

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AB	AFSN/SSAN [REDACTED]
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW
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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%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">NO</td> </tr> <tr> <td style="text-align: center; padding: 2px;">X</td> <td style="padding: 2px;"></td> </tr> </table>	YES	NO	X			
YES	NO					
X						

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A94.05	INDEX NUMBER A67.10	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width: 5%; text-align: center;">1</td> <td>ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="text-align: center;">2</td> <td>APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="text-align: center;">3</td> <td>LETTER OF NOTIFICATION</td> </tr> <tr> <td style="text-align: center;">4</td> <td>BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td></td> <td>COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td></td> <td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td></td> <td>TAPE RECORDING OF PERSONAL APPEARANCE HEARING</td> </tr> </tbody> </table>	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
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HEARING DATE 26 FEB 03	CASE NUMBER FD2002-0399																	

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	SIGNATURE OF BOARD PRESIDENT

INDORSEMENT	DATE: 26 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

FD02-0399

GENERAL: The applicant appeals for upgrade of discharge to Honorable, change the Reason and Authority for discharge and 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 improper because it was based on AETC Forms 341, which there is no standard procedure for. He states that he conformed to AFI 36-3208 and would like to be able to return to active duty. The record indicates the applicant received an Article 15 for willfully damaging a wall in the squadron by creating a hole by unknown means, and, with intent to defraud, falsely pretend to be an authorized user of long distance services by wrongfully obtaining phone services. He also received two Letters of reprimand for being late for formation and substandard behavior. In addition, he received four AETC Forms 341 and four AETC Forms 173 for doing less than required, lack of effort, homework not completed, absent from a mandatory formation, security violations, failure to shave, irrational behavior, argumentative, having wrinkled uniforms, late for duty and talking in formation. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate. The Board found no evidence of any inequity or impropriety on which to base a decision to upgrade the discharge.

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 AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 5 Mar 02 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, and Change to Reentry Code, Reason and Authority)

2. **BACKGROUND:**

a. DOB: 22 Aug 81. Enlmt Age: 19 3/12. Disch Age: 20 6/12. Educ: HS DIPL. AFQT: N/A. A-58, E-78, G-59, M-93. PAFSC: 2E113 - Ground Radio Communication Helper. DAS: 12 Feb 01.

b. Prior Sv: None.

3. **SERVICE UNDER REVIEW:**

a. Enld as A1C 27 Dec 00 for 6 yrs. Svd: 1 Yr 2 Mos 7 Das, all AMS.

b. Grade Status: AB - 7 Feb 02 (Article 15, 7 Feb 02)

c. Time Lost: None.

d. Art 15's: (1) 7 Feb 02, ██████████ AFB, MS - Article 108. You, did, between on or about 1 Jun 01, and on or about 31 Jul 01, without proper authority willfully damage a wall in the 338th Training Squadron by creating a hole by unknown means, military property of the United States, the amount of said damage being in the sum of \$49.50. Article 134. You, did, between on or about 29 Jun 01, and on or about 27 Jul 01, with intent to defraud, falsely pretend to be an authorized user of ----- long distance services, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from ----- services of a value of over \$100.00. Reduction to the grade of AMN, forfeiture of \$552.00 pay per month for 2 months, and 60 days restriction.
(No appeal) (No mitigation)

e. Additional: AETC FM 341, 02 DEC 01 - Talking in formation.
AETC FM 341, 02 NOV 01 - Late for duty.
AETC FM 341, 24 SEP 01 - Wrinkled uniforms.
MEMO, 22 SEP 01 - Irrational behavior and argumentative.
AETC FM 341, 21 SEP 01 - Failure to shave.
LOR, 09 AUG 01 - Substandard behavior.
AETC FM 173, 10 JUL 01 - Security violation.
LOR, 05 JUN 01 - Late for formation.
AETC FM 173, 07 MAY 01 - Security violation.

AETC FM 173, 21 MAR 01 - Absent from a mandatory formation.
AETC FM 173, 15 MAR 01 - Doing less than required, lack of effort, and homework not completed.

f. CM: None.

g. Record of SV: None.

(Discharged from Keesler AFB)

h. Awards & Decs: AFTR.

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

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Aug 02.
(Upgrade Discharge to Honorable, and Change Reentry Code, Reason and Authority)

Issue 1: I feel my discharge was in proper (sic) because I (sic) was based on AETC Forms 341 which there is no standerd (sic) op. procedure for (sic).

Issue 2: I also conformed to AFI 36-3208 in which I did show improvement.

Issue 3: I would lik (sic) my discharge to be upgraded and be able to return to active duty.

ATCH
None.

17Dec02/cr



**-DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND**

FEB 28 2002

MEMORANDUM FOR 81 TRG/CC

FROM: 81 TRW/JAJ^{OB}
500 Fisher Street Rm 227
Keesler AFB, MS 39534-2553

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

1. **ACTION**: On 22 Feb 02, 338 TRS/TRM recommended that [REDACTED] (hereafter referred to as "Respondent") be administratively separated for minor disciplinary infractions with a general discharge characterization. The authority for this recommendation is AFI 36-3208, Section H, paragraph 5.49 (minor disciplinary infractions). Under paragraph 6.2.2, the Respondent is not entitled to a board hearing.

2. **PERSONAL DATA**:

- a. Date and Term of Enlistment: 27 Dec 00, 6 Years;
- b. Total Active Federal Military Service Date: 27 Dec 00;
- c. Performance Reports: N/A.

3. **EVIDENCE FOR THE GOVERNMENT**:

a. On 7 Feb 02, the 338 TRS/CC punished the Respondent under Article 15, UCMJ, for the following infractions:

- i. Between on or about 1 Jun 01, and 31 Jul 01, the Respondent willfully damaged a wall in the 338 TRS by creating a hole by an unknown means, with the amount of damage being \$49.50.
- ii. Between on or about 29 Jun 01, and 27 Jul 01, with intent to defraud, the Respondent falsely pretended to be an authorized user of American Telephone and Telegraph's long distance services, knowing that the pretenses were false, obtained services of a value of over \$100.00.

b. On 2 Dec 01, the Respondent was talking during formation after being repeatedly told not to do so as noted by AIC Mueller on AETC Form 341, dated 2 Dec 01.

ATTORNEY WORK PRODUCT

This is a privileged document. Do not release in whole or in part without the express permission of the Staff Judge Advocate.

c. On 2 Nov 01, the Respondent was late for duty as noted by [redacted] on AETC Form 341, dated 2 Nov 01.

d. On 24 Sep 01, the Respondent's uniform did not meet Air Force standards because it was very wrinkled as noted by [redacted] on AETC Form 341, dated 24 Sep 01.

e. On 22 Sep 01, [redacted] counseled the Respondent for substandard progress in military training as noted in a memorandum dated, 22 Sep 01.

f. On 21 Sep 01, the Respondent failed to comply with AFI 36-2903 by needing a facial shave as noted by [redacted] on AETC Form 341, dated 21 Sep 01.

g. On 13 Sep 01, the Respondent failed the Block X test with a score of 60 percent, minimum passing score is 70 percent, for which he was counseled.

h. On 9 Aug 01, the Respondent was involved in an argument with a student leader during the lunch formation, for which he received a Letter of Reprimand, dated 9 Aug 01. As a result of this incident, he was ordered to repeat the 2d Air Force Phase Program, and participate in the Marginal Military Member Program.

i. On 10 Jul 01, the Respondent had a security violation in his room, for which he was counseled.

j. On 18 May 01, the Respondent was late for formation, for which he received a Letter of Reprimand, dated 5 Jun 01.

k. On 7 May 01, the Respondent had a security violation in his room, for which he was counseled.

l. On 15 Mar 01, the Respondent was counseled for failing to complete his homework assignment.

m. On 2 Mar 01, the Respondent was absent from a mandatory weeds and seeds detail, for which he was counseled.

4. EVIDENCE FOR THE RESPONDENT:

a. This 20-year old airman is in his first enlistment and has AQE scores as follows: A - 58, E - 78, G - 59, M - 93. The Respondent consulted with military counsel, and submitted a written response for the commander's consideration. In his written response, the Respondent requests that he be given a chance to remain in the Air Force. He wrote a brief biography about himself, and his family members who have served in the military. Finally, the Respondent states that he excelled while at Basic Military Training (BMT).

b. The Respondent writes that most of his infractions were for items based on AETC Forms 341, which does not allow for a response, and could be pulled for any minor infraction. The Respondent admits he has had difficulty hiding his emotions or feelings when he felt a student leader, or even an NCO, is not understanding his side of the story. He states that he has been working hard in the last few months to resurrect his career, and that he has not has an AETC Form 341 pulled in almost three

months. He believes that he has showed that he can overcome his deficiencies and should remain in the service and be allowed to finish tech school.

c. In response to the notification letter, the Defense Counsel, [REDACTED] states that the Respondent must be formally counseled concerning his deficiencies and given an opportunity to overcome them before a commander recommends discharge. He asserts that the Respondent seems to have overcome those deficiencies since he has only had a total of two AETC Forms 341 pulled since September. [REDACTED] notes that the Article 15 shows that the conduct occurred over six months prior and the Respondent has been rehabilitated. Finally, he states that while substandard performance, the failure of a block test, notification letter paragraph 1g [sic] [2g], can be considered for unsatisfactory duty performance, it should not be considered as a minor disciplinary infraction. Therefore, since this case is based on a pattern of misconduct, the block failure should not be considered as a basis for discharge.

5. DISCUSSION:

a. This file is legally sufficient. The Respondent had various disciplinary infractions throughout his time here at Keesler AFB. He was under investigation in July 2001, for suspected falsely obtaining telephone services. After consideration on whether to take the matter to a court-martial, in Feb 02, Respondent received non-judicial punishment for falsely obtaining phone services and for making a hole in a wall in a building located within 338 TRS. [REDACTED] correctly points out the failing of a block test does not qualify as a minor disciplinary infraction under paragraph 5.49. However, even without the block test failure, discharge is warranted in this case.

b. We concur with the 338 TRS/TRM's recommendation of a general discharge. If a member's service has been honest and faithful, a general discharge is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record. Respondent's behavior warrants such a characterization. We also concur with 338 TRS/TRM's recommendation against offering respondent probation and rehabilitation. The respondent has been given opportunities to improve, and to this date fails to show any improvement. Further attempts at probation and rehabilitation would likely prove unsuccessful.

6. OPTIONS: As the Separation Authority your options are:

a. If you determine the evidence does not support this separation action, direct that it be discontinued, and direct the Respondent be retained in the Air Force.

b. If you determine this separation action has been brought under an inappropriate section of AFI 36-3208, direct reinitiation under a more appropriate section.

c. If you determine this separation action is supported by the evidence, approve the separation action and direct the Respondent be given a general discharge, with or without probation and rehabilitation, for minor disciplinary infractions under the provisions of AFI 36-3208, paragraph 5.49.

d. If you determine this separation action is supported by the evidence, but believe an honorable discharge is appropriate, make that recommendation and forward the file to 2 AF/CC for further disposition.

e. If you determine that an under other than honorable conditions discharge is appropriate under paragraph 5.49, direct a discharge board be convened, and forward the file to 338 TRS/TRM for processing.

7. **RECOMMENDATION**: Approve Respondent's separation with a general service characterization, without probation and rehabilitation, for minor disciplinary infractions under the provisions of AFI 36-3208, Chapter 5, Section H, paragraph 5.49.



I concur.



Attachment
Case File



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

FEB 14 2002

MEMORANDUM FOR [REDACTED]

FROM: 338 TRS/TRM

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, paragraph 5.49. If my recommendation is approved, your discharge will be described as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On 7 Feb 02, the 338 TRS/CC punished you under Article 15, UCMJ, for the following infractions:

i. Between on or about 1 Jun 01, and 31 Jul 01, you willfully damaged a wall in the 338 TRS by creating a hole by an unknown means, with the amount of damage being \$49.50. (Atch 1, Appendix A w/atchs)

ii. Between on or about 29 Jun 01, and 27 Jul 01, with intent to defraud, you falsely pretended to be an authorized user of American Telephone and Telegraph's long distance services, knowing that the pretenses were false, obtained services of a value of over \$100.00. (Atch 1, Appendix A w/atchs)

b. On 2 Dec 01, you were talking during formation after being repeatedly told not to do so as noted by [REDACTED] on AETC Form 341, dated 2 Dec 01. (Atch 1, Appendix B)

c. On 2 Nov 01, you were late for duty as noted by [REDACTED] on AETC Form 341, dated 2 Nov 01. (Atch 1, Appendix C)

d. On 24 Sep 01, your uniform did not meet Air Force standards because it was very wrinkled as noted by [REDACTED] on AETC Form 341, dated 24 Sep 01. (Atch 1, Appendix D)

e. On 22 Sep 01, you were counseled by [REDACTED] for your substandard progress in military training as noted in a memorandum dated, 22 Sep 01. (Atch 1, Appendix E)

- f. On 21 Sep 01, you failed to comply with AFI 36-2903 by needing facial shave as noted by [REDACTED] on AETC Form 341, dated 21 Sep 01. (Atch 1, Appendix F)
- g. On 13 Sep 01, you failed the Block X test with a score of 60 percent, minimum passing score is 70 percent, for which you were counseled. (Atch 1, Appendix G)
- h. On 9 Aug 01, you were involved in an argument with a student leader during the lunch formation, for which you received a Letter of Reprimand, dated 9 Aug 01. As a result of this incident, you were ordered to repeat the 2d Air Force Phase Program, and participate in the Marginal Military Member Program. (Atch 1, Appendix H)
- i. On 10 Jul 01, you had a security violation in your room, for which you were counseled. (Atch 1, Appendix I)
- j. On 18 May 01, you were late for formation, for which you received a Letter of Reprimand, dated 5 Jun 01. (Atch 1, Appendix J)
- k. On 7 May 01, you had a security violation in your room, for which you were counseled. (Atch 1, Appendix K)
- l. On 15 Mar 01, you were counseled for failing to complete your homework assignment. (Atch 1, Appendix L)
- m. On 2 Mar 01, you were absent from a mandatory weeds and seeds detail, for which you were counseled. (Atch 1, Appendix M)

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or higher 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. Any special pay, bonuses, or education assistance funds may be subject to recoupment.

4. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult ADC at Bldg 0701, Room 133, on TBD at TBD hours. You may consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me by 21 Feb 02 by 1630 hours 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 81st Medical Group, Physical Exams on 15 Feb 02, 2002 at _____ hours 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 Bldg 7502, CQ.
9. Execute the attached acknowledgment and return it to me immediately.



Attachments:

1. Supporting Documents
 - a. AF Form 3070, dated 7 Feb 02 w/atchs
 - b. AETC Form 341, dated 2 Dec 01
 - c. AETC Form 341, dated 2 Nov 01
 - d. AETC Form 341, dated 24 Sep 01
 - e. Substandard Progress Letter, dated 22 Sep 01
 - f. AETC Form 341, dated 21 Sep 01
 - g. AETC Form 173, dated 13 Sep 01
 - h. Letter of Reprimand, dated 9 Aug 01 w/atchs
 - i. AETC Form 173, dated 10 Jul 01
 - j. Letter of Reprimand, dated 5 Jun 01 w/atchs
 - k. AETC Form 173, dated 7 May 01
 - l. AETC Form 173, dated 15 Mar 01
 - m. AETC Form 173, dated 2 Mar 01
2. Airman's Receipt of Notification Memorandum
3. Airman's Statement
4. Medical Examination

ATCH 1