

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

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

ISSUES A94.53 A93.01	INDEX NUMBER A67.30	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 01 Dec 2004	CASE NUMBER FD-2004-00273	
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE 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	DATE: 12/3/2004	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-2004-00273

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 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 was discharged for commission of a serious offense. The records indicate the applicant confessed to stealing four tires and rims from a car dealership and to stealing four tires and rims from a vehicle located at a car parts store; civilian authorities apparently prosecuted member for these crimes. Unfortunately, most of member's discharge processing files were unavailable to the Board for review due to being missing from the record. Because member's discharge file was unavailable to the Board for review, the Board was unable to conclusively ascertain if there was other misconduct on member's part that formed additional bases for the discharge. The Board was however able to determine that at that time of the discharge processing member offered an unconditional waiver of his right to have his case heard by an administrative discharge board, and declined to submit any matters in his own behalf. A review of applicant's medical records and remaining documentation in his Unit Personnel Record Group failed to disclose any information pertinent to his discharge, although it was noted he had a pre-service arrest for vandalism and had been fired from a civilian place of employment for failing to go to work. Lacking documented evidence from the applicant to the contrary, the Board relies on the presumption of regularity and finds the discharge proper and without basis for an upgrade. The Board concluded applicant's misconduct was a significant departure from conduct expected of all military members and the characterization of the discharge received by the applicant was appropriate. No inequity or impropriety could be found in this discharge in the course of the records review.

Issue 2. The applicant cited his desire to return to military service as justification for upgrade. The Board was sympathetic to the impact his reenlistment code was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

Issue 3. Applicant infers that he should not be penalized indefinitely for mistakes he made when young. The DRB noted the applicant was 21 years of age when the discharge took place; there is no evidence he was immature or did not know right from wrong. The Board opined the applicant was as old as the vast majority of first-term members who properly adhere to the Air Force's standards of conduct. The DRB concluded that the characterization of the applicant's discharge was appropriate due to his misconduct.

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 A1C) (HGH A1C)

MISSING SOME DISCHARGE DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Schriever AFB, CO on 22 Dec 00 UP AFI 36-3208, para 5.52.3 (Commission of a Serious Offense). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 17 Aug 79. Enlmt Age: 18 11/12. Disch Age: 21 4/12. Educ: HS DIPL. AFQT: N/A. A-67, E-85, G-76, M-82. PAFSC: 3C031 - Communications Computer Systems Operations Apprentice. DAS: 14 Jun 99.

b. Prior Sv: (1) AFRes 6 Aug 98 - 19 Jan 99 (5 months 14 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 20 Jan 99 for 4 yrs. Svd: 1 Yrs 11 Mo 3 Das, all AMS.

b. Grade Status: A1C - 20 May 00
Amn - 20 Jul 99

c. Time Lost: None.

d. Art 15's: None.

e. Additional: (Examiner's Note: Applicant confessed to stealing four tires and rims from a Mazda dealership, and four tires and rims from a vehicle located near a car parts store. Civilian authorities were prosecuting him for these crimes during the time of discharge).

f. CM: None.

g. Record of SV: 20 Jan 99 - 30 Nov 00 Schriever AFB 3 (Initial)

h. Awards & Decs: AFTR, AFOUA, EMR.

i. Stmt of Sv: TMS: (2) Yrs (4) Mos (16) Das
TAMS: (1) Yrs (11) Mos (3) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 11 Jul 04.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

Issue 1: I am requesting a change of my discharge and reentry code so that I may enter back into the Air Force and complete the rest of my enlistment and,

if possible, continue serving in the military. I know that I made a mistake while serving and I have paid for that mistake. I was facing 4 felony theft charges in civil court and opted to be discharged before disposition of the case occurred. I realized later that I should have waited, but I was young and inexperienced in these matters.

The military is the only place where I felt that I was actually a part of something. Where I felt that I was working towards something meaningful in my life. I have held a couple of jobs since being seperated, one of which I was an automotive technician. While I did learn a lot of information, I just reached a plateau when it came to learning more. The Air Force just kept challenging me to learn more and make myself better.

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None.

19AUG04/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS FOURTEENTH AIR FORCE (AFSPC)

FD2004-00273



18 DEC 2000

MEMORANDUM FOR 14 AF/CC

FROM: 14 AF/JA

SUBJECT: Legal Review – AFI 36-3208 Administrative Discharge (Unconditional Waiver); A1C [REDACTED] 50 CS (AFSPC)

1. Background. Involuntary discharge action has been initiated against A1C [REDACTED] 50th Communications Squadron, Schriever AFB CO pursuant to AFD 36-32 and AFI 36-3208, *Administrative Separation of Airmen*, 14 Oct 94, Chapter 5, Section H, paragraph 5.52.3 for Commission of a Serious Offense. A1C [REDACTED] offered an unconditional waiver of his right to an administrative discharge board. The Commander, 50th Space Wing, recommends that the waiver be approved, and that A1C [REDACTED] be separated with an Under Other Than Honorable Conditions (UOTHC) discharge and that he not be offered probation and rehabilitation (P&R). I have reviewed the file and concur with that recommendation. In accordance with AFI 36-3208, paragraph 5.56.2.1, you are the separation authority.

2. Basis for Discharge. The basis for discharge is articulated in the Notification Memorandum. A1C [REDACTED] misconduct consists of stealing four tires and rims from a Mazda dealership and four tires and rims from a vehicle located near a car parts store. Both the Mazda dealership and the car parts store are in Colorado Springs, CO. A1C [REDACTED] confessed to these larcenies, and civilian authorities are prosecuting him.

3. Matters Submitted by the Respondent. On 20 Nov 00, A1C [REDACTED] offered an unconditional waiver of his right to an administrative discharge board. He submitted no other matters on his behalf.

4. Errors and Irregularities. There are no errors in the file substantively prejudicial to the respondent. There was one error that has been corrected. When A1C [REDACTED] submitted his original waiver letter, it lacked certain language required by AFI 36-3208. Specifically, the waiver omitted the following words:

I further understand that, regardless of your recommendation, I may be discharged under other than honorable conditions. I know that as a result of such discharge I may be deprived of veterans' benefits. I am aware of the adverse nature of such a discharge and the possible consequences thereof.

A1C [REDACTED] was notified of the error. On 12 Dec 00, he submitted another waiver which included the mandatory language. His defense counsel also signed this waiver.

This new waiver cures the earlier error. Additionally, I note one minor error that does not affect the legal sufficiency of this action. A1C [REDACTED] has been on active duty for more than 20 months, and thus should have been furnished with an EPR. Although an EPR is currently being written, AFI 36-3208, paragraph 6.4, does not require an EPR in cases involving misconduct. Thus, although A1C [REDACTED] should have received an EPR, the fact that he did not is not a legally significant issue.

5. Characterization. You must decide what characterization of service is appropriate if discharge is directed. The unit and wing commanders have recommended a UOTHC discharge. According to AFI 36-3208, paragraph 5.48.1, discharges for Commission of a Serious Offense should usually be characterized as UOTHC. There is nothing in this case which warrants departure from this standard. A1C [REDACTED]' behavior was a significant departure from the conduct expected of airmen and deserves to be characterized as UOTHC.

6. Probation and Rehabilitation. AFI 36-3208, paragraph 7.3, provides that probation should be possible for airmen: (1) who have demonstrated a potential to serve satisfactorily; (2) who have the capacity to be rehabilitated for continued military service or for completion of the current enlistment; (3) and whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline. Probation and rehabilitation is inappropriate in this case. A1C [REDACTED] misconduct is such a significant departure from acceptable standards that I believe his retention on active duty would be inconsistent with the maintenance of good order and discipline.

7. Options. You may:

- a. Direct that A1C [REDACTED] be retained in the Air Force.
- b. Disapprove the offered waiver and return the case for a board hearing.
- c. Accept the offered waiver and direct that A1C [REDACTED] be discharged with an Honorable, General or UOTHC discharge characterization, with or without suspension of the discharge for a probationary period of rehabilitation.

8. Recommendation. I recommend that you approve the offered waiver and direct that A1C [REDACTED] be separated from the United States Air Force with an Under Other Than Honorable Conditions discharge and that the discharge not be suspended for a probationary period of rehabilitation. If you agree, an endorsement effecting such a recommendation is at Tab 1.

[REDACTED]
Colonel, USAF
Staff Judge Advocate