

# AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN			
		A1C				
TYPE	- PERSONAL APPEARANCE		X RECORD REVIEW			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION				
YES	NO					
	X					
		ADDRESS AND OR ORGANIZATION OF COUNSEL				
		VOTE OF THE BOARD				
MEMBERS SITTING		HON	GEN	UOTHC	OTHER	DENY
						X
						X
						X
						X
						X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD		
A01.57		A66.00		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		
HEARING DATE		CASE NUMBER				
23 Jul 02		FD-00-00040				
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE						
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			
INDORSEMENT			DATE 23 JUL 02			
TO:			FROM:			
SAF/MIBR 530 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 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002			

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD-00-00040

**GENERAL:** The applicant appeals for upgrade of discharge to Honorable and change of reason for discharge.

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 and change of reason for discharge are denied.

The board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety, which would justify a change of discharge.

The applicant's issue is listed in the attached brief.

**Issue.** Applicant contends discharge was inequitable because it was too harsh. The information provided by the applicant and contained in his records was carefully reviewed by the DRB. The records indicated the applicant received an Article 15 for misconduct. The misconduct was for drug abuse, wrongfully using marijuana. The DRB opined that drug abuse, particularly by an NCO, is not compatible with Air Force standards. The applicant claimed that he did not smoke marijuana but was present when others did. He also stated that he should have been retested due to the controversy surrounding drug testing in the early 1980's. Extensive scientific testing has indicated that the casual passive inhalation of marijuana will not result in a positive urine specimen. Procedures for testing urine samples are carefully followed to ensure their validity. If there had been a suspected chain of custody violation, the member and his chain of command would have been notified at the time. The member did not present any evidence to the contrary indicating that he believed that there was such a violation. The Board concluded the misconduct outweighed the otherwise satisfactory performance of this member.

**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 and change of reason for 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 85/12/20 UP AFR 39-10, para 5-49c (Misconduct - Drug Abuse). Appeals for Hon and Change Rsn and Auth for Disch.

2. **BACKGROUND:**

a. DOB: 59/05/19. Enlmt Age: 19 8/12. Disch Age: 26 7/12. Educ: HS DIPL. AFQT: N/A A-69, E-84, G-66, M-78. PAFSC: 73250 - Personnel Specialist. DAS: 83/04/22.

b. Prior Sv: (1) AFRes 79/01/24 - 79/03/22 (1 months 29 days) (Inactive).

(2) Enld as AB 79/03/23 for 4 yrs. Ext 83/03/21 for 23 months. SVD: 5 yrs 0 mos 0 das, all AMS. AMN - 79/09/23. A1C - 80/03/23. SRA - 81/11/01. APRs: 9,9,9,9,9,9,9.

3. **SERVICE UNDER REVIEW:**

a. Enld as SRA 84/03/23 for 4 yrs. Svd: 1 Yrs 8 Mo 28 Das, all AMS.

b. Grade Status: A1C - 85/12/09 (ART 15, 85/12/09)

c. Time Lost: none.

d. Art 15's: (1) 85/12/09, Chanute AFB, TX - You did, o/a 24 Jul 85, wrongfully use marijuana. Rdn to A1C, and forfeiture of \$100.00 per month for two months. (No appeal) (No mitigation).

e. Additional: none.

f. CM: none.

g. Record of SV: 84/03/11 84/07/08 Chanute AFB 7 (CRO)  
84/07/09 85/07/08 Chanute AFB 9 (Annual)  
(Discharged from Chanute AFB)

h. Awards & Decs: AFAM W/1 DEV, AFGCM W/1 DEV, SAEMR, HSM, AFLSAR, AFTR, AFOUA.

i. Stmt of Sv: TMS: (6) Yrs (10) Mos (27) Das  
TAMS: (1) Yrs (8) Mos (28) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 99/12/20.

(Change Discharge to Honorable and Change Rsn and Auth for Disch)

Issue 1: I had requested an additional testing, given during the early 80's, there was a lot of controversy and malfeasance with the chain of custody for specimens, but I was refused and offered to take an Article 15 of the UCMJ with loss of rank and pay.

Issue 2: I had never used this substance, but as I stated to my present commander at the time, I had just returned from a family leave in Mexico and while visiting the nightclubs was exposed to many smoky substances in the air, for which my family and I both inhaled as secondhand smoke. My commander agreed that this could've caused so along (sic) rating as .003 for which I received on the urinalysis. He indicated that he was bound by policy to implement punishment anyway and couldn't have me re-tested due to either an error or a faulty reading, which was taken two days upon my return to duty from leave. The Squadron test had been given the week before, but my co-worker insisted I should take it also since (sic) was absent at the time it was given and therefore I had to take test upon her expressed dissatisfaction. The whole situation appeared to have an injustice kind of air about it. Unfortunately, I lost my entry into the Air Nat'l Guard which was to take place 3 days past my unforeseen separation date.

ATCHS

1. Resume.

00/01/31/ia



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS CHANUTE TECHNICAL TRAINING CENTER (ATC)  
CHANUTE AIR FORCE BASE IL 61868-5000

REPLY TO: JAC (Capt [REDACTED], 3002)

18 December 1985

SUBJECT: Legal Review (A1C [REDACTED] FR [REDACTED])

TO: 3345 ABG/CC

1. I have reviewed the attached recommended separation of A1C [REDACTED] FR [REDACTED] under AFR 39-10, para 5-49c, for misconduct: drug abuse, and it is, in my opinion, legally sufficient to warrant and sustain the recommended action.
2. A1C [REDACTED] is 26 years of age. He began active duty on 23 Mar 79 with a current term of enlistment for four years beginning 23 Mar 84. On 24 Jul 85 A1C [REDACTED] submitted a urine sample in a unit sweep which tested positive for marijuana. By Article 15 action on 9 Dec 85 for drug abuse, he was demoted from the rank of Sergeant to Airman First Class and ordered to forfeit \$100 per month for two months. Drug abuse, particularly by an NCO, is not compatible with Air Force standards. The positive urinalysis is evidence of illegal, wrongful, and improper use of marijuana as established by 21 U.S.C. 812.
3. Before his unit commander recommended A1C [REDACTED] for discharge, he was formally counseled by his first sergeant and his commander, and he was referred to the drug abuse evaluation program.
4. His commander finds that A1C [REDACTED] has not demonstrated the potential for successful rehabilitation, and recommends a general discharge. A1C [REDACTED] has submitted a conditional waiver of his rights to an administrative discharge board hearing contingent on his receipt of no less than a general discharge. However, A1C [REDACTED] has consulted counsel and has submitted a statement denying that he has ever smoked marijuana. He maintains his innocence but admits he was present when civilians he knew were smoking marijuana. He asks to remain in the U.S. Air Force, having received two Air Force Achievement Awards and a Humanitarian Service Award. A1C [REDACTED] further asks that if you decide not to offer him probation and rehabilitation that he be given an honorable discharge based on the quality of his service. Characterization of service as general is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of his military record. A1C [REDACTED] has received eight airman performance reports since Sep 80, of which seven were overall "9" ratings, and one (dated Jul 84) was a rating of "7." Since the urinalysis was not commander-directed, the positive finding may be used to characterize his discharge. Procedures for testing the urine sample are carefully followed to ensure their validity. A1C [REDACTED] wrongful use of marijuana is the significant negative aspect of his conduct that outweighs the positive aspects of his military record and warrants his receiving a general discharge. Furthermore, extensive scientific testing in the past has indicated that the casual passive inhalation of marijuana, as claimed by A1C [REDACTED], will not result in a positive urine specimen.

5. As discharge authority, you have the following options:

- a. Retain A1C [REDACTED];
- b. Recommend to the General Court-martial Convening Authority (GCM) that A1C [REDACTED] receive an honorable discharge;
- c. Accept A1C [REDACTED] conditional waiver of a board hearing and discharge him with a general discharge;
- d. Accept A1C [REDACTED] conditional waiver of board hearing and discharge him with a general discharge, but offer him a conditional suspension of the discharge for a period of not less than six months, nor more than 12 months; or
- e. If discharge under other than honorable conditions is warranted, reject the conditional waiver and tell the respondent to either submit an unconditional waiver or request a board hearing.

6. RECOMMENDATION TO THE DISCHARGE AUTHORITY: Accept the conditional waiver and discharge A1C [REDACTED] with a general discharge. Further attempts to rehabilitate appear inappropriate.

[REDACTED]  
[REDACTED] Lt Col, USAF  
Staff Judge Advocate

1 Atch  
Case File

FD00-00040



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS CHANUTE TECHNICAL TRAINING CENTER (ATC)  
CHANUTE AIR FORCE BASE, IL 61868

REPLY TO: 3345 ABG/CCQ  
ATTN OF:

12 Dec 85

SUBJECT: Letter of Notification - Board Hearing

TO: ALC [REDACTED], FR [REDACTED]

1. I am recommending your discharge from the United States Air Force for drug abuse according to AFR 39-10, under the provisions of paragraph 5-49c. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are: You submitted a urine sample on 24 Jul 85. It tested positive for marijuana identifying you as a drug abuser. This sample was given as the result of a unit sweep. Drug abuse by any Air Force member, and an NCO in particular, is inexcusable and will not be tolerated. Failure to meet the minimally acceptable standards of the Air Force mandates that you be discharged. 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.

3. This action could result in your separation with an under other than honorable conditions 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.

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 received a medical examination on 18 December 1985.

6. Military legal counsel Capt [REDACTED] ADC, ext 4108 has been obtained to assist you. An appointment has been scheduled for you to consult him on 13 Dec 85 at 0800 hrs. 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 AFM 111-1. 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 Statement as explained in AFR 39-10, attachment 6. A copy of AFR 39-10 is available for your use in the Orderly Room Bldg P-4, Room 127 and must be returned to the Orderly Room when your case is completed.

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

[REDACTED]  
[REDACTED] Major, USAF  
Commander, Hq Sq Sec, 3345 ABC

3 Atch

1. USAF Hosp, SGHL Ltr, Nov 85
2. AF Form 3070, 9 Dec 85
3. Airman's Receipt of Ltr of Notification