

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:10%;">YES</td> <td style="width:10%;">No</td> <td>NAME OF COUNSEL AND OR ORGANIZATION</td> </tr> <tr> <td></td> <td align="center">X</td> <td></td> </tr> </table>		YES	No	NAME OF COUNSEL AND OR ORGANIZATION		X		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No	NAME OF COUNSEL AND OR ORGANIZATION							
	X								

MEMBER SITTING	REPORT TO THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A94.53	INDEX NUMBER A67.05	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 16 Jun 2011	CASE NUMBER FD-2009-00694	
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APPLICANT'S ISSUE AND THE BOARD'S DECISION AND RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISION 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.

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

FD-2009-00694

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.

ISSUE: Applicant received a General discharge for Misconduct—A pattern of Misconduct: Discreditable Involvement with Military of Civil Authorities

Applicant submitted no issues regarding the inequity or impropriety of his discharge. The applicant does submit that he understands the issues regarding his discharge and has taken to appropriate actions to ensure he does not make the same mistakes again. The record indicates the applicant received one Article 15, and one Vacation. His misconduct included disobeyed an order regarding installation curfew, failure to provide information upon request to a security forces patrolman, resisted being apprehended by a security forces patrolman, and driving under the influence. The Board opined that through these administrative actions, the applicant had ample opportunities to change his behavior. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board reviewed the entire record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge.

The 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, on September 7, 2005) 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.

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.

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.**

e. 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
f. NAME (Last, First, Middle Initial)			c. GRADE/RANK AT DISCHARGE		d. SOCIAL SECURITY NUMBER	
			E3/A1C			
g. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 (Forward notification of any change in address.)					e. ZIP 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)		<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION:
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	<input type="checkbox"/> OTHER (Explain)		

20090508

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 13. See instructions on Page 3.)
I would like to use my MGIB for school. I understand my actions regarding my discharge and have done the appropriate actions to ensure that I will not drink and drive. I have also been sober since the date I got pulled over for DUI.

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.)

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)
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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.

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

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.)	CASE NUMBER (Do not write in this space.)
a. SIGNATURE - REQUIRED (Applicant or person in item 11 above)	b. DATE SIGNED - REQUIRED (YYYYMMDD)
	20091110
	FD2009-00694

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

AFDRB BRIEF					
NAME (Last, First, MI):		SSN:	DOCKET # FD-2009-00694		COMPONENT: USAF
TYPE OF DISCHARGE: GENERAL	DISCHARGE FROM: DYESS AFB, TX	DISCHARGE DATE: 08 MAY 09		APPEALS FOR: UPGRADE DISCHARGE TO HONORABLE	
DOB/ ENLMT AGE: 14 AUG 87 18	DISCH AGE: 21	FORMER: A1C	HGH: SRA	B. CURRENT DOR: 14 AUG 07	C. TIME LOST: NONE
AFSC: 2W051 - MUNITIONS SYS JOURNEYMAN		DEP DT: 25 FEB 05		ASVAB SCORES:	
D. ART 15 / VAC: ART 15: 1 / VAC: 1	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): 30 AUG 05 - 30 APR 07 CANNON AFB 5 (INITIAL) 01 MAY 07 - 01 FEB 08 CANNON AFB 5 (CRO) 02 FEB 08 - 01 FEB 09 KUNSAN AB 2 (ANNUAL) REFERRAL					
G. AWARDS & DECS: AFAM, AFOUA, AFGCM, NDSM, GWOTSM, KDSM, AFOSSTR, AFTR					
EAD: 30 AUG 05	DAS: 31 MAR 09	H. TMS: 4 YRS 2 MOS 14 DAS		TAMS: 3 YRS 8 MOS 9 DAS	
APPLN (DD FORM 293) DTD: 10 NOV 09	DT/ INITIALS: 10MAR11/JLL	NPA/PA: NPA		BOARD REGION:	
RECORDS :	MPR:NO	ARMS: YES	STR: NO	ISSUES: YES	ATTACHMENTS: NO
AUTH FOR DISCHARGE : AFI 36-3208, PARA 5.50.1 (A PATTERN OF MISCONDUCT - DISCREDITABLE INVOLVEMENT WITH MILITARY OR CIVIL AUTHORITIES)					
ART 15; VAC; SCM; SPMC; GCM; ADDITIONAL:					
<p>(1) ART 15: 12 JAN 09 - (ART 92) DISOBEY A ORDER REGARDING INSTALLATION CURFEW & FAILED TO PROVIDE INFORMATION UPON REQUEST TO A SF PATROLMAN. (ART 95) RESISTED BEING APPREHENDED BY A SF PATROLMAN.</p> <p>(2) VAC: 29 APR 09 - (ART 111) DUI</p>					
EXAMINER'S NOTE:					
NOTES:					

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

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b. DATE SIGNED - REQUIRED (YYYYMMDD)

CASE NUMBER (Do not write in this space.)

FD2009-00694

20091110



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 7TH BOMB WING
DYESS AIR FORCE BASE, TEXAS

5 May 09

MEMORANDUM FOR A1C

FROM: 7 MUNS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for A Pattern of Misconduct - Discreditable Involvement With Military or Civil Authorities. The authority for this action is AFI 36-3208, paragraph 5.50.1. If my recommendation is approved, your service will be characterized as Honorable or General. I am recommending that your service be characterized as General (Under Honorable Conditions).
2. My reasons for this action are:
 - a. You did, on 13 Dec 08, at Osan Air Base, Republic of Korea, fail to obey a lawful general order in that you wrongfully violated curfew. You did, on 13 Dec 08, resist apprehension by SSgt [redacted] an armed forces policeman, a person authorized to apprehend you. You did, on 13 Dec 08, fail to obey a lawful order issued to you by SSgt [redacted] in that you refused to tell him your squadron of assignment. You did, on 13 Dec 08, wrongfully use provoking word to SSgt [redacted]. You did, on 13 Dec 08, threaten SSgt [redacted]. You told SSgt [redacted] "If you hit me with that I am going to fuck all of you up." For this misconduct you received Article 15 punishment, as evidenced by AF Form 3070A, dated 12 Jan 09.
 - b. You did, on 4 Apr 09, physically control a vehicle while drunk, for which your suspended reduction in rank was vacated, as evidenced by AF Form 366, dated 29 Apr 09.
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 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.
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 the Area Defense Counsel on 6 May 09 at 1030 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 8 May 09, at 1530 hours, 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 on 6 May 09 at 1500 hours, at the 7th Medical Group. You must report 15 minutes early.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFI 36-3208. A copy of AFI 36-3208 is available for your use in the orderly room.

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

Capt, USAF

Commander, 7 MUNS

Attachments:

1. Airman's Receipt of
Letter of Notification
2. AF Form 3070A, dated 12 Jan 09
3. AF Form 366, dated 29 Apr 09
4. Sworn Statements from AIC
SrA SrA
5. Abilene Police Department Arrest Report, Case 09-006044,
dated 4 Apr 09



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 7TH BOMB WING
DYESS AIR FORCE BASE, TEXAS

AFI 36-3208

6 May 09

MEMORANDUM FOR 7 BW/CC

FROM: 7 BW/JA

SUBJECT: Legal Review - A1C

1. I have reviewed the attached file pertaining to A1C and find it legally sufficient to support his discharge under AFI 36-3208, paragraph 5.50.1, A Pattern of Misconduct - Discreditable Involvement With Military or Civil Authorities.

2. PERSONAL DATA: A1C is 20 years old, married, and has one child. He is currently assigned to the 7th Munitions Maintenance Squadron as a Munitions Systems Journeyman (2W051). His TAFMSD is 3 Aug 05 and he began his current 6-year enlistment on 3 Aug 05. His duty performance ratings on the EPRs he has received to date, listed latest to earliest, are as follows: EPRs - 2, 5, 5

3. BASIS FOR ACTION:

a. A1C Allen did, on 13 Dec 08, at Osan Air Base, Republic of Korea, fail to obey a lawful general order in that he wrongfully violated curfew. He did, on 13 Dec 08, resist apprehension by SSgt an armed forces policeman. He did, on 13 Dec 08, fail to obey a lawful order issued to him by SSgt in that A1C refused to tell SSgt his squadron of assignment. He was, on 13 Dec 08, disrespectful in language to SSgt. He did, on 13 Dec 08, make a threatening statement to SSgt. For this misconduct he received Article 15 punishment, as evidenced by AF Form 3070A, dated 12 Jan 09.

b. He did, on 4 Apr 09, physically control a vehicle while drunk, for which his suspended reduction in rank was vacated, as evidenced by AF Form 366, dated 29 Apr 09.

4. MEMBER'S RESPONSE: A1C has waived his right to submit statements regarding this discharge action.

5. ERRORS OR IRREGULARITIES: None.

6. CHARACTERIZATION OF DISCHARGE: Under AFI 36-3208, Table 1.3, this member may be separated with an Under Other Than Honorable Conditions discharge. A1C would be entitled to have his case heard by an administrative discharge board if such a characterization were recommended. After reviewing all the relevant facts and circumstances, the squadron commander has recommended that A1C receive an Under Honorable Conditions (General) discharge. A General discharge is appropriate when significant negative aspects of an Airman's conduct or performance outweigh the positive aspects of the Airman's military record. A1C's record reflects a consistent and sustained pattern of misconduct that outweighs the positive aspects of his record. After reviewing A1C's overall negative aspects of conduct, I agree a General discharge is appropriate in this case.

7. PROBATION AND REHABILITATION: According to AFI 36-3208, Chapter 7, probation and rehabilitation may be possible for Airmen who have demonstrated a potential to serve satisfactorily; who have the capacity to be rehabilitated for continued military service; and for those whose retention on active duty in a probationary status is inconsistent with the maintenance of good order and discipline in the Air Force. A1C's continued misconduct and failure to respond to the various corrective efforts already taken have demonstrated neither a potential to serve satisfactorily nor a capacity to be rehabilitated. Retention of this member would be inconsistent with the maintenance of good order and discipline in the Air Force.

8. OPTIONS OF THE SEPARATION AUTHORITY: Your options in this case are:

- a. Retain the member in the Air Force.
- b. Discharge the member with a General discharge, with or without probation and rehabilitation.
- c. Recommend to 12 AF/CC that the Airman be separated with an Honorable discharge, with or without probation and rehabilitation, if you believe an Honorable discharge is appropriate.
- d. Direct this action be initiated under administrative board proceedings if you believe only an Under Other Than Honorable Conditions discharge can properly characterize A1C's service.

9. RECOMMENDATION: I recommend that you separate A1C with a General discharge, without the opportunity for probation and rehabilitation.

Maj, USAF
Acting Staff Judge Advocate

Attachment
Case File - A1C