

## AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

<b>ISSUES</b> A94.05	<b>INDEX NUMBER</b> A67.10	<b>EXHIBITS SUBMITTED TO THE BOARD</b>	
		1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
<b>HEARING DATE</b> 6 MAY 03	<b>CASE NUMBER</b> FD2002-0408	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 RATIONALE 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.

<b>SIGNATURE OF RECORDER</b> [REDACTED]	<b>SIGNATURE OF BOARD PRESIDENT</b> [REDACTED]
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<b>INDORSEMENT</b>	<b>DATE: 29 MAY 03</b>
<b>TO:</b> SAF/MIBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

**GENERAL:** The applicant appeals for upgrade of discharge to honorable, change the re-enlistment (RE) code, and to change the Reason and Authority for discharge.

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, change of RE Code, and change of reason and authority are denied.

The Board finds the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was unable to identify any.

**Issues:** Applicant was discharged for misconduct - minor disciplinary infractions. He had two Articles 15, four Letters of Reprimand, and two Records of Individual Counseling. His misconduct included failure to obey a lawful order on five occasions, assault and battery, and disrespectful language. At the time of discharge, member consulted counsel and submitted statements in his own behalf. The Board noted member was given several opportunities to correct his behavior but was either unwilling or unable to do so. Member was age 18 to 20 when his misconduct happened, the same age as other airmen who honorably complete their service without misconduct. There was no evidence member did not know right from wrong. The Board determined member was responsible for his actions and held accountable for them because his misconduct was disruptive to the unit. 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

(Former AMN) (HGH A1C)

**1. MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 13 Nov 01 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals to Upgrade Discharge to Honorable, Change to Reentry Code, and Reason and Authority for Discharge.

**2. BACKGROUND:**

a. DOB: 16 Aug 81. Enlmt Age: 17 8/12. Disch Age: 20 2/12. Educ: HS DIPL. AFQT: N/A. A-65, E-82, G-59; M-26. PAFSC: 2A331C - Avionic Systems Comm, Nav & Pen Aids. DAS: 4 Mar 00.

b. Prior Sv: (1) AFRes 23 Apr 99 - 29 Jun 99 (2 Mos 7 Days) (Inactive).

**3. SERVICE UNDER REVIEW:**

a. Enld as AB 30 Jun 99 for 4 yrs. Svd: 2 Yrs 4 Mos 15 Das, all AMS.

b. Grade Status: AMN - 21 Jun 01 (Vacation of Article 15, 23 Oct 01)  
A1C - 30 Oct 00  
AMN - 30 Dec 99

c. Time Lost: None.

d. Art 15's: (1) 23 Oct 01, Vacation, Eglin AFB, FL - Article 91. You, on or about 12 Sep 01, were disrespectful in language and deportment toward Staff Sergeant -----, a noncommissioned officer, then known by you to be a noncommissioned officer, by arguing with Staff Sergeant ----- after having been recalled onto duty while you were on your 3-day pass, or words to that effect, and by hanging up the telephone while Staff Sergeant ----- was still talking to you. Reduction to the grade of AMN. (No appeal) (No mitigation)

(2) 21 Jun 01, Eglin AFB, FL - Article 86. You did, on or about 29 May 01, without authority, go from your appointed place of duty. Article 91. You, on or about 29 May 01, were disrespectful in language toward Staff Sergeant -----, a superior noncommissioned officer, then known by you to be a superior noncommissioned officer, who was then in the execution of his office, by saying to him "this is stupid and you are a fucking dumbass and a fucking idiot," or words to that effect. Suspended reduction to the grade of AMN. (No appeal) (No mitigation)

- e. Additional: LOR, 31 MAY 01 - Disrespect to an NCO and failure to obey an order  
 LOR, 09 FEB 01 - Assault and battery.  
 LOR, 20 JAN 01 - Failure to obey an order.  
 LOR, 09 JAN 01 - Failure to obey an order.  
 RIC, 16 DEC 00 - Failure to obey a lawful order from an NCO.  
 RIC, 16 DEC 00 - Disrespect to an NCO and failure to obey an NCO.
- f. CM: None.
- g. Record of SV: 30 Jun 99 - 27 Feb 01 Eglin AFB 2 (Initial) REF  
 (Discharged from Eglin AFB)
- h. Awards & Decs: AFTR.
- i. Stmt of Sv: TMS: (2) Yrs (6) Mos (22) Das  
 TAMS: (2) Yrs (4) Mos (15) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 23 Sep 02.  
 (Upgrade Discharge to Honorable, Change to Reentry Code, and Reason and Authority for Discharge)

Issue 1: Falsely accused of disrespect & failing to obey a lawful order on 15 Oct 00.

Issue 2: Falsely accused of disobeying a lawful order on 15 Oct 00 for a different reason.

Issue 3: Falsely accused of disobeying a lawful order on 5 Jan 01. and (sic) also on 19 Jan 01.

Issue 4: Falsely accused of failing to report to duty on 29 May 01 & falsely accused of disrespectful language toward NCO (sic) on 12 Sep 01.

**ATCH**

1. Applicant's Memorandum for Correction of Military Records.
2. Discharge Documents.

23 Dec 02/cr

FD2002-0408



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR ARMAMENT CENTER (AFMC)  
EGLIN AIR FORCE BASE, FLORIDA

05 NOV 2001

MEMORANDUM FOR 96 ABW/CC

FROM: AAC/JA

SUBJECT: Legal Review, AFI 36-3208 Administrative Discharge, Amn [REDACTED]  
[REDACTED] 58 FS (ACC)

1. **LEGAL SUFFICIENCY:** I have reviewed the attached discharge package of Amn [REDACTED] (respondent). I find it legally sufficient to support a discharge under AFI 36-3208, chapter 5, section H (Misconduct), paragraph 5.49, Minor Disciplinary Infractions.
2. **INITIATION OF ACTION:** On 25 Oct 01, Capt [REDACTED] 58 FS Section Commander, notified the respondent that he was recommending the respondent be administratively discharged for minor disciplinary infractions under AFI 36-3208, chapter 5, section H, paragraph 5.49. Capt [REDACTED] recommends that the respondent receive a general discharge without probation and rehabilitation (P&R). The respondent is not entitled to an administrative discharge board.
3. **EVIDENCE CONSIDERED FOR THE GOVERNMENT:** The respondent has engaged in numerous acts of misconduct since 15 Oct 01. The acts of misconduct consist of the following: five instances of disrespect to a non-commissioned officer (NCO); four counts of failure to obey an order; assaulting a fellow airman and failure to report for duty. For these acts of misconduct, the respondent received two records of individual counseling, four letters of reprimand, an Article 15 and a vacation action. The supporting documents are attached to the notification memorandum. (Tab 1)
4. **EVIDENCE CONSIDERED FOR THE RESPONDENT:** The respondent is a 20-year-old Avionics System Apprentice who enlisted in the Air Force on 30 Jun 99. He was assigned to his current unit on 4 Mar 00. The respondent consulted counsel and submitted a statement for your review. He asks that he be retained. He says that he is not guilty of several of the instances of disrespect to an NCO that he is accused of. He feels that the vacation action is unfair because he was not disrespectful to an NCO. He also says that he is not guilty of failing to obey orders or for leaving duty early. The respondent claims that in several cases he was not given an order, or never heard the order he was given. He feels that no one listens to him or believes him because he is only an airman not an NCO. He admits to assaulting a fellow airman and to losing his temper on a couple of occasions. The respondent asks that if he is discharged that his service be characterized as honorable.

## 5. DISCUSSION:

a. Separation Criteria: This file is legally sufficient to support discharge pursuant to AFPD 36-22 and AFI 36-3208, chapter 5, section H, paragraph 5.49.

b. Character of Discharge: Discharge under paragraph 5.49 can be described as under other than honorable conditions (UOTHC), general, or honorable. Only the General Court-Martial Convening Authority can approve a UOTHC or honorable service characterization for misconduct. A UOTHC discharge is appropriate when there has been a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. A general discharge is warranted when an airman's service has been honest and faithful, but significant negative aspects of the airman's performance of duty outweigh positive aspects of the airman's military record. An honorable discharge would be appropriate when the member's service has been so meritorious that any other characterization would clearly be inappropriate. In this case, the respondent's misconduct was significant and clearly outweighs the few positive aspects of his military record. Therefore, a general discharge is appropriate.

c. Probation & Rehabilitation: The respondent is eligible for P&R under AFI 36-3208, Chapter 7. Probation and Rehabilitation is limited to deserving cases, including those where the airman has demonstrated a potential to serve satisfactorily, has the capacity to be rehabilitated for continued military service or for completion of the current enlistment, or whose retention on active duty in a probationary status is consistent with maintaining good order and discipline in the Air Force. The respondent received two records of individual counseling for disrespect to an NCO. When that didn't work he received a letter of reprimand. Finally, he received an Article 15. Part of the punishment for the Art 15 was suspended. Cap [REDACTED] points out in his recommendation that the suspension was vacated 3 months after the punishment was imposed for the same type of misconduct. The respondent has been given numerous opportunities to correct his behavior, and he has failed to do so. Consequently, P&R is not recommended in this case.



6. **OPTIONS**: As the Special Court-Martial Convening Authority in this case, you have the following options:

- a. Disapprove the discharge action and retain the respondent;
- b. Approve the discharge action and separate the respondent with a general discharge with or without P&R;
- c. Return the file to the unit with a recommendation to reinstate the case with a recommendation for a UOTHC discharge; or
- d. Forward to the General Court-Martial Convening Authority the respondent's case file, along with your recommendation that the respondent receive an honorable discharge, with or without P&R.

7. **RECOMMENDATION:** Based on the respondent's repeated misconduct and apparent unwillingness to conform to Air Force policies, I recommend the respondent be discharged from the United States Air Force under AFPD 36-32 and AFI 36-3208, chapter 5, section H, paragraph 5.49. I further recommend respondent's discharge be characterized as general and that he not be considered for probation or rehabilitation.

 Capt, USAF  


I have reviewed the attached discharge package and the foregoing recommendation. I concur in the recommendation.

 Lt Col, USAF  


Attachment:  
Case File 



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 33D FIGHTER WING (ACC)  
EGLIN AIR FORCE BASE, FLORIDA

FD2002-0408

MEMORANDUM FOR Amn [REDACTED]  
[REDACTED] 58 FS (ACC)

FROM: 58 FS/CC

25 Oct 01

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct, specifically 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 service will be characterized as honorable, general, or under other than honorable conditions. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On 15 Oct 00, you were disrespectful to a non-commissioned officer and failed to obey a lawful order. For this incident, you received a Record of Individual Counseling, dated 16 Dec 00.

b. On 15 Dec 00, you disobey a lawful order to wait before turning in your tools since there were aircraft still being worked on. For this incident, you received a Record of Individual Counseling, dated 16 Dec 00.

c. On 5 Jan 01, you failed to obey a lawful order. For this incident, you received a Letter of Reprimand, dated 9 Jan 01.

d. On 19 Jan 01, you failed to obey a lawful order and were disrespectful to a non-commissioned officer. For this incident, you received a Letter of Reprimand, dated 20 Jan 01.

e. On 20 Jan 01, you were belligerent and abusive in your behavior and actions which escalated into physical violence during a game of pool when you threw a fellow airman into a bookcase. For this incident, you received a Letter of Reprimand, dated 9 Feb 01.

f. On 29 May 01, you were aggressive and disrespectful to a non-commissioned officer. For this incident, you received a Letter of Reprimand, dated 31 May 01.

g. On 29 May 01, you failed to report for duty; and were disrespectful in language toward a non-commissioned officer. For these incidents, you received an Article 15, dated 21 Jun 01.

h. On 12 Sept 01, you were disrespectful in language and deportment toward a non-commissioned officer. For this incident, you received a Record of Vacation Suspended Nonjudicial Punishment dated, 22 Oct 01.

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 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

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for reenlistment in the Air Force. Special pay, bonuses, or education assistance funds may be subject to recoupment.

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] at building 451, 882-4185, on 25 Oct at 1500 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 within 3 workdays from today 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 on your own behalf, your failure will constitute a waiver of your right to do so.

7. You will complete a medical examination with the 96th Medical Group, physical examination section on 31 Oct at 0715 hours.

8. You have been scheduled for an appointment with the 96th Mission Support Squadron, separation section, on 29 Oct 01, at 1030 hours.

9. Immediately after completion of your 96th Mission Support Squadron separation section briefing, report to the 96th Traffic Management Office with your completed AFDTTC Form 4134 or LGTT Office Form B133. If you have a TMO pickup, it must be before 5 Nov 01.

10. You are required to receive a briefing from the Family Support Center prior to your separation. You have been scheduled to receive your Transition Assistance Management Program (TAMP) briefing on 30 Oct 01, at 0800 hours.

11. 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 your unit orderly room.

6. If you fail to consult counsel or to submit statements on your own behalf, your failure will constitute a waiver of your right to do so.

[REDACTED]  
[REDACTED]  
[REDACTED] Capt, USAF

2 Attachments:

1. Supporting Documents
  - 1a. ROIC, dated 16 Dec 00
  - 1b. LOR, dated 16 Dec 00.
  - 1c. LOR, dated 9 Jan 01.
  - 1d. LOR, dated 20 Jan 01.
  - 1e. LOR, dated 9 Feb 01.
  - 1f. LOR, dated 31 May 01.
  - 1g Article 15 dated 21 Jun 01
  - 1h Record of Vacation Suspended Nonjudicial Punishment, dated 22 Oct 01
2. Airman Acknowledgement