

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AB	AFSN/SSAN [REDACTED]
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TYPE	X PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	[REDACTED]	[REDACTED]
NO		
X		

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]		X			
[REDACTED]			X		
[REDACTED]			X		
[REDACTED]			X		
[REDACTED]			X		

ISSUES A91.06	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD		
		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	

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

REMARKS

Case heard at Dobbins ARB, Georgia.

Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.

SIGNATURE OF RECORDER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 21 NOV 02
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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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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2001-0353

GENERAL: The applicant appeals for upgrade of discharge to Honorable.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel at Dobbins ARB, GA on November 21, 2002. The following witnesses also testified on the applicant's behalf: [REDACTED], a friend and applicant's counsel, and [REDACTED], applicant's spouse.

The attached brief contains the available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: The discharge is upgraded to Under Other Than Honorable Conditions (UOTHC).

The Board finds that as an act of clemency, the character of discharge should be changed.

The applicant's issues are listed in the attached brief.

Issues. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant was convicted at Special Court Martial pursuant to his guilty plea and a Stipulation of Fact, for drug abuse. Specifically he tested positive on a random urinalysis for marijuana use, after admitting in a signed sworn statement to the Air Force Office of Special Investigations that he had used it recently at an off-base civilian party. Member also had a previous Article 15 in the same enlistment for wrongful marijuana use after a positive random urinalysis. At the time of his court martial, member requested to be discharged in lieu of court martial, which was denied. The Board concluded the misconduct was a significant departure from conduct expected of all military members, and member knew illegal drug use was incompatible with Air Force standards, but chose to ignore those standards. Because applicant did not receive an administrative discharge, his contention of inequity is not applicable. The applicant received a Bad Conduct Discharge, a punitive discharge. Under the provisions of Title 10, U.S.C. Section 1553, the only basis for change of Bad Conduct Discharge is clemency. During the hearing, applicant submitted evidence that warrants clemency; he noted he has been gainfully employed since discharge 6 years ago and has always been an active volunteer in his community, through his church, his condominium association, and various children's sports leagues and activities. He also tutors at his children's school. Applicant appears to have persevered and applied himself, and to have learned from his "mistake."

It should further be noted that Board President gave the applicant an additional 2 weeks from the date of his appearance for additional character references to reach the Board members for further consideration. Those documents were received November 26, 2002, and were reviewed and considered by the Board in reaching its findings.

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.

However, as an act of clemency, the board further concludes the applicant's characterization of discharge should be changed to Under Other Than Honorable Conditions under the provisions of Section 1553, 10 USC; however there is no basis to change the reason for discharge. Further upgrade of the discharge is not considered appropriate because of the seriousness of applicant's misconduct for which he pled guilty and was found guilty at trial.

Attachment:
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

[REDACTED]
[REDACTED]
(Former AB)

1. **MATTER UNDER REVIEW:** Appl rec'd a BCD Disch fr USAF 96/10/23 UP Special Court Martial Order [REDACTED] (Court Martial). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 68/04/05. Enlmt Age: 19 6/12. Disch Age: 28 6/12. Educ:HS DIPL. AFQT: N/A. A-87, E-61, G-62, M-27. PAFSC: 4Y031 - Dental Assistant Apprentice. DAS: (EPR Indicates): 94/05/30-95/03/29.

b. Prior Sv: (1) AFRes 87/10/20 - 88/02/08 (3 months 19 days) (Inactive).

(2) Enld as AB 88/02/09 for 4 yrs. Svd: 5 yrs 5 months 2 days, all AMS. AMN/A1C-(EPR Indicates): 88/02/09-89/02/08. SrA - 90/08/14. APR: 8. EPRs: 3,3,4,3,3.

ART 15: (1) 90/02/15, Clark AB, Phillipines - Article 86. You did, on or about 20 Dec 89, without authority, absent yourself from your place of duty at which you were required to be, and did remain so absent until on or about 23 Jan 90. Rdn to Amn (suspended until 14 Aug 90). (No appeal) (No mitigation).

(2) 88/06/23, Sheppard AFB, TX - Article 86. You did, on or about 8 Jun 88, without authority, fail to go at the time prescribed to your appointed place of duty. Forfeiture of \$50,00 pay, seven days extra duty. Rdn to Amn (suspended until 22 Dec 88). (Appeal/Denied) (No mitigation).

3. **SERVICE UNDER REVIEW:**

a. Reenld as SrA 93/07/12 for 4 yrs. Svd: 3 Yrs 3 Mo 11 Das, of which AMS is 3 yrs 2 months 18 days (excludes 23 days lost time).

b. Grade Status: AB - 95/08/17 (SPCMO# 16, 95/08/17)
A1C - 95/04/06 (Article 15, 95/04/06)

c. Time Lost: 95/07/19-95/08/11 (23 days).

d. Art 15's: (1) 95/04/06, Offutt AFB, NE - Article 112a. You did, on or about 13 Jan 95 and on or about 19 Jan 95, wrongfully use marijuana. Rdn to A1C. (Appeal/Denied) (No mitigation)

e. Additional: none.

f. CM: Special Court Martial Order [REDACTED] - 95 Aug 17, Article 112a.

CHARGE: Article 112a. Plea: Guilty. Finding: Guilty.

Specification: Did, at or near Offutt AFB, NE, between between on or about 11 May 95 and on or about 16 May 95, wrongfully use marijuana. Sentence adjudged on 19 Jul 95: Bad conduct discharge, 30 days confinement, and reduction to the pay grade of E-1.

g. Record of SV: 93/05/30 - 94/05/29 Offutt AFB 4 (Annual)
94/05/30 - 95/05/29 Offutt AFB 1 (Annual)

(Discharged from Offutt AFB)

h. Awards & Decs: AFOUA W/2 OLC, AFGCM W/1 OLC, NDSM, AFLSAR, NCOPMER, AFTR.

i. Stmt of Sv: TMS: (8) Yrs (11) Mos (12) Das
TAMS: (8) Yrs (7) Mos (23) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/08/16.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH

1. Letter to SAF/MRBR.
2. Special Court Martial No. [REDACTED] 27 Aug 96.
3. AF Form 2098, Duty Status Change, 20 Oct 95.

01/10/16/ia

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 55TH WING (ACC)
OFFUTT AIR FORCE BASE, NEBRASKA 68113-3130

Special Court-Martial Order

17 Aug 95

[REDACTED] United States Air Force, 55th Dental Squadron, was arraigned at Offutt Air Force Base, Nebraska, on the following offense at a court-martial convened by this headquarters.

CHARGE: Article 112a. Plea: G. Finding: G.

Specification: Did, at or near Offutt Air Force Base, Nebraska, between on or about 11 May 1995 and on or about 16 May 1995, wrongfully use marijuana. Plea: G. Finding: G.

SENTENCE

Sentence adjudged on 19 July 1995: Bad conduct discharge, 30 days confinement, and reduction to the pay grade of E-1.

ACTION

In the case of [REDACTED], United States Air Force, 55th Dental Squadron, the sentence is approved and, except for the bad conduct discharge, will be executed. The period of confinement having been served, no place of confinement is designated. Unless competent authority otherwise directs, the accused will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review of the conviction.

FILE
USAF MASTER PERSONNEL RCDs GP
INITIALS GRM DATE 25 Aug 95
HQ USAF (AF/JA/JM)

ACHS 029092

SPCMO No. [REDACTED]

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS TWELFTH AIR FORCE (ACC)
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA 85707-4100

27 August 1996

Special Court-Martial Order
No. [REDACTED]

In the special court-martial case of [REDACTED]
[REDACTED] United States Air Force, 55th Dental Squadron, the sentence to a bad
conduct discharge, confinement for 30 days, and reduction to the grade of airman basic, as
promulgated in Special Court-Martial Order No. [REDACTED] Headquarters 55th Wing (ACC), dated
17 August 1995, has been finally affirmed. Article 71(c) having been complied with, the bad
conduct discharge will be executed. The sentence was adjudged on 19 July 1995. (ACM
S29092)



Lieutenant General, USAF
Commander

DISTRIBUTION:

- 1 - [REDACTED]
- 1 - [REDACTED] AFLSA/JAJT-3, 2035 1st Drive West, Ste 02,
Randolph AFB TX 78150-4304 (MJ)
- 1 - [REDACTED] 55 WG/JA, 101 Washington Square, Suite 200, Offutt AFB NE
68113-2109 (TC)
- 1 - [REDACTED] USAF Judiciary/ADC, 106 Peacockeep Drive, Suite 2N3, Offutt AFB
NE 68113-4024 (ATC)
- 1 - [REDACTED] AFLSA/JACL, 1501 Wilson Blvd, Room 706, Arlington, VA
22209-2403 (DC)
- 1 - 55 DS/CC, Offutt AFB NE 85707
- 1 - 55 WG/CC/JA, 101 Washington Sq, Ste [REDACTED] Offutt AFB NE 68113-2109

OFFICE OF THE JUDGE ADVOCATE GENERAL
The United States Court of Appeals for the Armed
Forces has denied relief under Article 67; accordingly
the sentence has become final. This order accurately
reflects the final action taken pursuant to appellate review.

FOR THE JUDGE ADVOCATE GENERAL
[REDACTED]

SPCMO No. [REDACTED]

[REDACTED]
 Brigadier General, USAF
 Commander

FOR THE COMMANDER

[REDACTED]
 [REDACTED] USAF
 Superintendent, Military Justice

DISTRIBUTION:

- 1 - [REDACTED], 55th Dental Squadron, Offutt AFB, NE 68113
- 1 - [REDACTED] AFLSA/Central Circuit, Randolph AFB, TX 78150 (MJ)
- 1 - [REDACTED] 55 WG/JA, Offutt AFB, NE 68113 (TC)
- 1 - [REDACTED] 55 WG/JA, Offutt AFB, NE 68113 (ATC)
- 1 - [REDACTED] USAF Judiciary, Offutt AFB, NE 68113 (DC)
- 1 - 55 WG/CC, Offutt AFB, NE 68113-3130
- 1 - 55 DS/CC, Offutt AFB, NE 68113-2040
- 1 - 55 SPS/CC/SPOLR, Offutt AFB, NE 68113-2110
- 2 - 55 CPTS/FMFP, Offutt AFB, NE 68113-4035
- 4 - 55 MSS/DPMAR, Offutt AFB, NE 68113-4035
- 1 - 55 WG/SJA, Offutt AFB, NE 68113-2109
- 1 - 12 AF/SJA, 2915 S. 12TH AF Drive, Ste 157, Davis-Monthan AFB, AZ 85707-4250
- 10 - AFLSA/JAJM, 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332-5113
- 1 - AFMPC/DPMDOM1, 550 C Street West Ste 21, Randolph AFB, TX 78150-4739
- 6 - HQ AFSPA/SPCI, 8201 H. Ave. S.E., Kirtland AFB, NM 87117-6001
- 2 - AFDW/JAJR, 20 MacDill Blvd, Ste 207, Bolling AFB, DC 20332-5100
- 1 - AF Security Clearance Office, 497 IG/INSB, 211 Brookley Ave, Ste 200 Bolling AFB, DC 20332-5108
- 1 - DFAS-DE/FJSCM, 6760 E. Irvington Place, Denver, CO 80279-3000



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 55TH WING (ACC)
OFFUTT AIR FORCE BASE, NEBRASKA

14 August 1995

MEMORANDUM FOR 55 WG/CC [REDACTED]

FROM: 55 WG/JA

SUBJECT: Staff Judge Advocate's Recommendation:

United States v. [REDACTED]

1. On 19 June 1995 you referred the case of [REDACTED], 55th Dental Squadron, Offutt Air Force Base, Nebraska, to trial by special court-martial alleging wrongful use of marijuana. On 19 July 1995 trial was held. Attached is the AF Form 1359, Report of Results of Trial, which summarizes the charge and specification, pleas, findings, and sentence. Also attached is a personal data sheet on the accused for your consideration prior to taking action on the sentence.

2. Evidence

a. The evidence supporting the finding of guilty consists of the accused's provident plea of guilty to the charge and specification, a stipulation of fact, urinalysis results from the Air Force Drug Testing Laboratory, and the accused's confession to the AFOSI. Sentencing evidence was introduced by the prosecution to include a personal data sheet on the accused, the accused's EPRs, prior punishment under Article 15, UCMJ, for marijuana use, a letter of counseling for showing disrespect to a noncommissioned officer, dated 21 October 1994, and a civilian conviction for having alcohol in a park from Douglas County, Nebraska. There is no corrective action required in regard to the findings of guilty. I am satisfied that the evidence upon which the conviction is based is legally sufficient.

b. The sentencing evidence submitted by the defense included character letters from a [REDACTED] letters of appreciation from a [REDACTED] and [REDACTED] a nomination package for airman of the quarter: a nomination package for airman of the month: two training certificates: fifteen dental treatment surveys: a financial statement: the affidavit accompanying the urinalysis results from the Air Force Drug Testing Laboratory: and a written copy of the accused's unsworn statement.

3. Sentence: The accused was sentenced to a bad conduct discharge, thirty days of confinement, and reduction to the grade of E-1. The maximum sentence for the offense the accused was convicted of is a bad conduct discharge, six months of confinement, reduction to the grade of E-1, and forfeiture of 2/3 pay per month for six months.

ACHS 023002

Global Power for America

4. ACTION OF THE CONVENING AUTHORITY

a. Pursuant to Article 60, UCMJ, and R.C.M. 1107 you have the sole discretion to modify the findings and sentence of this court-martial as a matter of command prerogative. You may approve the findings, in whole or in part, or may disapprove the findings and order a rehearing, or dismiss the charges.

b. You may, in your sole discretion, approve, change, mitigate or suspend the adjudged sentence in whole or in part. You may disapprove the sentence and order a rehearing. You may not, however, increase the severity of the sentence.

c. This recommendation is intended to be a concise source of information about the case to assist you in deciding what action to take on the findings and sentence in the exercise of your command prerogative. You are not required to read the record of trial, or review the case for legal errors or factual sufficiency. You must consider, however, the result of trial, this recommendation and any clemency matters submitted by the accused or counsel under R.C.M. 1105, or in response to this recommendation under R.C.M. 1106.

5. RECOMMENDATION: I have considered all matters in the record of trial, including all matters presented in the presentencing portion of the trial. The sentence adjudged is warranted by the circumstances of the offense for which the accused was convicted and appropriate for the accused. I recommend that you approve the findings of guilt and approve the sentence as adjudged.

A large, dark, irregularly shaped redaction mark covers the signature of the Staff Judge Advocate.

Colonel, USAF

Staff Judge Advocate

Attachments:

1. AF Form 1359
2. Personal Data Sheet