

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE [REDACTED]	AFSN/SSAN [REDACTED]
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TYPE GEN	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	<input checked="" type="checkbox"/>	

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]	<input checked="" type="checkbox"/>				
[REDACTED]	<input checked="" type="checkbox"/>				
[REDACTED]					<input checked="" type="checkbox"/>
[REDACTED]	<input checked="" type="checkbox"/>				
[REDACTED]	<input checked="" type="checkbox"/>				

ISSUES A92.36, A92.22	INDEX NUMBER A67.10	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 21 OCT 03	CASE NUMBER FD2001-0267	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

*Change Reason and Authority to Secretarial Authority. (SPD:JFF)

Case heard at the Air Reserve Personnel Center, Denver, CO.

Advise applicant of the decision of the Board.

(DD Form 149 submitted.)

SIGNATURE [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 21 OCT 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

FD2001-0267

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel at the Air Reserve Personnel Center, Denver, CO, on October 21, 2003. The following type of witness also testified on the applicant's behalf: SSgt RPR, USAF (a friend and former co-worker).

The following additional exhibits were submitted at the hearing:

Exhibit 5: Character Reference Letter from ██████████ USAF, dated 17 October 2003

Exhibit 6: Utility Trailer Manufacturing Company (employer) Character Reference Letter signed by ██████████ ██████████, dated 19 August 2003

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

FINDINGS: The Board grants the requested relief.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's reason and authority for discharge inequitable.

Issues. Applicant was discharged for minor disciplinary infractions. The records indicated the applicant received two Articles 15, one for disrespect to a superior noncommissioned officer (NCO) and failing to obey a lawful order, the other for being drunk and disorderly and assaulting another person, resulting in injury. At the time of the discharge, member waived his right to consult counsel and to submit matters in his own behalf. Applicant contends the two incidents of misconduct were isolated and uncharacteristic of his otherwise satisfactory service. Additionally applicant contends these two incidents were predicated by a period of stress related to personal problems for which he felt the Air Force provided inadequate assistance. The DRB opined that through the unit's administrative actions, the applicant had the opportunity to change his negative behavior, and concluded the misconduct was a significant departure from conduct expected of all military members. And, while the Board did not condone member's misconduct, after a thorough review of the record and information submitted by applicant, the Board felt there was sufficient mitigation and extenuation to substantiate an upgrade of the discharge and to change the reason for the discharge. Specifically, the Board found the characterization was too harsh.

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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge, and the reason for discharge is more accurately described as Secretarial Authority. The applicant's characterization of service and reason and authority for discharge should be changed to Honorable and Secretarial Authority under the provisions of Title 10, U.S.C. 1553.

Attachment:
Examiner's Brief

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

(Former A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 98/08/01 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 75/04/04. Enlmt Age: 19 0/12. Disch Age: 23 3/12. Educ:HS DIPL. AFQT: N/A. A-89, E-51, G-66, M-50. PAFSC: 1C531C - Aerospace Control & Warning System Apprentice. DAS: 97/02/08.

b. Prior Sv: (1) AFRes 94/04/16 - 94/10/11 (5 months 26 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enld as AB 94/10/12 for 4 yrs. Extended 97/06/30 for 4 months (Cancelled). Svd: 3 Yrs 9 Mo 20 Das, all AMS.

b. Grade Status: A1C - 98/07/14 (Article 15, 98/04/14)
SrA - 97/10/12
A1C - (EPR Indicates): 94/10/12-97/01/15
AMN - (EPR Indicates): 94/10/12-97/01/15

c. Time Lost: none.

d. Art 15's: (1) 98/04/14, Keflavik NAS, Iceland - Article 91. You did, at Naval Air Station Keflavik, Iceland, on or about 27 Jun 98, treat with disrespectful language toward MSgt -----, a noncommissioned officer, then known by you to be a noncommissioned officer, who was then in the execution of his office, by saying to him, "Fuck this, this is bullshit, I'm not showing you my ID card--I'm just sitting here." "Fuck this. I'm not showing you shit." or words to that effect. Article 92. You, having knowledge of a lawful order issued by MSgt ----- to show him your ID card, an order which it was your duty to obey, did at Naval Air Station Keflavik, Iceland, on or about 27 Jun 98, fail to obey the same by wrongfully refusing to give him your ID Card. Rdn to A1C. (No appeal) (No mitigation)

(2) 98/03/06, Keflavik NAS, Iceland - Article 128. You did, at Naval Air Station, Keflavik, Iceland, on or about 14 Feb 98, commit an assault upon ----- by striking him in the face with your elbow and did thereby inflict greivous bodily harm upon him, to wit: a broken nose. Article 134. You were, at Naval Air Station, Keflavik, Iceland, on or

about 14 Feb 98, drunk and disorderly, which conduct was of a nature to bring discredit upon the armed forces. Rdn to A1C (suspended until 5 Sep 98) forfeiture of \$590.00 pay per month for two months and 30 days extra duty.
(Appeal/Denied) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: 94/10/12 - 97/01/15 Hill AFB 4 (HAF Dir)
97/01/16 - 98/01/15 Keflavik AS 4 (Annual)

(Discharged from Keflavik NAS)

h. Awards & Decs: AFTR, NDSM, AFEM, AFOUA, AFGCM.

i. Stmt of Sv: TMS: (4) Yrs (3) Mos (16) Das
TAMS: (3) Yrs (9) Mos (20) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 01/08/12.
(Change Discharge to Honorable)

Issue 1: I accept responsibility for my past poor decisions. Use letter of request, document one.

Issue 2: I am striving to be a better citizen, husband, and father. Use letters of support, documents two, three, and four.

ATCH

1. Applicant's Letter to Board.
2. Four Letters of Support.

01/10/03/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 85TH GROUP (ACC)
APO AE 09725-2055

28 July 1998

MEMORANDUM FOR CC

FROM: JA

SUBJECT: Legal Review - Administrative Discharge of [REDACTED]

1. The record in this case is legally sufficient to justify an administrative discharge for misconduct (minor disciplinary infractions) under the provisions of AFI 36-3208, para 5.49. The respondent has been afforded all rights and privileges in accordance with pertinent laws and regulations.
2. [REDACTED] is 23 years old and enlisted in the Air Force on 12 Oct 94 for a term of four years. His DEROS is 11 Oct 98.
3. As evidence supporting this action, his squadron commander cites the reasons listed in the Notification Memorandum, paragraph 2 (see case file). Since Mar 98, [REDACTED] has committed infractions worthy of administrative discharge. These include:
 - a. On or about 27 Jun 98, he was disrespectful toward a superior noncommissioned officer and failed to obey the NCOs lawful order. For these actions, [REDACTED] received nonjudicial punishment (Article 15) action, dated 14 Jul 98.
 - b. On or about 14 Feb 98, he assaulted another individual (breaking the person's nose) and was drunk and disorderly on station. As a result, he received nonjudicial punishment (Article 15) action, dated 6 Mar 98.
4. Please note, in paragraph 2(l) of [REDACTED] forwarding memorandum, he mentions two Letters of Reprimand and one Letter of Counseling for unsatisfactory progress in the weight management program (WMP). Failure to progress in the WMP is not misconduct; it cannot be used in deciding whether or not to discharge, the characterization of discharge, nor granting or denying P&R. It is included merely as other derogatory data, as required by the regulation.
5. [REDACTED] was afforded the opportunity to consult with the Lakenheath AB Area Defense Counsel concerning this action and voluntarily decided not to consult. His statement unequivocally states, in the strongest terms, that he did not wish to consult with counsel on this matter. He also elected not to submit matters on his own behalf.

6. The squadron has demonstrated support for [REDACTED] through rehabilitative efforts and opportunities. The first of the two Article 15s given had punishment including a suspended reduction in rank for six months. The squadron commander and first sergeant took all appropriate actions in this case. Despite these efforts, [REDACTED] simply has failed to meet the standards for continuous service in the military.

7. The respondent's Article 15s are evidence of a pattern of misconduct, specifically, minor disciplinary infractions. The seriousness of the offenses and the short period of time in between events clearly establishes [REDACTED] as a candidate for administrative separation. The appropriate action at this point in time, under the AFI, is to discharge this individual.

8. AFI 36-3208, paragraph 5.49, says the SPCM authority personally approves or disapproves discharges under this provision. Paragraphs 1.18.1 and 5.48.4 say an honorable discharge is appropriate if the quality of an airman's service has generally met Air Force standards of acceptable conduct and performance of duty, or when his service is otherwise so meritorious that any other characterization would be clearly inappropriate (in which case the general court-martial convening authority must approve the characterization). Para 1.18.2 says a general discharge is appropriate if an airman's service has been honest and faithful, but significant negative aspects of his conduct or duty performance outweigh positive aspects of his military record. Discharges for minor disciplinary infractions are ordinarily characterized as general. [REDACTED] service meets the latter test and warrants a general discharge.

9. If you decide to discharge the respondent, you may direct conditional suspension of his discharge pending successful completion of probation and rehabilitation (P&R), under Chapter 7, AFI 36-3208. P&R is appropriate for members who have demonstrated a potential to serve satisfactorily, have the capacity to be rehabilitated, and whose retention on active duty is consistent with good order and discipline. I do not recommend the respondent be offered P&R. The efforts of the unit demonstrate this airman is simply unable to progress and meet Air Force standards of performance.

10. **Options.** You may:

a. Discharge [REDACTED] with a general, under honorable conditions discharge, with or without P&R.

b. Recommend to 8 AF/CC that [REDACTED] receive an honorable discharge, with or without P&R.

c. Convene a discharge board and refer this case to it if you feel an under other than honorable conditions (UOTHC) discharge is warranted.

d. Retain [REDACTED] on active duty.

10. **Recommendation.** [REDACTED] squadron commander recommends discharge with a service characterization of general, under honorable conditions, without P&R. I concur. If you accept this recommendation, you may use the attached action memorandum to direct the airman's discharge.

[REDACTED] USAF
Staff Judge Advocate

Attachments:

1. Proposed Action Memorandum
2. Case File



DEPARTMENT OF THE AIR FORCE

932D AIR CONTROL SQUADRON (ACC)
APO AE 09725-2055

27 July 1998

MEMORANDUM FOR [REDACTED]

FROM: CC

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, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general!

2. My reasons for this action are:

a. On or about 27 Jun 98, you treated with disrespectful language a noncommissioned officer who was in the execution of his office and failed to obey a lawful order issued by the same noncommissioned officer. For this, you received nonjudicial punishment (Article 15) action, dated 14 Jul 98.


b. On or about 14 Feb 98, you assaulted an individual, inflicting grievous bodily harm, and were drunk and disorderly. As a result, you received nonjudicial punishment (Article 15) action, dated 6 Mar 98.

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. If you are discharged, you will be ineligible for reenlistment in the Air Force. Any special pay, bonus, 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 with the Area Defense Counsel, RAF Lakenheath, on 28 July 1998, at 0930. In addition to military counsel, you have the right to employ civilian counsel at your own expense.

5. You have the right to submit statement in your own behalf. Any statements you want the separation authority to consider must reach me by 015, 30 July 1998, 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 the medical facility at 0930, on 29 July 1998.
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 at the Base Legal Office.


Commander

Attachments:

1. Record of Nonjudicial Punishment Proceedings, 14 Jul 98
2. Record of Nonjudicial Punishment Proceedings, 6 Mar 98
3. Two EPRs (Thru Dates: 15 Jan 98, 15 Jan 97)
4. Receipt of Notification Memorandum