

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

A1C

TYPE GEN

X

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

X

ISSUES

A94.11
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

TAPE RECORDING OF PERSONAL APPEARANCE HEARING

HEARING DATE

11 Jan 2011

CASE NUMBER

FD-2009-00114

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 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

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 20762-7001

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2009-00114

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 at Andrews AFB on 11 Jan 2011. The following witnesses also testified on the applicant's behalf: [REDACTED]
[REDACTED]

The following additional exhibits were submitted at the hearing:

Exhibit #5: Applicant's Contentions

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDING: The Board denies the upgrade of the discharge, change of reason and authority for discharge, and change of reenlistment code.

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 that his discharge did not take into account the good things he did and his total service while in the Air Force. The DRB took note of the applicant's duty performance as documented by his performance reports and his 6-month deployment. However, the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

Issue 2. 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.

Issue 3. Applicant contends that his discharge was inequitable because he had "medical reasons" for the Article 15 (NJP) he received for sleeping on post and that his supervisory chain had a bias towards him because of the stigma of his previous NJP. The records indicate the applicant received three Article 15s and a Letter of Reprimand (LOR) for his misconduct. The first NJP was for violation of three specifications of Article 92, UCMJ: 1) failing to obey a lawful order issued by 376 AEW/CC regarding curfews in the Kyrgyz Republic; failing to obey a lawful order issued by 376 AEW/CC by wrongfully entering the installation at Kyrgyz by entering through the incorrect Entry Control Point; and failing to obey a lawful order issued by 376 AEW/CC, by failing to travel in a group of three to six persons when off the installation. The applicant apologized for this misconduct. The applicant's second NJP cited his violation of Article 113, UCMJ: Misbehavior of Sentinel (sleeping on post). The applicant stated that he believed that it was his inability to breathe properly, which caused him to fall asleep or pass out. He also indicated that he had taken *Claritin* to alleviate his sinus issues and "all I remembered was that it felt like someone was sitting on my chest and that I was not getting enough air. Next thing I remember is seeing headlights in front of me and TSgt K asking me if I was sleeping." While the applicant contended that he did not want to go to the clinic

as he did not want to be put on quarters or be PRP de-certified, he also knew that he should not have taken medications without clearance from a physician while in a PRP status, especially in light of his critical duties while posted as a sentinel on Tower Loop. While the applicant contended that his medication and health issues caused him to "pass out or fall asleep", the offense did not result from a physical incapacity caused by disease or accident. Therefore, there was no legal justification for the offense. The applicant subsequently received an LOR for disrespect towards a superior commissioned officer for which he did not submit a written response. The applicant's last NJP prior to his discharge was for assaulting his spouse, SrA SM, by shoving her into a wall and causing her a swollen and bloody lip. The applicant contended that he pushed his spouse to "keep her from destroying his property," as SrA SM threw his Xbox on the floor and was attempting to do the same with his PS3 console. The Board found that all of the disciplinary actions taken against the applicant, which were used as a basis for the discharge were legally sufficient and that the level of punishment was not harsh when compared to the misconduct. The Board did not find any evidence of bias or conflict of interest by his supervisory chain with regard to the level of punishment imposed against him.

The Board concluded that the negative aspects of the applicant's service outweighed the positive contributions he made in his Air Force career. The characterization of the discharge received by the applicant was found to be appropriate.

CONCLUSION: 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 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 and determines the discharge should remain unchanged.

Attachment:
Examiner's Brief

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

a.	BRANCH OF SERVICE (X one)	ARMY	MARINE CORPS	NAVY	<input checked="" type="checkbox"/> AIR FORCE	COAST GUARD
b.	[REDACTED]			c. GRADE/RANK AT DISCHARGE	[REDACTED]	
				Amn		

2. (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)		RGE CHARACTERIZATION RECEIVED (X one)	
2007 Sept 1 3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION Aviano, AB	<input type="checkbox"/>	HONORABLE	<input checked="" type="checkbox"/> CHANGE TO HONORABLE
	<input checked="" type="checkbox"/>	GENERAL/UNDER HONORABLE CONDITIONS	<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
	<input type="checkbox"/>	UNDER OTHER THAN HONORABLE CONDITIONS	<input type="checkbox"/> CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)
	<input type="checkbox"/>	BAD CONDUCT (Special court-martial only)	<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION TO:
	<input type="checkbox"/>	UNCHARACTERIZED	
	<input type="checkbox"/>	OTHER (Explain)	

Page 3.) It is an injustice for me to continue to suffer the adverse consequences of a general discharge for infractions from which circumstances out of my control impaired my ability to serve.

AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

If military documents or medical records are relevant to your case, please send copies.) Have already submitted letter, military records, medical documents pertaining to my discharge, was told to fill out this application also.

X	CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD.
	I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.
	I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city and state) (NOTE: The Navy Discharge Review Board does not have a traveling panel.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

d. FAX NUMBER (Include Area Code)

<input type="checkbox"/>	SPOUSE	<input type="checkbox"/>	WIDOW	<input type="checkbox"/>	WIDOWER	<input type="checkbox"/>	NEXT OF KIN	<input type="checkbox"/>	LEGAL REP
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12 a CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE

(Do not write in this space.)

b. DATE SIGNED - REQUIRED
(YYYYMMDD)

20090207

FD-2009-00114

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

16. REMARKS (If applicable)

Wanted To get also seperation code changed.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593

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

AFDRB BRIEF							
				DOCKET # FD2009-00114		COMPONENT: USAF	
TYPE OF DISCHARGE: GENERAL		DISCHARGE FROM: AVIANO AB, IT		DISCHARGE DATE: 27 SEP 07		APPEALS FOR: HONORABLE DISCH, RE CODE & NARRATIVE REASON	
DOB/ ENLMT AGE: 14 FEB 84 19		DISCH AGE: 23		FORMER: A1C		HGH: SRA	
				B. CURRENT DOR: 26 JUL 07		C. TIME LOST: NONE	
AFSC: 3P051 - SECURITY FORCES JOURNEYMAN				DEP DT: 12 AUG 02		ASVAB SCORES: A: 41 E: 40 G: 36 M: 38	
D. ART 15: ART 15: 3		D. LOR, LOA, RIC, LOC: LOR: 1		E. SPCM / GCM: NONE		ADDITIONAL: (IE. CIVIL CONV, CDC) NONE	
F. RECORD OF SERVICE (EPR/ OPR, PAST TO PRESENT) : 18 MAR 03 - 17 DEC 04 AVIANO AB 3 (INITIAL) REFERRAL 18 DEC 04 - 17 DEC 05 AVIANO AB 4 (CRO) 18 DEC 05 - 17 DEC 06 AVIANO AB 3 (ANNUAL)							
G. AWARDS & DECS: AFOUA w/ 10LC, NDSM, GWOTEM, GWOTSM, AFESR w/GB, AFLS, AFTR							
EAD: 18 MAR 03		DAS: 7 AUG 04		H. TMS: 5 YRS 1 MOS 15 DAS		TAMS: 4 YRS 6 MOS 11 DAS	
APPLN (DD FORM 293) DTD: 7 FEB 09		DT/ INITIALS: 20OCT09/LMM		NPA: YES		PA: NO	
RECORDS :	MPR:	ARMS: X	STR: X	ISSUES: YES		ATTACHMENTS: YES	
AUTH FOR DISCHARGE : AFI 36- 3208 PARA 5.49 (MISCONDUCT: MINOR DISCIPLINARY INFRACTIONS)							
ART 15; SPCM; GCM; ADDITIONAL: <div style="margin-top: 10px;"> (1) ART15: 30 APR 04 - (ART 92) LATE FOR CURFEW, RETURNED IN THE WRONG GATE & DIDN'T TRAVEL IN A GROUP. (2) ART 15: 8 JUN 05 - (ART 113) FOUND SLEEPING ON POST. LOR: 15 MAR 07 - FAILED TO SHOW CUSTOMS & COURTESIES. (3) ART 15: 26 JUL 07 - (ART 128) PHYSICALLY HARMED WIFE. </div>							
EXAMINER'S NOTE:							
NOTES:							

APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL FROM THE ARMED FORCES OF THE UNITED STATES

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

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PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.

a. BRANCH OF SERVICE (X one)	ARMY	MARINE CORPS	NAVY	<input checked="" type="checkbox"/> AIR FORCE
b. [REDACTED]	c. GRADE/RANK AT DISCHARGE		[REDACTED]	
2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)		3. DISCHARGE CHARACTERIZATION RECEIVED (X one)		
2007 SEPT 1		<input checked="" type="checkbox"/> HONORABLE <input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS <input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS <input type="checkbox"/> BAD CONDUCT (Special court-martial only) <input type="checkbox"/> UNCHARACTERIZED <input type="checkbox"/> OTHER (Explain)		
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION		CHANGE TO HONORABLE CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS CHANGE TO UNCHARACTERIZED (Not applicable for Air Force) CHANGE NARRATIVE REASON FOR SEPARATION TO:		
Aviano, AB				

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.)

It is an injustice for me to continue to suffer the adverse consequences of a general discharge for infractions from which circumstances out of my control impaired my ability to serve.

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD)

AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: (Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)

Have already submitted letter, military records, medical documents pertaining to my discharge. was told to fill out this application also.

9. TYPE OF REVIEW REQUESTED (X one)

<input checked="" type="checkbox"/>	CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD.
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10. a. COUNSEL/REPRESENTATIVE (If any) NAME (Last, First, Middle Initial) AND ADDRESS (See Item 10 of the instructions about counsel/representative.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

d. FAX NUMBER (Include Area Code)

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print) and relationship by marking a box below.

☐ SPOUSE ☐ WIDOW ☐ WIDOWER ☐ NEXT OF KIN ☐ LEGAL REPRESENTATIVE ☐ OTHER (Specify)

PERSON ABOVE

13. CERTIFICATION: I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

CASE NUMBER

(Do not write in this space.)

b. DATE SIGNED - REQUIRED (YYYYMMDD)

20090207

FD-2009-00114

PREVIOUS EDITIONS ARE OBSOLETE.

Page 1 of 4 Pages

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

16. REMARKS (If applicable)

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Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB, TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593



DEPARTMENT OF THE AIR FORCE
31ST FIGHTER WING (USAFE)



SEP 05 2007

MEMORANDUM FOR AIC [REDACTED]

FROM: 31 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct: 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 an Under Honorable Conditions (General) discharge. I am recommending that your service be characterized as an Under Honorable Conditions (General) discharge.
2. My reasons for this action are:
 - a. On or about 17 Apr 2004, at or near Manas Air Base in the Kyrgyz Republic, you failed to obey a lawful order by wrongfully failing to return from off base prior to the 2200 curfew. On or about 17 Apr 2004, at or near Manas Air Base in the Kyrgyz Republic, you again failed to obey a lawful order by wrongfully entering the installation through an unauthorized entry point. Additionally, on or about 17 Apr 2004, at or near Manas Air Base in the Kyrgyz Republic, you failed to obey a lawful order by wrongfully failing to travel in a group of three to six persons when off the installation. For these incidents, you received an Article 15, dated 30 Apr 2004, with the punishment of reduction to the grade of Airman Basic, suspended through 29 Oct 2004, and forfeiture of \$596.00 pay per month for 2 months, with the portion in excess of \$300.00 suspended until 29 Oct 2004. In addition, this action was used to establish your then Unfavorable Information File (UIF).
 - b. On or about 12 May 2005, while posted as a sentinel, you were found sleeping upon your post. For this incident, you received an Article 15, dated 8 Jun 2005, with a punishment of reduction to the grade of Airman, with a new date of rank of 8 Jun 2005; forfeiture of \$323.00 pay, suspended through 6 Dec 2005; restriction to the limits of Aviano Air Base, Italy for 14 days; 14 days extra duty; and a reprimand.
 - c. On or about 8 Mar 2007, during a NATO TACEVAL, you failed to show proper customs and courtesies to a General Officer. For this incident, you received a Letter of Reprimand (LOR), dated 15 Mar 2007.
 - d. On or about 25 May 2007, you unlawfully shoved your wife up against a wall causing her significant physical harm. For this incident, you received an Article 15, dated 26 Jul 2007, with a punishment of reduction to the grade of Airman First Class, with a new date of rank of 26 Jul 2007; forfeiture of \$200.00 pay, suspended through 25 Jan 2008; and a reprimand. This action was also used to create your current UIF.

3. 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).

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 with [REDACTED] at Building 224, extension 632-5588, on 5 SEPT 07, at 1330 hours. You may consult civilian counsel at your own expense.

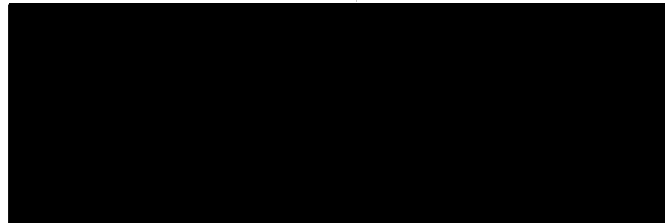
5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 9 SEPT 07 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

6. If you fail to consult counsel or to submit statements 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 Family Practice Clinic, Area One Hospital on 6 SEPT 07, at 0830 hours for the examination.

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 the Office of the Area Defense Counsel or the Unit Orderly Room.

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



Attachments:

1. Supporting Documents
 - a. AF Form 1137/Article 15 dated 30 Apr 2004
 - b. Article 15 dated 8 Jun 2005
 - c. LOR dated 15 Mar 2007
 - d. AF Form 1137/Article 15 dated 26 Jul 2007
2. Receipt of Notification Memorandum
3. EPRs



DEPARTMENT OF THE AIR FORCE
31ST FIGHTER WING (USAFE)



MEMORANDUM FOR 31 FW/CC

SEP 14 2007

FROM: 31 FW/JA

SUBJECT: Legal Review Administrative Discharge Action, Airman [REDACTED]

1. I have reviewed the proposed discharge action and find it legally sufficient. [REDACTED] Commander, 31st Security Forces Squadron, recommends that the respondent be separated for misconduct with an Under Honorable Conditions (General) discharge as soon as he is found medically fit for separation. This case is forwarded to you, as the Separation Authority, in accordance with AFI 36-3208, paragraph 5.56, for action.

2. Background:

a. The respondent is a 23-year-old Airman First Class, assigned to the 31st Security Forces Squadron (31 SFS). His TAFMSD is 18 March 2003, and he began his 4-year enlistment on 18 March 2003. He was assigned to his present unit on 7 August 2004. His AQE scores are Admin - 41, Elect - 40, Gen - 36, and Mech - 38. The respondent has received three Enlisted Performance Reports (EPRs), with two ratings of "3", and one rating of "4." He is entitled to wear the Air Force Training Ribbon, the National Defense Service Medal, the Air Force Longevity Service Award, the Air Force Expeditionary Service Ribbon, the Air Force Outstanding Unit Award, the Global War on Terrorism Expeditionary Medal, and the Global War on Terrorism Service Medal.

b. On 5 September 2007, the 31 SFS/CC notified the respondent of his recommendation to separate the respondent with a General discharge under the provisions of AFI 36-3208, Chapter 5, paragraph 5.49 for Misconduct: Minor Disciplinary Infractions. The respondent is not entitled to a board hearing; therefore, this case has been properly processed in accordance with the notification procedures of AFI 36-3208, Chapter 6, Section B.

3. Basis for Discharge: In accordance with AFI 36-3208, paragraph 5.49, a pattern of misconduct consisting solely of minor disciplinary infractions in the current enlistment makes an Airman subject to discharge. The infractions under this section may involve failure to comply with nonpunitive regulations or minor offenses under the UCMJ. Infractions of this type result, as a rule, in informal (reduced to writing) or formal counselings, letters of reprimand, or Article 15 nonjudicial punishment.

4. Summary of Evidence for the Government:

a. On or about 17 April 2004, at or near Manas Air Base in the Kyrgyz Republic, the respondent failed to obey a lawful order by wrongfully failing to return from off base prior to the 2200 curfew. On or about 17 April 2004, at or near Manas Air Base in the Kyrgyz Republic, the respondent again failed to obey a lawful order by wrongfully entering the installation through an unauthorized entry

"The World's Finest"

point. Additionally, on or about 17 April 2004, at or near Manas Air Base in the Kyrgyz Republic, the respondent failed to obey a lawful order by wrongfully failing to travel in a group of three to six persons when off the installation. For these incidents, the respondent received an Article 15, dated 30 April 2004. In addition, this action was used to establish his then Unfavorable Information File (UIF).

b. On or about 12 May 2005, while posted as a sentinel, the respondent was found sleeping upon his post, as referenced by the Article 15 he received on 8 June 2005.

c. On or about 8 March 2007, during a NATO TACEVAL, the respondent failed to show proper customs and courtesies to a General Officer, as referenced by the Letter of Reprimand (LOR) he received on 15 March 2007.

d. On or about 25 May 2007, the respondent unlawfully shoved his wife up against a wall causing her significant physical harm, as referenced by the Article 15 he received on 26 July 2007. This action was also used to create his current UIF.

5. **Summary of Evidence for the respondent:** The respondent met with defense counsel and submitted a written response. In his response, the respondent gives a brief personal and military background, and further explains the extenuating circumstances surrounding his three Article 15s. In addition, he asks that his discharge characterization be upgraded to an honorable discharge due to these circumstances. The respondent also included a portion of his medical records and two witness statements as attachments.

6. Discussion:

a. **A basis for discharge exists, and the respondent should be discharged under that provision.** In accordance with AFI 36-3208, paragraph 5.49, a pattern of misconduct consisting solely of minor disciplinary infractions in the current enlistment makes an Airman subject to discharge. Minor disciplinary infractions are defined, for this purpose, as failure to comply with nonpunitive instructions or minor offenses under the UCMJ that result in informal (reduced to writing) or formal counselings, LORs, or Article 15s. In his current enlistment, the respondent has received one LOR, three Article 15s, and the establishment of a UIF. Based on the respondent's record of misconduct, he should be discharged.

b. **The respondent should receive a general discharge.** According to AFI 36-3208, table 1.3, Rule 11, the service of persons identified for discharge for misconduct may be characterized as Honorable, Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHHC). An honorable discharge is warranted when the quality of the Airman's service generally has met Air Force standards of acceptable conduct and performance of duty, or when a member's service is otherwise so meritorious that any other characterization would be inappropriate. A general discharge is appropriate when significant negative aspects of the Airman's conduct or performance of duty outweigh positive aspects of the Airman's military record. A UOTHHC is appropriate when basing the reason for separation on a pattern of behavior, or one or more acts or omissions that constitute a significant departure from the conduct expected of Airmen. Based on the respondent's service record, the 31 SFS/CC recommends a general discharge. The respondent's pattern of misconduct clearly outweighs the positive aspects of his service; thus, he deserves a general discharge.

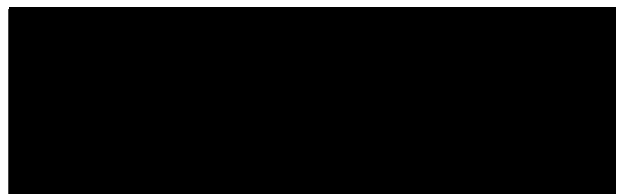
c. **Probation and Rehabilitation (P&R):** According to AFI 36-3208, paragraph 7.2.7, the separation authority may offer P&R in any case where there seems to be a reasonable expectation of rehabilitation. The respondent's continued failure to meet minimum standards both here at Aviano and at his deployed location cause a significant burden to both the mission and personnel of the 31st Security Forces Squadron. The respondent's disregard for military standards demonstrates his poor rehabilitative potential. Therefore, I support the commander's decision not to recommend P&R in conjunction with this discharge. Further, the respondent did not request P&R.

7. **Errors and Irregularities:** We note that the respondent's Article 15 (Attachment 2b), dated 8 June 2005, although annotated as being entered into a UIF, was never added to the respondent's UIF. We also note that the respondent's LOR (Attachment 2c), dated 15 March 2007, is missing a final signature from the Flight Chief who initiated the paperwork; however, the lack of signature does not affect the LOR's legal sufficiency. We do not find these errors or irregularities to be prejudicial to the respondent's substantive or procedural rights.

8. **Options:** As the Separation Authority in this case, you may:

- a. Retain the respondent, if you consider the discharge unwarranted;
- b. Refer the case to 3 AF/CC if you believe the respondent should be separated with an honorable discharge;
- c. Direct that the respondent be separated for minor disciplinary infractions with a general discharge, with or without P&R; or
- d. Direct re-initiation of the discharge action if you believe an Under Other Than Honorable Conditions (UOTHC) discharge is warranted.

9. **Recommendation:** Direct respondent's separation with an Under Honorable Conditions (General) discharge, without P&R, by signing the attached memorandum.



Attachments:

1. Commander's Recommendation
2. Copy of Notification Memo w/atchs
3. Receipt of Notification Memo/Recoupment Ltr/Airman's Statement w/atchs/
Discharge Under Ltr
4. EPRs
5. Medical Examination
6. 6-Part RIP/Enlistment Extension Form/ID Card Ltr/Finance Ltr