

PERSONAL APPEARANCE		X RECORD REVIEW				
NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO					
	X					
MEMBERS SITTING		HON	GEN	UOTBC	OTHER	DENY
						X
						X
						X
						X
						X
						X
ISSUES A92.01, A92.15, A92.21, A94.53	INDEX NUMBER A67.70	1 ORDER APPOINTING THE BOARD				
		2 APPLICATION FOR REVIEW OF DISCHARGE				
		3 LETTER OF NOTIFICATION				
		4 BRIEF OF PERSONNEL FEE				
		COUNSEL'S RELEASE TO THE BOARD				
		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE				
		TAPE RECORDING OF PERSONAL APPEARANCE HEARING				
REMARKS						
Case heard at 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.						
SIGNATURE OF RECORDER			SIGNATURE OF BOARD PRESIDENT			
[REDACTED]			[REDACTED]			
SAF/MIBR 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 issues are listed in the attached brief.

Issue 1. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance reports, college work and other information contained in the records. The records indicated the applicant received an Article 15 for wrongfully using marijuana, and tested positive for marijuana a second time. The Board opined 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. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

Issue 2 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well. However, no inequity or impropriety in his discharge was found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

Issue 3. 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 February 9, 1996) 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.

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 A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 99/12/16 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 70/08/09. Enlmt Age: 25 3/12. Disch Age: 29 4/12. Educ: HS DIPL. AFQT: N/A. A-84, E-77, G-72, M-67. PAFSC: 2A452 - Aircraft Communications and Navigation Systems Journeyman. DAS: 96/09/03.

b. Prior Sv: AFRes 95/12/04 - 96/01/23 (1 month 20 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enld as A1C 96/01/24 for 4 yrs. Svd: 3 Yrs 10 Mo 23 Das, all AMS.

b. Grade Status: A1C - 99/12/02 (Article 15, 99/12/02)
SRA - 98/05/24

c. Time Lost: none.

d. Art 15's: (1) 99/12/02, Grand Forks AFB, ND - Article 112a. You did, between o/a 25 Oct 99 and o/a 2 Nov 99, wrongfully use marijuana. Rdn to A1C. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: 96/01/24 97/07/15 Grand Forks AFB 5 (HAF Di)
97/07/16 98/07/15 Grand Forks AFB 5 (Annual
98/07/16 99/07/15 Grand Forks AFB 5 (Annual
(Discharged from Grand Forks AFB)

h. Awards & Decs: AFTR, AFEM, AFOUA, AFGCM.

i. Stmt of Sv: TMS: (4) Yrs (0) Mos (13) Das
TAMS: (3) Yrs (10) Mos (23) Das

4. BASIS ADVANCED FOR REVIEW: Appln DD Fm 293) dtd 01/01/15.
(Change Discharge to Honorable)

Issue 1: I am writing this letter to request an upgrade of my 15 December 1999 discharge from the United States Air Force.

I joined the military to see the world and to serve my country. As a communication and navigation systems technician, I accomplished those goals. I changed eight landing gear tires on a KC-135 tanker in the Saudi Arabian desert. Unfortunately, the aircraft had run off the runway into a ditch. I helped get that jet out. I changed nose landing gear lights on the flightline at Grand Forks Air Force Base in North Dakota when it was fifty degrees below zero. I called flight controls in Sicily. I fixed radio and radar systems on jets ready to launch to accomplish real world sorties in Spain.

My military records are exemplary. My final evaluation and performance report was a "fire wall five." I attended college; achieving the needed credits to receive my Community College of the Air Force degree. I coached squadron basketball. The sacrifices and hard work I gave the military were well worth it.

My sacrifices were many. Most notably holidays with my family and friends in Cincinnati.

I had begun processing for an honorable discharge date of December 7, 1999, when I was put on administrative hold. Nine days later I was given a general discharge.

My military records show an individual who served his country honorably. I present these as well as other documents for your study. Among the enclosed documents is a resume. It will state that I am assistant librarian at The ----- newspaper. I work part-time at ----- with children and teens. I am a participant in the Volunteer Income Tax Assistance program at the ----- . I am secretary of my guild. I am a member of the American Legion and a contributor to other causes and organizations. Finally, I have begun to take college classes.

My college is being paid out of my pocket. An upgrade to my discharge would again enable me to use the Montgomery GI Bill. I contributed to the GI Bill and did not use it during my enlistment so it would be available to me now.

It is not available to me now. If it were, I would be in a much better educational position. I would be able to take more classes, accelerating my graduation from the University of ----- . My ultimate goal of law school would be closer to my reach.

Again, I implore you to upgrade my discharge from the United States Air Force to honorable. An honorable characterization would better reflect my term of service. Thank you.

ATCH

1. Letter to Discharge Review Board.
2. DD Form 214.
3. Resume.
4. Probationary Employee Evaluation Form.
5. Three Enlisted Performance Reports.
6. Two Performance Evaluations.
7. Two Letters of Recommendation.

FDO1-00061

8. Technical School Diploma.
9. Three College Transcripts.
10. Award Certificate.
11. News Clippings.
12. Discharge Correspondence.
13. Personnel Report.
14. Article 15.
15. Urinalysis Results.

01/03/02/ia



DEPARTMENT OF THE AIR FORCE
 HEADQUARTERS 319TH AIR REFUELING WING (AMC)
 GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

13 December 99

MEMORANDUM FOR 319 ARW/CC

FROM: 319 ARW/JA

SUBJECT: AFI 36-3208 Discharge Legal Review - [REDACTED] (319 AGS) ~~CC~~

1. I reviewed and found legally sufficient the attached AFI 36-3208 discharge package, contingent upon the inclusion of a medical report clearing the respondent for separation. The respondent is eligible for separation per AFI 36-3208, paragraph 5.54 (drug abuse), and should be separated with a general discharge.

2. 319 AGS/CC initiated this action on 9 Dec 99 because the respondent willfully committed the following offenses:

- a. Between on or about 25 Oct 99 and on or about 2 Nov 99, he wrongfully used marijuana.
- b. On or about 15 Nov 99, for the second time, he tested positive for Marijuana during a urine consent test.

3. The respondent is subject to discharge per AFI 36-3208, paragraph 5.54 (drug abuse). 319 AGS/CC recommends a general discharge without probation and rehabilitation.

4. The respondent is 29 years old and began his first and only four-year enlistment on 24 Jan 96. He has received three EPRs, which rated him an overall 5, 5 and 5. The respondent waived his right to consult with counsel and waived his right to submit a statement on his own behalf.

5. Since this is a notification case, the respondent may receive only an honorable or general discharge, unless you choose to refer this case to a discharge board. The respondent's repeated wrongful use of marijuana is a significant negative aspect of his service record that outweighs any period of satisfactory duty performance. A1C [REDACTED] has proven that he cannot live up to the standards expected of a member of the Air Force and that he should be discharged. He has tested positive for Marijuana twice. The only time a member who abuses drugs may be retained on active duty is if the member receives a waiver by meeting seven criteria outlined in para. 5.55.2.1: 1) drug abuse is a departure from usual behavior; 2) drug abuse occurred as a result of experimentation; 3) drug abuse does not involve recurring incidents; 4) member does not desire or intend to engage in drug abuse again; 5) drug abuse occurred under circumstances unlikely to occur again; 6) the member's continued presence in the Air Force is consistent with good order, discipline and morale; 7) drug abuse did not involve distribution. The General Court-Martial Convening Authority is the approval authority for such waivers. In this case, the respondent does not meet the criteria, the unit commander does not support a waiver request, and we do not recommend one. His illegal activities warrant a general discharge. No substantive or procedural errors materially prejudice the respondent's rights in this case.

Attorney client privilege material and/or attorney work product.

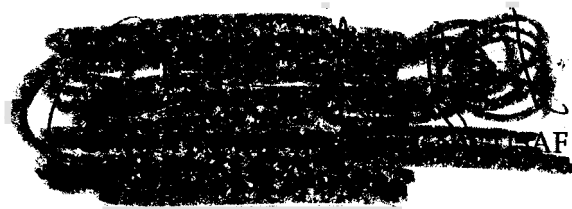
This document was prepared in direct or indirect anticipation of litigation. Not for release or transfer outside of the Air Force without specific approval of the originator or higher authority. Not subject to discovery or release under P.L. 95-502 (5 USC 552).

6. If you determine that the allegations against the respondent support discharge and that he should be discharged, you would normally decide whether or not his discharge should be suspended for a period of probation and rehabilitation (P&R). In this case, however, P&R is not available for a member discharged for drug abuse, per para. 7.2.6.

7. As SPCM separation authority, you may:


- a. Recommend retaining the respondent by requesting a waiver from the GCM;
- b. Approve the respondent's separation with a general discharge without probation and rehabilitation;
- c. Forward the case to 15AF/CC recommending separation with an honorable discharge without probation and rehabilitation; or
- d. Direct reinitiation of the action if you determine that an under other than honorable conditions discharge is the only appropriate service characterization in this case.

We recommend you approve the respondent's separation with a general characterization without P&R.



[Redacted signature block]

I concur



[Redacted signature block]



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 319TH AIR REFUELING WING (AMC)
GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

FD01-00061

09 DEC 1999

MEMORANDUM FOR [REDACTED]

FROM: 319 AGS/CC

SUBJECT: Notification Memorandum

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 in accordance with 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.

My reasons for this action are:

a. Between on or about 25 Oct 99 and on or about 2 Nov 99, you did wrongfully use marijuana. For this misconduct, you received an Article 15 dated 2 Dec 99. Your punishment consisted of reduction to Airman First Class. (Attachment A)

b. On or about 15 Nov 99, you tested positive for Marijuana from a urine consent test. (Attachment B)

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 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 will probably be denied enlistment in any component of the armed forces.

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. You have been scheduled an appointment at the Office of the Area Defense Counsel at Building 216 on N/A at _____ hours. You may consult civilian counsel at your own expense. waived counsel

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 12 Dec at 1315 hours unless you request and receive an extension for good cause shown. I will send them to the separation authority.

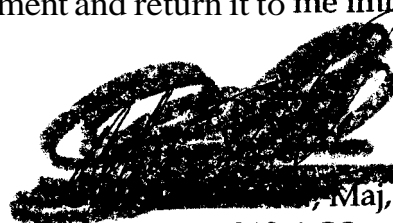
6. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.

7. You have been scheduled for a medical examination. You must report to the 319th Medical Group on _____ at _____ hours for the examination. N/A 3 Completed Prior (2 Dec 99)

8. Deliver to me immediately your military identification card and those of your dependents. I have requested that temporary identification cards be issued IAW AFI 36-3026(I), paragraph 4.2. You will report to me by COB 10 Dec 99, to verify that issuance of Temporary Identification Card(s) has been accomplished.

9. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A Privacy Act statement is attached. A copy of AFI 36-3208 is available for your use in your squadron orderly room.

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


_____, Maj, USAF
Commander, 319 AGS

Attachments:

1. Privacy Act Statement
2. Supporting Documents
 - a. Article 15 dated 2 Dec 99
 - b. Positive Urinalysis Result Letter dated 2 Dec 99
3. Respondent's Data
4. Personnel Data