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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																																												
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																																												

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 contends discharge was inequitable because it was based on an isolated offense. The records indicated the applicant received an Article 15 for wrongfully using marijuana. The Board concluded the serious misconduct of the applicant 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.

Issue 2. 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, awards and decorations, promotions, and other information contained in the records. 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 3 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.

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 SRA MISSING DOCUMENTS)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 00/05/19 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 67/08/31. Enlmt Age: 18 1/12. Disch Age: 32 8/12. Educ: HS DIPL. AFQT: N/A. A-61, E-60, G-72, M-83. PAFSC: 3E271 - Pavements & Construction Equipment Craftsman. DAS: 92/09/16.

b. Prior Sv: (1) AFRes 85/10/21 - 86/08/06 (9 months 16 days) (Inactive).

(2) Enld as AB 86/08/07 for 4 yrs. Ext 89/02/01 for 21 months. Reenld as Sgt 90/12/03. Ext 94/09/15 for 20 months. Svd: 9 yrs 9 mos 25 das, all AMS. AMN/AIC-(APR Indicates): 86/08/07-87/08/06. SEW - 88/12/07. SGT-(EPR Indicates): 89/04/02-90/03/15. APRs: 8,9,9. EPRs: 4,4,3,4,3,4,4,5.

3. SERVICE UNDER REVIEW:

a. Reenld as SGT 96/06/03 for 6 yrs. Svd: 3 Yrs 11 Mo 16 Das, all AMS.

b. Grade Status: SRA - 00/04/13 (Article 15, 00/04/13)
SSgt - 95/09/01

c. Time Lost: none.

d. Art 15's: (1) 00/04/13, Seymour Johnson AFB, NC - Article 112a. You, did, between o/a 16 Feb 00, and o/a 16 Mar 00, wrongfully use marijuana. Rdn to SrA. (No appeal) (Nomitigation)

e. Additional: none.

f. CM: none.

g. Record of SV:

95/08/24	96/08/23	Seymour Johnson AFB	5	(Annual)
96/08/24	97/08/23	Seymour Johnson AFB	5	(Annual)
97/08/24	98/06/30	Seymour Johnson AFB	4	(CRO)
98/07/01	99/06/30	Seymour Johnson AFB	5	(Annual)
99/07/01	00/04/19	Seymour Johnson AFB	1	(HAF Dir) REF

(Discharged from Seymour Johnson AFB)

h. Awards & Decs: AFAM W/3 DEV, AFLSAR W/3 DEV, AFTR, AFOSSTR, AFOSLTR, NDSM, HSM, NCOPMER W/1 DEV, AFEM, AFOUA W/2 DEV, JMUA, AFGCM W/3 DEV.

i. Stmt of Sv: **TMS:** (14) Yrs **(6) Mos** (29) Das
TAMS: (13) Yrs **(9) Mos** (13) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 00/12/18.
(Change Discharge to Honorable)

Issue 1: My average conduct and efficiency rating/behavior and proficiency marks while serving in the Air Force were good or excellent.

Issue 2: I have received numerous decorations and awards for various involvements throughout my service commitment.

Issue 3: My record of promotions showed I was generally a good service member.

Issue 4: Since my discharge, I have been a good citizen.

Issue 5: My record of an Article 15 indicates only one isolated offense, prior to my offense, I was known as an "invaluable crew leader"; I also received praise from a North Carolina senator for maintenance work done at a local school.

ATCH
none.

.01/03/05/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS NINTH AIR FORCE (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

MAY 10 2000

MEMORANDUM FOR 9 [REDACTED]

FROM: [REDACTED]

524 Shaw Drive
Shaw AFB, SC 29152-5029

SUBJECT: Legal Review, AFI 36-3208, S [REDACTED]

1. Overview: On 20 Apr 00, 4 CES/CC initiated administrative discharge action against the respondent pursuant to AFI 36-3208, paragraph 5.54, for drug abuse. The 4 CES/CC recommended that the respondent be separated with a General discharge without probation and rehabilitation (P&R). The respondent submitted a conditional waiver of his right to a discharge board contingent upon receiving no less than a General discharge. 4 FW/CC has forwarded the case file recommending acceptance of the respondent's conditional waiver and that he be separated with a General discharge. Probation and rehabilitation was not recommended and is not authorized for drug abuse.
2. Basis: Between on or about 16 Feb 00 and on or about 16 Mar 00, the respondent wrongfully used marijuana, for which he received an Article 15.
3. Background Information: The respondent has more than six years military service, therefore he is entitled to an administrative discharge board hearing. The respondent submitted a conditional waiver to this right. He did not submit matters in his own behalf. The 4 FW/CC has forwarded the case file recommending that the respondent's conditional waiver be accepted and that he be separated with a General discharge.
4. Personal Data: The respondent is 32 years old and divorced with two dependents. His current enlistment began on 3 Jun 96 for a period of six years. The respondent has received three APRs with overall ratings of one 8 and two 9s, and twelve EPRs with overall ratings consisting of two 3s, six 4s, and four 5s. The respondent is authorized to wear the Air Force Achievement Medal with three Oak Leaf Clusters, the Air Force Good Conduct Medal with three Oak Leaf Clusters, the National Defense Service Medal, the Air Force Longevity Service Award with two devices, the Air Force Training Ribbon, the Air Force Overseas Service Long Tour Ribbon, the Air Force Overseas Service Short Tour Ribbon, the Armed Forces Expeditionary Medal, the Air Force NCO Professional Military Education Ribbon, the Humanitarian Service Medal, the Joint Meritorious Unit Award, and the Air Force Outstanding Unit Award with two devices.
5. Errors and Irregularities: There are no errors or irregularities, which are prejudicial to the substantive rights of the respondent.
6. Legal Sufficiency/Discussion: I have reviewed the case file and find it legally sufficient to support a General discharge without P&R. It is my opinion that the respondent's use of marijuana warrants administrative separation under paragraph 5.54 of AFI 36-3208. Based on the respondent's record, a General discharge is appropriate when characterizing the respondent's overall service record and drug abuse. AFI 36-3208, paragraph 5.55.2.1, authorizes retention of a respondent when he meets all seven retention criteria for drug abuse, i.e.:

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- a. Drug abuse is a departure from the respondent's usual and customary behavior
- b. Drug abuse occurred as the result of drug experimentation.
- c. Drug abuse does not involve recurring incidents.
- d. The member does not desire to engage in or intend to engage in drug abuse in the future.
- e. Drug abuse under all the circumstances is not likely to recur.
- f. Under the particular circumstances of this case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale.
- g. Drug abuse did not involve drug distribution.

I do not believe this respondent meets those criteria. Per AFI 36-3208, paragraph 7.2.6, the respondent is not eligible for P&R since the reason for discharge is drug abuse.

7. Options: As the separation authority, you have the following options:

- a. Direct that the respondent be retained in the Air Force if you feel he meets all the retention criteria in AFI 36-3208, paragraph 5.55.2.1.
- b. Refer the case file to 9 AF/CC if you believe an Honorable discharge is warranted.
- c. Accept the respondent's conditional waiver and direct that the respondent be separated with a General discharge.
- d. Reject the respondent's conditional waiver and direct that he submit an unconditional waiver of his right to an administrative discharge board or demand a hearing before an administrative discharge board.

8. Recommendation: I recommend that you direct the respondent be separated with a General discharge without P&R. If you concur, an action letter to that effect has been prepared for your signature.


Asst Chief, Military Justice and Adverse Actions

I concur.


Ac



DEPARTMENT OF THE AIR FORCE

4TH FIGHTER WING (ACC)
SEYMOUR JOHNSON AIR FORCE BASE NC

20 APR 2000

MEMORANDUM FOR [REDACTED]

FROM: 4 CES/CC

SUBJECT: Notification Memorandum—Board Hearing

1. I am recommending your discharge from the United States Air Force for misconduct, specifically drug abuse. The authority for my recommendation is AFI 36-3208, Chapter 5, Section H, Paragraph 5.54. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached.

2. My reason for this action is that you did, between on or about 16 February 2000 and on or about 16 March 2000, wrongfully use marijuana, as evidenced by the following: a memorandum, dated 29 March 2000 from the Drug Testing Laboratory at Brooks AFB reporting their finding of tetrahydrocannabinol (THC) in the urine specimen submitted by you on 16 March 2000, and an AF Form 3070, Record of Nonjudicial Punishment Proceedings dated 6 April 2000 (Tab 1a).

3. This action could result in your separation with an honorable or general discharge. I am recommending that you receive a general discharge. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. 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:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You have been scheduled for a medical examination. You must report to the Physical Exam Section of the Base Hospital on 21 April 2000 at 0730 hours. A follow-up appointment has also been scheduled with the Gold Team on 21 April 2000 at 0810 hours.

6. Military legal counsel has been obtained to assist you: ~~Captain P. [REDACTED]~~ 1185 Cannon Avenue, Seymour Johnson AFB NC, telephone DSN 722-5345. An appointment has been scheduled for you to consult him on 20 APR 00 at 1430 hours. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

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 your Orderly Room.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

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



Commander

Attachment:

1. Supporting Document(s)
 - a. AF Form 3070, Record of Nonjudicial Punishment Proceedings, dated 6 April 2000 with attachments
2. Airman's Receipt of Notification Memorandum
3. Medical Examination
4. EPRs
5. Airman's Statement