

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) []		GRADE A1C	AFSN/SSAN []				
TYPE GEN	X	PERSONAL APPEARANCE					
COUNSEL		RECORD REVIEW					
YES	No	NAME OF COUNSEL AND OR ORGANIZATION					
	X	AMERICAN LEGION					
		ADDRESS AND OR ORGANIZATION OF COUNSEL					
		1608 K ST NW WASHINGTON DC 20006					
MEMBER SITTING []		VOTE OF THE BOARD					
		HON	GEN	UOTHC	OTHER	DENY	
		X**					
						X	
						X	
		X**					
ISSUES A94.06 A92.35 A93.01 A92.01 A01.39 A01.45		INDEX NUMBER A67.30		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 HE					
HEARING DATE 22 May 2007		CASE NUMBER FD-2006-00426					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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.							
Names and votes will be made available to the applicant at the applicant's request.							
* CHANGE RE CODE							
+ CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY							
[]							
INDORSEMENT				DATE: 5/22/2007			
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

FD-2006-00426

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) with his representative, Mr. [REDACTED] of the American Legion, at Andrews AFB on 22 May 2007. The following witness also testified on the applicant's behalf: Mr. RE (his father).

The following additional exhibits were submitted at the hearing:

Exhibit #5: American Legion Statement with Attachments

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 and reason and authority for discharge to be inequitable.

Issue: Applicant contends his discharge was inequitable because it was too harsh. The applicant was discharged with an under honorable conditions (general) discharge for Misconduct: Commission of a Serious Offense. This discharge was based on the applicant being charged with misdemeanor offenses in civilian criminal court relating to domestic violence. The Discharge Review Board determined that the applicant's discharge was too harsh based on the isolated and relatively minor incident which formed the basis for discharge. While the Discharge Review Board in no way condones domestic violence, based on the evidence presented the Board determined that there were a number of mitigating factors involved in the incident in question. Both the applicant and his ex-wife were young and got married when the applicant's ex-wife became pregnant. Following the birth of the applicant's son, the evidence suggests the applicant's ex-wife experienced some difficulties with motherhood and had mood swings. The applicant testified that he would frequently be up during the night to feed and care for his newborn son and would get little sleep during the day. According to the police report of the incident, when the applicant's son was approximately four weeks old, the applicant and his wife engaged in an argument and his wife told the applicant she was leaving the home with their son. The applicant testified that his wife had been out the previous night due to a fight she'd had with a neighbor and came home the morning of the incident in an angry and confrontational mood. He testified that his wife told him she was leaving with the baby for 30 days. The applicant testified that he attempted to block his wife's access into their son's room as he felt she was in no condition to care for the baby. He testified that she scratched his arm and he then shoved her in what he believed to be the chest/shoulder area. He testified that his wife then called a supervisor from work who then called the local police who arrested the applicant. Contrary to the information contained in the police report, the applicant testified that at no time did he put his hands around his wife's neck or grab her in a "bear hug." The applicant had an otherwise good record with no record of disciplinary action prior to this incident and he had received a "5" on his prior performance report. Based on the applicant's overall service record, his lack of previous disciplinary action, and the relatively minor and mutual nature of the domestic violence incident, the Discharge Review Board determined that the discharge action was too harsh. The Board felt that the applicant's treatment was inequitable as other Airmen in this situation are typically allowed to remain in the service.

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 applicant's service is more accurately reflected by an Honorable discharge and the reason for the discharge is more accurately described as Secretarial Authority. The applicant's characterization and reason for discharge should be changed to Honorable and Secretarial Authority and his RE Code should be changed to 3K 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 A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Travis AFB, CA on 16 Mar 05 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense - Other Serious Offenses). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 8 Jun 83. Enlmt Age: 18 9/12. Disch Age: 21 9/12. Educ: HS DIPL. AFQT: N/A. A-51, E-49, G-52, M-66. PAFSC: 2A551J - Aerospace Maintenance Journeyman. DAS: 21 Dec 02.

b. Prior Sv: (1) AFRes 29 Mar 02 - 08 Jul 02 (3 months 10 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 9 Jul 02 for 6 years. Svd: 02 Yrs 08 Mo 08 Das, of which AMS is 02 Yrs 08 Mos 04 Days (excludes 4 days lost time).

b. Grade Status: A1C - 23 Aug 02

c. Time Lost: 19 Nov 04 - 22 Nov 04 (4 days)

d. Art 15's: None.

e. Additional: Superior Court Documents.
Police Report.

f. CM: None.

g. Record of SV: 09 Jul 02 - 15 Jan 04 Travis AFB 5 (HAF DIR)

h. Awards & Decs: AFTR, NDSM, AFOUA W/1 OLC.

i. Stmt of Sv: TMS: (02) Yrs (11) Mos (18) Das
TAMS: (02) Yrs (08) Mos (04) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 30 Oct 06.
(Change Discharge to Honorable)

Issue 1: The Discharge was based on civiliaian (sic) matters not military performance.

ATCH

1. Enlisted Performance Report.
2. Certificate of Appreciation.
3. Letter from Family Advocacy.
4. Two character references.

7DEC06/day



DEPARTMENT OF THE AIR FORCE
60TH EQUIPMENT MAINTENANCE SQUADRON
TRAVIS AFB, CALIFORNIA 94535

FEB 24 2005

MEMORANDUM FOR AIC: [REDACTED]

FROM: 60 EMS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct: Commission of a Serious Offense, Other Serious Offenses. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.52.3. If my recommendation is approved, your service will be characterized as an Under Honorable Conditions (General) Discharge. I am recommending that your service be characterized as an Under Honorable Conditions (General) Discharge.

2. My reason for this action is:

On or about 15 Jun 04, you were charged with three counts of misdemeanor offenses, in violation of Section 273.5(a) (Corporal Injury to Spouse/Cohabitant/Child's Parent), Section 243(e)(1) (Battery) and Section 236 (False Imprisonment) of the Penal Code of the State of California, County of Solano. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or higher authority will decide whether you will be discharged or retained in the United States 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 any special pay, bonus, or education assistance funds may be subject to recoupment. The separation authority will make the findings and recommendations required under 10 U.S.C. Section 2005(g).

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: [REDACTED] at 540 Airlift Drive Bldg 381, on 28 Feb 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. Any statements you want the separation authority to consider must reach me by 1 Mar 05 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. 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.

6. You have been scheduled for a medical examination. You must report to David Grant Medical Center, 101 Bodin Circle on 25 Feb 05, at 0930 hours for the examination. Report to Force Health Management.

7. 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 Unit Orderly Room.

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



Commander

Attachments:

1. Superior Court Documents (Faxed 14 Feb 05)
2. Police Report



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

MAR 10 2005

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
510 Mulheron Street
Travis AFB CA 94535-2406

SUBJECT: Administrative Discharge Under AFI 36-3208, Airman First Class [REDACTED]
[REDACTED] 60th Equipment Maintenance Squadron

1. **Introduction:**

a. This action is legally sufficient. On 24 Feb 05, the 60 EMS/CC initiated discharge action against Airman First Class Thomas P. Eierdam (Respondent) pursuant to AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, chapter 5, paragraph 5.52.3, Misconduct, Commission of a Serious Offense, Other Serious Offenses. The 60 EMS/CC recommended an under honorable conditions (general) service characterization without probation and rehabilitation, and the 60 MXG/CC concurred. This 21-year-old respondent has 31 months of active military service. He has been awarded the Air Force Training Ribbon, National Defense Service Medal and Air Force Outstanding Unit Award. He has received two EPRs with overall ratings of "5," and "2" (referral). A detailed summary of his personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge memorandum, dated 28 Feb 05.

b. After consulting defense counsel, Respondent asks to be discharged with an honorable service characterization. Respondent acknowledges his mistakes, takes full responsibility for his actions, and contends that his actions did not affect his Air Force duties. Furthermore, Respondent contends that an honorable service characterization will enable him to obtain a good job to support his family.

2. **Basis for Discharge:**

a. On or about 11 Jun 04, Respondent did commit a misdemeanor namely Corporal Injury to Spouse/Cohabitant/Child's Parent, in violation of Section 273.5(a) of the Penal Code of the State of California, in that Respondent did willfully and unlawfully inflict corporal injury resulting in a traumatic condition upon his spouse.

b. On or about 11 Jun 04, Respondent did commit a misdemeanor namely Battery in violation of Section 243(e)(1) of the Penal Code of the State of California, in that Respondent did willfully and unlawfully use force and violence upon his spouse.

c. On or about 11 Jun 04, Respondent did commit a misdemeanor namely False Imprisonment, in violation of Section 236 of the Penal Code of the State of California, in that Respondent did unlawfully violate the personal liberty of his spouse. For the misconduct in subparagraphs 2a, 2b and 2c, Respondent's imposition of sentence was suspended pending successful completion of three years reporting probation, \$100.00 fine, \$25.00 a month probation fee, obey all laws and all orders of the court, report all incidents, citations, or violations of law, within 5 days to the probation officer, not to have possession, custody, or control of any firearms or dangerous / deadly weapons / ammunition, of any kind of at any time, enroll and successfully complete a Domestic Violence Program directed by the court and consisting of 52 weeks in duration and complete it by 24 May 05, as evidenced by Minute Order & Order of Probation, dated 24 Nov 04.

3. **Appropriateness of Discharge:** Pursuant to AFI 36-3208, chapter 5, paragraph 5.52, Airmen are subject to discharge for misconduct based on the commission of a serious offense if a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (MCM). Furthermore, according to AFI 36-3208, chapter 5, paragraph 5.52.3 Misconduct, Commission of a Serious Offense, Other Serious Offenses, tends to disrupt good order, discipline, or morale within the military community. It also usually involves behavior that tends to cause dissent, disruption, or a deterioration of mission effectiveness. If you are convinced, based on Respondent's aforementioned behavior, there is a basis for discharge, you may then look at his entire military record to decide whether it is appropriate to discharge him at this time. Given Respondent's misconduct, there are sufficient grounds for discharge and, in light of his record as a whole, it is appropriate to discharge him at this time.

4. **Characterization of Service:**

a. Pursuant to AFI 36-3208, chapter 5, paragraph 5.46, Airmen in the active military service are required to maintain, both on and off duty, the high standards of personal conduct set for Air Force members. An honorable characterization is reserved for those airmen whose service has met Air Force standards of acceptable conduct and performance of duty and their service has been so meritorious that any other characterization would be clearly inappropriate (para 1.18). Respondent was tried, convicted, and punished for criminal behavior; therefore, Respondent does not deserve to be awarded an honorable discharge certificate.

b. AFI 36-3208 instructs that, in most cases, discharges initiated under paragraph 5.52 should be characterized as UOTHC. Paragraph 1.21.3 cautions, however, that in those cases where the sole basis for discharge is a serious offense that resulted in a court-martial conviction but no punitive discharge, Secretary Of the Air Force (SECAF) approval is necessary for a UOTHC discharge characterization. Respondent's case fits squarely within the characterization limitations of this paragraph.

c. A general discharge, under honorable conditions, is appropriate if an airman's service has been honest and faithful but significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. Taking into consideration Respondent's service record, misconduct, age, time in service, and, most importantly, the limitations imposed by AFI 36-3208, paragraph 1.21, a general discharge is appropriate.

Respondent's misconduct outweighs the positive aspects of his service record. The 60 EMS/CC and the 60 MXG/CC recommend a general service characterization. Given Respondent's misconduct and his time spent in service, I believe a general service characterization is the most appropriate. Therefore, I concur with both commanders' recommendation for a general discharge.

5. **Probation and Rehabilitation (P&R)**: P&R is clearly inappropriate in this case. According to AFI 36-3208, chapter 5, paragraph 5.2, Airmen should have an opportunity to overcome their deficiencies before discharge action is initiated. A commander's efforts to rehabilitate an Airman may include formal or informal counseling, control roster action, punishment under Article 15, UCMJ, a change in duty assignment, demotion, additional training or duty, retraining, or other administrative action. Pursuant to AFI 36-3208, chapter 7, paragraph 7.3, P&R should be offered, when it is reasonably possible to do so, to those Airmen (a) who have demonstrated a potential to serve satisfactorily, (b) who have the capacity to be rehabilitated for continued military service or for completion of the current enlistment, and (c) whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. Based on the seriousness of Respondent's misconduct, his retention on active duty is not consistent with the maintenance of good order and discipline in the Air Force.

6. **Options**: Pursuant to AFI 36-3208, chapter 5, paragraph 5.56, the Special Court-Martial Convening Authority (SPCMCA) personally approves or disapproves recommendations for any discharges processed by notification under AFI 36-3208, chapter 6, section B, and resulting in a general discharge under section H. As SPCMCA, your options are to

- a. direct that this action be withdrawn and retain Respondent;
- b. discharge Respondent with a general discharge, with or without P&R;
- c. forward the case to the 18 AF/CC with a recommendation for an honorable discharge, with or without P&R.

7. **Recommendation**: Discharge Respondent with a general discharge, without P&R, by signing the memorandum at attachment 1.

[Redacted Signature Box]

Staff Judge Advocate

Attachments:

1. Proposed Memorandum
2. Barment Memorandum
3. Case File (A1C Eierdam)