

PERSONAL APPEARANCE		X RECORD REVIEW				
NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO					
	X					
MEMBERS SITTING		RON	GEN	UOTHC	OTHER	DENY
						X
						X
						X
						X
						X
ISSUES A94.05, A94.53		INDEX NUMBER A67.70				
HEARING DATE 01 04 13		CASE NUMBER FD01-00067				
		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			
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 too harsh. The records indicated the applicant received two Article 15s and a Vacation of Suspended Non-Judicial Punishment for misconduct. The misconduct included wrongfully using marijuana, failing to refrain from possessing alcohol while under 21 years of age, and consuming alcohol while under the age of 21. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. If he can provide additional documented information to substantiate an issue, the applicant should consider exercising his right to make a personal appearance before the Board. If he should choose to exercise his right to a personal appearance hearing, the applicant should be prepared to provide the DRB with factual evidence of the inequity and any exemplary post-service accomplishments as well as any contributions to the community. 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.

Issue 2. 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 October 29, 1998) 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 AB)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/06/21 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 80/02/26. Enlmt Age: 18 3/12. Disch Age: 20 3/12. Educ: HS DIPL. AFQT: N/A. A-70, E-63, G-50, M-47. PAFSC: 2A636 - Aircraft Electronics & Environmental Systems Journeyman. DAS: 99/06/01.

b. Prior Sv: AFRes 98/06/25 - 98/10/13 (3 months 19 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 98/10/14 for 4 yrs. Svd: 1 Yrs 8 Mo 8 Das, all AMS.

b. Grade Status: AB - 99/10/25 (Article 15, Vacation, 99/10/25)
AMN - 99/04/14

c. Time Lost: none.

d. Art 15's: (1) 00/03/23, Robins AFB, GA - Article 112a. You did, o/a 23 Mar 00, wrongfully use marijuana. Forfeiture of \$465 of pay. (No appeal) (No mitigation)

(2) 00/01/20, Vacation, Robins AFB, GA - Article 92. You, who knew, or should have known of your duties, o/a 12 Jan 00, were derelict in the performance of those duties in that you willfully failed to refrain from possessing alcohol while under 21 years of age, in violation of the Official Code of Georgia Annotated Section 3-3-23(a)(2), as it was your duty to do. Rdn to AB. (No appeal) (No mitigation)

(3) 99/10/25, Robins AFB, GA - Article 134. You, were, o/a 25 Sep 99, drunk and disorderly. Article 92. You, who knew, or should have known of your duties, not to consume alcohol while under the age of 21, o/a 25 Sep 99, were derelict in the performance of those duties in that you willfully failed to refrain from drinking while under 21 years of age, in violation of the Official Code of Georgia Annotated, Section 3-3-23(a)(5), as it was your duty to do. Rdn to AB (susp till 19 Apr 00), and 45 days extra duty. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: none.

(Discharged from Robins AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (1) Yrs (11) Mos (27) Das

TAMS: (1) Yrs (8) Mos (8) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 01/01/23.

(Change Discharge to Honorable)

Issue 1: At the point of discharge I submitted (sic) a written statement stating my case, and aplogizing (sic) for my mistakes. My biggest (sic) point on asking for this upgrade was for the MGI Bill which I had paid for the year.

ATCH

none.

01/02/22/ia

FD01-00067



DEPARTMENT OF THE AIR FORCE
HQ Warner Robins Air Logistics Center (AFMC)
Robins Air Force Base Georgia

15 JUN 2001

MEMORANDUM FOR 78 ABW/CC

FROM: JA

SUBJECT: Legal Review, AFI 36-3208 Administrative Discharge Action
[REDACTED]

1. **Action:** The proposed discharge of AB [REDACTED] under the provisions of AFI 36-3208 paragraph 5.54, for Drug Abuse has been reviewed and is legally sufficient subject to the inclusion of the discharge physical examination. There is an adequate basis in the current enlistment to support discharge, as well as support the recommended characterization of service. I concur with the commander's recommendation that [REDACTED] be separated with a General Discharge.
2. **Background:** [REDACTED] was the subject of an AFOSI investigation in which he admitted to puffing but not inhaling the drug marijuana. For wrongfully using marijuana, [REDACTED] received an Article 15, Nonjudicial Punishment dated 16 May 00, which was placed in his current Unfavorable Information File. AFI 36-3208, paragraph 5.54 provides for administrative discharge of an enlisted member who wrongfully uses a controlled substance. Drug abuse is incompatible with military service and airmen who abuse drugs one or more times are subject to discharge for misconduct.
3. **Personal Data:** [REDACTED] twenty years old, with 1 year and 8 months active service. He has been awarded the Air Force Training Ribbon. He has no EPRs.
4. **Evidence For The Respondent:** [REDACTED] was notified on 6 Jun 00 of the proposed discharge. He consulted with the Area Defense Counsel and submitted a statement on his behalf requesting an honorable discharge. [REDACTED] is not entitled to an administrative discharge board hearing.
5. **Legal Issues:** Airmen discharged for drug abuse are not eligible for Probation and Rehabilitation in accordance with AFI 39-3208, paragraph 7.2.6.

FD01-00067

In accordance with the regulation, paragraph 5.48.1 states discharges based on drug abuse should be characterized as Under Other Than Honorable Conditions. However, [REDACTED] is a non-NCO and a first-term airman. Other similarly situated members have received discharges with a general characterization when being separated for recreational drug use. A General Discharge would also be appropriate in this case.

6. Options for 78 ABW/CC: As the separation authority in this case, you may:

- a. Retain the Respondent if you determine that discharge is not warranted; or
- b. Discharge the Respondent with a General Discharge; or,
- c. Recommend to WR-ALC/CC that the Respondent be discharged with an Honorable Discharge; or
- d. Direct that notification of discharge be withdrawn and the Respondent be served with notice of proposed discharge Under Other Than Honorable Conditions. This option would entitle the member to have an additional seven days to respond to the discharge action and would entitle him to present his case to an administrative discharge board.

7. Recommendation: An administrative discharge is warranted, supported by the evidence and legally sufficient. I recommend [REDACTED] be given a General Discharge. If you concur, you may so indicate by signing the letter at Tab 1.

[REDACTED]
Deputy Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE
93rd MAINTENANCE SQUADRON (ACC)
ROBINS AIR FORCE BASE, GEORGIA

FD01-00067

6 Jun 00

MEMORANDUM

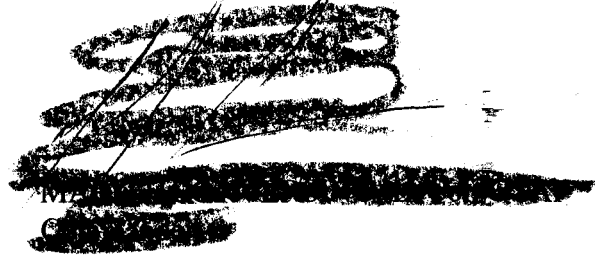
R. B. [REDACTED]

FROM: 93 MXS/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 AFD 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 that on or about 23 Mar 2000 you wrongfully used marijuana. For this, you received an Article 15, Nonjudicial Punishment, for wrongfully using marijuana, dated 16 May 2000.
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. 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 with the Area Defense Counsel, building 368, ext 6-5852, on 6 June 2000, at 1500 hours.** 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 of the date of this letter** 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 physical on 14 Jun 2000, at 0715 hours** at the Physical Exams Section, Building 207. **Your follow-up appointment is on 14 Jun 2000 at 0740 hours at Family Practice, Bldg 700.** You *must be in uniform and have your medical records* with YOU.

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 at the Area Defense Counsel's office or your unit orderly room.



Attachments:

1. AF Form 3070 w/atchs
2. AF Form **1137** w/atchs
3. Airman's receipt of notification memorandum