

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) []		GRADE AMN	AFSN/SSAN []				
TYPE	GEN	PERSONAL APPEARANCE		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 A93.23 A92.21 A93.07 A94.05		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		
HEARING DATE 12 Jun 2007		CASE NUMBER FD-2006-00408		TAPE RECORDING OF PERSONAL APPEARANCE HE			
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE							
Case was heard in Washington, D.C. via video teleconferencing between Andrews AFB, MD and Robins AFB, GA.							
Advise applicant of the decision of the Board 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.							
X – Upgrade, RE Code, Reason and Authority							
[]							
INDORSEMENT				DATE: 6/12/2007			
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-2006-00408

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference between Andrews AFB, MD and Robins AFB, GA on 12 June 2007.

The following additional exhibits were submitted at the hearing:

- Exhibit #5: Applicant's Contentions
- Exhibit #6: Recent VA Medical Documents
- Exhibit #7: Electrical JATC of Southern Nevada Apprentice Acceptance Letter
- Exhibit #8: Pulte Homes Letter (proving home ownership)
- Exhibit #9: LES (proving contributed to MGIB)
- Exhibit #10: DD 214
- Exhibit #11: 2 Character Reference Letters

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:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for failing to go to his appointed place of duty and nine Letters of Reprimand for a variety of misconduct, to include: numerous failures to go, failure to obey a lawful order, failure to report in a timely manner, and making a false official statement. In addition, the applicant received five Letters of Counseling for receiving a speeding ticket, interrupting his supervisor's meeting, financial irresponsibility, failure to go, and reporting to class out of uniform. Finally, he received one Record of Individual Counseling for failure to properly sign out a government vehicle. The DRB opined that through all of these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the applicant's misconduct was a significant departure from conduct expected of all military members. The Board found the characterization of the discharge, reason for discharge and reenlistment code received by the applicant was found to be appropriate.

Issue 2. Applicant contends his family issues (child sick, fiancé cheating on him, quarrels into the night) were known by his chain of command, but not appropriately acknowledged or taken into consideration. Although the DRB was sympathetic to the member's family situation, the Board found no direct correlation/causal relationship between the member's stresses at home and his on-going misconduct on the job, (e.g., financial irresponsibility, on-going failures to go, speeding ticket, etc.). They concluded that the characterization, reason for discharge and reenlistment code received by the applicant was found to be appropriate.

Issue 3. Applicant opines that his psychological problems (potential diagnosis of AD/HD, stress, post-military Service diagnosis of Passive Aggressiveness) were not appropriately acknowledged by his chain of

command. After reviewing all the medical documents and interviewing the member, the board acknowledged that the member had a lot of psychologically related issues as a result of problems associated with sleep, socialization, stress related to work and home, financial problems, relationships, stuttering and his health. Despite this, the board was unable to find an impropriety or inequity in the member's discharge based on the extensive/on-going nature of the member's misconduct and the lack of an "unfitting" psychological disorder or correlation/causal relationship that could help mitigate his departure from acceptable military standards. The Board concluded the characterization, reason for discharge and reenlistment code was appropriate for the reasons which were the basis for this case.

Issue 4. Applicant asks the Board to consider upgrading his characterization of discharge, reason for discharge and reenlistment code based on his post-Service activities. The DRB was pleased to see that the applicant was doing well and has a good job. However, the board could find no inequity or impropriety in the documents provided or during the course of the hearing to change his discharge characterization, his reason for discharge or reenlistment code.

Issue 5. The applicant cited his desire to reenlist and receive G.I. Bill benefits as justification for upgrade. The DRB noted that although the member would like to have his discharge characterization, reason for discharge and reenlistment code changed so that he could reenlist into the Air Force Reserve, the board found no extenuating circumstances, impropriety or inequity that could justify "rewriting history." In addition, the board also made note that when the applicant initially applied for his G.I. Bill benefits, he signed a statement 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, change the reason and authority for the discharge, or change the reenlistment code, thus the applicant's discharge, reason and authority for discharge and reenlistment code 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 14 Aug 01 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, to Change the RE Code, and Reason for Discharge.

2. **BACKGROUND:**

a. DOB: 19 Dec 75. Enlmt Age: 23 2/12. Disch Age: 25 7/12. Educ: HS DIPL. AFQT: N/A. A-32, E-76, G-66, M-89. PAFSC: 3E231 - Pavements and Construction Equipment Apprentice. DAS: 11 May 00.

b. Prior Sv: (1) AFRes 25 Feb 99 - 23 Mar 99 (29 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 24 Mar 99 for 4 years. Svd: 02 Yrs 04 Mo 21 Das, all AMS.

b. Grade Status: Amn - 22 Jun 01 (Article 15, 22 Jun 01)

c. Time Lost: None.

d. Art 15's: (1) 22 Jun 01, Nellis AFB, NV - Article 86. You, did, on or about 5 Jun 01, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: building 808. Reduced to Amn and 14 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional:

- LOR, 04 JUL 01 - Failure to go at the time prescribed.
- LOR, 01 JUL 01 - Failure to obey a lawful order.
- LOR, 29 MAY 01 - Disobey a lawful order by taking college classes while in upgrade training.
- LOC, 23 APR 01 - Given speeding ticket for going 11 miles over speed limit in base housing.
- RIC, 13 APR 01 - Failure to properly sign out GOV.
- LOC, 26 MAR 01 - Barged into an office and interrupted a supervisor meeting.
- LOR, 08 FEB 01 - Failure to report in a timely manner for recall and not having the proper dependent care coverage.
- LOR, 18 JAN 01 - Failure to go at the time prescribed.
- LOR, 09 NOV 00 - Failure to go at the time prescribed and then failed the test by failing to study.
- LOR, 02 NOV 00 - Failure to go at the time prescribed for the second time for Prime BEEF class.
- LOR, 15 SEP 00 - Failure to go and making a false official

statement.

LOC, 30 AUG 00 - Financial irresponsibility.
LOR, 17 AUG 00 - Failure to go at the time prescribed.
LOC, 24 JUL 00 - Failure to go at the time prescribed.
LOC, 21 JUN 00 - Reported to class out of uniform.

f. CM: None.

g. Record of SV: 24 Mar 99 - 15 Oct 00 Nellis AFB 2 (HAF DIR) **REF**

h. Awards & Decs: AFTR, AFOUA W/2 OLC.

i. Stmt of Sv: TMS: (02) Yrs (05) Mos (20) Das
TAMS: (02) Yrs (04) Mos (21) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 11 Oct 06.
(Change Discharge to Honorable, Change the RE Code, and Reason for Discharge.)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Fm 149.
3. DD Fm 214.

8NOV06/day



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

MEMORANDUM FOR 99 ABW/CC

07 AUG 2001

FROM: AWFC/JA

SUBJECT: Legal Review of Administrative Discharge Proceedings Under AFI 36-3208, Paragraph 5.49 – Amn: [REDACTED], 99 CES

1. Background: On 7 Aug 01, the 99th Civil Engineers Squadron Commander recommended the respondent, Amn: [REDACTED], be discharged for minor disciplinary infractions under AFPD 36-32 and AFI 36-3208, paragraph 5.49. The commander recommended a general service characterization and no opportunity for probation and rehabilitation (P&R). 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 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 for the Government: A preponderance of the evidence establishes that the following incidents occurred during the respondent's current enlistment:

- a. On or about 21 Jun 00, Amn: [REDACTED] reported to Motivational Flight out of uniform. He did not have his belt for his service dress uniform. For his actions, he received a Letter of Counseling (LOC) on 21 Jun 00;
- b. On or about 24 Jul 00, Amn: [REDACTED] reported to duty 30 minutes late. For his actions, he received a LOC on 24 Jul 00;
- c. On or about 17 Aug 00, Amn: [REDACTED] reported to duty 30 minutes late. For his actions, he received a Letter of Reprimand (LOR) on 17 Aug 00;

d. On or about 30 Aug 00, Amn: [] neglected to pay his DPP bill on time. His account had been delinquent since 6 Jul 00. For his actions, he received a LOC on 30 Aug 00;

e. On or about 13 Sep 00, Amn: [] did not report for duty as directed. He also neglected his responsibilities. When questioned, he made a false official statement to an officer in the United States Air Force. For his actions, he received a LOR on 15 Sep 00;

f. On or about 2 Nov 00, Amn: [] was late for his Prime BEEF class. This caused him, for the second time, to miss his initial chemical warfare class. For his actions, he received a LOR on 2 Nov 00;

g. On or about 7 Nov 00, Amn: [] failed to go to his appointed place of duty. For his actions, he received a LOR on 9 Nov 00;

h. On or about 16 Jan 00, Amn: [] did not report to duty on time. For his actions, he received a LOR on 18 Jan 01;

i. On or about 7 Feb 01, Amn: [] did not report to work immediately during a recall. For his actions, he received a LOR on 8 Feb 01;

j. On or about 26 Mar 01, SSgt: [] was engaged in a conversation with the Shop Superintendent, MSgt: [] and the Shop NCOIC, SSgt: [] Amn: [] without any respect, charged into the office and interrupted their conversation. SSgt: [] had personally talked with Amn: [] about this before. For his actions, he received a LOC on 26 Mar 01;

k. On or about 13 Apr 01, Amn: [] left his dump truck running unattended. He also did not sign off AF Form 1806, vehicle inspection card as he was required to do. For his actions, he received a Record of Individual Counseling (ROIC) on 13 Apr 01;

l. On or about 21 Apr 01, Amn: [] received a speeding ticket for going 11 mph over the speed limit in base housing. For his actions, he received a LOC on 23 Apr 01;

m. On or about 29 May 01, Amn: [] took off duty college courses while he was in upgrade training even though he had been directed not to take any classes until he completed his Career Development Course (CDC). For his actions, he received a LOR on 29 May 01 and an Unfavorable Information File (UIF) was established;

n. Amn: [] did, at or near Nellis Air Force Base, Nevada, on or about 5 Jun 01, without authority, fail to go at the time prescribed to his appointed place of duty. For his actions, he was punished under Article 15, Uniform Code of Military Justice (UCMJ) on 22 Jun 01; and this action was placed in his existing UIF;

o. On or about 1 Jul 01, Amn: [] was directed by SSgt: [] not to log on to any computer in the shop while performing his extra duty. Amn: [] was caught logged on to the

computer that day and also the following day. For his actions, he received a LOR on 1 Jul 01; and this action was placed in his existing UIF:

p. On or about 4 Jul 01, Amn: failed to go to his appointed place of duty. For his actions, he received a LOR on 4 Jul 01 and this action was placed in his existing UIF;

3. For the Respondent: The respondent is a 21-year old airman with 2 years and 5 months of active military service. He has received one enlisted performance report with an overall rating of 2 (referral). He is entitled to wear the AF Outstanding Unit Award (1OLC) and the AF Training Ribbon. His test scores are: Admin-32, Elect-76, Gen-66, Mech-89. The respondent consulted with military legal counsel and submitted a statement for your consideration. The respondent requests to be retained or have his service be characterized as honorable.

4. Errors and Irregularities: There are no errors or irregularities prejudicial to the substantive rights of the respondent. This discharge is legally sufficient. This legal review is contingent upon the respondent being given a physical exam and being found qualified for worldwide duty.

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 a failure to comply with nonpunitive regulations or committing minor offenses under the UCMJ. Infractions of this type normally result, as a rule, in informal or formal counseling, LORs, or Article 15 nonjudicial punishments.

c. The service of a member discharged for misconduct may be characterized as honorable only if the member's record has been so meritorious any other characterization would be clearly inappropriate. The respondent's misconduct is clearly evident in his military record. His repeated disregard for military standards and the disciplinary actions taken against him make an honorable service characterization inappropriate.

d. A general characterization is warranted when the negative aspects of an airman's conduct or performance outweigh other positive aspects of the airman's military record. The respondent's actions and his disregard of military standards substantially outweigh any positive aspects of his military service record. Due to the respondent's apparent disregard for military standards and requirements, a general discharge under paragraph 5.49 is warranted and appropriate in this particular case.

e. Service may be characterized as UOTHC only if the respondent is given an opportunity for a hearing by an administrative discharge board. A UOTHC discharge may be appropriate when separation is based on a pattern of behavior that constitutes a significant departure from the conduct expected of an airman. The respondent's infractions are prejudicial to good order and discipline,

but taking in consideration the respondent's youth and inability to adapt to military life, the misconduct is not of such a nature that a UOTHC characterization would necessarily follow.

f. 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 at rehabilitation. For these reasons, the respondent is a poor candidate for P&R.

6. Analysis:

a. Amn: [redacted] has committed more than enough offenses to form the legal basis for discharge under minor disciplinary infractions. Amn: [redacted] should be discharged with a general service characterization, without P&R. 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. The respondent's misconduct, disregard of military standards, and substandard duty performance substantially outweigh any positive aspects of his military service record and merit a general discharge.

b. The respondent has been counseled and reprimanded numerous times, and punished under Article 15, UCMJ, all with negative results. The respondent has been given numerous chances to correct his behavior, yet he continues to disregard Air Force standards. Supervisors and section chiefs have already spent more than enough time attempting to train, rehabilitate, and assist Amn: [redacted] to make the transition to military life. No further opportunities should be given at this point. His repeated misconduct and failure to respond to disciplinary action by his unit make him a poor candidate for P&R.

7. Recommendation: Approve the respondent's discharge from the United States Air Force with a general service characterization, without P&R.

[redacted signature]

Assistant Staff Judge Advocate

I concur.

[redacted signature]

Acting Staff Judge Advocate



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

26 Jul 01

MEMORANDUM FOR A1C: [REDACTED], 99 CES

FROM: 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 21 Jun 00, you reported to Motivational Flight out of uniform. You did not have your belt for your service dress uniform. For your actions, you received a Letter of Counseling (LOC) on 21 Jun 00;

b. On or about 24 Jul 00, you reported to duty 30 minutes late. For your actions, you received a LOC on 24 Jul 00;

c. On or about 17 Aug 00, you reported to duty 30 minutes late. For your actions, you received a Letter of Reprimand (LOR) on 17 Aug 00;

d. On or about 30 Aug 00, you neglected to pay your DPP bill on time. Your account has been delinquent since 6 Jul 00. For your actions, you received a LOC on 30 Aug 00;

e. On or about 13 Sep 00, you did not report for duty as directed. You also neglected your responsibilities, when questioned you made a false official statement to an officer in the United States Air Force. For your actions, you received a LOR on 15 Sep 00;

f. On or about 2 Nov 00, you were late for your Prime BEEF class. This was the second time you missed your initial chemical warfare class. For your actions, you received a LOR on 2 Nov 00;

g. On or about 7 Nov 00, you failed to go to your appointed place of duty. For your actions, you received a LOR on 9 Nov 00;

h. On or about 16 Jan 00, you did not report to duty on time. For your actions, you received a LOR on 18 Jan 01;

i. On or about 7 Feb 01, you did not report to work immediately during a recall. For your actions, you received a LOR on 8 Feb 01;

j. On or about 26 Mar 01, SSgt [redacted] was engaged in a conversation with the Shop Superintendent, MSgt [redacted] and the Shop NCOIC, SSgt [redacted]. You then, without any respect, charged into the office and interrupted their conversation. SSgt [redacted] personally talked with you about this before. For your actions, you received a LOC on 26 Mar 01;

k. On or about 13 Apr 01, you left your dump truck running unattended, and had not signed off AF Form 1806, vehicle inspection card. For your actions, you received a Record of Individual Counseling (ROIC) on 13 Apr 01;

l. On or about 21 Apr 01, you received a speeding ticket on base for going 11 mph over the speed limit in base housing. For your actions, you received a LOC on 23 Apr 01;

m. On or about 29 May 01, you were taking off duty college courses while you were in upgrade training. You were directed not to take any classes until you completed your Career Development Course (CDC). For your actions, you received a LOR on 29 May 01 and an Unfavorable Information File (UIF) was established;

n. You, did, at or near Nellis Air Force Base, Nevada, on or about 5 Jun 01, without authority, fail to go at the time prescribed to your appointed place of duty. For your actions, you were punished under Article 15, Uniform Code of Military Justice (UCMJ) on 22 Jun 01; and this action was placed in your existing UIF;

n. On or about 1 Jul 01, you were directed by SSgt [redacted] not to log on to any computer in the shop while on extra duty. You were caught logged on to the computer that day and also the following day. For your actions, you received a LOR on 1 Jul 01; and this action was placed in your existing UIF;

o. On or about 4 Jul 01, you failed to go to your appointed place of duty. For your actions, you received a LOR on 4 Jul 01 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 _____ at _____ 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 31 Jul 01 at 0800 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 26 Jul 01 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 TBD at _____ hrs.

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.



Commander

Attachments:

1. LOC, 21 Jun 00
2. LOC, 24 Jul 00
3. LOR, 17 Aug 00
4. LOC, 30 Aug 00
5. LOR, 15 Sep 00
6. LOR, 2 Nov 00
7. LOR, 9 Nov 00
8. LOR, 18 Jan 01
9. LOR, 8 Feb 01
10. LOC, 26 Mar 01
11. ROIC, 13 Apr 01
12. LOC, 23 Apr 01
13. LOR, 29 May 01
14. Article 15, 22 Jun 01
15. LOR, 1 Jul 01
16. LOR, 4 Jul 01
17. UIF