

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE AB	AFSN/SSAN ██████████
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TYPE UOTHC	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	X	

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

ISSUES A02.17, A02.09	INDEX NUMBER A67.50	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
HEARING DATE 03-05-28	CASE NUMBER FD2003-00078	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 and 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
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DATE: 03-05-29

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

FD2003-00078

GENERAL: The applicant appeals for upgrade of discharge to general, under honorable conditions.

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 impropriety or inequity that would justify an upgrade of the discharge.

Issues. Applicant was discharged for a pattern of misconduct. Member, who was a Security Forces specialist, received three Articles 15 and four Letters of Reprimand, and a Letter of Counseling. His misconduct included dress and appearance violations, using his Security Forces badge in an inappropriate manner while harassing an underage civilian female and her friends, dereliction of duty and unauthorized use of security equipment, reckless driving, failure to obey lawful orders, failure to go to his appointed place of duty, sleeping on his post, disrespect toward a senior noncommissioned officer, and threatening to kill his commander and first sergeant. The board noted that member was recommended for an Under Other Than Honorable Conditions (UOTHC) discharge and after consulting his military defense counsel, submitted an unconditional waiver to his right to an administrative board hearing or to submit statements in his own behalf. Applicant now contends he had inadequate legal representation. The Board could find nothing in the record to substantiate applicant's contention. The Board concluded member's misconduct was an extremely significant departure from conduct expected of all military members, and not compatible with Air Force standards, nor those of the Security Forces career field. The Board could find no inequity or impropriety on which to suggest a basis 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

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

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 20 Jul 01 UP AFI 36-3208, para 5.50 (Pattern of Misconduct). Appeals for General Discharge.

2. **BACKGROUND:**

a. DOB: 6 Jan 81. Enlmt Age: 18 3/12. Disch Age: 20 6/12. Educ: HS DIPL. AFQT: N/A. A-39, E-59, G-42, M-60. PAFSC: 3P031 - Security Forces. DAS: 28 Mar 00.

b. Prior Sv: (1) AFRes 28 Apr 99 - 12 Oct 99 (5 months 15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 13 Oct 99 for 6 yrs. Svd: 1 Yrs 9 Mo 8 Das, all AMS.

b. Grade Status: AB - 19 Jul 01 - (Article 15, 19 Jul 01)
AMN - 10 May 01 - (Article 15, 10 May 01)

c. Time Lost: None.

d. Art 15's: (1) 19 Jul 01, Kirtland AFB, NM - Article 134. You did, on or about 5 Jul 01, wrongfully communicate to SrA ----- and A1C ----- a threat to kill Lt Col -----, your commander. You did, on or about 5 Jul 01, wrongfully communicate to SrA ----- and A1C ----- a threat to kill MSgt -----, your First Sergeant. Article 91. You, on or about 6 Jul 01, did treat with disrespectful language toward MSgt -----, a superior non-commissioned officer, the known by you to be a superior non-commissioned officer, who was then in the execution of his office, by saying to him, "You fuckin dick, you're messing with me. You mother fucker what gives you the right, I just want to be treated fairly," or words to that effect. Reduction to AB. (No appeal) (No mitigation)

(2) 10 May 01, Kirtland AFB, NM - Article 113. You, on or about 30 Apr 01, being posted as a sentinel at post number K-2 were found sleeping upon your post. Reduction to Amn, and 10 days extra duty. (No appeal) (No mitigation)

(3) 01 Mar 01, Kirtland AFB, NM - Article 86. You did, on or about 13 Feb 01, without authority, fail to go at the time prescribed to your appointed place of duty.

Article 92. You, having knowledge of a lawful order issued by SSgt -----, to wit: To take an End of Course pretest on 12 and 13 Feb 01, an order which it was your duty to obey, did, between on or about 12 Feb 01 and on or about 13 Feb 01, fail to obey the same by wrongfully not doing so. Thirty days correctional custody, and forfeiture of \$100.00 pay per month for two months. (No appeal) (No mitigation)

- e. Additional: LOR, 14 JUN 01 - Reckless driving.
 LOR, 22 NOV 00 - Dereliction of duty, disregard for standards, quarters violation, and illegal use of security equipment.
 LOR, 06 OCT 00 - Harrassing an underage civilian female, and her friends, and using Security Forces Badge in an unauthorized manner.
 LOR, 09 SEP 00 - Failure to meet minimum Air Force dress and appearance standards.
 LOC, 09 SEP 00 - Uniform violation, lying, and total disregard for Air Force and Squadron policy.

f. CM: None.

g. Record of SV: None.

(Discharged from Kirtland AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (2) Yrs (2) Mos (23) Das
 TAMS: (1) Yrs (9) Mos (8) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 17 Feb 03.
 (Change Discharge to General)

Issue 1: My discharge was inequitable because I was not given complete information by my attorney. At the time of my discharge I was assigned an attorney off base. She spoke with me over the phone and did not go into full detail the consequences of accepting an under other than honorable conditions discharge. She informed me that the quickest way to resolve the issues was to take this discharge and I would be out in two to three days. She also told me that by accepting an under other than honorable conditions discharge I would not be able to rejoin the military and it would not work against me in any other way.

ATCH

1. Three Character References.

3APR03/ia



FD 2003-00078

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 377TH AIR BASE WING (AFMC)
KIRTLAND AIR FORCE BASE, NEW MEXICO 87117

19 Jul 01

MEMORANDUM FOR 377 ABW/CC

FROM: 377 ABW/JA (Capt: [REDACTED])

SUBJECT: Administrative Discharge of [REDACTED]

1. **INITIATION OF ACTION:** On 19 Jul 01, Capt [REDACTED] 377 SFS/CC, recommended that AB [REDACTED] ("Respondent") be administratively discharged for misconduct, specifically a pattern of misconduct, pursuant to AFD 36-32 and AFI 36-3208, paragraph 5.50. He further recommended that Respondent receive an under other than honorable conditions (UOTHC) discharge without an opportunity for probation and rehabilitation (P&R).

2. **RESPONDENT:** Respondent, who turned 20 on 6 Jan 01, has been in the Air Force for approximately one year and nine months. He was assigned to his current unit on 28 Mar 00.

3. **RESPONDENT'S SUBMISSION:** Respondent waived his right to an administrative discharge board and to submit a written response on his behalf. Respondent retained his right to military legal counsel, and has consulted his appointed counsel, Capt [REDACTED], Mountain Home Air Force Base Area Defense Counsel.

4. **DISCUSSION:**

a. **Basis for Discharge:** The respondent's repeated acts of misconduct provide a sufficient basis for his discharge in accordance with AFI 36-3208, paragraph 5.50. Specifically, Respondent has three Article 15s, four Letters of Reprimand and one Letter of Counseling. Respondent has been reprimanded for unsafe and reckless operation of a privately-owned vehicle (LOR dated 14 Jun 01); failure to accomplish a daily checklist at the Truman Gate, failure to comply with on-quarters status, and inappropriate use of Security Forces equipment (LOR dated 22 Nov 00); harassing and unprofessional communications with a civilian female (LOR dated 6 Oct 00); and failure to meet dress and appearance standards (LOR dated 9 Sep 00). Respondent also received a Letter of Counseling for disregarding Air Force and squadron policy (dated 9 Sep 00). Respondent's disciplinary problems escalated to the level of an Article 15 on 12 Mar 01 when Respondent failed to go to his appointed place of duty (a physical health assessment (PHA) appointment) and failed to obey a lawful order (to take an end-of-course pretest). Pursuant to the first Article 15, Respondent presented that he was unaware of the PHA appointment, but admitted to not taking the end-of-course pretest. Respondent's second Article 15 was issued on 11 May 01 for sleeping on post. Finally, on 19 Jul 01, Respondent was issued a third Article 15 for wrongfully communicating two threats and disrespect towards a superior noncommissioned officer. The threats entailed a threat to kill the respondent's commander and first sergeant.

b. **Appropriateness of Discharge:** Respondent's misconduct does not support continued military service, especially given the serious nature of the recently communicated threats.

Respondent has been given ample opportunity to correct the disciplinary problems. However, the problems are only worsening in degree rather than improving. The consistent record of disregard for Air Force policy strongly supports discharge. All of the disciplinary actions stem from Respondent's inability to conform to acceptable Air Force standards. Respondent's misconduct strikes at the heart of the Air Force core values. Despite the repeated attempts by his superiors to improve his behavior, Respondent has been unable or unwilling to change his behavior and continues to be disruptive to the accomplishment of the Air Force mission. The last attempt made by his superiors to improve his behavior resulted in threats to kill two of his superiors. Respondent's misconduct cannot be tolerated in the Air Force. His repeated and serious misconduct does not call for continued service.

c. **Characterization of Service:** Table 1.3 of AFI 36-3208 provides that a discharge for a pattern of misconduct may be characterized as either honorable, general (under honorable conditions), or under other than honorable conditions (UOTHC). Only the General Court-Martial Convening Authority can approve an honorable or UOTHC discharge. A general discharge is appropriate when significant negative aspects of an airman's conduct outweigh the positive aspects of his military record. A UOTHC discharge is warranted when there is a "pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen." Examples include use of force or violence to produce serious bodily injury or death; acts or omissions that endanger the health and welfare of other members of the Air Force; and deliberate acts or omissions that seriously endanger the health and safety of other persons. In this case, a UOTHC is appropriate. Respondent's actions on 5 Jul 01 and 6 Jul 01 are serious enough infractions to warrant a UOTHC discharge. His actions throughout his enlistment continuously disrupted good order and discipline on the base and within his unit. Furthermore, Respondent's threats to kill his commander, kill his first sergeant's family, and then kill his first sergeant caused great concern and anxiety. Respondent's entire disciplinary record, especially the most recent misconduct, is more than a significant negative aspect of his military career; more aptly, it represents a pattern of behavior that constitutes a significant departure from the conduct expected of airmen. Thus, a UOTHC discharge is the appropriate characterization of service.

d. **Probation and Rehabilitation:** Respondent is eligible for P&R under AFI 36-3208, Chapter 7. Capt [REDACTED] does not recommend P&R. P&R is generally reserved for members who have demonstrated a potential to serve satisfactorily, have the capacity to be rehabilitated, and whose probationary retention on active duty is consistent with the maintenance of good order and discipline in the Air Force. Multiple attempts to rehabilitate Respondent's behavior have been unsuccessful and even resulted in further disciplinary actions. Any future attempt by the Air Force to rehabilitate respondent is also likely to fail. P&R is not appropriate for Respondent.

e. **Legal Sufficiency:** This action is legally sufficient.

5. **ERRORS OR IRREGULARITIES:** None

6. **OPTIONS:** As the General Court-Martial Convening Authority, you may:

- a. Retain Respondent;

- b. Approve the separation with an honorable discharge, with or without P&R;
- c. Approve the separation with a general discharge, with or without P&R; or
- d. Approve the separation with a UOTHC discharge, with or without P&R.

7. **RECOMMENDATION:** That you approve Respondent's separation with a UOTHC discharge without P&R. If you have any questions, please contact Capt [redacted] at 6-4395.

[redacted] USAF
Legal Intern

I concur.

[redacted]

Staff Judge Advocate