

		PERSONAL APPEARANCE	X RECORD REVIEW						
<table border="1"> <tr> <td>COUSL</td> <td>NAME OF COUNSEL AND OR ORGANIZATION</td> </tr> <tr> <td>YES</td> <td>NO</td> </tr> <tr> <td></td> <td>X</td> </tr> </table>		COUSL	NAME OF COUNSEL AND OR ORGANIZATION	YES	NO		X	ADDRESS AND OR ORGANIZATION OF COUNSEL	
COUSL	NAME OF COUNSEL AND OR ORGANIZATION								
YES	NO								
	X								

	MEMBERS SITTING				
	HON	GEN	DOTIC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A01.00, A95.00	INDEX NUMBER A67.70	1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
HEARING DATE 01 04 17	CASE NUMBER FD01-00062	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

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 [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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TO: SAF/MIBR 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, 3 RD FLOOR ANDREWS AFB, MD 20762-7002
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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 DRB finds that the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was able to identify none. The records indicated the applicant received an Article 15, a Letter of Counseling, two Records of Individual Counseling and a verbal counseling for misconduct. The misconduct included wrongfully using marijuana, failure to maintain quarters, speeding, failure to comply with dress and appearance requirements, using a government vehicle for personal business, and having an accident while backing up a government-owned vehicle. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. 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 AMN)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 99/05/13 UP AFI 36-3208, para 5.49 & 5.54 (Misconduct - Minor Disciplinary Infractions & Drug Abuse). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 75/09/23. Enlmt Age: 19 11/12. Disch Age: 23 7/12. Educ: HS DIPL. AFQT: N/A. A-60, E-44, G-52, M-26. PAFSC: 2S031 - Supply Management Apprentice. DAS: 96/07/19.

b. Prior Sv: AFRes 95/09/07 - 95/12/27 (3 months 21 days) (Inactive).

(2) Enld as AB 95/12/28 for 4 yrs. Svd: 3 yrs 0 months, 28 days, all AMS. AMN - 96/06/28. A1C - 97/04/28. SRA - 98/12/28. EPRs: 4,4.

3. SERVICE UNDER REVIEW:

a. Reenld as SRA 99/01/25 for 4 yrs. Svd: 0 Yrs 3 Mo 18 Das, all AMS.

b. Grade Status: AMN - 99/03/31 (Article 15, 99/03/31)

c. Time Lost: none.

d. Art 15's: (1) 99/03/31, Travis AFB, CA - Article 112a. You did, o/a 19 Jan 99 and o/a 19 Feb 99, wrongfully use marijuana. Rdn to Amn, 30 days extra duty, and 15 days restriction. (No appeal) (No mitigation)

e. Additional: LOC, 08 NOV 96 - Failure to maintain quarters.
VBC, 11 DEC 96 - Speeding.
RIC, 16 JAN 97 - Improper Military Image.
RIC, 23 JAN 97 - Vehicle accident.

f. CM: none.

g. Record of SV: none.
(Discharged from Travis AFB)

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

i. Stmt of Sv: TMS: (3) Yrs (8) Mos (7) Das
TAMS: (3) Yrs (4) Mos (16) Das

FD01-00062

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/01/25.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH
none.

01/03/02/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

04 MAY 1999

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
510 Mulheron Street
Travis AFB CA 94535-2406

SUBJECT: Legal Review of Administrative Discharge Action Under AFI 36-3208,
~~Administrative Discharge Action~~ 60th Supply Squadron

1. **Introduction:** This action is legally sufficient. On 27 Apr 99, M ~~_____~~ Commander, 60 SUPS, initiated separation action against Respondent pursuant to AFI 36-3208, Section H, paragraphs 5.49 and 5.54, for Misconduct, Minor Disciplinary Infractions, and Drug Abuse. ~~_____~~ recommended a general service characterization and 60 LG/CC concurred. This 23-year-old Respondent who has over 3 years of active military service has received two EPRs with overall ratings of "4." He was awarded the Air Force Good Conduct Medal, Air Force Training Ribbon, and Air Force Outstanding Unit Award. A detailed summary of his personal data is contained in paragraph 2 of the Commander's Recommendation for Discharge letter, dated 30 Apr 99. Probation and Rehabilitation is not authorized for drug abuse cases pursuant to AFI 36-3208, Chapter 7, paragraph 7.2.6.

2. **Basis for Discharge:**

a. Misconduct. Minor Disciplinary Infractions. paragraph 5.49:

(1) On or about 5 Nov 96, Respondent failed to maintain standards of his living quarters during a scheduled room inspection. Further, on or about 8 Nov 96, Respondent's service dress uniform failed to meet dress and appearance required by AFI 36-2903, for which he received a letter of counseling (LOC) on 8 Nov 96.

(2) On or about 10 Dec 96, Respondent was cited by Security Forces for driving 34 mph in a 25 mph speed limit zone, resulting in a verbal counseling on 11 Dec 96.

(3) On or about 16 Jan 97, Respondent failed to comply with dress and appearance required by AFI 36-2903. Despite verbal counseling and advice from superiors, he has not shown a significant improvement. His problem with personal hygiene was also noticeable. For this, Respondent received a RIC.

(4) On or about 15 Jan 97, Respondent had an accident while backing up a government-owned vehicle (GOV). Further, on or about 18 Jan 97, he was seen using a GOV for personal business, resulting in a RIC on 23 Jan 97.

b. Misconduct. Drug Abuse, paragraph 5.54: Respondent did, in the State of California, between on or about 19 Jan 99 and on or about 19 Feb 99, wrongfully use marijuana, in violation of Article 112a, UCMJ. For this, Respondent received an Article 15, dated 31 Mar 99, which was placed in an unfavorable information file (UIF) on 5 Apr 99, with punishment of reduction to the grade of airman, **30** days extra duty, and 15 days restriction to base.

3. Discussion:

a. On 29 Apr 99, Respondent submitted a statement seeking retention in the Air Force. He contends that his "drug abuse" consisted of an experimental use of marijuana. Respondent asserts that his "drug abuse" consisted of a one-time experimental use of marijuana. Further Respondent states that the one-time drug use came to the Air Force's attention as a result of the random urinalysis program, not because of his conduct or work related problems. Respondent regrets his mistakes. He asks that you consider his 3½ years of good Air Force service (Tab 3).

b. Airmen in the active military service are required to maintain, both on and off duty, the high standards of personal conduct set for Air Force members. Airmen occupy a unique position in society, representing the military establishment 24 hours a day. This special status carries with it a permanent obligation to uphold and maintain the dignity and good reputation of the Air Force at all times and in all places. Unacceptable conduct such as drug abuse adversely affects military duty performance. Minor disciplinary infractions in the current enlistment make an airman subject to discharge. Infractions under paragraph 5.49 may involve failure to comply with nonpunitive regulations or minor offenses under the Uniform Code of Military Justice. Respondent's misconduct, listed in paragraph 2a, supports discharge under the provisions of AFI 36-3208, paragraph 5.49.

c. Drug abuse is incompatible with military service, and members who abuse drugs adversely affect the ability of the Air Force to maintain discipline, good order and morale, and mutual trust and confidence among members. Members who abuse drugs also adversely affect the ability of the Air Force to facilitate assignments and worldwide deployment, recruit and retain members, maintain public acceptability of military service, and prevent breaches of security. A member found to have abused drugs would be discharged unless the initiating commander recommends a waiver of discharge under AFI 36-3208, paragraph 6.60. The 60 SUPS/CC has not recommended such a waiver. Before recommending a waiver, the initiating commander would have to fully consider the nature of the offense involved, all the circumstances surrounding the offense, any matters in extenuation, the airman's military record, and the airman's potential for future productive service. In considering a waiver, the initiating commander must give full consideration to the nature of the offense involved, all the circumstances surrounding the offense, any matters in extenuation, the airman's military record, and the airman's potential for future productive service. Additionally, the initiating commander must ensure the member meets all seven of the criteria for retention consideration listed in paragraph 5.55.2.1, that: (1) drug abuse is a departure from the member's usual and customary behavior; (2) drug abuse occurred as a result of drug experimentation; (3) drug abuse does not involve recurring incidents, other than drug experimentation; (4) member does not desire to

engage in or intend to engage in drug abuse in the future; (5) drug abuse under all the circumstances is not likely to recur; (6) under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with maintaining proper discipline, good order, leadership, and morale; and, (7) drug abuse did not involve drug distribution. The burden of proving that retention is warranted under these limited circumstances rests with the member. Unless you find that each of the above retention criteria exists, Respondent must be separated. While Respondent describes his duty performance as very good, notably absent in his response is an assertion that his continued presence in the Air Force would be consistent with proper discipline, good order, leadership, and morale. Given the need for law-abiding, mission-ready airmen, and the lack of evidence that his continued presence in the Air Force is consistent with maintaining proper discipline, good order, and morale, retention is clearly inappropriate. Finally, once convinced that there is a basis for Respondent's discharge, you may look at his entire military record in deciding whether it is appropriate to discharge him. Taking into consideration Respondent's drug abuse and infractions, Respondent unquestionably should be discharged.

4. Characterization of Service: Pursuant to AFI 36-3208, Table 1.3, discharges under paragraphs 5.49 and 5.54 are characterized as honorable, general, or UOTHC. An honorable characterization is reserved for those airmen whose service has met Air Force standards of acceptable conduct and performance of duty and their service has been so meritorious that any other characterization would be clearly inappropriate. Respondent does not meet this standard. A general discharge, under honorable conditions, is appropriate if an airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. A UOTHC discharge is appropriate when the grounds for discharge are based on a member's acts or omissions that constitute a significant departure from the conduct expected of airmen. Respondent's minor disciplinary infractions and drug use outweigh the positive aspects of his service record. The other derogatory information in Respondent's case file consists of a memorandum for a missed appointment. Considering Respondent's misconduct and time in the service, a general service characterization, as opposed to a UOTHC, is justifiable in this case. Thus, I concur with both commanders' recommendations for a general discharge.

5. Options: As the Special Court-Martial Convening Authority, you approve or disapprove recommendations for discharge processed by notification according to Chapter 6, Section B, resulting in general discharge under Section H (paragraph 5.56 of AFI 36-3208). According to paragraph 6.45, if you direct discharge for more than one reason, the instrument directing discharge must cite the primary reason. In this case, paragraph 5.54, Misconduct, Drug Abuse, should be the primary basis for discharge. Your options are to:

- a. Direct this action be withdrawn and retain Respondent if you independently find that each of the seven retention criteria exists;
- b. Discharge Respondent with a general discharge citing either paragraph 5.54 or 5.49 as the primary reason;

c. Forward the case to 15 AF/CC with a recommendation for an honorable citing either paragraph 5.54 or 5.49 as the primary reason for discharge; or,

d. Direct reinitiation for processing pursuant to AFI 36-3208, Chapter 6, Section C - Board Hearing or Board Waiver, if you believe the issuance of a UOTHC is warranted.

6. Recommendation: Discharge Respondent with a general discharge without P&R, by signing the appropriate letter at Attachment 1, utilizing paragraph 5.54 as the primary reason for discharge. Further recommend that you bar Respondent from Travis AFB by signing the letter at Attachment 2.



Attachments:

1. Proposed Letter
2. Barment Letter
3. Case File (██████████)



DEPARTMENT OF THE AIR FORCE
60TH SUPPLY SQUADRON (AMC)

27 Apr 99

MEMORANDUM FOR AMN D [REDACTED] 60 SUPS

FROM: 60 SUPS/CC
350 Hangar Avenue
Travis AFB CA 94535-2631

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct, Minor Disciplinary Infractions, and Drug Abuse, according to AFI 36-3208, paragraphs 5.49 and 5.54. If my recommendation is approved, your service will be characterized as honorable, general, or under other than honorable conditions. I am recommending that your service be characterized as general.

2. My reasons for initiating this action are:

a. Misconduct. Minor Disciplinary Infractions. paragraph 5.49:

(1) On or about 5 Nov 96, you failed to maintain standards of your living quarters during a scheduled room inspection. Further, on or about 8 Nov 96, your service dress uniform failed to meet dress and appearance required by AFI 36-2903, for which you received a letter of counseling (LOC) on 8 Nov 96 (Atch 1, Tab 1).

(2) On or about 10 Dec 96, you were driving 34 mph in a 25 mph speed limit zone, as evidenced by a DD Form 1408, Armed Forces Traffic Ticket, resulting in a verbal counseling on 11 Dec 96 (Atch 2, Tab 1).

(3) On or about 16 Jan 97, you failed to comply with dress and appearance required by AFI 36-2903. Despite verbal counseling and advice from your supervisor and the previous First Sergeant, you have not shown a significant improvement. Your problem with personal hygiene was also noticeable. For this, you received an RIC (Atch 3, Tab 1).

(4) On or about 15 Jan 97, you had an accident while backing up a government-owned vehicle (GOV). Further, on or about 18 Jan 97, you were seen using a GOV for personal business, resulting in an RIC on 23 Jan 97 (Atch 4, Tab 1).

b. Misconduct, Drug Abuse. paragraph 5.54: You did, in the State of California, between on or about 19 Jan 99 and on or about 19 Feb 99, wrongfully use marijuana, in violation of Article 112a, UCMJ. For this, you received an Article 15, dated 31 Mar 99, which was placed in an unfavorable information file (UIF) on 5 Apr 99, with punishment of reduction to the grade of airman, 30 days extra duty, and 15 days restriction to base.

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.

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 M [REDACTED] Area Defense Counsel, Travis Air Force Base, California, 540 Airlift Drive, Suite D-100, Bldg. 381, DSN 837-4569; Commercial: (707) 424-4569, on 27 Apr 99 at 1130**. You may consult civilian counsel at your **own** expense.

5. You have the right to submit statements on your behalf. Any statements you want the separation authority to consider must reach me by (three workdays from service of this letter) 30 Apr 99 no later than 1000 hours unless you request and receive an **extension for good cause**. I will send any documents you submit 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 were scheduled for a separation physical examination at the Physical Exams Section, David Grant Medical Center on 14 Apr 99.

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 in the orderly room.

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



Commander

Attachments:

1. LOC, 8 Nov 96
2. DD Form 1408, 10 Dec 96
3. AF Form 174, RIC, 16 Jan 97
4. AF Form 174, RIC, 23 Jan 97
5. AF Form 3070, 31 Mar 99
6. Other Derogatory Data:
Memorandum of 60 DS/SGD, 5 Sep 96