

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	GRADE AMN	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE GEN	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
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>					X*
					X*
					X*
					X*
					X*

ISSUES A93.23	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 28 Jul 2006	CASE NUMBER FD-2005-00413	
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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 in 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.

*Reason and Authority

SIGNATURE OF RECORDER <div style="border: 1px dashed black; height: 30px; width: 100%;"></div>	SIGNATURE OF BOARD PRESIDENT <div style="border: 1px dashed black; height: 30px; width: 100%;"></div>
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ENDORSEMENT	DATE: 7/31/2006
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-2005-00413

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

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:

Issue 1. Applicant contends discharge was inequitable because his reason for discharge should have been due to mental health. The records indicated the applicant received an Article 15, a Vacation, two Letters of Reprimand and five Records of Individual Counseling for misconduct. The Article 15 and Vacation were as a result of neglect to government quarters with damage by the applicant in the amount of \$2751.47 and failure to go to appointed place of duty. He was punished with a reduction to airman, 10 days of extra duty and a reprimand. He received two Letters of Reprimand for failure to go, sleeping on the job, and failure to report to work on time. He also received Records of Individual Counseling for failure to obey orders, failure to meet training requirements, late reporting to work and failure of his CDC End of Course Pre-test. The DRB opined that although the applicant was being treated by mental health, it did not impair his ability to know right from wrong or ability to choose the right. 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.

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 AMN) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF Nellis AFB, NV on 7 Apr 05 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge and to Change the Reason and Authority for Discharge.

2. BACKGROUND:

a. DOB: 11 Mar 78. Enlmt Age: 24 4/12. Disch Age: 27 0/12. Educ: HS DIPL. AFQT: N/A. A-94, E-93, G-99, M-97. PAFSC: 2A031A - Avionics Test Station and Components, Avionics System F-15 Apprentice. DAS: 14 Nov 03.

b. Prior Sv: (1) AFRes 26 Jul 02 - 27 Jan 03 (6 mos 2 das)(Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 28 Jan 03 for 6 years. Svd: 2 Yrs 2 Mo 10 Das, all AMS.

b. Grade Status: Amn - 18 Feb 05 (Vacation, 15 Mar 05)
A1C - 14 Mar 03

c. Time Lost: None.

d. Art 15's: (1) 15 Mar 05, Vacation, Nellis AFB, NV - Article 86. You did, on or about 8 Mar 05, without authority, failed to go at the time prescribed to your appointed place of duty, to wit: Building #423. Reduced to Amn. (No appeal)(No mitigation)

(2) 18 Feb 05, Nellis AFB, NV - Article 108. You, did, on or about 12 Jan 05, without proper authority, through neglect suffer government quarters, military property of the United States, to be damaged by you, the amount of the said damage being in the sum of \$2,751.47. Suspended reduction to Amn. Ten days extra duty and Reprimand. (No appeal) (No mitigation)

e. Additional: RIC, 8 MAR 05 - Failure to obey orders.
RIC, 8 MAR 05 - Failure to meet training requirements.
LOR, 28 JAN 05 - Failure to go and sleeping on duty.
LOR, 1 DEC 04 - Failure to go.
RIC, 22 OCT 04 - Late for work.
RIC, 25 AUG 04 - Tardy for duty.
RIC, 23 JUL 04 - Failure of CDC EOC Pre-test.

f. CM: None.

g. Record of SV: 28 Jan 03 - 27 Sep 04 Nellis AFB 4 (Initial)
28 Sep 04 - 15 Mar 05 Nellis AFB 2 (CMDR DIR) **REF**

h. Awards & Decs: AFOUA, NDSM, AFTR, GWOTSM.

i. Stmt of Sv: TMS: (02) Yrs (08) Mos (12) Das
TAMS: (02) Yrs (02) Mos (10) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 26 Oct 05.

(Change Discharge to Honorable and Change the Reason and Authority for Discharge)

Issue 1: I believe (sic) my discharge should be upgraded because the reason for discharge was caused by my mental health. I was discharged for being late repeatedly, which my mental health records show was caused by my sleep problems, which I was being treated for. Additionally, (sic) the first page of the packet of mental health records shows I was going to be medically (sic) discharged, but due to another tardy, was discharged before that for reasons other than my mental health. I was seeking treatment and I am still being treated for the same problems. I would like to have my discharge upgraded for those reasons. Thank you, Adam Morse.

ATCH

1. Medical Records.

21DEC05/day



DEPARTMENT OF THE AIR FORCE
57TH COMPONENT MAINTENANCE SQUADRON
NELLIS AIR FORCE BASE, NEVADA 89191

29 MAR 2005

MEMORANDUM FOR AMN:.....; 57 CMS

FROM: 57 CMS/CC

SUBJECT: Notification Memorandum --Board Hearing

1. I am recommending your discharge from the United States Air Force for Misconduct: Minor Disciplinary Infractions. The authority for this action is AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reason for this action is:

a. On 22 Jul 04, you scored an average of 70% on your EOC pretest which was unacceptable according to shop directives. For your actions, you received a Record of Individual Counseling (ROIC) dated 23 Jul 04; and

b. On 24 Aug 04, you failed to go at the time prescribed to your place of duty. For your actions, you received an ROIC dated 25 Aug 04; and

c. On 22 Oct 04, you failed to go at the time prescribed to your place of duty. For your actions, you received an ROIC dated 22 Oct 04; and

d. On or about 1 Dec 04, you failed to go at the time prescribed to your place of duty. For your actions, you received a Letter of Reprimand (LOR) dated 1 Dec 04; and

e. On 27 Jan 05, you failed to go at the time prescribed to your place of duty. For your actions, you received an LOR dated 28 Jan 05; and

f. Between 20 Feb 05 and 3 Mar 05, you failed to complete your CDC unit review exercises. For your actions, you received an ROIC dated 8 Mar 05; and

g. On 7 Mar 05, you failed to obey the orders of a noncommissioned officer. For your actions, you received an ROIC dated 8 Mar 05; and

h. You did, at or near Nellis AFB, NV, on or about 12 Jan 05, with out proper authority, through neglect suffer government quarters, military property of the United States, to be damaged by you, the amount of the said damage being in the sum of \$2,751.47. For your actions, you were punished under Article 15, Uniform Code of Military Justice (UCMJ) on 18 Feb 05 consisting of a suspended reduction to the grade of Airman, ten days extra duty, a reprimand, and an Unfavorable Information File (UIF) was established; and

i. You did, at or near Nellis AFB, NV, on or about 8 Mar 05, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Building #423. For your actions, your suspended punishment of reduction to the grade of Airman was vacated on 15 Mar 05.

3. 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 Captain [] or Capt [] at Bldg 625, on 30 Mar 05, at 0900 hours. You may consult civilian counsel at your own expense.

4. 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 1 Apr 05 at 1500 hours unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. 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 30 Mar at 1100 hrs.

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 99th Medical Group, 222 Las Vegas Blvd on 4 Apr 05, at 1005 hours for the examination.

*Public Health
Paperman*

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 your unit orderly room.

[]

Commander

Attachments:

1. Receipt of Notification Memorandum
2. ROIC, dated 23 Jul 04
3. ROIC, dated 25 Aug 04
4. ROIC, dated 22 Oct 04
5. LOR, dated 1 Dec 04
6. LOR, dated 28 Jan 05
7. ROIC, dated 8 Mar 05
8. ROIC, dated 8 Mar 05
9. Article 15, dated 18 Feb 05
10. Vacation Action, dated 15 Mar 05



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR WARFARE CENTER (ACC)
NELLIS AIR FORCE BASE, NEVADA

MEMORANDUM FOR 57 WG/CC

FROM: AWFC/JA

SUBJECT: Legal Review of Administrative Discharge Proceedings Under AFI 36-3208, Paragraph 5.49 - Amn [REDACTED], 57 CMS

1. Introduction: On 29 Mar 05, the Component Maintenance Squadron Commander initiated discharge action against the respondent, Amn [REDACTED], for minor disciplinary infractions under AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.49. The commander recommended a general service characterization and no further opportunity for probation and rehabilitation (P&R). We concur and have determined that the discharge package is legally sufficient and supports the commander's recommendations. The case is being processed by notification procedure. As the separation authority, you have the following alternatives:

- a. Direct the respondent be retained;
- b. Direct the respondent be discharged with a general service characterization, with or without P&R;
- c. Recommend to the General Court-Martial Convening Authority that the respondent receive an honorable service characterization, with or without P&R; or
- d. Direct reinitiation of this case IAW AFI 36-3208, Chapter 6, Section C, Board Hearing or Waiver, if you believe an under other than honorable conditions (UOTHC) service characterization is warranted.

2. Facts: A preponderance of the evidence establishes that the following incidents occurred during the respondent's current enlistment:

- a. On 22 Jul 04, Amn [REDACTED] scored an average of 70% on his EOC pretest which was unacceptable according to shop directives. For his actions, he received a Record of Individual Counseling (ROIC) dated 23 Jul 04; and
- b. On 24 Aug 04, Amn [REDACTED] failed to go at the time prescribed to his place of duty. For his actions, he received an ROIC dated 25 Aug 04; and
- c. On 22 Oct 04, Amn [REDACTED] failed to go at the time prescribed to his place of duty. For his actions, he received an ROIC dated 22 Oct 04; and
- d. On or about 1 Dec 04, Amn [REDACTED] failed to go at the time prescribed to his place of duty. For his actions, he received a Letter of Reprimand (LOR) dated 1 Dec 04; and

e. On 27 Jan 05, Amn [redacted] failed to go at the time prescribed to his place of duty. For his actions, he received an LOR dated 28 Jan 05; and

f. Between 20 Feb 05 and 3 Mar 05, Amn [redacted] failed to complete his CDC unit review exercises. For his actions, he received an ROIC dated 8 Mar 05; and

g. On 7 Mar 05, Amn [redacted] failed to obey the orders of a noncommissioned officer. For his actions, he received an ROIC dated 8 Mar 05; and

h. Amn [redacted] did, at or near Nellis AFB, NV, on or about 12 Jan 05, without proper authority, through neglect suffer government quarters, military property of the United States, to be damaged, the amount of the said damage being in the sum of \$2,751.47. For his actions, he was punished under Article 15, Uniform Code of Military Justice (UCMJ) on 18 Feb 05 consisting of a suspended reduction to the grade of Airman, ten days extra duty, a reprimand, and an Unfavorable Information File (UIF) was established; and

i. Amn Morse did, at or near Nellis AFB, NV, on or about 8 Mar 05, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Building #423. For his actions, his suspended punishment of reduction to the grade of Airman was vacated on 15 Mar 05.

3. Other Factors: The respondent is a 27-year old Airman First Class with over 1 year and 1 month of active military service. He is entitled to wear the Global War on Terrorism Service Ribbon, National Defense Service Medal, AF Outstanding Unit Award, and the AF Training Ribbon. His test scores are: Admin-94, Elect-93, Gen-99, and Mech-97. The respondent waived his right to consult with military legal counsel and waived his right to submit a statement for your consideration.

4. Errors and Irregularities: The words "Board Hearing" should not have been included in the Notification Memorandum dated 29 Mar 05. Though the words "Board Hearing" were included in the memorandum, the words do not affect the substantive or procedural rights of the respondent. There are no errors or irregularities prejudicial to the substantive rights of the respondent.

5. Authority: AFI 36-3208 regulates the administrative discharge of Airmen and provides the following guidance relevant to this file:

a. The file has been prepared in substantial compliance with AFI 36-3208 and is legally sufficient.

b. A member is subject to discharge for minor disciplinary infractions such as failing to comply with nonpunitive regulations or committing minor offenses under the UCMJ. Infractions of this type normally result, as a rule, in formal or informal counseling, LORs, or Article 15 nonjudicial punishments.

c. A member subject to discharge may have his or her service characterized as honorable, under honorable conditions (general), or as under other than honorable conditions (UOTHC). The service of a member discharged for misconduct may be characterized as honorable only if the member's record has been so meritorious that any other characterization would be clearly inappropriate. A general characterization is warranted when the negative aspects of an Airman's conduct or performance outweigh other aspects of the Airman's military record. A member's service

may be characterized as UOTHC only if the respondent is given an opportunity for a hearing by an administrative discharge board. A UOTHC may be appropriate when separation is based on a pattern of behavior that constitutes a significant departure from the conduct expected of an Airman.

d. The Air Force program of P&R for Airmen subject to administrative discharge gives Airmen the opportunity to stay in the Air Force and get help so that they may be able to serve until their expiration of term of service (ETS). The program includes suspension of approved discharges for specific periods of P&R and lengthy service probation. It is based on the principle of conditional suspension of administrative discharge for cause in deserving cases. Under the program, execution of the approved discharge for cause is conditionally suspended. This gives Airmen a chance to show that they are able to meet Air Force standards.

6. Analysis:

a. Amn: [redacted] has committed numerous offenses which form the legal basis for discharge for minor disciplinary infractions. Amn: [redacted] should be discharged with a general service characterization. While the respondent could receive a UOTHC discharge for minor disciplinary infractions, these minor disciplinary infractions are not so egregious as to require a UOTHC discharge.

b. The respondent's misconduct is clearly evident in his military record. The respondent has been given numerous opportunities to correct his behavior, yet he continues to disregard Air Force standards. Therefore, an honorable service characterization is inappropriate. Amn Morse's actions and his disregard of military standards substantially outweigh any positive aspects of his military service record. He has been reprimanded and punished under Article 15, UCMJ, all with negative results. A general discharge under paragraph 5.49 is warranted and appropriate in this particular case. No further opportunities should be given. While Amn: [redacted] infractions are prejudicial to good order and discipline, the misconduct is not of such a nature deserving of a UOTHC characterization.

c. The commander has not recommended P&R. The respondent's repeated misconduct shows a disregard for military standards and an inability or unwillingness to respond to prior efforts of rehabilitation.

7. Recommendation: Approve the respondent's discharge from the United States Air Force with a general service characterization.

[redacted signature box]

Assistant Staff Judge Advocate

I concur.

[redacted signature box]

Staff Judge Advocate