

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	PERSONAL APPEARANCE	X RECORDREVIEW
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COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO		
	X		

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

ISSUES A93.01	INDEX NUMBER A67.70	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
HEARING DATE 18 JUN 02	CASE NUMBER FD2002-0001	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

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]
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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

FD2002-0001

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 of discharge, change of reason for discharge and change of RE code 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 issues are listed in the attached brief.

Issue. Applicant contends discharge was inequitable because it was too harsh and also contends that he should not be penalized indefinitely for a mistake he made when young. 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 wrongfully using marijuana. The DRB recognized the applicant was 20 years of age when the discharge took place. However, there is no evidence he was immature or did not know right from wrong. The Board concluded the misconduct outweighed the otherwise satisfactory performance of this member. The characterization of the discharge received by the applicant was found to be appropriate.

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]
[REDACTED] (Former AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 97/09/18 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for an Honorable Discharge, to Change the Reason and Authority for Discharge, and to Change the RE Code.

2. **BACKGROUND:**

a. DOB: 76/10/20. Enlmt Age: 19 0/12. Disch Age: 20 10/12. Educ: HS DIPL. AFQT: N/A. A-34, E-54, G-52, M-48. PAFSC: 3E731 - Fire Protection Apprentice. DAS: 96/10/31.

b. Prior Sv: (1) AFRes 95/11/19 - 96/04/30 (5 months 11 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 96/05/01 for 4 yrs. Svd: 01 Yrs 04 Mo 18 Das, all AMS.

b. Grade Status: AB - 97/08/05 (Article 15, 97/08/05)
AMN - Unknown

c. Time Lost: none.

d. Art 15's: (1) 97/08/05, Luke AFB, AZ - Article 112a. You did, within the Continental United States, between on or about 16 Jun 97 and on or about 18 Jun 97, wrongfully use marijuana. Reduction to AB. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: none.

(Discharged from Luke AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (09) Mos (31) Das
TAMS: (01) Yrs (04) Mos (18) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/01/03.

(Change Discharge to Honorable, Change the Reason and Authority for Discharge, and Change the RE Code.)

Issue 1: I was nineteen years old and I made a mistake. I smoked marijuana and failed pee test. I have not repeated this mistake.

Issue 2: At that time I requested any program available so that I could stay in. There were no programs available. The programs had been suspended 2 months before my mistake, and reinstated 3 months after I was discharged. My father did 24 years in the military. I would like my discharge upgraded so that I can enlist and continue a tradition. I am now 25 years old and much wiser. I truly would like to enlist in the military and serve my country to the best of my ability. All help in this matter would be greatly appreciated. Thank you.

ATCH

1. Memorandum.
2. DD Form 214.

02/05/07/ia

DEPARTMENT OF THE AIR FORCE
56th Fighter Wing (AETC)
Luke Air Force Base Arizona

MEMORANDUM FOR CC

02 SEP 96

FROM: JA

SUBJECT: Legal Review of Administrative Discharge - AB [REDACTED]
[REDACTED], 56 CES

1. ACTION: This case is before you for review and action in your capacity as discharge authority. The 56 CES/CC recommends the respondent be separated from the United States Air Force with a general discharge without probation and rehabilitation pursuant to AFI 36-3208, paragraph 5.54, for Drug Abuse. I concur.
2. BACKGROUND: The respondent is 20 years old, and has served approximately 2 years and 1 month of a current 4 year enlistment. AQE scores are: A - 34; E - 54; G - 52; and M - 48. The respondent is entitled to wear the Air Force Training Ribbon.
3. FACTS: On or about 16 Jun 97 and on or about 18 Jun 97, AB [REDACTED] wrongfully used marijuana. His use was discovered as the result of a statement made to the AFOSI on 9 Jul 97 that he had used marijuana between 16 Jun 97 and 18 Jun 97. His use was confirmed as the result of a voluntary consent to a urinalysis.
4. RESPONDENT'S MATTERS: The respondent has met with military counsel and has elected not to submit a statement regarding this discharge action.
5. CHARACTERIZATION OF DISCHARGE: The respondent's commander has recommended a general service characterization for this term of service which began on 1 May 96. A general discharge is appropriate in misconduct cases in which an under other than honorable conditions discharge is not warranted. The misconduct in this case is not so serious as to warrant an under other than honorable conditions service characterization.

A discharge under this paragraph may only be characterized as honorable if the member's record is so meritorious that any other characterization would be clearly inappropriate. AB [REDACTED] received an Article 15 dated 5 Aug 97 for drug use. There is no evidence that his service during that time is so meritorious a general discharge is

inappropriate. Thus, I concur with the squadron commander's recommendation for a general discharge.

6. PROBATION AND REHABILITATION: In accordance with AFI 36-3208, Chapter 7, members being separated for drug abuse are not eligible for probation and rehabilitation. In addition, **IAW** paragraph 5.55.2, a member found to have abused drugs shall be discharged unless they meet all seven of the following retention criteria:

- a. The drug use is a departure from the member's usual and customary behavior.
- b. Drug abuse occurred **as** the result of drug experimentation.
- c. Drug abuse does not involve recurring incidents, other than drug experimentation as defined above.
- 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 the 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.

The burden of proving that retention is warranted rests with the member. There has been no evidence presented **that** the member meets the retention requirements identified in paragraph 5.55.2.

7. **LEGAL SUFFICIENCY:** There is sufficient factual basis to support discharge. Further, this file has been **prepared in** substantial compliance with the provisions of **AFI 36-3208**. Finally, **AB [REDACTED]** has been notified of this discharge and has had **an** opportunity to respond. For these reasons, we find the case file is legally sufficient subject to either a review of the airman's medical records or the inclusion of the discharge physical.

8. **OPTIONS:** As the discharge authority you have the following options:

- a. Separate the respondent with a general discharge; or

b. Forward the case to 19AF/CC recommending the respondent receive **an** honorable discharge; **or**

c. If you feel **an** under other than honorable conditions discharge is appropriate, return the package **to** the squadron for processing in accordance with administrative discharge procedures.

9. RECOMMENDATION: Based on the foregoing, I recommend you separate the respondent from the United States Air Force with a general discharge.


Lt Col, USAF
Staff Judge Advocate

DEPARTMENT OF THE AIR FORCE
56th Civil Engineering Squadron (AETC)
Luke Air Force Base, Arizona

29 AUG 1997

MEMORANDUM FOR AB [REDACTED], 56 ES

FROM: CC

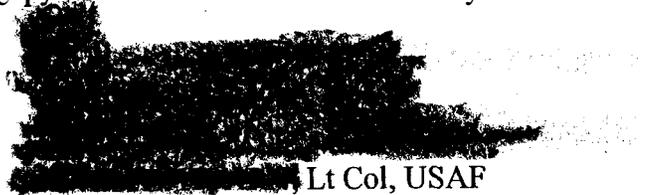
SUBJECT: Notification Letter

1. I am recommending your discharge from the United States Air Force for Drug Use. The authority for this action is AFPD 36-32 and AFI 36-3208, section H, 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 is, that you did between on or about 16 Jun 97 and on or about 18 Jun 97, wrongfully use marijuana. This is evidenced by an AFOSI Report of Investigation, dated 16 Jul 97. For this misconduct, you received Article 15 punishment on 5 Aug 97.
3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising special court martial 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 United States Air Force, and any special pay, bonus, or education assistance funds may be subject to recoupment.
4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. An appointment for you to consult the **Area Defense Counsel**, Captain [REDACTED] at Building 1150, Suite 3015, Luke Air Force Base, Arizona, has been scheduled for 29 Aug 97 at 0900 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 by 4 Sep 97 unless you request and receive, in writing, an extension for good cause. I will forward any statements you submit to the separation authority as part of this package.

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 must retrieve your medical records from **56th** Medical Group Hospital Outpatient Records Section and report to Physical Examinations Section, building **810**, with your medical records and a copy of this discharge package for medical review and/or examination.

8. **Any** personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in **AFI 36-3208**. A copy of **AFI 36-3208** is available for your use in the Orderly Room.



Lt Col, USAF

Commander

Attachments

1. Report of Investigation, dated **16 Jul 97**
2. AF Form 3070, dated **5 Aug 97**
3. Submission of Matters