

INITIAL)

GRADE

A1C

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	UOHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES	A94.06	INDEX NUMBER	A67.10	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	CASE NUMBER
14 Feb 2006	FD-2005-00331

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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.

Names and votes will be made available to the applicant at the applicant's request.



INDORSEMENT		DATE: 2/16/2006
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

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00331

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.

ISSUES:

Issue 1. Applicant contends discharge was inequitable because he was discharged for failing the weight management program. The records indicated the applicant received two Article 15s, three Letters of Reprimand, and one Record of Individual Counseling for misconduct. The misconduct included failure to obey a lawful order, financial irresponsibility on divers occasions, and failure to progress in Phase I of the Weight Management Program. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board noted that failure to progress in the weight management program was one of several reasons leading up to the applicant's discharge. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. 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

(Former A1C) (HGH SRA)

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

2. **BACKGROUND:**

a. DOB: 25 Jul 78. Enlmt Age: 20 2/12. Disch Age: 24 8/12. Educ: HS DIPL. AFQT: N/A. A-98, E-54, G-55, M-65. PAFSC: 3V031 - Visual Information Apprentice. DAS: 4 Aug 99.

b. Prior Sv: (1) AFRes 23 Oct 98 - 27 Oct 98 (5 days)(Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 28 Oct 98 for 6 yrs. Svd: 04 Yrs 05 Mo 05 Das, all AMS.

b. Grade Status: A1C - 21 Nov 02 (Vacation of Article 15, 10 Mar 03)
SrA - 28 Feb 01

c. Time Lost: None.

d. Art 15's: (1) 10 Mar 03, Vacation, Nellis AFB, NV - Article 92. You, having knowledge of a lawful order issued by LtCol _____, to wit: "you must immediately contact the Finance Office to inform them of your return to the dorm," dated 22 Oct 02, an order which you acknowledged and which it was your duty to obey, did, from on or about 22 Oct 02 to on or about 12 Feb 03, fail to obey the same by failing to notify the Finance Office of your return to the dorm. Reduction to A1C. (No appeal) (No mitigation)

(2) 21 Nov 02, Nellis AFB, NV - Article 134. You, being indebted to Nova Financial Service in the sum of \$265.00 for a loan, which amount became due and payable on or about 1 Oct 02, did, at or near Las Vegas, Nevada, from on or about 1 Oct 02 to on or about 5 Nov 02, dishonorably fail to pay said debt. Suspended reduction to A1C. (No appeal) (No mitigation)

e. Additional: LOR, 05 FEB 03 - Failure to progress in Phase I of the Weight and Body Fat Management Program.
LOR/UIF, 18 SEP 02 - Financial irresponsibility.
LOR/UIF, 04 SEP 02 - Financial irresponsibility.

RIC, 13 JUL 02 - Financial irresponsibility.

f. CM: None.

g. Record of SV: 28 Oct 98 - 15 Apr 00 Nellis AFB 3 (HAF Dir)
16 Apr 00 - 15 Apr 01 Nellis AFB 5 (Annual)
16 Apr 01 - 15 Apr 02 Nellis AFB 5 (Annual)

h. Awards & Decs: AFTR, NDSM, AFLSAR, AFOUA, AFOEA.

i. Stmt of Sv: TMS: (04) Yrs (05) Mos (10) Das
TAMS: (04) Yrs (05) Mos (05) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02 May 05.
(Change Discharge to Honorable)

Issue 1: To receive MGI Bill benefits, I served the USAF honorably and was discharged for weight management.

ATCH
None.

20SEP05/ia



DEPARTMENT OF THE AIR FORCE
99th COMMUNICATION SQUADRON (ACC)
NELLIS AIR FORCE BASE, NEVADA

FD 2005-00331

18 MAR 2003

MEMORANDUM FOR A1C

, 99 CS

FROM: 99 CS/CC

SUBJECT: Notification Memorandum - Administrative Discharge AFI 36-3208

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 8 Jul 02, you were counseled about delinquent payments to an account involving encyclopedias. Also, your government travel card was past due 30 days. On 18 Jul 02, you stated that you were 2 months behind on your vehicle payments. On 22 Jul 02, your encyclopedia and government travel card accounts were still delinquent. For your actions, you received a Record of Individual Counseling (ROIC) on 13 Jul 02;

b. On or about 30 Aug 02, the acting 99 CS/CCF, MSgt [redacted] received a phone call from Mr [redacted] of Legal Services GNM International. Mr [redacted] wanted to report the receipt of a \$125.00 check received from you was returned due to insufficient funds. During the conversation, Mr [redacted] indicated the following information. You were currently \$290.00 past due on a \$1,200.99 education package. You had not made a valid payment on the debt since Mar 02. Mr [redacted] made numerous attempts to contact you but you had not returned any of his calls. When Mr [redacted] said that you were uncooperative, and disrespectful. For your actions, you received a Letter of Reprimand (LOR) on 4 Sep 02 and this action established an Unfavorable Information File (UIF);

c. On or about between 29 Aug 02 and 2 Sep 02, you were 6 months delinquent on an education package, \$309.00 unpaid for braces, and \$450.00 unpaid on truck payments. In addition, you were over 90 days delinquent on your government travel card in the amount of \$837.88, and 60 days past due for \$1,945.16. For your actions, you received an LOR on 18 Sep 02 and this action was placed in your UIF;

d. You, being indebted to Nova Financial Service in the sum of \$265.00 for a loan, which amount became due and payable on or about 1 Oct 02, did at or near Las Vegas, Nevada, from on or about 1 Oct 02 to on or about 5 Nov 02, dishonorably fail to pay said debt. For your actions, you were punished under Article 15, Uniform Code of Military Justice (UCMJ) consisting of a suspended reduction to the grade of airman first class; and

e. You, having knowledge of a lawful order issued by Lieutenant Colonel [redacted] to wit: "you must immediately contact the Finance Office to inform them of your return to the dorm," dated 22 Oct 02, an order which you acknowledged and which if was your duty to obey, did, at or near Nellis Air Force Base, Nevada, from on or about 22 Oct 02 to on or about 12 Feb 03, fail to obey the same by failing to notify the Finance Office of your return to the dormitory. For your actions, on 10 Mar 03 the suspended portion of the Article 15, UCMJ punishment received on 21 Nov 02 was vacated. You were reduced to the grade of airman first class.

3. Additional derogatory information not used as a basis or for service characterization, but to decide if you should be discharged or whether you should receive probation and rehabilitation: on or about 10 Jan 03, you failed to make satisfactory progress in Phase I of the Weight and Body Fat Management Program. Specifically, you did not lose 5 pounds or 1 percent body fat. For your actions, you received an LOR on 5 Feb 03.

4. 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.

5. 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 18 MAR at 11:00 hours. You may consult civilian counsel at your own expense.

Capt
6. 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 21 MAR 03 at 0815 hours unless you request and receive an extension for good cause shown. I will send them to the separation authority.

7. 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 18 MAR on 10:00 hrs. SSA

8. 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.

9. You have been scheduled for a medical examination at the 99th Medical Group on 21 MAR at 10:30 hrs. Capt

10. 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.

11. Execute the attached acknowledgment and return it to me immediately.

Commander

✓ Lt Col, USAF

Attachments:

1. ROIC, 13 Jul 02
2. AF Form 1058
3. LOR, 4 Sep 02
4. LOR, 18 Sep 02
5. Article 15, 21 Nov 02
6. AF Form 366
7. LOR, 5 Feb 03
8. AF Form 1137