

# 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;">NAME OF COUNSEL AND OR ORGANIZATION</td> <td style="width: 50%; padding: 2px;">ADDRESS AND OR ORGANIZATION OF COUNSEL</td> </tr> <tr> <td style="padding: 2px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;">X</td> </tr> </table> </td> <td style="padding: 2px;"></td> </tr> </table>		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;">X</td> </tr> </table>	YES	No		X				
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YES	No											
	X											

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

ISSUES	A94.55	INDEX NUMBER	A67.10 A50.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="padding: 2px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> <tr><td style="width: 20px; text-align: center; padding: 2px;">1</td><td style="padding: 2px;">ORDER APPOINTING THE BOARD</td></tr> <tr><td style="text-align: center; padding: 2px;">2</td><td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="text-align: center; padding: 2px;">3</td><td style="padding: 2px;">LETTER OF NOTIFICATION</td></tr> <tr><td style="text-align: center; padding: 2px;">4</td><td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td></tr> <tr><td colspan="2" style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td colspan="2" style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td colspan="2" style="padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE HEARING</td></tr> </table>	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	
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HEARING DATE	16 Jun 2011	CASE NUMBER	FD-2009-00699																	

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.

<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> 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**

**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—Minor disciplinary Infractions (Primary) and Failure in the Fitness Program (Secondary)

Applicant contends discharge was inequitable based on paragraph 5.65 and Table 1.3 of AFI 36-3208, Administrative Separation of Airmen, which states a member will receive an honorable discharge for failure in the fitness program. Based on paragraph 5.66.2 of AFI 36-3208, the service of airmen discharged for not meeting fitness standards will be characterized as honorable if the sole reason for separation is failure to meet fitness standards. His failure in the fitness program was the secondary reason for his discharge. The applicant's primary reason for discharge was misconduct, specifically minor disciplinary infractions. The records indicated the applicant received an Article 15, six Letters of Reprimand, and one Letter of Counseling. His misconduct included failure to maintain dorm room standards, failed to turn in Fitness Improvement Activity Log (AF Form 1475) (3x), failed fitness test (2x), signed AF Form 1475 in an area he was not authorized to sign, made a false official statement, and failed to go to duty on time. 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.

**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.**

a. **BRANCH OF SERVICE** (*X one*) ☒ **ARMY** ☐ **MARINE CORPS** ☐ **NAVY** ☒ **AIR FORCE** ☐ **COAST GUARD**

b. **NAME** (*Last, First, Middle Initial*)

c. **GRADE/RANK AT DISCHARGE**

d. **SOCIAL SECURITY NUMBER**

E-2/Airmen

e. **CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11** *(Forward notification of any change in address.)*

f. **TELEPHONE 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)*

20090428

4. **DISCHARGE CHARACTERIZATION RECEIVED** (*X one*)

☐ **HONORABLE**

☒ **GENERAL/UNDER HONORABLE CONDITIONS**

☐ **UNDER OTHER THAN HONORABLE CONDITIONS**

3. **UNIT AND LOCATION AT DISCHARGE OR SEPARATION**

3 SFS/ Elemndorf AFB AK, 99506

☐ **BAD CONDUCT** *(Special court-martial only)*

☐ **UNCHARACTERIZED**

☐ **OTHER** *(Explain)*

5. **BOARD ACTION REQUESTED** (*X one*)

☒ **CHANGE TO HONORABLE**

☐ **CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS**

☐ **CHANGE TO UNCHARACTERIZED**

*(Not applicable for Air Force)*

☐ **CHANGE NARRATIVE REASON FOR SEPARATION:**

6. **ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST** *(Continue in Item 13. See instructions on Page 3.)*

The type of discharge is not authorized by the applicable paragraphs according to AFI 36-3208.

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.)*

Table 1.3 Reasons and Authority for Involuntary Separation  
Letter

**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 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*)

20091108

PD2009-00699

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

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

15. 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 (CG-122)  
2100 Second Street, S.W. Room 5500  
Washington, DC 20593

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

<b>AFDRB BRIEF</b>							
NAME (Last, First, MI):			SSN:		DOCKET # <b>FD-2009-00699</b>		COMPONENT: <b>USAF</b>
TYPE OF DISCHARGE: <b>GENERAL</b>		DISCHARGE FROM: <b>ELMENDORF AFB, AK</b>		DISCHARGE DATE: <b>29 APR 09</b>		APPEALS FOR: <b>UPGRADE DISCHARGE TO HONORABLE</b>	
DOB/ ENLMT AGE: <b>15 NOV 87            19</b>		DISCH AGE: <b>21</b>		FORMER: <b>AMN</b>	HGH: <b>A1C</b>	B. CURRENT DOR: <b>27 FEB 09</b>	C. TIME LOST: <b>NONE</b>
AFSC: <b>3P051 - SECURITY FORCES JOURNEYMAN</b>				DEP DT: <b>16 NOV 06</b>		ASVAB SCORES:	
D. ART 15 / VAC: <b>ART 15: 1</b>		D. LOR, LOA, RIC, LOC: <b>LOR: 6 / LOC: 1</b>		E. SCM / SPCM / GCM: <b>NONE</b>		ADDITIONAL: (IE. CIVIL CONV, CDC) <b>NONE</b>	
F. RECORD OF SERVICE (EPR/ OPR, PAST TO PRESENT) : <b>13 MAR 07 - 12 NOV 08 ELMENDORF AFB 2 (INITIAL) REFERRAL</b>							
G. AWARDS & DECS: <b>AFOUA, NDSM, GWOTSM, AFTR</b>							
EAD: <b>13 MAR 07</b>		DAS: <b>31 AUG 07</b>		H. TMS: <b>2 YRS 5 MOS 14 DAS</b>		TAMS: <b>2 YRS 1 MOS 17 DAS</b>	
APPLN (DD FORM 293) DTD: <b>08 NOV 09</b>		DT/ INITIALS: <b>11MAR11/JLL</b>		NPA/PA: <b>NPA</b>		BOARD REGION:	
RECORDS :	MPR:NO	ARMS: YES	STR: NO	ISSUES: YES		ATTACHMENTS: YES	
AUTH FOR DISCHARGE : <b>AFI 36-3208, PARA 5.49 (MISCONDUCT: MINOR DISCIPLINARY INFRACTIONS) PRIMARY &amp; PARA 5.65 (FAILURE IN THE FITNESS PROGRAM) SECONDARY</b>							
ART 15; VAC; SCM; SPMC; GCM; ADDITIONAL:							
<div style="margin-left: 40px;"> <p>LOR: 16 JAN 08 - FAILED TO MAINTAIN DORM ROOM STANDARDS.</p> <p>LOC: 30 JUL 08 - FAILED TO FOLLOW INSTRUCTIONS TO TURN IN FITNESS IMPROVMENT ACTIVITY LOG (AF FORM 1475)</p> <p>LOR: 25 AUG 08 - FAILED TO TURN IN AF FORM 1475 &amp; FAILED YOUR FITNESS TEST.</p> <p>LOR: 28 SEP 08 - FAILE DTO TURN IN AF FORM 1475.</p> <p>LOR: 17 NOV 08 - FAILED TO MAINTAIN ACCEPTABLE PHYSICAL FITNESS READINESS.</p> <p>LOR: 09 FEB 09 - SIGNED AF FORM 1475 IN A AREA YOU WERE NOT AUTHORIZED TO SIGN &amp; MADE A FALSE STATEMENT REGARDING YOUR AF FORM 1475.</p> <p>ART 15: 27 FEB 09 - (ART 86) FAILED TO GO TO DUTY ON TIME.</p> </div>							
EXAMINER'S NOTE: NOTIFICATION MEMO, DATED 2 APR 09, PARA 2 CITES ADDITIONAL MISCONDUCT AS: MFR: TWICE FAILED A PHYSICAL FITNESS TEST ON TWO SEPARATE DATES. MFR: 02 MAY 08 - FAILED A PHYSICAL FITNESS TEST.							
NOTES:							

**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

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

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b. NAME <i>(Last, First, Middle Initial)</i>	c. GRADE/RANK AT DISCHARGE E-2/Airmen			d. SOCIAL SECURITY NUMBER	
e. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON NAMED IN ITEM 11 <i>(Forward notification of any change in address.)</i>				f. TELEPHONE NUMBER <i>(Include Area Code)</i>	
				g. E-MAIL	
				h. FAX NUMBER <i>(Include Area Code)</i>	

2. DATE OF DISCHARGE OR SEPARATION <i>(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)</i>  20090428	4. DISCHARGE CHARACTERIZATION RECEIVED <i>(X one)</i>	5. BOARD ACTION REQUESTED <i>(X one)</i>
	<input type="checkbox"/> HONORABLE	<input checked="" type="checkbox"/> CHANGE TO HONORABLE
	<input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS	CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
	<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS	CHANGE TO UNCHARACTERIZED <i>(Not applicable for Air Force)</i>
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION 3 SFS/ Elemndorf AFB AK, 99506	<input type="checkbox"/> BAD CONDUCT <i>(Special court-martial only)</i>	CHANGE NARRATIVE REASON FOR SEPARATION:
	<input type="checkbox"/> UNCHARACTERIZED	
	<input type="checkbox"/> OTHER <i>(Explain)</i>	

**6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST** *(Continue in Item 13. See instructions on Page 3.)*

The type of discharge is not authorized by the applicable paragraphs according to AFI 36-3208.

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10.a. COUNSEL/REPRESENTATIVE <i>(if any)</i> NAME <i>(Last, First, Middle Initial)</i> AND ADDRESS <i>(See Item 10 of the instructions about counsel/representative.)</i>	b. TELEPHONE NUMBER <i>(Include Area Code)</i>
	c. E-MAIL
	d. FAX NUMBER <i>(Include Area Code)</i>

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<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 <i>(Specify)</i>
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 <i>(Applicant or person in Item 11 above)</i>			b. DATE SIGNED - REQUIRED <i>(YYYYMMDD)</i>  20091108		
			CASE NUMBER <i>(Do not write in this space.)</i>  PD2009-00699		

**13. CONTINUATION OF ITEM 6, ISSUES (if applicable)**

**14. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (if applicable)**

**15. 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 (CG-122)  
2100 Second Street, S.W. Room 5500  
Washington, DC 20593

October 24, 2009

To Air Force Review Boards Agency,

I am writing to you in regards to my separation from the Air Force on April 28, 2009. I was discharged under AFI 36-3208, paragraphs 5.49 and 5.65. I was given an Under Honorable Conditions (General) discharge. In AFI 36-3208, Table 1.3. Reasons and Authority for Involuntary Separation, Paragraph 5.65 is designated as an Honorable or Entry-level discharge. Given my length of time in the Air Force, an Entry-Level discharge is not applicable. Though I was also discharged under 5.49 which does allow for Under Honorable Conditions (General), this is incompatible with 5.65. The notification memorandum specifically cites both paragraphs, not one or the other.

This means that by this regulation, the Air Force is obligated to give me an Honorable discharge rather than an Under Honorable Conditions (General). In light of this, I respectfully request that the Air Force fulfill its obligation spelled out in AFI 36-3208 and upgrade my Under Honorable Conditions (General) to an Honorable discharge.

Respectfully,





DEPARTMENT OF THE AIR FORCE  
PACIFIC AIR FORCES

APR 2 2009

MEMORANDUM FOR AMN

, 3 SFS

FROM: 3 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions and failure in the fitness program. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraphs 5.49 and 5.65. If my recommendation is approved, your service will be characterized as Honorable or Under Honorable Conditions (General). I am recommending a General service characterization.

2. My reasons for this action are:

a.) The following misconduct has been considered for paragraph 5.49.

1. On 3 Feb 09, you made a false official statement in regards to turning in your AF Form 1975 in a timely manner. In addition, you signed in the place of the Physical Training Leader (PTL) knowing you were not authorized to do so. For these offenses you received a Letter of Reprimand (LOR), dated 9 Feb 09.

2. On or about 1 Nov 08 and on or about 31 Dec 08, without authority, Amn failed to go at the time prescribed to his appointed place of duty. For this offense, he received an Article 15, dated 27 Feb 09. The punishment consisted of a reduction to the grade of Airman and 15 days extra duty.

3. On 28 Sep 08, you were derelict in the performance of your duties in that you failed to turn in your AF Form 1975s as directed by your supervisor. For this offense you received a LOR, dated 29 Sep 08.

4. On 25 Aug 08, you were derelict in the performance of your duties in that you failed to turn in your AF Form 1975s. In addition, you failed to abide by the rules set forth by the fitness program to work out for a minimum of 1 hour and have a PTL sign as proof of your actions. For these offenses, you received an LOR, dated 25 Aug 08.

5. On 30 Jul 08, you were derelict in the performance of your duties in that you failed to turn in your AF Form 1975s for three months. For this offense, you received a Letter of Counseling (LOC), dated 30 Jul 08.

6. On 16 Jan 08, you failed to obey a lawful order and failed to maintain government quarters by failing to keep your dormitory room up to proper standards and living conditions. For these offenses, you received an LOR, dated 16 Jan 08.

b) The following fitness failures have been considered for paragraph 5.65.

1. On 29 Jan 09, you failed your physical fitness test by scoring in the poor category with a 59.25.

2. On 29 Oct 08, you failed your physical fitness test by scoring in the poor category with a 45.25.

3. On or about 6 Nov 08 you received an LOR for failing to maintain acceptable physical fitness readiness since Apr 07. This document was used to establish an Unfavorable Information File (UIF), dated 17 Nov 08.

4. On 31 Jul 08, you failed your physical fitness test by scoring in the poor category with a 18.35. For this failure you received an LOR, dated 25 Aug 08.

5. On 2 May 08, you failed your physical fitness test by scoring in the poor category with a 24.55.

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 a higher authority will decide whether you are discharged or retained in the Air Force. 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 legal counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult, the Area Defense Counsel Capt 552-3887, at Bldg 10480, Rm 330 on 3 Apr 09 at 1100. 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 within three duty days after the date of this letter unless you request and receive an extension for good cause shown. I will forward any statements you provide 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 medical examinations. You must report, with your medical records, to the 3rd Aerospace Medicine Squadron, Bldg 8497, at 0840 on 3 Apr 09 for your first exam, at which time you will be notified of the time for your second exam. Please bring Medical Assessment Form (AF Form 2697) for your appointment. You are to refrain from

alcohol for 72 hours, and refrain from the use of tobacco products for 6 hours, prior to examination. Bring eyeglasses (and contact solution if using contacts) if applicable. You must be in uniform for these examinations.

8. You have been scheduled for a Transition Assistance Program briefing. You must report to the Family Support Center at 1500 on 3 Apr 09. You must be in uniform for all appointments.

9. 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 <http://www.e-publishing.af.mil/>.

USAF

7 Attachments:

1. AF Form 3070, 27 Feb 09, w/ attchs
2. Letter of Reprimand, dtd 9 Feb 09
3. AF IMT 1058, 23 Dec 08, w/ attchs
4. AF IMT 1058, 17 Nov 08, w/ attchs
5. LOC, 30 Jul 08
6. LOR, 16 Jan 08
7. Fitness Documents



DEPARTMENT OF THE AIR FORCE  
PACIFIC AIR FORCES

APR 13 2009

MEMORANDUM FOR 3 WG/CC

FROM: 3 WG/JA

SUBJECT: Legal Review - Administrative Discharge, Amn  
3 SFS

1. Lt Col 3 SFS/CC, recommends that Amn be involuntarily separated from the Air Force with an Under Honorable Conditions (General) service characterization, pursuant to AFI 36-3208, paragraphs 5.49 and 5.65, specifically, minor disciplinary infractions and failure in the fitness program. The reasons set forth in the Commander's Recommendation for Discharge Letter, with accompanying documentation, are legally sufficient to support discharge action under these provisions of the instruction. Prior to final discharge, Amn will be medically cleared for separation.

2. **FACTS:** The discharge is based upon events occurring during Amn current enlistment, which began on 13 Mar 07, and are detailed below:

a. The following misconduct has been considered for paragraph 5.49.

1. On 3 Feb 09, Amn made a false official statement in regards to turning in his AF Form 1975 in a timely manner. In addition, Amn signed in the place of the Physical Training Leader (PTL) knowing he was not authorized to do so. For these offenses he received a Letter of Reprimand (LOR), dated 9 Feb 09.

2. On or about 1 Nov 08 and on or about 31 Dec 08, without authority, Amn failed to go at the time prescribed to his appointed place of duty. For this offense, he received an Article 15, dated 27 Feb 09. The punishment consisted of a reduction to the grade of Airman and 15 days extra duty.

3. On 28 Sep 08, Amn was derelict in the performance of his duties in that he failed to turn in his AF Form 1975s as directed by his supervisor. For this offense he received an LOR, dated 29 Sep 08. This document was placed in the member's already existing UIF.

4. On 25 Aug 08, Amn was derelict in the performance of his duties in that he failed to turn in his AF Form 1975s. In addition, he failed to abide by the rules set forth by the fitness program to work out for a minimum of 1 hour and have a PTL sign as proof of his

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actions. For these offenses, he received an LOR, dated 25 Aug 08. This document was placed in the member's already existing UIF.

5. On 30 Jul 08, Amn                      was derelict in the performance of his duties in that he failed to turn in his AF Form 1975s for three months. For this offense, he received a Letter of Counseling (LOC), dated 30 Jul 08.

6. On 16 Jan 08, Amn                      failed to obey a lawful order and failed to maintain government quarters by failing to keep his dormitory room up to proper standards and living conditions. For these offenses, he received an LOR, dated 16 Jan 08.

b. The following fitness failures and documentation have been considered for paragraph 5.65.

1. On 29 Jan 09, Amn                      failed his physical fitness test by scoring in the poor category with a 59.25.

2. On or about 6 Nov 08 Amn                      received an LOR for failing to maintain acceptable physical fitness readiness since April 2007. This document was used to establish a Unfavorable Information File (UIF), dated 17 Nov 08

3. On 29 Oct 08, Amn                      failed his physical fitness test by scoring in the poor category with a 45.25.

4. On 31 Jul 08, Amn                      failed his physical fitness test by scoring in the poor category with a 18.35. He received an LOR, dated 25 Aug 08. This document was placed in the member's already existing UIF.

5. On 2 May 08, Amn                      failed his physical fitness test by scoring in the poor category with a 24.55.

3. **OTHER MATTERS:** N/A

4. **MEMBER'S RESPONSE:** Amn                      consulted counsel, and on 6 Apr 09 waived his right to submit matters for your consideration.

5. **ANALYSIS:**

a. Appropriateness of Discharge. Pursuant to AFI 36-3208, paragraph 5.49, an Airman is subject to discharge for minor disciplinary infractions when the Airman fails to comply with non-punitive regulations or commits minor offenses under the UCMJ. Amn                      has committed several disciplinary infractions, to include, making false official statements, failing to report to duty on time, failing to turn in the proper documentation concerning his physical fitness, and failing to keep his government quarters up to standards. Furthermore, according to AFI 10-248, paragraph 8.2.6, commanders will make a discharge or retention recommendation to the Installation Commander when an individual remains in the poor fitness category for a

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continuous 12-month period or receives four poor fitness assessments in a 24-month period. Amn has failed his physical fitness test four times within a 10 month period. He was enrolled in the Fitness Improvement Program and the Body Composition Improvement Program. Amn received multiple administrative correction tools for motivation, but his failure to put forth the effort and inability to achieve a passing physical fitness test score is grounds for administrative separation.

b. Characterization of Service. Pursuant to AFI 36-3208, paragraph 1.18, a general service characterization is warranted if an Airman's service has been honest and faithful, but significant negative aspects of the Airman's conduct or performance of duty outweigh the positive aspects. An honorable service characterization is warranted if the quality of the Airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when the Airman's service is otherwise so meritorious that any other characterization would be inappropriate. In this case, Amn has received one Article 15, six LORs, one LOC, and establishment of an Unfavorable Information File (UIF). In addition, AFI 36-3208, paragraph 5.66.2, the service of Airmen discharged for not meeting fitness standards will be characterized as honorable if the sole reason for separation is the failure to meet fitness standards. In this case, there is an additional basis for discharge aside from his failure to meet fitness standards. Therefore, other service characterizations are authorized. His actions, specifically the nature of his misconduct, represent significant negative aspects of conduct and performance that outweigh the positive aspects of his Air Force service. Amn service has not been honorable; therefore, a general characterization is warranted.

c. Probation and Rehabilitation (P&R). Pursuant to AFI 36-3208, Chapter 7, P&R should be allowed for Airmen who have demonstrated a potential to serve satisfactorily, have the capacity to be rehabilitated, and whose retention on active duty in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. Actual and measured success requires the effort and dedication of the individual. Amn has been provided ample opportunity and time to pass his physical fitness test and correct his subpar behavior, but has failed to do so. Amn has failed four fitness tests in the past 10 months. Lt Col does not believe expending further resources toward retaining Amn will prove successful in helping him reach Air Force standards. Lt Col is opposed to P&R and I concur with his recommendation. However, if after reviewing this package, you are convinced that Amn has the potential to meet standards, P&R for 6-12 months would be a preferable option to either retention or an honorable characterization.

6. **OPTIONS:** You may take one of the following actions in this case:

- a. Direct this action be discontinued and Amn be retained, or;
- b. Forward this case file to the 11 AF/CC if you believe Amn should be separated from the Air Force with an honorable service characterization, with or without P&R;
- c. Direct Amn be separated from the Air Force with an under honorable conditions (general) service characterization, with or without P&R.

d. Direct Amn case be processed under Chapter 6, Section C (Board Hearing), if you determine Amn misconduct may warrant an under other than honorable conditions (UOTHC) service characterization.

7. **RECOMMENDATION:** I recommend separating Amn from the Air Force, pursuant to AFI 36-3208, paragraphs 5.49 and 5.65, for minor disciplinary infractions and failure in the fitness program with an Under Honorable Conditions (General) service characterization without P&R.

Chief, Military Justice

USAF

I concur.

Staff Judge Advocate

~~USAF~~

Attachment:  
Case File (Amn )