

| PERSONAL APPEARANCE | | X RECORD REVIEW | | | | | | | | | | | | | | | | | | |
|---|--|--|--|-------|-------|------|---|----------------------------|---|-------------------------------------|---|------------------------|---|-------------------------|--|--------------------------------|--|--|--|--|
| NAME OF COUNSEL AND OR ORGANIZATION [REDACTED] | | ADDRESS AND OR ORGANIZATION OF COUNSEL [REDACTED] | | | | | | | | | | | | | | | | | | |
| YES | NO | | | | | | | | | | | | | | | | | | | |
| X | | | | | | | | | | | | | | | | | | | | |
| MEMBERS SITTING | | HON | GEN | DOTEC | OTHER | DENY | | | | | | | | | | | | | | |
| [REDACTED] | | | | | | X | | | | | | | | | | | | | | |
| [REDACTED] | | | | | | X | | | | | | | | | | | | | | |
| [REDACTED] | | | | | | X | | | | | | | | | | | | | | |
| [REDACTED] | | | | | | X | | | | | | | | | | | | | | |
| [REDACTED] | | | | | | X | | | | | | | | | | | | | | |
| ISSUES A92.21, A94.05 | INDEX NUMBER A67.70 | <table border="1"> <tr> <td>1</td> <td>ORDER APPOINTING THE BOARD</td> </tr> <tr> <td>2</td> <td>APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td>3</td> <td>LETTER OF NOTIFICATION</td> </tr> <tr> <td>4</td> <td>BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td></td> <td>COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td></td> <td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td></td> <td>TAP RECORDING OF PERSONAL APPEARANCE HEARING</td> </tr> </table> | | | | | 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 | | TAP RECORDING OF PERSONAL APPEARANCE HEARING |
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| 3 | LETTER OF NOTIFICATION | | | | | | | | | | | | | | | | | | | |
| 4 | BRIEF OF PERSONNEL FILE | | | | | | | | | | | | | | | | | | | |
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| HEARING DATE 01 06 20 | CASE NUMBER FD01-00123 | | | | | | | | | | | | | | | | | | | |
| 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] | | | | | | | | | | | | | | | | | |
| 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, change of reason for discharge, and change of reenlistment eligibility (RE) code.

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/change of reason for discharge and change of RE code are 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—that he did not use marijuana and was wrongfully discharged from the service. The records indicated the applicant received and accepted an Article 15 for wrongfully using marijuana. The DRB opined that the applicant and his counsel did not provide substantiated information to overcome the factors which were the basis of the case. 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/reason for the discharge and the RE code received by the applicant were found to be appropriate.

Issue 2 applies to the applicant's post-service activities. The DRB noted that the applicant would like to reenlist as a reservist in one of the branches of the Armed Services. 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/change of reason for discharge and change of RE code, 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

[REDACTED]

(Former AB)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 97/12/05 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch, Change the Reason for Disch, and to Change RE Code.

2. **BACKGROUND:**

a. DOB: 76/12/16. Enlmt Age: 19 5/12. Disch Age: 20 11/12. Educ:HS DIPL. AFQT: N/A. A-90, E-36, G-39, M-37. PAFSC: 2T031 - Traffic Management Apprentice. DAS: 97/01/22.

b. Prior Sv: AFRes 96/05/16 - 96/08/27 (3 months 12 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as A1C 96/08/28 for 4 yrs. Svd: 1 Yrs 3 Mo 8 Das, all AMS.

b. Grade Status: AB - 97/11/04 (Article 15, 97/11/04)

c. Time Lost: none.

d. Art 15's: (1) 97/11/04, Elmendorf AFB, AK - Article 112a. You did, on divers occasions, between o/a 01 Apr 97, and 30 Apr 97, wrongfully use marijuana. Rdn to AB.
(No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

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

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (06) Mos (20) Das
TAMS: (01) Yrs (03) Mos (08) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/01/17.
(Change Discharge to Honorable, Change Reason and Authority for Discharge, and Change RE Code)

(Petitioner's Brief): Petitioner was, in error and unjustly, separated from the United States Air Force on December 5, 1997 for alleged use of marijuana. At the time of his separation, his DD Form 214 reflected a separation code of JKK, a re-entry code of 2B and a narrative reason for separation reflecting

"misconduct." As a result of the above stated entries on petitioners DD Form 214, petitioner is not eligible for enlistment in any branch of the Armed Services.

Petitioner did not use marijuana as alleged by the United States Air Force. Petitioner only admitted to the use of marijuana after being subjected to intolerable working and living conditions at Elmendorf Air Force Base in Alaska. These intolerable conditions included total ostracizing by co-workers and supervisors, assigning petitioner the worst work assignments and forcing the petitioner to resign his position as a YMCA coach. These conditions resulted from the mere allegation of marijuana use and continued over a six-month period while the allegations were being investigated and before the petitioner was ever charged. Being socially and geographically isolated at age 20 and being nearly 5000 miles from home, the petitioner felt that his only way out of this dilemma was to admit to the marijuana use in order to escape the intolerable conditions in the Air Force.

At the time the investigation was initiated, the petitioner voluntarily agreed to take a urinalysis test. The urinalysis test was taken at or near the time that the petitioner was alleged to have used marijuana. The results of the urinalysis test were **negative for any drugs**. Moreover, the only evidence of alleged marijuana use by the petitioner was the testimony of other service members who were using and distributing drugs. Petitioner can only surmise that the service members falsely accused the petitioner of marijuana use because they erroneously believed that the petitioner had informed on them (which he had not) or that they had something to gain by turning in the petitioner.

Petitioner would like the opportunity to reenlist as a reservist in one of the branches of the Armed Services. In order to do so, petitioner requires an upgrade of the separation code, the re-entry code and the narrative of these dd (sic) Form 214. Based upon the circumstances described in the petition and the documents attached hereto, petitioner respectfully request those upgrades.

ATCH

1. Petitioner's Affidavit.
2. Record of Investigation.
3. National Personnel Records Center File.

01/04/27/ia

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

DEC 2 1997

MEMORANDUM FOR 3 WG/CC

FROM: 3 WG/JA

SUB Legal Review - Administrative Discharge - B [REDACTED]

B [REDACTED] has been recommended for discharge by the 3rd Transportation Squadron Commander, pursuant to AFI 36-3208, paragraph 5.4 for misconduct based on the reasons set forth in the Commander's [REDACTED] for Discharge Letter, with [REDACTED] are legal [REDACTED] to support discharge action under this provision of the instruction AB [REDACTED] is [REDACTED] for separation.

2. FAC The following event forms the basis for this discharge [REDACTED]

Between on or about 1 Apr 97 and on or about 30 Apr 97, then A1C [REDACTED] did, at or near Elmendorf Air Force Base, Alaska, on various occasions, wrongfully use marijuana, as evidenced by an Article 15, dated 27 Oct 97, and an Unfavorable Information File (UIF) entry, undated.

3. Airmen subject to separation for drug abuse under AFI 36-3208, paragraph 5.54, may be discharged under honorable, general, or under other than honorable conditions. Airmen separated for drug abuse are not eligible for probation and rehabilitation.

4. After consulting counsel, AB [REDACTED] elected not to submit a statement for consideration. (See Tab 6.)

5. The 3rd Transportation Squadron Commander recommends a General Discharge.

6. ERRORS AND IRREGULARITIES: Airmen separated for drug abuse should usually be discharged under other than honorable conditions; however, AB [REDACTED] has no documented incidents of misconduct or drug abuse other than the Article 15 for marijuana use. Under these circumstances, a General Discharge is appropriate.

7. You may take the following actions in this case:

- a. Direct this action be discontinued and AB [REDACTED] be retained.
- b. Forward this case file to 11 AF/CC if you believe AB [REDACTED] should be separated from the United States Air Force with an Honorable Discharge.
- c. Direct AB [REDACTED] be separated from the United States Air Force with a General Discharge.

d. Direct AB [REDACTED] be retained for processing under Chapter 6, Section C (Board Hearing) if you determine he should be separated with an Under Other Than Honorable Conditions Discharge.

8. RECOMMENDATION: I recommend you discharge AB [REDACTED] from the United States Air Force under the provisions of AFI 36-3208, paragraph 5.54. I further recommend you approve a General Discharge. AB [REDACTED] is ineligible for P&R.

[REDACTED]
[REDACTED], Capt, USAF
Chief, Administrative Law

I concur.

Attachment:
Case File (AB [REDACTED])

[REDACTED]
[REDACTED], Colonel, USAF
Staff Judge Advocate

FDCI-00123

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

NOV 17 1997

MEMORANDUM FOR 3 TRNSS/LGTT (AB [REDACTED])

FROM: 3 TRNSS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct based on 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, general, or under other than honorable conditions. I **am** recommending your service be characterized **as** general.

2. My reasons for this action are:

Between on or about 1 Apr 97 and on or about 30 Apr 97, you did, at or near Elmendorf Air Force Base, Alaska, on divers occasions, wrongfully use marijuana, as evidenced by an Article 15, dated 27 Oct 97, and an Unfavorable Information File (UIF) entry, undated.

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 are 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 assistance funds may be subject to recoupment.

4. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult Capt [REDACTED] 552-3887, at Bldg 6-920, Rm 330 on 18 Nov 97 at 1400. 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 after the date of this letter unless you request and receive an extension for good cause shown. I will **forward** any statements you provide 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 medical examinations. You must report to the 3rd Aerospace Medicine Squadron, Bldg 24-850 at _____ on _____ with your medical records and to the Family Practice Clinic at _____ on _____. You are to fast

FD01-00123

(drink water only) for 14 hours, refrain from alcohol for 72 hours, and refrain from the use of tobacco products for 6 hours, prior to examination. Bring eyeglasses (and contact solution if using contacts) if applicable. You must be in uniform for these examinations.

8. You have been scheduled for a Transition Assistance Program briefing. You must report to the Family Support Center at 1445 on 18 NOV 97. You have also been scheduled for a TMO Household Goods Shipment preprocessing briefing. You must report to Bldg 2-900 (People Center), Rm 247 at 0800 on 21 NOV 97. You must be in uniform for all appointments.

9. 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 your Squadron Orderly Room.

10. The discharge authority will make the findings and recommendations required under 10 U.S.C. 2005(g).



Attachment:
Article 15, 27 Oct 97