

PERSONAL APPEARANCE		X RECORD REVIEW				
NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO					
	X					
MEMBERS SITTING		HON	GEN	UOTEC	OTHER	DENY
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
[REDACTED]						X
ISSUES A94.05	INDEX NUMBER A67.70	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 01 02 21		CASE NUMBER FD01-00024				
REMARKS						
Case heard at Washington, DC.						
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.						
SIGNATURE OF RECORDER			SIGNATURE OF BOARD MEMBER			
[REDACTED]			[REDACTED]			
TO:			FROM:			
SAFMBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742			SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3 RD FLOOR ANDREWS AFB, MD 20762-7002			

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 to exercise this right.

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

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither evidence of record nor that provided by the applicant substantiates an inequity or impropriety which would justify a change of discharge.

The applicant's issue is listed in the attached brief.

Issue. Applicant contends discharge was inequitable because it was too harsh—that he admitted to having possession of the marijuana, but did not use any of the substance. The records indicated the applicant received an Article 15 for wrongfully using marijuana. There was also a statement to the investigators signed by the applicant saying he had smoked some marijuana from a pipe. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

CONCLUSIONS: 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 that 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, thus the applicant's discharge should not be changed.

Attachment:
Examiner's Brief

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

(Former AB) MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 97/08/28 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 77/02/28. Enlmt Age: 17 9/12. Disch Age: 20 6/12. Educ: HS DIPL. AFQT: N/A. A-76, E-54, G-41, M-70. PAFSC: 1T131 - Aircrew Life Support Apprentice. DAS: 95/12/30.

b. Prior Sv: AFRes 94/12/27 - 95/08/29 (8 months 3 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 95/08/30 for 4 yrs. Svd: 1 Yrs 11 Mo 29 Das, all AMS.

b. Grade Status: AB - 97/07/31 (Article 15, 97/07/31)
AMN TO A1C - (EPR Indicates): 95/08/30-97/04/29

c. Time Lost: none.

d. Art 15's: (1) 97/07/31, Altus AFB, OK - Article 112a. You, did, between o/a 13 Jun 97 and o/a 14 Jun 97, wrongfully use marijuana. Rdn to AB, forfeiture of \$250.00 pay. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: 95/08/30 97/04/29 Altus AFB 5 (Initial)
(Discharged from Altus AFB)

h. Awards & Decs: AFTR, NDSM, AFOUA.

i. Stmt of Sv: TMS: (2) Yrs (8) Mos (2) Das
TAMS: (1) Yrs (11) Mos (29) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 00/11/29.
(Change Discharge to Honorable)

Issue 1: I admitted to having possession of the marijuana, however, I did not use any of the substance. I tested negative when I took a urine test for any types of narcotics in my system. I admitted to making a mistake but felt I should have not been punished so severly. I am asking to have my discharge

FD01-00024

updated to honorable to be able to take advantage of schooling and other Veteran Benefits.

ATCH

1. DD Form 214.
2. NA Form 13046.

01/01/22/ia

DEPARTMENT OF THE AIR FORCE
97th Air Mobility Wing (AETC)
Altus Air Force Base, Oklahoma

MEMORANDUM FOR 97 AMW/CC

FROM: 97 AMW/JA

SUBJECT: Legal Review of Administrative Discharge Action-[REDACTED]

1. ACTION: The discharge action regarding [REDACTED] has been reviewed and found to be legally sufficient. His commander, [REDACTED] ARS/CC, initiated discharge action under the provisions of AFI 36-3208, paragraph 5.54, drug abuse. The commander recommends a general discharge.

2. BASIS: The basis for the respondent's separation is his wrongful use of marijuana. In his statement, the subject admitted that he purchased \$5.00 worth of marijuana, separated the seeds and stems in anticipation of smoking the marijuana, and later used a pipe to smoke it. For this misconduct the respondent received Nonjudicial Punishment, (evidenced by AF Form 3070, dated 24 Jul 97).

3. PERSONAL DATA: [REDACTED] is a 20 year old Life Support Apprentice Specialist who has completed 1 year, 11 months of his first enlistment. His AQE scores are: Admin - 76; Elect - 54; Gen - 41; Mech - 70. His file contains one EPR, an overall "5." He has received the following awards and decorations: National Defense Service Medal, AF Training Ribbon.

4. MEMBER'S RESPONSE: After consulting appointed counsel [REDACTED] declined to submit any statements for your consideration.

5. DISCUSSION: A basis for discharge exists under AFI 36-3208, paragraph 5.54.

a. The commander recommended a discharge after reviewing the respondent's personnel records and taking into account his drug use as evidenced by nonjudicial punishment for illegal use of marijuana.

b. Paragraph 5.55.2.1 of the AFI allows the respondent to attempt to establish the seven criteria necessary for retention. The burden of proving that retention is warranted rests with the member. [REDACTED] has not submitted any evidence to prove that he meets any of these seven factors. If you find that any of the seven factors have not been established, you must direct that he be discharged.

The criteria are:

- (1) That drug abuse is a departure from the member's usual and customary behavior.
- (2) Drug abuse occurred as a result of drug experimentation [a drug experimenter is defined as one who has illegally or improperly used a drug for reasons of curiosity, peer pressure, or other similar reasons].
- (3) Drug abuse does not involve recurring incidents, other than drug experimentation as defined above.
- (4) The member does not desire to engage in or intend to engage in drug abuse in the future.
- (5) Drug abuse under all circumstances is not likely to recur.
- (6) Under the particular circumstances of the case, the respondents' continued service in the Air Force is consistent with the interest of the Air Force in maintaining good order and discipline, leadership, and morale.
- (7) Drug abuse did not involve drug distribution.

c. Since [REDACTED] waived his right to submit matters for your consideration, he has failed to prove that his retention on active duty is warranted. As the factors for retention have not been established, you must direct that [REDACTED] be discharged under the terms of the instruction.

d. Discharges for drug abuse should normally be under other than honorable conditions. The available evidence in this case, however, taking into account the respondent's relative youth and inexperience and his heretofore faithful service, warrant a general discharge characterization. Probation and Rehabilitation under Chapter 7 of the instruction are not available in drug abuse cases.

e. The procedures involved and the basis for this action are in compliance with applicable law and directives. Although a copy of the medical examination is not in the file at this time, paragraph 6.11 states processing will not be delayed to wait for this report.

6. OPTIONS: As the discharge authority, you have the following options:

- a. Retain [REDACTED] on active duty.
- b. Direct that [REDACTED] be discharged from the Air Force with a general discharge

c. Recommend to the 9 AF/CC that [REDACTED] be separated from the Air Force with an honorable discharge if you believe [REDACTED] record has been so meritorious that any other characterization would be clearly inappropriate.

d. Direct that the package be reinitiated with a service characterization of under other than honorable conditions, and offer the respondent a discharge board.

7. RECOMMENDATION: I recommend that you direct [REDACTED] be separated **from** the service with a general discharge for drug abuse.

[REDACTED]

Deputy Staff Judge Advocate

I concur.

[REDACTED]

Staff Judge Advocate

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND
ALTUS AIR FORCE BASE, OKLAHOMA 73523

15 Aug 97

MEMORANDUM FOR [REDACTED]

FROM: 55 ARS/CC

SUBJECT: Notification Letter

1. I am recommending your discharge from the United States Air Force for drug abuse. The authority for this action is **AFPD 36-32** and **AFI 36-3208**, paragraph **5.54**. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reason for this action is: At or near Altus, Oklahoma, between on or about 13 Jun 97 and on or about 14 Jun 97, you wrongfully used marijuana. For this misconduct you received an Article 15 and administrative discharge was initiated.

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 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 funds may be subject to recoupment.

3. 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 [REDACTED] at Building 52 on 15 Aug 97 at 1530. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 20 Aug 97 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. 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.

6. You have been scheduled for a medical examination. You must report to the base hospital, physical exams, at 0800 on 19 Aug 97

7. 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 in the unit orderly room.

- 8. Execute the attached acknowledgment and return it to me immediately.



Atchs

AF Form 3070, dtd 24 Jul 97