

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)  [ ]	GRADE  <b>AB</b>	AFSN/SSAN  [ ]
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TYPE GEN	<b>PERSONAL APPEARANCE</b>	<b>X</b>	<b>RECORD REVIEW</b>
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<b>COUNSEL</b>	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES		
	<b>No</b>	
	<b>X</b>	

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[ ]	<b>X</b>				
[ ]					<b>X</b>
[ ]	<b>X</b>				
[ ]	<b>X</b>				
[ ]	<b>X</b>				

ISSUES <b>A94.06</b> <b>A01.14</b>	INDEX NUMBER <b>A67.90</b>	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
		<b>1</b> ORDER APPOINTING THE BOARD
		<b>2</b> APPLICATION FOR REVIEW OF DISCHARGE
		<b>3</b> LETTER OF NOTIFICATION
		<b>4</b> BRIEF OF PERSONNEL FILE
		COUNSEL'S RELEASE TO THE BOARD
		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
		TAPE RECORDING OF PERSONAL APPEARANCE HE

HEARING DATE <b>22 Mar 2007</b>	CASE NUMBER <b>FD-2006-00350</b>	
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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.

[ ]

<b>INDORSEMENT</b>	<b>DATE: 5/3/2007</b>
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-2006-00350**

**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:** The Board grants the requested relief.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's character of discharge inequitable.

**ISSUE:**

The applicant was discharged with an under honorable conditions (general) discharge for pattern of misconduct--conduct prejudicial to good conduct and discipline in May 2002. The record indicates that the applicant received a Letter of Reprimand (LOR) for driving under the influence, an Article 15 for possessing and consuming alcoholic beverages while under the age of 21, and a vacation of Article 15 for being disrespectful to a senior noncommissioned officer. There were no other administrative actions taken against the applicant. After thorough and complete consideration of the information submitted by the applicant and those contained in the record, the Board concluded there was sufficient mitigation to substantiate upgrade and change of the reason for discharge. Specifically, the Board found the characterization was too harsh and that the reason for discharge did not reflect the misconduct correctly.

**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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of the applicant's service is more accurately reflected by an Honorable discharge and the reason for the discharge is more accurately described as Minor Disciplinary Infractions. Therefore, the applicant's characterization should be changed to Honorable and the reason for discharge should be changed to Minor Disciplinary Infractions under the provisions of Title 10, USC 1553.

Attachment:

Examiner's Brief

DEPARTMENT OF THE AIR FORCE  
AIR FORCE DISCHARGE REVIEW BOARD  
ANDREWS AFB, MD

(Former AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Offutt AFB, NE on 23 May 02 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 01 Feb 82. Enlmt Age: 18 4/12. Disch Age: 20 3/12. Educ: HS DIPL. AFQT: N/A. A-61, E-60, G-50, M-63. PAFSC: 2A631C - Aerospace Propulsion TF33 Jet Engine Apprentice. DAS: 5 Jul 01.

b. Prior Sv: (1) AFRes 14 Jun 00 - 29 Jan 01 (7 months 16 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 30 Jan 01 for 4 yrs. Svd: 01 Yrs 03 Mo 24 Das, all AMS.

b. Grade Status: AB - 13 Feb 02 (Article 15, 13 Feb 02)  
Amn - 30 Jul 01

c. Time Lost: None.

d. Art 15's: (1) 2 Apr 02, Vacation, Offutt AFB, NE - Article 91. You, on or about 14 Mar 02, were disrespectful in deportment toward MSgt [REDACTED]; a noncommissioned officer, then known by you to be a superior noncommissioned officer, who was then in the execution of his office, by abruptly interrupting his conversation and wrongfully accusing him of misconduct in front of other subordinates. Forfeiture of \$552.00 pay per month for 2 months, and 45 days extra duty. (No appeal) (No mitigation)

(2) 13 Feb 02, Offutt AFB, NE - Article 92. You, who knew of your duties, on or about 29 Dec 01, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcoholic beverages while under the age of 21, as it was your duty to do. Article 92. You, who knew of your duties, on or about 29 Dec 01, were derelict in the performance of those duties in that you willfully failed to refrain from possessing alcoholic beverages while under the age of 21, as it was your duty to do. Reduction to AB. Forty five days extra duty (suspended). Suspended forfeiture of \$552.00 pay per month for 2 months. (No appeal) (No mitigation)



FD2006-80350

**DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, 55TH WING (ACC)  
OFFUTT AIR FORCE BASE, NEBRASKA**

MEMORANDUM FOR 55 WG/CC

FROM: 55 WG/JA

SUBJECT: Legal Review: Administrative Discharge Action--AB: [REDACTED]  
[REDACTED] 55 MXS (ACC)

1. **INITIATION OF ACTION:** On 18 April 2002, 55 MXS/CC notified AB: [REDACTED] he was recommending he be discharged for Misconduct--Pattern of Misconduct pursuant to AFPD 36-32 and AFI 36-3208, paragraph 5.50.2. 55 MXS/CC further recommends AB: [REDACTED] receive a general discharge without probation and rehabilitation (P&R).

2. **RESPONDENT:** The respondent is a twenty year-old Aerospace Propulsion Apprentice. He has completed one year and two months of his four-year enlistment (TAFMSD: 30 January 2001) and was assigned to his unit on 5 July 2001. This is his first enlistment.

3. **REASONS FOR DISCHARGE:**

a. AB: [REDACTED] was derelict in the performance of his duties, on or about 29 December 2001, by failing to refrain from consuming alcoholic beverages while under the age of 21.

b. AB: [REDACTED] was derelict in the performance of his duties, on or about 29 December 2001, by failing to refrain from possessing alcoholic beverages while under the age of 21.

For the incidents listed in paragraphs a and b, AB: [REDACTED] received Nonjudicial Punishment, dated 13 February 2002, consisting of a reduction to the grade of E-1, 45 days extra duty suspended, and forfeitures of \$552.00 pay per month for two months suspended.

c. AB Penner was disrespectful in deportment toward Master Sergeant: [REDACTED] by abruptly interrupting his conversation and wrongfully accusing him of misconduct in front of other subordinates on or about 14 March 2002. For this incident AB: [REDACTED] received a Vacation of Nonjudicial Punishment, dated 2 April 2002, consisting of a forfeiture of \$552.00 pay per month for two and 45 days extra duty.

d. AB: [REDACTED] operated a vehicle while drunk, near Bellevue, Nebraska, on or about 29 December 2001. For this incident AB: [REDACTED] received a Letter of Reprimand, dated 9 April 2002. This LOR was added to his existing UIF.

4. **RESPONDENT'S SUBMISSION:** By letter dated 22 April 2002, the respondent consulted with counsel and submitted a statement. In his statement AB: [redacted] accepts responsibility for his actions but feels that there was some injustice. On 29 December 2001, AB: [redacted] received Nonjudicial Punishment for drinking underage and being a minor in possession of alcohol. He then received a Letter of Reprimand for driving under the influence of alcohol. All of these incidents arose from the same course of conduct. The respondent feels he was punished twice for the same incident. As discussed below, AB: [redacted] is misguided in his interpretation of the situation.

5. **ERRORS AND IRREGULARITIES:** None.

6. **DISCUSSION:**

a. **Basis for Discharge:** Under AFI 36-3208, paragraph 5.50.2, airmen are subject to discharge for a pattern of misconduct, which is prejudicial to good order and discipline. This includes conduct of a nature that tends to disrupt order, discipline, or morale within the military community. The misconduct usually involves causing dissent, disruption, and degradation of mission effectiveness. The actions of AB: [redacted] have degraded mission effectiveness and have negatively affected good order and discipline. The respondent has received Nonjudicial Punishment for underage drinking and being a minor in possession of alcohol, a Vacation of Suspended Nonjudicial Punishment for displaying disrespect toward an NCO, and a Letter of Reprimand for driving under the influence. In this case, the respondent's failure to adhere to rules and regulations has degraded mission effectiveness and negatively affected good order and discipline within his unit and the United States Air Force. Therefore, the respondent's pattern of misconduct provides a sufficient basis for discharge.

b. **Appropriateness of Discharge:** AB: [redacted] has committed offenses for which he has received one Nonjudicial Punishment, a Vacation of Suspended Nonjudicial Punishment, and a Letter of Reprimand. The nature of the offenses demonstrates that the respondent has an obvious disregard for Air Force standards. AB: [redacted] misconduct is prejudicial to good order and discipline and discharge is appropriate.

c. **Characterization of Service:** Table 1.3 to AFI 36-3208 provides that discharges for Misconduct--Pattern of Misconduct may be characterized as honorable, general, or under other than honorable conditions. A general discharge is appropriate when significant negative aspects of an airman's conduct or duty performance outweigh positive aspects of the airman's military record. The incidents of misconduct in this case clearly outweigh any positive aspects of AB: [redacted] military career. Accordingly, a general discharge is appropriate.

d. **Probation & Rehabilitation:** The respondent is eligible for P&R under AFI 36-3208, Chapter 7. P&R is offered when it is reasonably possible to do so for airmen who have demonstrated a potential to serve satisfactorily and airmen who have the capacity to be rehabilitated for continued military service or for completion of the current enlistment and whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. The initiating commander does not recommend P&R. He

believes that, despite being given opportunities to address his misconduct and change his behavior to that expected of him, the respondent has failed to make any improvement. This is a case in which the respondent's misconduct has taken place over a relatively brief period of time. It is conceivable that AB: [redacted] may be able to change his behavior to that expected of him given an additional period of time within which to consider the consequences of his actions. The P&R program under Chapter 7 of AFI 36-3208 is designed specifically for individuals like this. If you offer AB: [redacted] P&R, you are discharging him. The discharge, however, is held in abeyance for a period of up to 12 months. If AB: [redacted] commits *any* additional acts of misconduct, his discharge may be executed immediately. P&R can be the true test of AB [redacted] metal.

e. **Legal Sufficiency:** This action is legally sufficient. AB: [redacted] suggests that he has been given a raw deal by virtue of the fact that he received Nonjudicial punishment and a Letter of Reprimand for the same incident. In fact, AB: [redacted] has benefited from the location of one of his misdeeds. His drunk driving offense took place in Sarpy County, Nebraska. Sarpy County utilizes a diversion program for first-time drunk driving offenders. In essence, the diversion program simply forces the United States to delay its judicial or Nonjudicial action for the drunk driving offense. Air Force Instructions prevent us from taking any such action until the civilian authorities complete their disposition. We are, however, allowed to take administrative action even though the civilians have yet to perfect their case. That is exactly what 55 MXS/CC decided to do, and that decision was perfectly legitimate. AB: [redacted] has no cause to complain about the manner in which his commander has dealt with his misconduct. Furthermore, AB [redacted] has committed ample misconduct to sustain discharge in this case. In our view, this case would be sustained if challenged as some point in the future through an AFBCMR proceeding.

7. **OPTIONS:** As the special court-martial convening authority, you may:

- a. Retain the respondent;
- b. Approve discharge with a general discharge, with or without P&R;
- c. Return the file to the unit with a recommendation that the respondent be processed for discharge with an under other than honorable conditions discharge; or
- d. Forward the file to the general court-martial convening authority with a recommendation for an honorable discharge with or without P&R.

4. 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: \_\_\_\_\_, Bldg 323C, Room 302, Phone 4-3939, at 0900 on 18 Apr 02. You may consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me by 23 Apr 02 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

6. If you fail to consult counsel or to submit statements on 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 the 55th Medical Group, Green Team, at 1415 on 18 Apr for the examination. Please pick up your medical records prior to your appointment.

8. You have been scheduled for an initial separation appointment. You must report to the 55th Mission Support Squadron, Separations and Retirements Section, Room 235, Bldg 323C, at 1015 on 18 Apr with your escort.

9. You have been scheduled for a pre-separation briefing. You must report to the Family Support Center at 0900 on 23 Apr for the briefing.

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 the unit orderly room.

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

\_\_\_\_\_  
Commander, 55<sup>th</sup> Maintenance Squadron

Attachments:

Atch 1-1; NJP/UIF, dated 13 Feb 02

Atch 1-2; Vacation, dated 2 Apr 02

Atch 1-3; LOR, dated 9 Apr 02