

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2009-00396

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 and requests that the review be completed based on the available service record.

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.

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 discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15, two Letters of Reprimand, two Records of Individual Counseling and four Memorandums for Record for misconduct. The misconduct included underage drinking, unauthorized male personnel in the dormitory overnight, extramarital affairs, two false statements to a Senior Non-Commissioned Officer, and having marijuana fragments in her car. The DRB opined that through these administrative actions, the applicant had ample opportunities to change her negative behavior. The Board concluded that the negative aspects of the applicant's service outweighed the positive contributions she made in her Air Force career. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. After review of the record, the Board found no evidence to indicate that the applicant did not know right from wrong or that in his three years of service was unaware of the Air Force policy of zero tolerance to drug use. The Board found the negative aspects of the willful misconduct outweighed the positive aspects of the applicant's performance and concluded that the discharge was appropriate.

Issue 3. Applicant contends she was targeted and that her First Sergeant was determined to get rid of her. There was no evidence in the record or provided by applicant to substantiate this assertion. Therefore no impropriety or inequity was found during the records review.

Issue 4. Applicant infers that she should not be penalized indefinitely for mistakes she made when young. The DRB recognized the applicant was 21 years of age when the discharge took place. However, there is no evidence she was immature. The Board opined the applicant was older than the vast majority of first-term members who properly adhere to the Air Force's standards of conduct. The DRB concluded that the characterization of the applicant's discharge was appropriate due to the misconduct.

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

**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 20 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)	<input type="checkbox"/> ARMY	<input type="checkbox"/> MARINE CORPS	<input type="checkbox"/> NAVY	<input checked="" type="checkbox"/> AIR FORCE	<input type="checkbox"/> COAST GUARD
b. NAME (Last, First, Middle Initial)	c. GRADE/RANK AT DISCHARGE			d. SOCIAL SECURITY NUMBER	
	E-2				

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149) 20030929	4. DISCHARGE CHARACTERIZATION RECEIVED (X one)		5. BOARD ACTION REQUESTED (X one)
	<input checked="" type="checkbox"/> HONORABLE	<input checked="" type="checkbox"/> CHANGE TO HONORABLE	
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION 15 CES; Hickam AFB, HI	<input 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)			

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

I was generally discharged six years ago. I felt that this was done unjustly and that I was targeted. Being the young airman that I was, I was not perfect; in fact, far from it. I wish I could have been given another chance because the threat of me leaving the Air Force was truly a wake-up call for me. Although I'm not sure if going into the military would be a future option for me if my discharge is upgraded, I would still like to keep it an open option. I am a hard-working full-time student studying Psychology.

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.)

9. TYPE OF REVIEW REQUESTED (X one)

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.)

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)

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE (If no mail notification of any change in address.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

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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.)

a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)

b. DATE SIGNED - REQUIRED (YYYYMMDD)
20090611

FD-2009-00396

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

Sociology, and Health Care. I also work full-time at a local bar. My days consist of gaining priceless knowledge at school and studying until dawn, when I'm not working. I also want to buy a house soon, for the space (I have two adopted cats, Princess & Buttercup, and they like to run around), and I would like to take advantage of the home loan program. I am currently paying \$805.00 monthly for rent, and I am told that I could afford a house for that price. I truly wanted to stay in the Air Force as a truly changed airman, and I wish that I could have been given just one more chance. The particular First Sergeant was determined to get rid of me, and I realized that that was a battle that I couldn't win. I genuinely regret all of the mistakes that I made in the Air Force. I was young, and the mistakes were never made with bad intentions. This experience has truly changed my life by providing me with an earth-shattering life experience that has ultimately made me wiser. I would like for my discharge to be upgraded, most of all, because this would provide me with personal, positive closure that I need in my life, regarding this subject. I'm not a bad person. I would be open to a discussion and/or hearing to give vital information, regarding certain reprimands, that was left out in a lot of the paperwork.
Thank you.

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

16. REMARKS (If applicable)

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					
NAME (Last, First, MI):		SSN:	DOCKET # FD-2009-00396		COMPONENT: USAF
TYPE OF DISCHARGE: GENERAL	DISCHARGE FROM: HICKAM AFB, HI		DISCHARGE DATE: 29 SEP 03		APPEALS FOR: UPGRADE DISCHARGE
DOB/ ENLMT AGE: 04 AUG 82 19	DISCH AGE: 21	FORMER: AMN	HGH: A1C	B. CURRENT DOR: 10 FEB 03	C. TIME LOST: NONE
AFSC: 3E631 - OPERATIONS APPRENTICE		DEP DT: 10 AUG 01		ASVAB SCORES: A: 63 E: 43 G: 57 M: 41	
D. ART 15 / VAC: ART 15: 1	D. LOR, LOA, RIC, LOC: LOR: 2 / RIC: 2		E. SCM / SPCM / GCM: NONE		ADDITIONAL: (IE. CIVIL CONV, CDC) MFR: 4
F. RECORD OF SERVICE (EPR/ OPR, PAST TO PRESENT) : NONE					
G. AWARDS & DECS: NDSM, AFOSLTR, AFTR					
EAD: 03 JAN 02		DAS: 16 MAY 02		H. TMS: 2 YRS 1 MOS 20 DAS	
TAMS: 1 YRS 8 MOS 27 DAS		APPLN (DD FORM 293) DTD: 11 JUN 09		DT/ INITIALS: 15JUL10/JLL	
NPA/PA: NPA		BOARD REGION:			
RECORDS :	MPR: YES	ARMS: NO	STR: YES	ISSUES: YES	ATTACHMENTS: NO
AUTH FOR DISCHARGE : AFI 36-3208, PARA 5.50.2 (PATTERN OF MISCONDUCT: CONDUCT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE)					
ART 15; VAC; SCM; SPMC; GCM; ADDITIONAL:					
<p>RIC: 30 SEP 02 - DIRECTED TO PREPARE FOR HOUSING INSPECTION, HOWEVER FAILED HOUSING INSPECTION DUE TO LACK OF EFFORT.</p> <p>RIC: 04 OCT 02 - FAILURE TO REPORT ON TIME FOR DUTY & 1 HR LATE RETURNING FROM LUNCH.</p> <p>MFR: 23 OCT 02 - COUNSELED ON UNSATISFACTORY ROOM CONDITON & UNDERAGE DRINKING.</p> <p>MFR: 18 NOV 02 - COUNSELED ON PDA WITH A MALE FRIEND WHO WAS MARRIED.</p> <p>MFR: 07 JAN 03 - COUNSELED ON HAVING UNAUTHORIZED PERSONNEL IN DORM RM, & HOW EXTRAMARITAL AFFAIRS ARE UNPROFESSIONAL.</p> <p>MFR: 08 JAN 03 - DURING ROOM INSPECTION FOUND UNAUTHORIZED MAN IN ROOM.</p> <p>ART 15: 05 FEB 03 - (ART 92) DISOBEYED A ORDER TO HALT & REFRAIN FROM UNDERAGE DRINKING. (ART 107) WITH INTENT TO DECIEVE MADE 2 FALSE STATEMENT TO A SNCO.</p> <p>LOR: 17 MAR 03 - WHILE STILL MARRIED, HAD A MAN LIVING IN HER DORM ROOM.</p> <p>LOR: 23 JUL 03 - FOUND FRAGMENTS OF MARIJUANA IN YOUR CAR.</p>					
EXAMINER'S NOTE:					
NOTES:					

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20030929

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15 CES; Hickam AFB, HI

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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
PACIFIC AIR FORCES

26 AUG 2003

MEMORANDUM FOR AMN

FROM: 15 CES/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for a pattern of misconduct that is prejudicial to good military order and discipline. Authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.50.2. If this discharge action is approved, your service will be characterized as either Honorable, General, or Under Other Than Honorable Conditions. I am recommending that your service be characterized as General.
2. My reasons for this action are as follows:
 - a. On or about 21 Sep 02, you were directed by both your supervisor and another non-commissioned officer to prepare your house for inspection. You asked for and were given time off of work to accomplish this task. However, you failed the housing inspection due to your lack of effort. For this offense you were counseled, which was documented on AF Form 174, Record of Individual Counseling, dated 30 Sep 02.
 - b. On or about 4 Oct 02, you failed to go at the time prescribed to your appointed place of duty and were one hour late for work. For this offense, you were counseled, which was documented on AF Form 174, Record of Individual Counseling, dated 4 Oct 02.
 - c. On or about 23 Oct 02, you were counseled regarding your unsatisfactory room condition and about having a beer can in your room while under the legal drinking age. You were then counseled regarding the ramifications of consuming alcoholic beverages while under the legal drinking age. This counseling is documented in a Memorandum For Record (MFR), dated 23 Oct 02.
 - d. On or about 18 Nov 02, you were counseled about publicly displaying affection with a male "friend" while still married. This counseling is documented in an MFR, dated 18 Nov 02.
 - e. On or about 4 Jan 03, you failed to obey a lawful order to halt and were derelict in your duties in that you consumed alcoholic beverages while under the legal drinking age. Additionally, you made two false official statements when asked to identify yourself. For these offenses, you received Nonjudicial Punishment under Article 15, dated 5 Feb 03. Punishment consisted of a reduction to the grade of E-2 (Airman), 30 days extra duty and a reprimand. An

Unfavorable Information File (UIF) was also established, and you were referred to the Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program.

f. On or about 7 Jan 03, you were counseled about having unauthorized personnel in your dormitory room. This counseling is documented in an MFR, dated 7 Jan 03.

g. On or about 7 Jan 03, you were counseled about extramarital affairs. This counseling is documented in an MFR, dated 7 Jan 03.

h. On or about 7 Jan 03, you were counseled about unprofessional relationships regarding your friend staying in your room. This counseling is documented in an MFR, dated 7 Jan 03.

i. On or about 8 Jan 03, SSgt _____ conducted a room inspection. Although you were still married, SSgt _____ found another male in your bed. This incident is documented in an MFR, dated 8 Jan 03.

j. On or about 7 Mar 03, you failed to follow instructions regarding the protection of government property. After you informed your supervisor that a gate lock was broken, you were told to remain in the area until relieved. However, you left the area and left government property unsecured. For this offense, you received a Letter of Reprimand (LOR), dated 17 Mar 03. This LOR was added to your already established UIF.

k. On or about 7 Mar 03, you engaged in a conversation with your supervisors which revealed you had a male wrongfully cohabitating in your dorm room. At the time you were still married to your husband. For this offense, you received an LOR, dated 17 Mar 03. This LOR was added to your already established UIF.

l. On or about 22 Jul 03, fragments testing positive for THC/Marijuana were found in your vehicle, license plate JVV735. For this offense, you received an LOR, dated 23 Jul 03. This LOR was added to your already established UIF.

Copies of documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Court-Martial jurisdiction or higher authority will decide whether you will be discharged or retained by the Air Force. The commander will also decide how your service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force and can be denied enlistment in any component of the United States Armed Forces. Additionally, you will be ineligible for any special pay, bonus, or education assistance offered by the Armed Forces.

3. You have the right to consult legal counsel. Capt _____ Area Defense Counsel, _____ has been obtained to assist you. An appointment has been scheduled for you to consult him on **26 Aug at 1500 hours**. You may consult civilian counsel at your own expense.

4. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within 3 duty days, or by **29 Aug 03** unless you request and receive an extension for good cause shown. I will forward any statements to the separation authority.
5. If you fail to consult counsel or to submit statements on your own behalf, your failure to do so will constitute a waiver of this privilege.
6. You have been scheduled for a medical examination. You will report to Physical Exams at the 15th Medical Group on **28 Aug 03** at **0800 hours** and at Primary Care at **0820 hours** for your examination.
7. You must contact Separations, **in uniform**, located in the Military Personnel Flight, at 449-0658, **within 24 hours** of receipt of this letter to set up an initial separations appointment. During this appointment you will surrender your (including family members) active Duty ID card(s), and temporary ID(s) will be issued.
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 through your Commander's Support Staff.
9. Execute the attached acknowledgment and return it to me immediately.

Commander, 15th Civil Engineering Squadron

Attachments:

1. RIC, 30 Sep 02
2. RIC, 4 Oct 02
3. MFR, 23 Oct 02
4. MFR, 18 Nov 02
5. Article 15, dated 5 Feb 03
6. ADAPT Referral, 27 Jan 03 (2 pages)
7. MFR, 7 Jan 03
8. MFR, 7 Jan 03
9. MFR, 7 Jan 03
10. MFR, 8 Jan 03
12. LOR, 17 Mar 03 w/AF Form 1058, 31 Mar 03
13. 14. AF Form 1137,
14. LOR, 23 Jul 03 w/AF Form 1058, 28 Jul 03



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

MEMORANDUM FOR 15 AW/CC

22 SEP 2003

FROM: 15 AW/JA

SUBJECT: Administrative Discharge Legal Review – Amn
15 CES

1. **ISSUE:** On 26 Aug 03, Lt Col [redacted] 15 CES/CC, served Amn [redacted] notification of administrative discharge from the United States Air Force for a pattern of misconduct. Authority for this action is AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, paragraph 5.50.2. Lt Col [redacted] recommends a General discharge characterization, without Probation and Rehabilitation (P&R). Amn [redacted] is not entitled to an administrative discharge board hearing. I have reviewed the proposed separation action against Amn [redacted] and find it procedurally and legally sufficient to support separation, subject to insertion of the medical examination in the record.
2. **GOVERNMENT'S CASE:** This discharge action is based on Amn [redacted] pattern of misconduct, which began while she was assigned to the 15 CES. Misconduct from her military record is as follows:
 - a. On or about 21 Sep 02, she was directed by both her supervisor and another non-commissioned officer to prepare her house for inspection. She asked for and was given time off of work to accomplish this task. However, she failed the housing inspection due to her lack of effort. For this offense she was counseled, which was documented on AF Form 174, Record of Individual Counseling, dated 30 Sep 02.
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 - c. On or about 23 Oct 02, she was counseled regarding her unsatisfactory room condition and possessing alcohol while under the legal drinking age. She was also counseled about the ramifications of consuming alcoholic beverages while under the legal drinking age. This counseling is documented in a Memorandum For Record (MFR), dated 23 Oct 02.
 - d. On or about 18 Nov 02, she was counseled about publicly displaying affection with a male "friend" while still married to another person. This counseling is documented in an MFR, dated 18 Nov 02.

e. On or about 4 Jan 03, she failed to obey a lawful order to stop and was derelict in her duties in that she consumed alcoholic beverages while under the legal drinking age. Additionally, she made two false official statements when asked to identify herself. For these offenses, she received Nonjudicial Punishment under Article 15, dated 5 Feb 03. Punishment consisted of a reduction to the grade of E-2 (Airman), 30 days extra duty and a reprimand. An Unfavorable Information File (UIF) was also established, and she was referred to the Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program

f. On or about 7 Jan 03, she was counseled by three supervisors regarding visitors in her dorm room and improper relationships. This repeated counseling is documented in MFRs, dated 7 Jan 03.

g. On or about 8 Jan 03, she was once again counseled about extramarital affairs after her supervisor found a man in her dorm room at 0447. This counseling is documented in an MFR, dated 8 Jan 03.

h. On or about 7 Mar 03, she failed to follow instructions regarding the protection of government property. After she informed her supervisor that a gate lock was broken, she was told to remain in the area until relieved. However, she left the area and left government property unsecured before being relieved. For this offense, she received a Letter of Reprimand (LOR), dated 17 Mar 03. This LOR was added to her already established UIF.

i. On or about 7 Mar 03, she engaged in a conversation with her supervisors which revealed she had a male wrongfully cohabitating in her dorm room. At the time she was still married to her husband. For this offense, she received an LOR, dated 17 Mar 03. This LOR was added to her already established UIF.

l. On or about 22 Jul 03, fragments testing positive for THC/Marijuana were found in her vehicle, license plate JVV735. For this offense, she received an LOR, dated 23 Jul 03. This LOR was added to her already established UIF.

3. RESPONDENT'S CASE:

a. On 26 Aug 03, Amn [redacted] acknowledged receipt of the Letter of Notification. On 2 Sep 03, Amn [redacted] submitted matters for your consideration and her Area Defense Counsel has also submitted matters (Atch 3). In her matters, Amn [redacted] asks for a probationary period in which to correct her behavior. Amn [redacted] earliest documented misconduct is 21 Sep 02.

b. Her Area Defense Counsel, Capt. [redacted] raises several issues concerning the Records of Individual Counseling (RIC) and the Memoranda For Record (MFR).

c. Defense Counsel's first argument is the MFRs and RICs do not comply with the procedural requirements as set forth in Chapter 5 of AFI 36-2907 in that Amn [redacted] was not advised that the documents were protected under the Privacy Act. There is no requirement under

the cited AFI that the command advise Amn [redacted] that the Privacy Act applies, nor is there any allegation that the Privacy Act was violated. This allegation is without merit.

d. Defense counsel next alleges that Amn [redacted] was not informed of her right to respond to the counseling nor was she informed that any response would become part of the record and protected from disclosure. Per AFI 36-2907, paragraph 3.5.1, does require notification of the right to respond and that any response becomes part of the record; however, this requirement applies only to written counseling, not verbal counseling such as those memorialized in the MFRs. Even though the AFI states these notifications will be included in written counseling, these same notifications are not included pre-printed on the AF Form 174, Record of Individual Counseling. While the notice requirement was not fulfilled on the RICs, there is no exclusionary rule that would prevent the separation authority from considering the misconduct addressed in the RICs. Furthermore, Amn [redacted] did in fact respond in writing to the first RIC, so she was aware of this right. As stated earlier, there is no requirement to put a member on notice that the contents of the counseling would be protected from disclosure.

e. Defense Counsel's also argues that the MFRs do not comply with AFI requirements regarding rehabilitative efforts. This argument is without merit because the rehabilitative efforts consisted of appropriate and permissible verbal counseling. The MFRs merely record the fact of the counseling sessions.

f. Capt [redacted] final argument is that Amn [redacted] referral to ADAPT is not evidence of misconduct. I agree. The referral to ADAPT is, however, relevant to show the unit was attempting to rehabilitate Amn [redacted].

4. **DISCUSSION:** Under AFI 36-3208, para. 5.50.2, a member of the Air Force may be discharged for a pattern of misconduct that tends to disrupt order, discipline, or morale within the military community. Amn [redacted] repeated disregard of Air Force standards is firm evidence that Amn [redacted] does not possess the discipline necessary to maintain a career in the military. It is also evident that numerous attempts by her unit to use measures designed to correct this misconduct and save her career have been rejected by Amn [redacted]. A probationary period is not warranted for two reasons. Amn [redacted] first documented instance of misconduct occurred on 21 Sep 02. The intervening year is more than enough time to correct her behavior. Amn [redacted] was served with a discharge action in April 2003 that was later withdrawn. However, since the withdrawal of that action Amn [redacted] received an LOR after fragments of marijuana were found in her car. Overall, her repeated misconduct has served repeatedly to reduce mission effectiveness; thus, her retention in the Air Force is not warranted.

5. **DISCHARGE CHARACTERIZATION:** According to AFI 36-3208, the discharge of airmen for misconduct, without opportunity for an administrative discharge board hearing, may be characterized as either Honorable or General (Under Honorable Conditions). Per AFI 36-3208, paragraph 1.18.2, an Honorable characterization is warranted when the quality of an 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 where significant negative aspects of the airman's conduct, performance, or duty outweigh the positive aspects of the airman's military record. Amn [redacted] numerous incidents of misconduct outweigh the favorable information contained within her military record. Finally, an Under Other Than Honorable Conditions (UOTHC) discharge is another option; however, it is reserved for behavior that is a significant departure from expected conduct and allows the respondent to have a board hearing. AFI 36-3208, paragraph 1.18.3, lists examples of misconduct appropriate for a UOTHC discharge which includes the use of force to produce bodily injury or death, abuse of a special position, abuse of subordinate relationships, acts or omissions that endanger the security of the United States, or acts that endanger the health and safety of others. Amn [redacted] misconduct, while serious, does not rise to the level of behavior that would warrant a UOTHC; therefore, an administrative discharge board is not warranted. Based upon all of the facts available in Amn [redacted] case, a General discharge for a pattern of misconduct is appropriate. Lt Col [redacted] has recommended that Amn [redacted] receive a General discharge. I concur.

6. **PROBATION AND REHABILITATION**: Amn [redacted] has received 1 Article 15, 3 Letters of Reprimand, 6 Verbal Counselings as reflected by the MFRs, 2 Records of Individual Counseling, a Referral to the ADAPT program and has a UIF. Her repeated disregard of Air Force standards is evidence that she lacks the will and commitment necessary to maintain a career in the military. The amount of misconduct compared with her relatively short term of military service is a clear indication of this member's inability to meet military standards. Amn [redacted] is either unwilling or unable to adapt to military standards. Rehabilitative measures have been unsuccessful and there is no evidence that further attempts at rehabilitation will be effective. Her commander has recommended against granting P&R. I concur.

7. **ERRORS AND IRREGULARITIES**: None.

8. **OPTIONS**: As the separation authority, you may:

- a. Direct retention, if retention is in the best interest of the Air Force; or
- b. Direct separation with an Honorable characterization, with or without P&R; or
- c. Direct separation with a General characterization, with or without P&R; or
- d. Direct an administrative discharge board to convene. Due to the length of service, member is not entitled to a discharge board unless a UOTHC is recommended. If convened, the discharge board will determine whether a basis for discharge exists, an appropriate discharge characterization, and if P&R is appropriate.

9. **RECOMMENDATION:** Based on the above facts and discussion, I recommend you direct the separation of Amn with a General characterization, without P&R, by signing the action letter.

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Staff Judge Advocate, 15th Airlift Wing