

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN				
TYPE	GEN	PERSONAL APPEARANCE		X	RECORD REVIEW		
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
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD			
A93.01 A94.05 A93.09		A67.10		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		CASE NUMBER					
07 Dec 2005		FD-2005-00159					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE							
<p>Case heard at Washington, D.C.</p> <p>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</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p>							
SIGNATURE OF RECORDER			SIGNATURE OF BOARD PRESIDENT				
INDORSEMENT			DATE: 12/8/2005				
TO:			FROM:				
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742			SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002				

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00159

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

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 is 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. The records indicated the applicant received two Article 15s. One for unlawfully choking another Airman and for willfully damaging a telephone by ripping it out of the wall. The other one for being disrespectful in language toward a CMSgt. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

ISSUE 2, 3, 5, 10 and 14: Applicant states that his discharge did not take into account the good things he did while in the service, to include receiving several awards. The DRB 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 the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

ISSUE 4 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well and has a good job. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

ISSUE 6. Applicant contends that he should not be penalized indefinitely for a mistake he made when young. The DRB recognized the applicant was 22 years of age when the discharge took place. However, there is no evidence he was immature or did not know right from wrong. The Board opined the applicant was older than 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 the misconduct.

ISSUE 7 and 8 are without merit. The case went through legal sufficiency and handled properly. Each case is handled differently and cannot be compared to another case.

ISSUE 9, 11 and 12: The DRB took note of the applicant's personal and financial problems and his background and found that these issues are not a matter of inequity or impropriety. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

ISSUE 13: The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

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]

(Former AMN) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Nellis AFB, NV on 17 Sep 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 13 Mar 81. Enlmt Age: 19 4/12. Disch Age: 22 6/12. Educ: HS DIPL. AFQT: N/A. A-84, E-81, G-66, M-85. PAFSC: 2W151 - Aircraft Armament Systems Journeyman. DAS: 13 Feb 01.

b. Prior Sv: (1) AFRes 14 Jul 00 - 24 Jul 00 (11 days)(Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 25 Jul 00 for 6 years. Svd: 03 Yrs 01 Mo 23 Das, all AMS.

b. Grade Status: Amn - 12 Aug 03 (Article 15, 12 Aug 03)
SrA - 09 Feb 03
A1C - 08 Sep 00

c. Time Lost: None.

d. Art 15's: (1) 12 Aug 03, Nellis AFB, NV - Article 91. You, on or about 18 Jul 03, were disrespectful in language toward CMSgt Clinton Bess, a 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, "I don't know what you are smiling about. I'm not a piece of fucking shit" and "I'm tired of everybody treating me like I'm a fucking piece of shit," or words to that effect. Reduction to Amn. (Appeal/Denied) (No mitigation)

(2) 09 Aug 02, Nellis AFB, NV - Article 128. You did, on or about 1 Aug 02, unlawfully choke A1C Tobias Mendoza Jr. around the neck with your arm. Article 108. You did, on or about 1 Aug 02, without proper authority, willfully damage a telephone by ripping it out of the wall, the telephone being military property of the United States, the amount of said damage being in the sum of less than \$100.00. Suspended reduction to Amn. Forfeiture of \$250.00 pay per month for two months. Fourteen days extra duty and Reprimand. (No appeal) (No mitigation)

- e. Additional: None.
- f. CM: None.
- g. Record of SV: 25 Jul 00 - 25 Mar 02 Nellis AFB 4 (Initial)
26 Mar 02 - 25 Mar 03 Nellis AFB 3 (Annual)REF
- h. Awards & Decs: AFTR, NDSM, AFOUA W/1 BOLC, AFOEA.
- i. Stmt of Sv: TMS: (03) Yrs (02) Mos (04) Das
TAMS: (03) Yrs (01) Mos (23) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Mar 05.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Four letter's of Support
3. Letter from Senator [REDACTED]
4. DD Form 214.
5. Authorization of Release of Confidential Information.

25MAY05/day



DEPARTMENT OF THE AIR FORCE
57TH AIRCRAFT MAINTENANCE SQUADRON (ACC)
NELLIS AIR FORCE BASE, NEVADA

MEMORANDUM FOR AMN [REDACTED], 57 AMXS

04 SEP 2003

FROM: 57 AMXS/CC

SUBJECT: Notification Memorandum - Administrative Discharge AFI 36-3208

1. I am recommending you for discharge from the United States Air Force for minor disciplinary infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, *Administrative Separation of Airmen*, 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. You did, at or near Nellis Air Force Base, Nevada, on or about 1 Aug 02, unlawfully choke Airman First Class [REDACTED], around the neck with your arm. For your actions, you were punished under Article 15, Uniform Code of Military Justice (UCMJ) on 9 Aug 02 consisting of a suspended reduction to the grade of airman, forfeiture of \$250.00 pay per month for 2 months, 14 days extra duty, a reprimand, and an Unfavorable Information File (UIF) was established;

b. You did, at or near Nellis Air Force Base, Nevada, on or about 1 Aug 02, without proper authority, willfully damage a telephone by ripping it out of the wall, the telephone being military property of the United States, the amount of said damage being in the sum of less than \$100.00. For your actions, you were punished under Article 15, UCMJ on 9 Aug 02 consisting of a suspended reduction to the grade of airman, forfeiture of \$250.00 pay per month for 2 months, 14 days extra duty, a reprimand, and a UIF was established; and

c. You, at or near Nellis Air Force Base, Nevada, on or about 18 Jul 03, were disrespectful in language toward CMSgt [REDACTED] a 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, "I don't know what you are smiling about. I'm not a piece of fucking shit" and "I'm tired of everybody treating me like I'm a fucking piece of shit," or words to that effect. For your actions, you were punished under Article 15, UCMJ on 12 Aug 03 consisting of a reduction to the grade of airman and this action was placed in your existing UIF.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising special court-martial 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 for reenlistment in the Air Force and will probably be denied enlistment in any component of the Armed Forces.

4. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult the Area Defense Counsel at Bldg 625 on 5 Sep 03 at 1400 hours. You may consult civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. **You have three (3) duty days from the date/time served to submit statements in your behalf.** Any statements you want the separation authority to consider must reach me by 9 Sep 03 at 1730 hours unless you request and receive an extension for good cause shown. I will send them to the separation authority.
6. In the event the commander exercising special court-martial jurisdiction or a higher authority approves your discharge, separations will out-process you. Your initial separations briefing is scheduled for 5 Sep 03 on 0800 hrs.
7. If you fail to consult or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.
8. You have been scheduled for a medical examination at the 99th Medical Group on 9 Sep 03 at 0730 hrs. @ public Health
9. 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.
10. Execute the attached acknowledgment and return it to me immediately.


Lt Col, USAF
Commander

Attachments:

1. Article 15, 9 Aug 02
2. Article 15, 12 Aug 03
4. AF Form 1137

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Issues:

[REDACTED]

PO Box 163
Dumont, IA 50625
(641) 857-3549

Dear Discharge Review Board: This list of issues are supplement to DD Form 293, page 1, item 6. It will outline in detail the reasons I believe you should award me an upgrade from General to an Honorable Discharge. If you disagree, please explain in detail why you disagree. The presumption of regularity that might normally permit you to assume that the Air Force characterized my service in the manner they did does not apply to my case because of the evidence I am submitting.

1. Clemency is warranted because it is an injustice for me to continue to suffer the adverse consequences of a bad discharge. It is in common belief among all who know me that their characterizing me in such a way was an injustice, as stated in letters submitted for your review by those who served with me at the time. I was often placed in charge of sensitive maintenance practice where only a skilled, competent, and worthy individual would suffice. This is why I suffer from the injustice of a General Discharge.
2. My EPR reports which reflected a less than favorable report where flawed. The numerical scores depict poorly while the written statements evoke high scores with statements such as: "performs efficiently and professionally all tasks presented to him". I believe my EPRs where flawed and did not represent me correctly.
3. I received National Defense Service Medal, Air Force Outstanding Unit Award with one device, Air Force Organizational Excellence Award, and countless Letters of Commendation from my Training Commander Lt. Col. Lewis, and from my Flight Chief. Receiving these awards demonstrates my ability to work with others and perform a job with excellence.
4. I have been a good citizen since I let the military. In support of this I have included letters from my most recent employers.
5. I joined the military for the most sincere of reasons- I wanted to make a difference in my country's military.
6. My choices during my service where impaired by my maturity- this has been remedied with time and experience. If given another chance I am more than sure that I would be able to keep my nose clean and avoid the problems I had before.
7. Because my discharge was not correctly handled by those in charge of me or the proceedings leading to my discharge. A miscommunication on the part of my flight chief and those appointed to supervise me lead to my being late for my appointment with the commander possibly ill-affecting his decision. Also, I was put back to working with dangerous equipment while facing my discharge and was forced to work more hours than the commander had assigned me leading to additional stress and a lack of time to prepare for my case.

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8. Because an Airman who was being punished at the same time and with the same number of Article 15's was not discharged for his illegal drugs related offense. This demonstrates to unfair environment in which the decisions where made to discharge me. His name was Airman [REDACTED] of the 57 AMXS Viper Unit.
9. I had personal and financial problems, which added stress to my everyday life, subsequently affecting my judgment leading to the incident than initiated my Article 15, which in turn resulted in my discharge.
10. I had preformed other acts of merit which where not presented to my commander, these acts included, teaching self defense to both civilian and enlisted personnel. The many times I was forced to perform maintenance by myself while those I worked with sat indoors conversing over non mission related subjects. I had received many thanks for my diligence by the pilots and other personnel in charge of the aircraft.
11. My ability to serve was impaired by my deprived background. As an individual of mixed racial background I have always found it difficult to associate with others. This, lack of exposure led me to become somewhat socially inept and lack the social eloquence sought after by those I worked with. This lead to me being segregated from within my unit and my subsequent hostility toward them. I have analyzed this lack of personality in myself and found a reasonable solution. Because of this I am stronger than before and more than adequate for military service- there by descrving the upgrade I have requested.
12. All aspects of my financial life have been and continue to be adversely affected by my discharge and standing with the US Government including but not limited to my ability to get academic financial aid, credit, and all other matters concerning money.
13. When I signed up for the Air Force I was promised CLRP for college loan repayment, MGIB, and the ability to take school as much as I wanted. None of this materialized and I believe I was unjustly denied benefits most other Airmen had more than adequate access to. During my enlistment I was only allowed to take two classes in nearly four years of service.
14. I was unfairly persecuted because of my size, physique, and martial arts background. I was unfairly harassed and treated as a threat by all who saw me as intimidating. I can not help that I am the size I am and those I worked with and the command that lead the pursuit of my discharge was blinded by their prejudice.