

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE A1C	AFSN/SSAN ████████████████
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TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW
YES	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL	
X	████████████████████	████████████████████ ████████████████████	

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

ISSUES A92.15 A92.35 A93.07 A93.21 A93.29	INDEX NUMBER A67.90	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 DATE 14 Dec 2004	CASE NUMBER FD-2004-00270	
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APPLICANT'S STATEMENT AND THE BOARD'S DECISIONAL RATIONALE DISCUSSED ON THIS ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

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.

TO: SAF/MRBR 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, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00270

GENERAL: The applicant appeals for upgrade of discharge to honorable, to change the reason and authority for his discharge, and to change his reenlistment code.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) 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 reason and authority for the discharge, and change of reenlistment code are denied.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issue 1. Applicant contends discharge was inequitable because it was too harsh and states that his discharge did not take into account the good things he did while in the service. The records indicated the applicant received two Articles 15, a Letter of Reprimand, two Letters of Counseling, and a Record of Individual Counseling for misconduct. His infractions included three instances of failure to go, failing to pay just debts, dereliction of duty, and wrongfully downloading pornographic materials on his government computer. At the time of the discharge, applicant waived his right to consult counsel, submit statements on his own behalf, and waived his right to an administrative board hearing conditioned on receipt of a general (under honorable conditions) discharge, which is what he received. The DRB opined that through the unit's several administrative actions, the applicant had ample opportunities to change his negative behavior and was unwilling or unable to do so. The DRB also took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other accomplishments. They found the seriousness of his willful misconduct offset any positive aspects of the applicant's otherwise satisfactory duty performance. The Board concluded the misconduct was a significant departure from conduct expected of all military members and the characterization of the discharge was appropriate.

Issue 2. Applicant contends his duty performance was adversely impacted by marital, financial, medical and personal problems, and the resultant stress, and failure of his chain of command to offer him appropriate counseling or assistance. Unfortunately, applicant failed to provide any documented evidence to substantiate these various contentions and the records review failed to identify any. The Board concluded that the disciplinary actions taken were given in an attempt to rehabilitate member, and since his infractions occurred over a 21-month period, he had sufficient time to improve. Additionally, there was no evidence member sought assistance from available base agencies such as the chaplaincy, family support center, or mental health clinic. Thus there was insufficient evidence to evaluate the merits of applicant's alleged mitigating factors. The Board found the discharge procedurally proper and equitable, and no change warranted.

Issue 3. Applicant noted his offenses were minor. The record reflects applicant's offenses were numerous and well documented, and supported the characterization of service received.

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 A1C) (HGH SrA)

MISSING SOME DISCHARGE DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Pope AFB, NC on 29 Mar 00 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 10 Jan 75. Enlmt Age: 17 7/12. Disch Age: 25 2/12. Educ: HS DIPL. AFQT: N/A. A-69, E-39, G-37, M-41. PAFSC: 6F051 - Financial Mangement Journeyman. DAS: 4 Aug 95.

b. Prior Sv: (1) AFRes 31 Aug 92 - 3 Aug 93 (11 months 4 days) (Inactive).

(2) Enlisted as AB 4 Aug 93 for 4 yrs. Extended 7 Mar 95 for 1 month. Svd: 3 yrs 3 months 27 days, all AMS. AMN - Unknown. A1C - 4 Feb 94. SrA - 4 Dec 94. EPRs: 2(REF), 4.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 2 Dec 96 for 6 yrs. Svd: 3 Yrs 3 Mo 28 Das, all AMS.

b. Grade Status: A1C - 17 Feb 00 (Article 15, 17 Feb 00)

c. Time Lost: None.

d. Art 15's: (1) 17 Feb 00, Pope AFB, NC - Article 86. You did, on or about 3 Feb 00, without authority, fail to go at the time prescribed to your appointed place of duty. You did, on or about 7 Feb 00, without authority, fail to go at the time prescribed to your appointed place of duty. Reduction to A1C. (No appeal) (No mitigation)

(2) 25 Jun 98, Pope AFB, NC - Article 92. You did, on or about 15 Jun 98 and on or about 16 Jun 98, fail to obey a lawful general regulation, to wit: paragraph 6.1.3, AFI 33-129, dated 1 Jan 97, by wrongfully downloading pornographic computer images onto a United States Government desktop computer located in building 315, 43rd Comptroller Squadron, Pope AFB, NC. Suspended forfeiture of \$689.00 pay per month for 2 months. Thirty days extra duty. (No appeal) (No mitigation)

e. Additional: RIC, 03 FEB 00 - Returning late from lunch.
 LOR, 20 OCT 99 - Financial irresponsibility.
 LOC, 14 OCT 99 - Dereliction of duty.
 LOC, 16 SEP 98 - Late for duty.

f. CM: None.

g. Record of SV: 4 Apr 96 - 03 Apr 97 Pope AFB 4 (Annual)
 4 Apr 97 - 31 Oct 97 Pope AFB 5 (CRO)
 1 Nov 97 - 31 Oct 98 Pope AFB 4 (Annual)
 1 Nov 98 - 31 Oct 99 Pope AFB 3 (Annual)

h. Awards & Decs: AFLSA, AFTR, NDSM, NCOPMER, AFOUA W/1 OLC, AFGCM W/1 OLC.

i. Stmt of Sv: TMS: (7) Yrs (6) Mos (27) Das
 TAMS: (6) Yrs (7) Mos (26) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 7 Jul 04.
 (Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Certificate of Achievement.
2. Training Certificate.
3. Certificate of Recognition.
4. Letter of Congratulations.
5. Four Enlisted Performance Reports.
6. Unfavorable Information File.
7. Record of Individual Counseling, 3 Feb 00.
8. Response to Record of Individual Counseling.
9. DD Form 214.

28SEP04/ia

Continuation of DD Form 293

6. ISSUES: Why an upgrade or change is requested and justification for the request.

The following issues are the reasons I believe my discharge should be upgraded to honorable. The character of service, General (Under Honorable Conditions) does not reflect the true character of my service in the Air Force. In reviewing my military service record you see that I was awarded the Air Force Good Conduct Medal w/1 OLC, several Certificates of Achievement and other recognition awards.

Out of the six years I was in the Air Force, I was the section supervisor or section leader of my section for five of the six years. I was also entrusted with several additional duties as well. I acted as the building custodian and equipment custodian as additional duties. I was also on the Top Dollar Team that earned 3rd place honors in 1997.

While stationed at Pope AFB I was personally tasked by the Wing Commander to account for and de-obligate all the SATO travel tickets. This amounted to about 14 million dollars in funds. I was given six months to complete this task. After only two months I had accounted for over half of all vouchers.

My service and performance in the Air Force was well above average until I started having marital problems. These personal problems grew and created financial problems. I readily admit that I made some errors in judgment that led to problems at work. My job performance and reliability suffered due to my preoccupation with my marital problems. These family problems ultimately led to a very nasty divorce.

My bad decisions and poor work performance resulted in my receiving two article 15's. As stated earlier I did make some bad decisions and let my personal life interfere with my professional performance. This was a very stressful period of time for me.

I strongly feel that my supervisors at the time contributed to some of my problems. I was not offered any type of counseling to assist me in dealing with my personal problems. My supervisors chose to address the problem in only a punitive manner. This caused additional friction between me and the supervisors that led to difficult working conditions. The situation that was created resulted in bitter feelings on my part that further impaired my ability to cope with my marital and financial problems.

With proper counseling and a little more understanding from supervision I feel that I could have successfully worked through my personal problems and improved my work performance. I was never given this option. Supervision chose to punish instead of assisting in getting proper counseling.

To compound my problems during this period of time I was having serious medical problems. I was eventually diagnosed as having gall bladder problems. This resulted in gall bladder surgery at UNC Chapel Hill Hospital.

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In conclusion I am requesting that you review my military service record and verify that my character of service was honorable and the Article 15's I received were for basically minor offenses. In addition please change my reenlistment code to RE-1 and change my SPD code accordingly. I want to thank you in advance for your time and consideration. I honestly feel that after reviewing my Military Service Record that you will agree that my character of service was honorable.

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 43D AIRLIFT WING (AMC)
POPE AIR FORCE BASE NORTH CAROLINA

20 Mar 00

MEMORANDUM FOR 43 AW/CC

FROM: 43 AW/JA
374 Maynard St., Ste A
Pope AFB NC 28308-2381

SUBJECT: Legal Review: Discharge under Provisions of AFPD 36-32 and AFI 36-3208,
Paragraph 5.50.2 (AIC [REDACTED] 43 CPTS)

1. BASIS FOR ACTION: On 28 Feb 00, 43 CPTS/CC initiated administrative discharge action against AIC [REDACTED] in accordance with AFPD 36-32 and AFI 36-3208, Chapter 5, Paragraph 5.50, a Pattern of Misconduct. (This was later modified to paragraph 5.50.2, Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline.) Because the member has over six years of service he is entitled to present his case to an administrative discharge board. On 7 March 00, AIC [REDACTED] waived his right to an attorney and his right to an administrative discharge board (See Attachment 3 to Squadron Commander's Recommendation). On 10 March 00, a waiver of minor procedural errors was accomplished. This waiver of discrepancies memorandum contained a conditional waiver of AIC [REDACTED] right to a discharge board, contingent on him receiving a discharge characterization of no less than a general discharge. The most severe type of discharge authorized in this case is an under other than honorable conditions discharge (UOTHC) should you elect to initiate board proceedings. However, the squadron commander recommends separation with a general discharge without probation and rehabilitation (P&R).

2. FACTS:

a. On or about 7 Feb 00, AIC [REDACTED] did, at or near Pope Air Force Base, North Carolina, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Physical Exams, 379 Maynard Street, Pope Air Force Base, North Carolina as documented by an AF Form 3070, Record of Nonjudicial Punishment Proceedings, dated 17 Feb 00.

b. On or about 3 Feb 00, AIC [REDACTED] did, at or near Pope Air Force Base, North Carolina, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: 43d Comptroller Squadron, 5451 Reilly Street, Pope Air Force Base, North Carolina as documented by an AF Form 3070, Record of Nonjudicial Punishment Proceedings, dated 17 Feb 00.

c. On or about 15 Oct 99, at or near Pope Air Force Base, North Carolina, AIC [REDACTED] dishonorably failed to pay his just debts, to wit: \$273.00 past due on his AAFES Deferred

Payment Plan Account; and on or about 16 Aug 99, at or near Pope Air Force Base, North Carolina, A1C [REDACTED] issued a check to the Army and Air Force Exchange Service in the amount of \$142.60, and he failed to maintain sufficient funds in his account to pay such check; both as documented by a Letter of Reprimand, dated 20 Oct 99.

d. Between on or about 4 Oct 99 and on or about 9 Oct 99, A1C [REDACTED] was assigned a beeper and certifying responsibilities for the week. Master Sergeant [REDACTED] was informed by the Financial Services Officer, 1Lt [REDACTED] that Command Post made attempts but was unable to contact a Certifying Official to certify orders on the night of 4 Oct 99 as documented by a Letter of Counseling, dated 14 Oct 99.

e. On or about 16 Sep 98, A1C [REDACTED] failed to report for duty at 0700 hrs and was approximately 1 hour and 45 minutes late for work as documented by a Letter of Counseling, dated 16 Sep 98.

f. Between on or about 15 Jun 98 and on or about 16 Jun 98, A1C [REDACTED] did, at or near Pope Air Force Base, North Carolina, fail to obey a lawful general regulation, to wit: paragraph 6.1.3, Air Force Instruction 33-129, dated 1 Jan 97, by wrongfully downloading pornographic computer images onto a United States Government desktop computer located in building 315, 43rd Comptroller Squadron, Pope Air Force Base, North Carolina as documented by an AF Form 3070, Record of Nonjudicial Punishment Proceedings, dated 25 Jun 98.

3. PERSONAL DATA: A1C [REDACTED] is 25 years old and began serving his current enlistment on 2 Dec 96. A1C [REDACTED] duty title is Financial Services Journeyman, AFSC 6F051. He is entitled to wear the Air Force Outstanding Unit Award, Air Force Good Conduct Medal (1OLC), National Defense Service Medal, Air Force Lengthy Service, USAF NCO PME Graduate Ribbon, and Air Force Training Ribbon.

4. DISCUSSION:

a. This discharge recommendation has been processed in compliance with AFI 36-3208, and the record is legally sufficient to sustain a discharge. The circumstances cited by 43 CPTS/CC as reasons for discharge occurred within A1C [REDACTED] current enlistment. Minor irregularities did occur in the processing but were corrected by A1C [REDACTED] accomplishing a new waiver of his right to an administrative discharge board. Also, two letters of counseling in the package did not have required Privacy Act statements. They do show that A1C [REDACTED] was given three days to respond to the allegations contained therein, so their inclusion in the package does not violate his right to due process or fundamental fairness.

b. A Pattern of Misconduct is contrary to the self-discipline required for effective military service. A1C [REDACTED] record reveals a pattern of misconduct including several instances of failure to go at the time prescribed to his appointed place of duty, dishonorably failing to pay his just debts and failure to obey a lawful general regulation by downloading pornography on his government computer.

c. In determining the proper characterization of A1C [REDACTED] service, the guidelines in AFI 36-3208, paragraphs 1.17 and 1.18, must be applied. These guidelines provide that service characterization be based upon the quality of the member's service as reflected in the military record, as evidenced by personal conduct, performance of duty, and the reasons for the discharge action. Service characterization is usually based on a pattern of behavior rather than an isolated incident, and the standards of acceptable conduct and performance of duty for an airman.

d. A1C [REDACTED] service record reveals a pattern of misconduct, not a singular incident. His misconduct is significant. Further, the 43 CPTS/CC gave A1C [REDACTED] notice and provided him ample opportunity to bring his conduct up to standards. Nevertheless, he failed to do so. In this case, a general discharge is warranted because the negative aspects of A1C [REDACTED] record outweigh the positive aspects of his service. Indeed, A1C [REDACTED] service has not been so meritorious as to warrant an honorable discharge, nor has his misconduct been to such a degree that a UOTHC discharge is appropriate. P&R is not appropriate under these circumstances because A1C [REDACTED] has already been given several opportunities to improve his behavior and elevate it to an acceptable standard. However, he has shown he has no rehabilitative potential. Thus, it is apparent that active duty probationary status would be inconsistent with the maintenance of good order and discipline in the Air Force.

5. OPTIONS: As the Special Court-Martial Convening Authority in this case, you may:

a. Forward the file to 21 AF/CC along with your recommendation regarding an appropriate disposition of the case; or

b. Disapprove the respondent's conditional waiver of an administrative board hearing and order that a discharge board be convened.

6. RECOMMENDATION: 43 AW/CC forward the file to 21 AF/CC along with your recommendation he approve the respondent's conditional discharge board waiver and separate the respondent from the Air Force with a general discharge without P&R. If you agree with this recommendation, an endorsement for your signature is at Tab 1.



Lt Col, USAF
Staff Judge Advocate

Attachment:
Case File