

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)	GRADE	AFSN/SSAN
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TYPE GEN		PERSONAL APPEARANCE	X	RECORD REVIEW						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">GOING SET</td> <td style="width: 50%; padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">YES</td> <td style="padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">X</td> </tr> </table>	GOING SET		YES	No		X	NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
GOING SET										
YES	No									
	X									

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES	A92.21 A93.01 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	CASE NUMBER			
07 Feb 2011	FD-2009-00491			

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard in Washington, D.C.

Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

Names and votes will be made available to the applicant at the applicant's request.

INDORSEMENT

TO: USAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	FROM:	DATE: 2/8/2011 SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR 11 WING, 3RD FLOOR ANDREWS AFB, MD 20342-7001
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2009-00491

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 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 reason and authority for discharge inequitable

ISSUE:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received two Articles 15 for misconduct which included adultery and failure to obey a no contact order. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. 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.

Issue 2. Applicant contends that he should not be penalized indefinitely for a mistake he made when young. The DRB recognized the applicant was 25 years of age when the discharge took place. However, there is no evidence he was immature or did not know right from wrong. 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.

Issue 3. The DRB was pleased to see that the applicant was doing well and has a good job. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

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
FROM THE ARMED FORCES OF THE UNITED STATES**
(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

OMB No. 0704-0004
OMB approval expires
Oct 31, 2009

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 the Department of Defense, Executive Services Directorate (0704-0004). 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 ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.**

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. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 (Forward notification of any change in address.)		f. PHONE NUMBER (Include Area Code)			
		g. E-MAIL			
		h. FAX NUMBER (Include Area Code)			

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)	4. DISCHARGE CHARACTERIZATION RECEIVED (X one)	5. BOARD ACTION REQUESTED (X one)
	<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)
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION	<input type="checkbox"/> BAD CONDUCT (Special court-martial only)	CHANGE NARRATIVE REASON FOR SEPARATION:
	<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 13. See instructions on Page 3.)

See Attached Letter

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 14. If military documents or medical records are relevant to your case, please send copies.)

See Attached Letter

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.
<input type="checkbox"/> 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.
<input type="checkbox"/> 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)
N/A	c. E-MAIL
	d. FAX NUMBER (Include Area Code)

11. APPLICANT MUST SIGN IN ITEM 12.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.

<input type="checkbox"/> SPOUSE	<input type="checkbox"/> WIDOW	<input type="checkbox"/> WIDOWER	<input type="checkbox"/> NEXT OF KIN	<input type="checkbox"/> LEGAL REPRESENTATIVE	<input type="checkbox"/> OTHER (Specify)
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12. 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.)

a. SIGNATURE - REQUIRED (Applicant or person in Item 11 above)	b. DATE SIGNED - REQUIRED (YYYYMMDD)	CASE NUMBER (Do not write in this space.) FD-2009-00491
	2009 08 12	

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

AFDRB BRIEF							
NAME (Last, First, MI):			SSN:		DOCKET # FD-2009-00491		COMPONENT: USAF
TYPE OF DISCHARGE: GENERAL		DISCHARGE FROM: FT MEADE, MD		DISCHARGE DATE: 13 APR 01		APPEALS FOR: UPGRADE DISCHARGE	
DOB/ ENLMT AGE: 12 JAN 76 22		DISCH AGE: 25		FORMER: AMN	HGH: A1C	B. CURRENT DOR: 27 MAY 98	C. TIME LOST: NONE
AFSC: IN333A - SLAVIC CRYPTO LINGUIST				DEP DT: 11 MAR 98		ASVAB SCORES: A: 68 E: 98 G: 90 M: 90	
D. ART 15 / VAC: ART 15: 2		D. LOR, LOA, RIC, LOC: NONE		E. SCM / SPCM / GCM: NONE		ADDITIONAL: (IE. CIVIL CONV, CDC) NONE	
F. RECORD OF SERVICE (EPR/ OPR, PAST TO PRESENT) : 27 MAY 98 - 30 MAR 01 FT MEAD AIN 3 (DBH)							
G. AWARDS & DECS: AFTR, AFOUA							
EAD: 27 MAY 98		DAS: 06 APR 00		H. TMS: 3 YRS 1 MOS 3 DAS		TAMS: 2 YRS 10 MOS 17 DAS	
APPLN (DD FORM 293) DTD: 12 AUG 09		DT/ INITIALS: 21OCT10 / CM		NPA/PA: NPA		BOARD REGION:	
RECORDS :	MPR: YES	ARMS: NO	STR: YES	ISSUES: YES		ATTACHMENTS: YES	
AUTH FOR DISCHARGE : AFI-36-3208, PARA 5.49 (MISCONDUCT: MINOR DISCIPLINARY INFRACTIONS) & PARA 5.11 (CONDITION THAT INTERFERE WITH MILITARY SERVICE): MENTAL DISORDER)							
ART 15; VAC; SCM; SPMC; GCM; ADDITIONAL:							
<div style="text-align: center;"> <p>(1) ART 15: 06 FEB 01 - (ART 134) COMMITTED ADULTRY.</p> <p>(2) ART 15: 21 AUG 01 - (ART 92) FAILED TO OBEY A NO CONTACT ORDER.</p> </div>							
EXAMINER'S NOTE: NOTIFICATION MEMORANDUM DATED 22 MAR 01, PARA 2B, CITES ADDITIONAL REASON FOR DISCHARGE AS: ON OR ABOUT 13 OCT 00, DIAGNOSED BY LT COL _____ AS HAVING ADJUSTMENT DISORDER WITH MIXED ANXIETY AND PERSONALITY DISORDER AS WELL AS A DEPRESSED MOOD. THE MENTAL DISORDER IS SO SEVERE THAT HIS ABILITY TO FUNCTION EFFECTIVELY IN THE MILITARY ENVIRONMENT IS SIGNIFICANTLY IMPAIRED. HIS DISORDER IS EVIDENCED BY HIS CONTINUED DISOBEDIENCE.							
NOTES:							

**APPLICATION FOR THE REVIEW OF DISCHARGE
FROM THE ARMED FORCES OF THE UNITED STATES**

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3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION	<input type="checkbox"/> UNCHARACTERIZED			
32ND INTELLIGENCE SQ	<input type="checkbox"/> OTHER <i>(Explain)</i>			

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N/A	
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	2009 08 12

CASE NUMBER
(Do not write in this space.)

FD-2009-00491

August 12, 2009

To: Air Force Review Board
From:
Subject: Response to Application for Discharge Review

I request my discharge be upgraded from a general (under honorable conditions) to an honorable discharge.

The reason I was awarded a general vice an honorable discharge centers around the two Article 15 proceedings I received on active duty. While I was guilty of the charges and accept complete responsibility for my actions, I feel there were mitigating circumstances that were not fully appreciated at the time of my service.

Following a civil dispute between my former wife and I, which was later determined to be "mutual spousal abuse," I contacted her after I had been ordered to have no contact with her. I know it was wrong and I pleaded guilty in the Article 15 hearing but the emotional pain and hope of reconciliation were on my mind – I had hopes of salvaging my marriage. I also received an Article 15 punishment for having an inappropriate relationship with two women while legally separated and awaiting my divorce. While I recognize it was wrong from strictly a legal UCMJ aspect I think it was unfair given my wife was not under the same restrictions.

Following the two Article 15 proceedings, my security clearance was suspended and I was no longer able to do my job. The best course for me for me was to start over -- I had lost my wife and my job and just wanted a new start as quickly as possible

The breakup of my marriage was a traumatic and painful experience for me. I don't think the leaders of my command fully appreciated the impact this event had on me or my performance and actions. I have done well since leaving the Air Force – I graduated with degrees in chemistry and Modern Languages and Linguistics (appreciative of the language skills I learned in the military). I will soon finish my Ph.D. in chemistry. I've been productive member of the community, have remarried and now have a loving wife and son.

I have the utmost respect for the Air Force and admiration for those who serve. I truly enjoyed my work and wished I had finished my enlistment. I would like to change the past but it's not possible. I would ask that you give my case some thought and compassion commensurate with the circumstances I was going through.

I would have make this plea in person but it just isn't within our financial means for me to travel to the hearing.

Sincerely,



DEPARTMENT OF THE AIR FORCE
70th INTELLIGENCE WING (ACC)
FORT GEORGE G. MEADE, MARYLAND

22 Mar 01

MEMORANDUM FOR Amn

FROM: 32 IS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for **Misconduct, Minor Disciplinary Infractions and Involuntary Convenience of the Government, Conditions That Interfere With Military Service, Mental Disorders**. The authority for this action is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, Paragraph 5.49 and Section B, Paragraph 5.11. If my recommendation is approved, your service will be characterized as either honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are that:

- a. (1) Between on or about 6 April 2000 and 9 January 2001, you wrongfully had sexual intercourse with two different females not your wife, for which you received nonjudicial punishment on 6 February 2001.
- (2) On diverse occasions, between about 27 July 2000 and about 2 August 2000, you failed to obey a lawful order issued by Lieutenant Colonel _____ for which you received nonjudicial punishment on 21 August 2000.
- b. On or about 13 October 2000, you were diagnosed by Lt Co _____ as having Adjustment Disorder with Mixed Anxiety and a Personality Disorder as well as a Depressed Mood as described in the Diagnostic and Statistical Manual of Medical Disorders (DSM-IV). The mental disorder is so severe that your ability to function effectively in the military environment is significantly impaired. Your disorder is evidenced by your continued disobedience.

3. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached. The commander exercising SPCM 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 any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult **Captain** **at Andrews AFB, on 28 March 2001 at 1130 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 **29 March 2001** 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 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 **Bolling AFB, Physical Exams Section,** **at 0730 on 28 March 2001** with your medical records 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 32 IS orderly room or the Area Defense Counsel's office.

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

/s/ Commander

Attachments:

1. Supporting documents
 - a. AF Form 3070, dated 6 Feb 01 (5 pages)
 - b. AF Form 3070, dated 21 Aug 00 (4 pages)
 - c. Mental Health Evaluation, dated, 13 Oct 00 (2 pages)
2. Airman's Receipt of Notification Memorandum



DEPARTMENT OF THE AIR FORCE
70th INTELLIGENCE WING (ACC)
FORT GEORGE G. MEADE, MARYLAND

MAR 30 2001

MEMORANDUM FOR 70 IW/CC

FROM: 70 IW/JA

SUBJECT: Legal Review, Administrative Discharge

1. **Authority for Action:** I have reviewed the attached administrative discharge package in accordance with AFI 36-3208 and find it legally sufficient to support a finding that the Respondent, Amn [redacted] is subject to discharge for Misconduct (Minor Disciplinary Infractions) under AFI 36-3208, Chapter 5, Section H, Paragraph 5.49 and Involuntary Convenience of the Government, Conditions that interfere with Military Service, (Mental Disorders) under AFI 36-3208, Chapter 5, Section B, Paragraph 5.11. All further paragraph references are to AFI 36-3208 unless specifically stated otherwise.
2. **Respondent's Military Record:** Respondent has been on active duty since 27 May 98. He is not entitled to an administrative board hearing based on time in service, grade, or any other factor. He has no Enlisted Performance Reports.
3. **Respondent's Response:** Amn [redacted] consulted with counsel and has submitted a statement for your review. Amn [redacted] would like for you to consider discharging him under Honorable conditions instead of a General characterization.
4. **Analysis:**
 - a. **Basis and Propriety of Discharge:** The initiating commander has recommended Amn [redacted] separation based on Paragraph 5.49 and 5.11. Paragraph 5.49 authorizes the involuntary separation of airmen who engage in a pattern of misconduct involving violations of nonpunitive regulations or minor offenses under the UCMJ. According to the instruction, the subject misconduct will have ordinarily resulted in informal or formal counselings, letters of reprimand, or nonjudicial punishment under Article 15, UCMJ. Amn [redacted] has received two Article 15's and is currently awaiting civilian prosecution for a domestic dispute with his spouse. Because Amn [redacted] s pattern of misconduct involves recurrent minor UCMJ offenses, he may be lawfully separated pursuant to AFI 36-3208, paragraph 5.49. AFI 36-3208, paragraph 5.11 authorizes the involuntary separation of airmen who have a physical or mental disorder that is so severe that it significantly interferes with their ability to function in a military environment. The instruction requires that a recommendation for discharge, based on paragraph 5.11.1, Mental Disorders, be supported by a report of evaluation, prepared by a psychiatrist or clinical psychologist, that confirms the diagnosis of a disorder listed in the Diagnostic and Statistical

Manual of Medical Disorders (DSM-IV). As an additional prerequisite to recommending discharge, the Instruction requires that the report expressly conclude that the member's disorder is so severe that his or her ability to function effectively in a military environment is significantly impaired. On 13 Oct 00, Amn _____ was diagnosed by Lt Col _____ with an Adjustment Disorder with Mixed Anxiety and a Personality Disorder as well as a Depressed Mood. Lt Col _____ further stated that his mental disorder is so severe that his ability to function effectively in the military environment is significantly impaired.

b. Characterization of Discharge: According to paragraph 1.18.1, characterization of service as general is appropriate when significant negative aspects of an airman's conduct outweigh the positive aspects of his or her military record. Amn _____'s disobedience is a significant departure from accepted behavior in the military and consequently overshadows any identifiable positive aspects of his military record. Accordingly, characterization of Amn _____ service as general is appropriate.

c. Probation and Rehabilitation (P&R): I concur with the initiating commander that probation and rehabilitation is not appropriate for this airman. The squadron gave Amn _____ ample opportunity for rehabilitation. Amn _____ did not take advantage of those opportunities as shown by his repeated misconduct. There is no reason to believe that further rehabilitative efforts would be successful.

5. Options: You may:

- a. Retain the Respondent if you determine the evidence does not support discharge;
- b. Forward the discharge package to the 8AF/CC recommending an Honorable discharge;
- c. Order a General discharge; or
- d. Direct reinitiation of discharge processing to pursue an Under Other Than Honorable Conditions (UOTHC) discharge.

6. Recommendation: I recommend that you sign the attached letter directing Amn Martinez be discharged from the Air Force with a General discharge.

Staff Judge Advocate