dept, 8 Jan 03; Exhibit 8: Character Letter from [REDACTED] Red Baron Aviation, 30 Jan 03; Exhibit 9: Character Letter from [REDACTED] Chief of Police, [REDACTED] Police Dept, 16 Jan 03; Exhibit 10: Character Letter from [REDACTED], 22 Jan 03; Exhibit 11: Statement from the Applicant, 31 Jan 03; Exhibit 12: Statement from [REDACTED] (the Applicant's Mother), 5 Feb 03; Exhibit 13: Character Letter from [REDACTED] 2 Feb 03; Exhibit 14: Statement from [REDACTED] (USAFR), 15 Jan 03; Exhibit 15: Character Letter from [REDACTED] 1 Feb 03; Exhibit 16: Statement from [REDACTED]

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

FINDINGS: The DRB denies the requested relief.

The DRB finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify an upgrade of the discharge or a change to the reason and authority for the discharge or RE code.

ISSUES: The applicant was discharged with a general discharge upon the recommendation of an administrative discharge board. The record indicates the applicant was discharged after receiving a civilian conviction (pursuant to a guilty plea and a no contest plea – a plea that allows the applicant to avoid admitting guilt but that requires him to admit the evidence is sufficient to convict him beyond a reasonable doubt) on two counts of second degree (intentional) child abuse. The applicant was originally charged with first degree (intentional) child abuse, a more serious charge.

According to the record and the evidence adduced at the hearing, his 10-day-old son suffered head injuries (a hemotoma) and broken ribs (it was not clear from the record or the applicant's testimony how many ribs were broken) while in the applicant's care. The applicant's description of the incident differed somewhat from the account provided in his unsworn statement at the administrative discharge board. During the DRB, he indicated that to the best of his knowledge, the baby, who was being cradled in the applicant's arms, accidentally bumped his head on the couch post when the applicant tried to get up from the couch. The applicant had heard his older son (then approximately 18 months old) in the kitchen trying to get into the knife drawer. As he got up off the couch to attend to his older son, he his arms dropped (while continuing to hold the child) causing the baby to hit his head. Not realizing what he had done, he carried the baby into the kitchen. His administrative discharge board testimony, however, differed in that he stated he dropped the baby on the ground and left the baby on the ground when he went into the kitchen. He testified further that when he returned to the living room, he picked up the crying baby and started squeezing him to calm him down. At the DRB hearing, he stated he returned to the living room with the baby and began hugging him tightly with the baby over his shoulder in the same position one would use to burp a baby. He demonstrated a hugging/squeezing/patting motion that he felt "could have" broken the baby's ribs. He said he thought this was the only thing that might have resulted in the baby's broken ribs. He claims that neither he nor his wife noticed any bruises or had any idea the baby had been injured as

badly as it had. He also stated the baby had no other known health problems and that the baby's birth was quick and uneventful. Finally, he mentioned that his wife, who was taking a shower at the time of the incident, was convicted of fourth degree child abuse. He stated he only pled guilty to intentionally hurting the child in order to prevent his wife from also being prosecuted for first degree child abuse. The applicant is divorced and has not seen his ex-wife or children since he began his 21-month prison term, which is now complete. The applicant was uncertain of the current health of the baby, though his father was aware there was some permanent brain damage.

Notwithstanding the applicant's ambiguous testimony and the lack of medical evidence in the case, it was clear to the DRB the evidence (particularly the description of the occurrence of the baby's injuries) did not support the applicant's account of the incident. The DRB was not convinced the applicant's actions, as he describes them, could have caused the injuries to the baby. In short, the DRB concluded the applicant was not being truthful about how he caused the baby's injuries. The DRB also did not believe the applicant pled guilty to intentionally breaking the child's ribs (and no contest to the head injuries) in an effort to avoid his wife's prosecution. There are two reasons it was difficult to accept this proposition. First, the DRB was not convinced he would admit guilt to such a heinous crime if the injuries were caused by accident as the applicant claimed. Second, if the crimes were actually an accident and his wife was not present in the room when the accident occurred, he could have cleared his wife with a simple explanation to the authorities or even by pleading no contest to the rib injuries. The DRB was not convinced the applicant pled guilty to a crime he did not commit, but rather that he pled guilty because he was guilty—the evidence in the file supports this conclusion.

Although the applicant did have acceptable duty performance during his brief career, his crimes so outweigh his service that changing the character, the reason and authority, and the RE code would not be remotely in the best interests of the Air Force.

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. Hence, the request for relief is denied.

Attachment:
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

[REDACTED]
[REDACTED]
(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 11 May 98 UP AFI 36-3208, para 5.51.1 (Civilian Conviction). Appeals for Honorable Discharge, to Change the RE Code, and Reason & Authority for Disch.

2. **BACKGROUND:**

a. DOB: 23 Apr 73. Enlmt Age: 22 11/12. Disch Age: 25 0/12. Educ: HS DIPL. AFQT: N/A. A-68, E-50, G-55, M-65. PAFSC: 2A531A - Aerospace Maintenance Apprentice. DAS: 22 Dec 96.

b. Prior Sv: (1) AFRes 19 Apr 96 - 01 May 96 (13 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 2 May 96 for 4 yrs. Svd: 2 Yrs 0 Mos 9 Das, of which AMS is 1 year 10 months 27 days (excludes 1 month 13 days lost time).

b. Grade Status: A1C - 2 SEP 97
AMN - 2 NOV 96

c. Time Lost: 23 Feb 98-25Feb 98/31 Mar 98-11 May 98 (1 month 13 days).

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 2 May 96 - 1 Jan 98 McChord AFB 1 (Initial) REF

(Discharged from McChord AFB)

h. Awards & Decs: AFTR, AFOUA W/1 DEV.

i. Stmt of Sv: TMS: (1) Yrs (11) Mos (10) Das
TAMS: (1) Yrs (10) Mos (27) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 6 Sep 02

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

Issue 1: I would like to re-enlist into the Air Force. In order for me to do so it needs to be upgraded. I enjoyed the Air Force and was doing exceptional work. If at all possible I would like to serve my country again.

ATCH

1. AF Form 100.
2. Four Character References.
3. Recommendation for Discharge.
4. Letter of Recommendation.

6DEC02/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 62D AIRLIFT WING (AMC)



22 April 1998

MEMORANDUM FOR 62 AW/CC

FROM: 62 AW/JA

SUBJECT: Administrative Discharge Board - [REDACTED] 62 AGS

1. We have reviewed the Administrative Discharge Board record pertaining to the above referenced case and have found it legally sufficient.

2. SUMMARY OF CASE: On 2 March 1998, 62 AGS/CC initiated administrative discharge action against [REDACTED] (Respondent) under the provisions of AFPD 36-32, *Military Retirements and Separation*, and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section H, paragraph 5.51.1, for a civilian conviction. 62 AGS/CC identified the following reason for discharge in the Notification Letter:

On 23 February 1998, the Superior Court of the State of Washington, in and for the County of Pierce, convicted [REDACTED] of two counts of assault of a child in the second degree. The basis of the conviction was that between on or about 14 January 1997 and on or about 2 February 1997, [REDACTED] did, on divers occasions, assault his infant son.

He also indicated that as a result of this conviction, the court would sentence [REDACTED] on 31 March 1998. The maximum punishment for each count is 120 months confinement and a \$20,000 fine.

3. An Administrative Discharge Board appointed by your order convened on 30 March 1998. After considering all of the evidence presented, the Board determined that the Respondent was convicted of a civil offense as evidenced by the conduct cited in the Letter of Notification. The Board recommended that Respondent be separated with a General Discharge and that he not be offered probation and rehabilitation.

4. SUMMARY OF GOVERNMENT EVIDENCE: In addition to the Notification Letter and 62 AGS/CC's Recommendation for Discharge Letter, the government presented into evidence documents pertaining to Respondent's February 1998 civilian conviction for two counts of assault of a child in the second degree. Specifically, it provided the Pre-Sentence Report Order, the Release Order, and the Statement of Defendant. Finally, the government presented Respondent's EPR. The government did not call any witnesses.

5. SUMMARY OF RESPONDENT'S EVIDENCE: Respondent submitted twenty-one character statements from co-workers and relatives. The statements generally described Respondent as a hard worker and excellent duty performer and as a respectful, sensitive and caring person. Respondent also submitted a certificate of completion of a Parenting Skills course from Bates Technical College and the instructor's assessment, a certificate of participation in a Parenting Young Children course from Systematic Training for Effective Parenting (STEP), a progress report in a Domestic Violence Program course, and a memorandum of completion of the Assertiveness Training Class offered by the McChord AFB Mental Health Clinic.

6. Respondent called the following witnesses:

a. [REDACTED] identified her training and background. She testified that she is a clinical social worker who had an opportunity to observe [REDACTED] and his wife and ask them questions about the suspected abuse. She observed [REDACTED] physical demeanor and responses as being open and forthright in response to her questions. She stated that [REDACTED] explanation of his child's injuries was that he was watching their two children when he heard the older child in kitchen opening drawers. Because he was worried that the older child might get a knife or other dangerous object, he got up quickly to stop the older child. At this point [REDACTED] was holding the young child in his arms loosely. The young child slipped from his arms and fell, hitting the sofa. When [REDACTED] went to retrieve the young child, he squeezed the child in an attempt to calm it. She assesses the injuries to the young child as a terrible accident. On cross-examination she stated she was at the hospital to rule out child abuse. During questioning from the Legal Advisor, she reiterated [REDACTED] explanation and indicated that she did not question [REDACTED] as fully as others did.

b. [REDACTED] testified that he is the Respondent's father. He related that [REDACTED] never had any disciplinary problems growing up. Through his observations of [REDACTED] as a parent, he believes his son to be an open, easy-going and playful father to his children. He would have no reservations in leaving [REDACTED] with his grandchildren. He believes this was an isolated incident. Responding to questions from the Board and the Legal Advisor, he opined that the dropping of the infant was accidental and that his son pled guilty because he took the best deal he could from the State.

7. Respondent made an unsworn statement in which he stated the following (pages 13-16 of the transcript):

a. Respondent is from Chandler, Arizona. He attended a Christian school and participated in numerous volunteer activities. After high school, he moved to Grand Coulee, Washington, to live with his aunt. There, he met [REDACTED] his future spouse. At that time [REDACTED] was pregnant with a son [REDACTED], from a previous relationship. Eight months later, he moved back to Arizona to try and find a better job.

b. After having no success in his job hunt, Respondent joined the Air Force for the

educational and travel opportunities in 1996. In addition, he married [REDACTED] in April 1996. Shortly thereafter [REDACTED] became pregnant with a son, [REDACTED] was born on 13 January 1997.

c. About 10 days after [REDACTED] was born, Respondent was sitting on his couch feeding [REDACTED] when he heard [REDACTED] in the kitchen playing in the silverware drawers. He jumped up quickly to check on [REDACTED] and consequently dropped [REDACTED] on the wooden post of the couch. When he picked [REDACTED] back up, he tried to comfort [REDACTED] by squeezing him. He did not realize the pressure he put on [REDACTED] or the extent of [REDACTED] injury at that time. After [REDACTED] would not stop crying the next day, he took [REDACTED] to the hospital.

d. Respondent is willing to accept responsibility for his actions. He is doing everything he can to ensure this never happens again. He and his wife have attended various classes. He is very sorry for what took place.

8. DISCUSSION: The Board found that the reason stated in the Notification Letter was established by a preponderance of the evidence. The record supports the Board's determination. The Board recommends that the Respondent be separated with a General Discharge and that he not be offered probation and rehabilitation. The Board's recommendations are consistent with the guidance contained in AFI 36-3208 and are appropriate. Additionally, since the Discharge Board concluded [REDACTED] was sentenced in civilian court to 41 months in prison for two counts of assault of a child in the second degree.

9. OPTIONS: You have the following options:


- a. Direct that Respondent be retained in the United States Air Force;
- b. Approve a general discharge, with or without probation and rehabilitation.
- c. Forward the record to 15 AF/CC with a recommendation that he approve an honorable discharge.

10. RECOMMENDATION: That you approve the Board's recommendations and direct that Respondent be separated from the United States Air Force under the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.51.1, for a civilian conviction, with a general characterization of service, and without an offer of probation and rehabilitation. If you concur with our recommendation, please sign the letter attached at Tab 2. Because A1C Stone will be confined in a civilian prison for the next 41 months, we believe that

barring him from base would not serve any meaningful purpose. Therefore, we do not recommend that he be barred from base.



Attachments:

1. Ltr for 62 AW/CC Signature
2. Record of Board Proceedings re: 

DEPARTMENT OF THE AIR FORCE
62D AIRLIFT WING (AMC)
MCCHORD AIR FORCE BASE, WASHINGTON 98438

2 MAR 1998

MEMORANDUM FOR [REDACTED]

FROM: 62 AGS/CC

SUBJECT: Notification Letter--Board Hearing

1. I am recommending your discharge from the United States Air Force for a civilian conviction. The authority for this action is AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, under the provisions of paragraph 5.51.1. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached. I have informed 62 LG/CC of this recommendation for discharge.

2. My reasons for this action are:

On 23 February 1998, the Superior Court of the State of Washington, in and for the County of Pierce, convicted you of two counts of assault of a child in the second degree. The basis of the conviction was that between on or about 14 January 1997 and on or about 2 February 1997, you did, on divers occasions, assault your infant son.

As a result of this conviction, the court will sentence you on 31 March 1998. The maximum punishment for each count is 120 months confinement and a \$20,000 fine.

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable conditions discharge. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board, subject to your availability.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You previously had a medical examination to include an HIV test. Therefore, you are not required to have another medical examination.

6. You previously attended a mandatory Transition Pre-separation Counseling (TAP) appointment at the Family Support Center. Therefore, you are not required to attend another TAP appointment.

7. Military legal counsel has been obtained to assist you. You have an appointment to consult [REDACTED] 984-2240, in building 100, room 3076 at 0930 hours on 2 MAR 98. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201, *Administration of Military Justice*. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed must be readily available.

8. Confer with your counsel and reply, in writing, within seven workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

9. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208, *Administrative Separation of Airmen*, is available for your use at your Commander's Support Staff.

10. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

11. The discharge board or the discharge authority will make the finding and recommendations required under 10 U.S.C 2005(g).

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

[REDACTED]

Attachments: listed on next page

Attachments:

1. Order Establishing Conditions of Release Pending Sentencing Pursuant to CrR 3.2 dated 23 February 1998
 2. Order Fixing Time for Sentencing & for Pre-Sentence Report dated 23 February 1998
 3. Statement of Defendant on Plea of Guilty dated 20 February 1998
 4. AFOSI Report of Investigation File NR: 97305D8-S805542 dated 3 Apr 97
 5. Letter of Reprimand dated 15 Dec 97
 6. Airman's Acknowledgment
- cc: 62 LG/CC

Attachment 4 was separately provided to your defense counsel.