

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN	
[REDACTED]		SSGT	[REDACTED]	
TYPE	X PERSONAL APPEARANCE		RECORD REVIEW	
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL		
YES	NO			
	X			
MEMBERS SITTING		VOTE OF THE BOARD		
		HON	GEN	UOTHC
[REDACTED]			X	
[REDACTED]			X	
[REDACTED]			X	
[REDACTED]			X	
[REDACTED]			X	
ISSUES		EXHIBITS SUBMITTED TO THE BOARD		
A94.06		INDEX NUMBER		
		A67.00		
HEARING DATE 5 JUN 03		CASE NUMBER		
		FD2002-0386		
		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 Scott AFB, Illinois. Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.				
SIGNATURE OF RECORDER		SIGNATURE OF BOARD PRESIDENT		
INDORSEMENT		DATE: 5 JUN 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

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Scott AFB, IL on June 5, 2003. The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions.

Exhibit 6: Certificate of Appreciation from the Disabled American Veterans

Exhibit 7: Disabled American Veterans membership card

Exhibit 8: QWest Communications business card

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

FINDINGS: Upgrade of discharge to General is granted, but upgrade of the discharge to Honorable, the change to the Reason and Authority for the discharge, and the change to the RE Code is denied.

The Board finds that the evidence of record and that provided by the applicant substantiates both an inequity and an impropriety that would justify upgrade of the discharge.

ISSUES: The applicant was discharged with an Under Other Than Honorable Conditions Discharge for Misconduct – Discreditable Involvement with Military or Civil Authorities. Member received three Article 15s, all of which were related in some way to driving while under the influence of alcohol. The first Article 15 was for driving while intoxicated. The second was for driving while intoxicated and for leaving the scene of an accident, stemming from an incident in which the applicant hit the gate on his way off the base. The third Article 15 involved a failure to obey the commander's order not to drive on the installation, an order given to the applicant after his most recent driving while intoxicated infraction. Later, he received a letter of reprimand for driving while intoxicated, which ended with an arrest by civilian authorities and payment of a fine. The incident of misconduct that precipitated his discharge was a violation of a lawful general regulation when he compromised testing material by sharing the test answers with another enlisted member who was scheduled to take the exam. For this, he received a special court-martial conviction and a sentence that included confinement, forfeitures, and reduction in rank but not a punitive separation. After being notified of his discharge action, he submitted a conditional waiver for a general characterization. His commander and the installation legal office both recommended acceptance of the general characterization. The separation authority, however, approved the UOTHC. The applicant raised essentially one issue; that he was incorrectly denied a General service characterization after being led to believe he would be receiving such a characterization.

CONCLUSIONS: The DRB concludes that the issue raised by the applicant has merit. Further, the DRB concluded that the discharge was not consistent with the procedural or substantive requirements of the discharge regulation, was not within the discretion of the discharge authority, and that the applicant was not provided full administrative due process. Under Air Force regulations if the separation authority does not accept a conditional waiver of the discharge board, he can either return the case to the installation to be heard by a discharge board or can request an unconditional waiver of the board. In this case, the separation authority discharged the applicant with a UOTHC rather than the General characterization the applicant's waiver was conditioned upon. He failed to return the file to the base for a hearing or to demand an unconditional waiver. This was error. This procedural impropriety justifies an upgrade of the discharge to General.

While this result was required as a matter of law, the DRB also found that the discharge should be upgraded

as a matter of equity. The DRB was impressed with the applicant, his forthright testimony, and his accomplishments since leaving the service. This admirable post-service conduct enabled the DRB to more thoroughly review that facts and circumstances surrounding the misconduct related to the test compromise. Test compromise offenses are considered to be among the most contemptuous of integrity violations in the Air Force, representing the height of dishonor. The applicant's case did not, in the estimation of the DRB, represent such an integrity violation. The applicant did not attempt to profit or in some other way benefit from revelation of the test answers. Rather, it is undisputed the applicant provided the answers to his friend because he was attempting to help his friend overcome his personal burdens (by increasing his chance for promotion). While the applicant's good intentions do not negate the offense or eliminate the violation of integrity, it does tend to mitigate the wrongdoing, thereby decreasing the magnitude of the violation of integrity. In addition, at the hearing the applicant was honest about his misconduct and about his life after discharge from the service. His attempt to reconstruct his life, his decision to reveal his past to his oldest son in an effort to help him learn from his father's mistakes, and his desire to lead an honorable life all suggested to the DRB that a UOTHC characterization was not appropriate. All of this also demonstrated to the panel that the applicant's lost honor has been regained. In that regard, a General (*under honorable conditions*) characterization is the most appropriate description of the applicant's service and his contribution to the country.

Having found an inequity and an impropriety, the DRB partially approves the request for an upgrade, concluding that the overall quality of applicant's service is more accurately reflected by a General discharge. The applicant's characterization for discharge should be changed to General under the provisions of Title 10, USC 1553.

Attachment:
Examiner's Brief

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 14 Sep 95 UP AFI 36-3208, para 5.50.1(Pattern of Misconduct - Discreditable Involvement with Military or Civil Authorities). Appeals for Honorable Disch.

a. DOB: 17 Feb 60. Enlmt Age: 18 11/12. Disch Age: 35 6/12. Educ: HS DIPL.
AFQT: N/A. A-80, E-45, G-52, M-63. PAFSC: 2G071 - Logistics Plans Craftsman.
DAS: 28 Aug 92.

b. Prior Sv: Enlisted as AB 2 Feb 79 for 6 yrs. Extended 6 Apr 81 for 3 months. Extended 24 Aug 84 for 6 months. Extended 11 Mar 85 for 6 months. Reenlisted as SSgt 31 Mar 86 for 4 yrs. Extended 17 May 89 for 9 months. Extended 19 Sep 89 for 3 months. Extended 14 Feb 90 for 12 months. Svd: 12 yrs 11 months 28 days, all AMS. Amn/A1C-(APR Indicates): 7 Feb 79-1 Feb 80. SrA-(APR Indicates): 2 Feb 80-1 Feb 81. Sgt - 1 Dec 81. SSgt - 1 May 83. TSgt - 1 Mar 89. APRs: 9,7,8,9,9,9,9,9,9,9,9,9,9. EPRs: 4, 5, 5.

ART 15: 21 Jul 86, Grand Forks AFB, ND - Article 111. You did, on or about 19 Jul 86, on Sycamore Drive, operate a vehicle, to wit: a passenger car while drunk. Forfeiture of \$300.00 pay per month for one month. (No appeal) (No mitigation)

a. Reenlisted as TSgt 31 Jan 92 for 6 yrs. Svd: 3 Yrs 7 Mos 14 Das, all AMS.

b. Grade Status: SSgt - 18 Jul 95 (SPCMO No.3, 18 Jul 95)

c. Time Lost: None.

d. Art 15's: (1) 31 Aug 93, McChord AFB, WA - Article 92. You, having knowledge of a lawful order issued by Lt Col -----, to wit: to not operate any motor vehicle upon any military installation of the United States, an order which it was your duty to obey, did, on or about 18 Aug 93, fail to obey the same by wrongfully driving an automobile while your base driving privileges were revoked. Suspended reduction to SSgt, and forfeiture of \$400.00 pay per month for two months. (No appeal) (No mitigation)

(2) 25 Mar 93, McChord AFB, WA - Article 111. You, did, on or about 13 Mar 93, on Main Street, operate a vehicle,

to wit: a passenger car, while drunk. Article 134. You, the driver of a vehicle at the time of an accident in which said vehicle was involved, and having knowledge of said accident, did, on McChord AFB, WA, on or about 13 Mar 1993 wrongfully leave the scene of the accident without making your identity known. Forfeiture of \$150.00 pay per month for 2 months. (No appeal) (No mitigation)

e. Additional: LOR, 7 NOV 94 - Driving while intoxicated.

f. CM: Special Court Martial Order No.3 - 18 July 95

CHARGE: Article 92. Plea: Not Guilty. Finding: Guilty.

Specification: Did, at or near McChord AFB, on or about 24 Oct 94, violate a lawful general regulation, to wit: AFI 36-2605, paragraph 5.13, dated 17 Jun 94, by wrongfully sharing information about an actual Air Force Promotion Test or highlighted testable material to MSgt -----, an unauthorized individual. Plea: Not Guilty. Finding: Guilty. Sentence adjudged on 27 April 95: Reduction to SSgt, forfeiture of \$820.00 pay per month for 3 months, hard labor without confinement for 3 months and a reprimand (IAW Special Court Martial Order No.5, that portion of the sentence providing for forfeiture in excess of \$820.00 pay per month for 52 days and hard labor without confinement in excess of 52 days remitted).

g. Record of SV: 03 Sep 91 - 15 May 92 Offutt AFB 5 (CRO)
 16 May 92 - 15 May 93 McChord AFB 3 (Annual)
 16 May 93 - 15 May 94 McChord AFB 3 (Annual)
 16 May 94 - 15 May 95 McChord AFB 2 (Annual) REF

(Discharged from McChord AFB)

h. Awards & Decs: JSCM, AFCM W/3 OLCS, AFOUA W/2 OLCS, AFOEA W/1 OLC, AFGCM W/4 OLCS, NDSM, SWASM W/3 BSS, HSM, AFOSSTR, AFOSLTR, AFLSAR W/3 OLCS, NCOPMER, BMTHGR, SAEMR, KLM.

i. Stmt of Sv: TMS: (16) Yrs (7) Mos (13) Das
 TAMS: (16) Yrs (7) Mos (13) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 9 Sep 02.
 (Change Discharge to Honorable)

Issue 1: During my initial discharge action I was led to believe through verbal communication via the JA office (Capt-----) through my Defense Counsel (Capt -----), that I would receive nothing less than a General Discharge. In addition the same communication was said to me from my Commander Headquarters Squadron Section (2Lt -----), Director of Logistics (LTC -----), who was my supervisor and Commander, Western Air Defense Sector (Col -----). This plus my pervious (sic) two Honorable Discharges (1986 and 1992) and lengthy service

should equate to a minimum General Discharge/Under Honorable Conditions.

Issue 2: Use brief, tab 1, letter dated 19 May 95, para 3, sentences one, two, three, six and seven. I hereby offer a conditional waiver of the rights associated with an administrative discharge board hearing. This waiver is contingent upon my receipt on no less than a general discharge, if the recommendation for my discharge is approved. I understand that if the convening authority or the separation authority rejects this waiver the processing of my case will continue according to AFI 36-3208. Should this waiver be approved along with a general or higher discharge, I do not desire lengthy service consideration. However, if a general or higher is not approved, I do desire lengthy service consideration. My Conditional Waiver was not fully adhered to.

Issue 3: Use brief, tab 1, letter dated 5 June 1995, para 1, sentences three and four. TSgt ----- has waived his entitlement to a hearing by administrative discharge board contingent upon his receiving no less than a general discharge. We concur with the recommendation that TSgt ----- be separated with a general discharge without an offer of probation and rehabilitation.

Issue 4: Use brief, tab 1, letter dated 12 June 1995, para 2, sentences three and four. Moreover, the court martial panel reviewed all of the information concerning TSgt ----- service record and offenses and chose not to impose a punitive discharge. Therefore, it is probable that a discharge board reviewing the same information would come to a similar conclusion and award a general rather than a UOTHC discharge.

ATCH

1. Copy of Military Personnel Records.
2. Performance Reports.
3. Other Military/Achievements Documents.
4. Post Military Documents.
5. Support Letters.

10DEC02/ia



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

MEMORANDUM FOR 62 AW/CC

5 June 95

FROM: 62 AW/JA (Capt [REDACTED] 512)

SUBJECT: Legal Review of AFI 36-3208 Discharge Action - TSgt [REDACTED]
[REDACTED], WADS/LGX

1. We have reviewed the attached discharge package. We find it legally sufficient to support the separation of TSgt [REDACTED] for a pattern of misconduct under AFI 36-3208, para 5.50.1. TSgt [REDACTED] has waived his entitlement to a hearing by an administrative discharge board contingent upon his receiving no less than a general discharge. We concur with the recommendation that TSgt [REDACTED] be separated with a general discharge without an offer of probation and rehabilitation.

2. On 13 March 1993, TSgt [REDACTED] operated a vehicle while he was drunk, and then departed the scene without making his identity known. For these offenses, he received an Article 15. On 18 August 1993, TSgt [REDACTED] drove on McChord AFB while his base driving privileges were revoked. For this offense he received another Article 15. On 26 June 1994, TSgt [REDACTED] drove a vehicle off base while he was drunk. For this offense he received a letter of reprimand, which was included in his UIF. On 24 Oct 94, TSgt [REDACTED] violated a lawful general regulation by wrongfully sharing information about an actual Air Force Promotion Test. For this offense he was convicted and sentenced by a special court-martial. His sentence included a reprimand, reduction to E-5, forfeiture of \$820 pay per month for three months, and three months hard labor without confinement.

3. TSgt [REDACTED] is 35 years old and has sixteen years of active duty service. On his thirteen APRs, TSgt received eleven 9s and two 8s. On his six EPRs, he received three 5s, one 4, and two 3s. TSgt [REDACTED] was properly notified of this action, informed of his rights, and other than his conditional waiver of his entitlement to a discharge board and lengthy service probation consideration, provided no written response to this proposed action.

4. IAW AFI 36-3208, para 5.50.1, an airman should be discharged for a pattern of misconduct, including discreditable involvement with military or civil authorities. TSgt [REDACTED] misconduct certainly constitutes such a pattern and there is sufficient documentation to show, by a preponderance of the evidence, that a

discharge is warranted. TSgt [REDACTED] Squadron Section Commander, 2Lt [REDACTED] does not recommend probation and rehabilitation, noting that every effort to rehabilitate him has been made and failed. We concur. TSgt [REDACTED] service record during this term of enlistment beginning 31 Jan 92 should be considered when determining the characterization of his service. A general discharge is appropriate in this case because the significant negative aspects of TSgt [REDACTED] conduct outweigh the positive aspects of his military record. While 2Lt [REDACTED] did recommend a UOTHC discharge, a general discharge without probation does protect the interests of the Air Force in this case. Acceptance of TSgt [REDACTED] conditional waiver of a discharge board hearing and lengthy service review facilitates the expeditious discharge of a member who clearly has no rehabilitative potential. Moreover, the court-martial panel reviewed all of the information concerning TSgt [REDACTED] service record and offenses and chose not to impose a punitive discharge. Therefore, it is probable that a discharge board reviewing the same information would come to a similar conclusion and award a general rather than a UOTHC discharge.

5. Errors and Irregularities: We note one minor irregularity in the file. There is not a report of a medical examination included. Such a report must be included before the discharge is finalized. Note also that on 21 July 86, TSgt [REDACTED] received an Article 15 for driving a vehicle while drunk. Because this offense was committed in a previous enlistment, you should not consider this offense for any purpose in this discharge case.

6. Your options are:

- a. Retain TSgt [REDACTED] in the Air Force;
- b. Reject the conditional waiver and tell TSgt [REDACTED] that either an unconditional waiver or a request for a board hearing may be submitted; or,
- c. Recommend acceptance of the conditional waiver and send it to 15 AF/CC for decision.

7. If approved, this discharge should not be executed until you take final action on TSgt [REDACTED] court-martial and the appellate review is finalized. Currently, the court-martial transcript is being transcribed. Since TSgt [REDACTED] sentence does not include a bad conduct discharge, 15 AF/CC may waive this requirement under AFI 36-3208, para 1.9.2.

8. RECOMMENDATION: We recommend that you forward to 15 AF/CC a recommendation that TSgt [REDACTED] conditional waiver be accepted. We also recommend TSgt [REDACTED] be barred from McChord AFB effective the date of his discharge, if approved. Please sign the letters at Tab 1 if you concur with this recommendation.

[REDACTED]
[REDACTED], Col, USAF
Staff Judge Advocate

Attachment:

1. Case File

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15 May 1995

MEMORANDUM FOR TSgt [REDACTED]
WADS/LGX

FROM: WADS/CC

SUBJECT: Notification Letter-Board Hearing

1. I am recommending your discharge from the United States Air Force for a Discreditable Involvement with Civilian or Military Authorities according to AFD 36-32 and AFI 36-3208, under the provisions of paragraph 5.50.1. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

a. You did at or near McChord Air Force Base, on or about 24 Oct 94, violate a lawful general regulation, to wit AFI 36-2605, para 5.13, dated 17 Jun 94, by wrongfully sharing information about an actual Air Force Promotion Test or highlighted testable material to MSgt [REDACTED], an unauthorized individual. For this offense you were convicted and sentenced by a special court martial from 25 - 27 April 1995. (see atchs 4, 5, & 6)

b. On or about 26 June 1994, you drove while under the influence of intoxicating liquor and/or drugs at or near Auburn, Washington. You were given a letter of reprimand dated 7 Nov 94 which was included in your UIF. (see atch 1)

c. On or about 18 August 1993, you drove on McChord AFB while your base driving privileges were revoked. You were given an Article 15 dated 31 Aug 93 for violation of Article 92, with a reduction to SSgt (suspended) and forfeiture of \$400 per month for two months. (see atch 2)

d. On or about 13 March 1993, you operated a passenger vehicle while drunk and wrongfully departed the scene of an accident without making your identity known. You were given an Article 15, dated 25 Mar 93 for violation of Articles 111 and 134, forfeiture of \$150 per month for two months and MSgt promotion withdrawn. (see atch 3)

3. This action could result in your separation with an Under Other Than Honorable Conditions (UOTHC). I am recommending that you receive an UOTHC 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 in the Armed Forces.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- 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 were previously scheduled for and attended a separations physical on 16 Nov 94, therefore no further physical examination is required.

4) Convicted by Special Court Martial on 26 Apr 95 for violation of a general lawful regulation. Sentence adjudged was a reprimand, reduction to E-5, forfeiture of \$820 pay per month for 3 months, and 3 months hard labor without confinement.

j. Overall rating or ratings on enlisted performance report:

<u>Rating</u>	<u>COD</u>	<u>Rating</u>	<u>COD</u>	<u>Rating</u>	<u>COD</u>
3	15 May 94	9	20 Oct 89	9	14 Oct 84
3	15 May 93	9	20 Oct 88	9	29 Mar 84
5	15 May 92	9	20 Oct 87	9	1 Jun 83
5	2 Sep 91	9	1 Apr 87	9	1 Feb 83
5	1 Feb 91	9	1 Apr 86	8	1 Feb 82
4	16 Aug 90	9	1 Apr 85	8	1 Feb 81
				9	1 Feb 80

k. Favorable communications, citations, or awards: Joint Service Commendation Medal, AF Commendation Medal w/ 3OLC, AF Excellence Award, AF Outstanding Unit Award w/1OLC, AF Good Conduct Medal w/4OLC, NCO Professional Military Education, Small Arms Expert ribbon, AF Basic Military Training Honor Graduate ribbon, National Defense Service Medal, AF Overseas Long tour, AF Overseas Short tour, SW Asia Service Medal w/3 devices, AF Training Ribbon, AF Longevity Service Award w/2OLC.

l. Derogatory data, other than action by courts-martial or under Article 15, UCMJ:

- 1) Air Force Good Conduct Medal denied (Atch 8, Notification Memorandum)
- 2) Letter of Reprimand dated 7 Nov 94, Unfavorable Informataion File. (Atch 1, Notification Memorandum)

m. Medical or other data meriting consideration: None.

n. Member does not hold an appointment as a Reserve commissioned or warrant officer.

3. Before recommending this discharge the member has been counseled and referred to Social Actions. In addition, he has attended an in-patient Alcohol Rehabilitation Program at Travis AFB in August 1994.

4. I do not recommend probation and rehabilitation according to chapter 7. During this present enlistment member has received one LOR, two Article 15s, and was convicted by special court martial for violation of a general lawful regulation (WAPS test compromise). Based on the serious nature of his misconduct, this member's trustworthiness and dependability is virtually non-existent. All previous efforts at rehabilitation have met with further misconduct. His discharge is in the best interest of the Air Force.


Lt, USAF
Commander, Headquarters Squadron Section

5 Atch

1. Cy Notification Ltr w/ atchs
2. Acknowledge of Receipt of Notification Memorandum
3. Airman's Statement
4. Medical Examination
5. EPRs