

PERSONAL APPEARANCE

X RECORD REVIEW

COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO		
	X		

MEMBERS SITTING

VOIT OF THE BOARD

HON	GEN	UOTIC	OTHER	DENY
				X
				X
				X
				X
				X

ISSUES A93.17	INDEX NUMBER A67.70	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
HEARING DATE 20 AUG 02	CASE NUMBER FD2002-0097	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 RATIONALE ARE DISCUSSED IN 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, and the right to submit an application to the AFBCMR.

UNCLASSIFIED		DATE: 20 AUG 02
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	

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0097

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.

ISSUE: The applicant is not contending that his discharge was inequitable. He would like his discharge upgraded so that he will be eligible for further consideration in the USPS. The Board reviewed the entire record and found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The records indicated the applicant was found guilty by a General Court Martial for wrongfully using marijuana. The DRB took note of the applicant's duty performance as documented by his performance reports, nominations for awards, and other information contained in the records. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the drug abuse was a significant departure from the conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge.

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 SRA) (HGH TSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 96/07/08 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 63/12/30. Enlmt Age: 18 1/12. Disch Age: 32 6/12. Educ:HS DIPL. AFQT: N/A. A-43, E-36, G-44, M-64. PAFSC: 3P051 - Security Journeyman. DAS: 92/08/23.

b. Prior Sv: (1) AFRes 82/02/24 - 82/10/27 (8 months 4 days) (Inactive).

(2) Enlisted as AB 82/10/28 for 4 yrs. Reenlisted as SRA 85/11/18 for 5 yrs. Extended 87/09/01 for 3 months. Extended 90/01/09 for 11 months. Svd: 8 yrs 0 months 2 days, all AMS. AMN - 83/04/28. AIC - 83/10/28. SRA-(APR Indicates):85/04/01-86/03/31. SGT-(APR Indicates): 86/11/02-87/10/30. SSGT - 90/04/01. APRS: 9,8,9,9,9,9. EPRs: 5,4.

ART 15: 90/04/11, Bitburg AB, Germany - Article 107. Preliminary investigation has disclosed that you did, on or about 23 Mar 90, with intent to deceive make to SSgt -----, an official statement, to wit: that you did not talk to Sgt ----- on 4 Mar 90, which statement was false in that you had spoken to him, which statement was then known by you to be so false. Reduction to Sgt (remitted 11 Apr 90), forfeiture of \$560.00 pay per month for two months (in excess of \$100.00 per month suspended until 8 Oct 90) and ordered to perform 45 days extra duty (No appeal) (No mitigation)

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 90/10/31 for 6 yrs. Svd: 05 Yrs 08 Mo 02 Das, of which AMS is 5 yrs 7 months 10 days (excludes 22 days lost).

b. Grade Status: SRA - 96/04/17 (GCMO#41, 96/04/17)
TSGT - 95/06/01

c. Time Lost: 96/03/07 - 96/03/28 (22 days).

d. Art 15's: none.

e. Additional: none.

f. CM: General Court Martial No.41 - 96 April 17

CHARGE: Article 112a. Plea: Not Guilty. Finding: Guilty.

Specification: Did, in the continental United States, on divers occasions, between on or about 1 Jan 95 and 18 Sep 95, wrongfully use marijuana. Sentence adjudged on 7 Mar 96: Confinement for 30 days, forfeiture of \$200.00 pay per month for 3 months, and reduction to SrA.

g. Record of SV: 90/10/31 - 91/10/30 George AFB 5 (Annual)
 91/10/31 - 92/06/20 George AFB 5 (CRO)
 92/06/21 - 93/07/29 Whiteman AFB 5 (Annual)
 93/07/30 - 94/03/29 Whiteman AFB 5 (CRO)
 94/03/30 - 95/01/30 Whiteman AFB 5 (CRO)
 95/01/31 - 95/09/28 Whiteman AFB 2 (CRO)REF

(Discharged from Whiteman AFB)

h. Awards & Decs: AFAM, NCOPMER, NDSM, AFOSSTR, AFLSAR W/2 DEVS, SAEMR, AFOSLTR W/1 DEV, AFOUA 2/3 DEVS, AFGCM W/3 DEVS.

i. Stmt of Sv: TMS: (14) Yrs (03) Mos (18) Das
 TAMS: (13) Yrs (07) Mos (14) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/03/05.
 (Change Discharge to Honorable)

Issue 1: I am requesting a record review for the further consideration of employment with the United States Postal Service. due to the type of discharge (General Under Honorable Condition) Human Resource informed me to have the discharge upgraded which can make me eligible for further consideration of employment.

ATCH
 none.

02/06/17/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 509th BOMB WING (ACC)
WHITEMAN AIR FORCE BASE, MISSOURI

FD 2002-0097

JUN 4 1996

MEMORANDUM FOR 8 AF/JA

245 Davis Ave E Room 200
Barksdale AFB LA 71110-2279

FROM: 509 BW/CC

509 Mitchell Ave, Ste 509
Whiteman AFB MO 65305-5055

SUBJECT: Administrative Discharge-SrA

1. I have carefully considered the discharge package, the respondent's conditional waiver of board hearing, and the squadron commander's recommendation. The circumstances involved in this case are of a nature to require discharge. Although the respondent's on-duty performance has been good, his illegal use of marijuana, a controlled substance, outweighs the positive aspects of his military record. The facts and circumstances of this case establish a basis for discharge under AFI 36-3208, Paragraph 5.54.

2. I recommend that you accept the respondent's offer of a conditional waiver of his right to present matters to an Administrative Discharge Board, and that the respondent be discharged with a service characterization of under honorable conditions (general). Under the provisions of AFI 36-3208, chapter 7, probation and rehabilitation are not authorized.

Attachment
Case File

Global Power for America

**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS, 509TH BOMB WING (ACC)
WHITEMAN AIR FORCE BASE, MISSOURI**

JUN 4 1996

MEMORANDUM FOR 509 BW/CC

FROM: 509 BW/JA

SUBJECT: Final Legal Review, Administrative Discharge of
509 SPS

1. **BASIS OF ACTION:** IAW AFI 36-3208, para 5.5, [redacted] commander initiated this discharge for drug abuse [redacted] submitted a conditional waiver of his right to an administrative discharge board if his discharge is characterized no less than an under honorable conditions (general). After review [redacted] conditional waiver, his commander recommends that [redacted] be discharged with an under honorable conditions (general) discharge.

2. **EVIDENCE FOR THE GOVERNMENT:**

a. On or about 7 March 1996, he was found guilty by a General Court-Martial for wrongfully using marijuana on several occasions, between on or about 1 January 1995 and 18 September 1995.

3. **EVIDENCE FOR THE RESPONDENT:** [redacted] is 33 years old. He consulted counsel, and he submitted a conditional waiver of his right to an administrative discharge board in return for a general discharge. He elected not to submit statements in his behalf. He entered the Air Force on 24 February 1982, and has had 2 APR's and 8 EPR's. He is entitled to wear the Air Force Achievement Medal (1OLC), Air Force Good Conduct Medal (2OLC), Air Force Outstanding Unit Award (3OLC), The Air Force Longevity Service Ribbon, USAF NCO PME Graduate Ribbon, Small Arms Expert Marksmanship Ribbon, Air Force Overseas Ribbon (Short), Air Force Overseas Ribbon (Long), The National Defense Service Medal and the Air Force Training Ribbon. National Defense Service Medal and AF Training Ribbon.

4. **DISCUSSION:** AFI 36-3208, paragraph 5.54, defines drug abuse as "the illegal, wrongful, or improper use, . . . of any drug." It further states that drug abuse is "incompatible with military service and airmen who use . . . drugs one or more times are subject to discharge for misconduct." [redacted] was convicted of drug abuse on 7 March 1996. [redacted] discharge for drug abuse is mandatory unless the respondent makes an affirmative showing that he meets seven specific retention criteria. A copy of the pertinent paragraphs of AFI 36-3208 is included for your review. [redacted] does not meet those criteria; therefore, the only issue is the characterization of service. In this case, [redacted] has elected not to submit statements and he has conditionally waived his right to a discharge board.

5. AFI 36-3208, chapter 1, para 1.21.3., an airman cannot be discharged under other than honorable conditions if the sole basis for discharge is a serious offense that resulted in conviction by a court-martial that did not adjudge a punitive discharge unless such characterization is approved by the Secretary of the Air Force.

6 [redacted] has had one additional incident of misconduct. He received a Letter of Reprimand for violation of AFI 36-3001 for having three ID cards in his possession when he was emitted into confinement. IAW AFI 36-3208, chapter 5, para 5.2.1. an airman must be counseled formally concerning his deficiencies and given an opportunity to overcome them before a commander recommends discharge for a pattern of misconduct. [redacted] has been counseled about proper use of his ID card. He has refrained from further misconduct. Therefore a pattern of misconduct cannot be the basis for discharge.

7. For the above stated reasons, the sole basis for discharge of [redacted] his General Court-Martial conviction. Under the provisions of AFI 36-3208, paragraph 7.2.6, probation and rehabilitation is not authorized. This case file is legally sufficient to support discharge under the provisions of AFI 36-3208, paragraph 5.54.

8. **DISPOSITION ALTERNATIVES:** As special court-martial convening authority, you may:

(a) if you determine that [redacted] meets all seven retention criteria as stated in AFI 36-3208, terminate this proceeding and retain [redacted] in active duty, or

(b) recommend that the general court-martial convening authority accept the conditional waiver and that [redacted] be separated with an *under honorable conditions (general) discharge*; or

(c) recommend that the general court-martial convening authority accept the conditional waiver and that [redacted] be separated with an *honorable discharge*; or

(d) if you deem it more appropriate, reject [redacted] conditional waiver and order an administrative discharge board be convened; or

(e) if you deem it more appropriate, reinstate this discharge under another paragraph of AFI 36-3208.

9. **RECOMMENDATION:** I recommend you sign the attached correspondence addressed to the General Court-Martial Convening Authority recommending that he accept [redacted] conditional waiver and discharge [redacted] with an *under honorable conditions (general) discharge*.

Attachment:
Discharge Package

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 509 SECURITY POLICE SQUADRON (ACC)
WHITEMAN AIR FORCE BASE, MISSOURI

MEMORANDUM FOR:

29 MAY 1996

FROM: 509 SPS/CC

SUBJECT: Notification Letter - Board Hearing

1. I am recommending your discharge from the United States Air Force for a ^{Drug Abuse} ~~pattern of misconduct~~ according to AFPD 36-32 and AFI 36-3208, under the provisions of paragraph 5. ~~5f~~. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reason for this action is:

~~a. On or about 25 March 1996, you had three Armed Forces identification cards in your possession, which is a violation of AFI 36-3001, as evidenced by a Letter of Reprimand, dated 25 March 1996. (Atch 1a)~~

~~q.~~ **b.** On or about 7 March 1996, you were found guilty by a General Court-Martial for wrongfully using marijuana on several occasions, between on or about 1 January 1995 and 18 September 1995, as evidenced by General Court-Martial Order Number 41, dated 17 April 1996. (Atch 1b)

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending your service be characterized as under other than honorable conditions. The commander exercising SPCM authority 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 and will probably be denied enlistment in any component of the armed forces. Any special pay, bonus, or education assistance funds may be subject to recoupment.

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 have been scheduled for a medical examination. You must report to Physical Exams at **1545 on 31 May 1996**.
(Time) (Date)

6. Military legal counsel **hldg 1000, ext 7-5556**, has been obtained to assist you. An appointment has been scheduled for you to consult him on _____, at _____. 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 AFI 51-201. 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 seven 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.

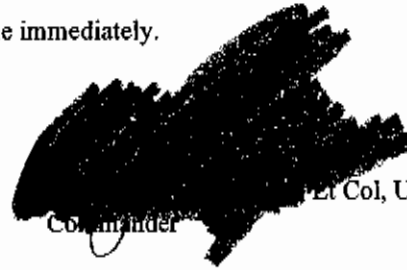
I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in your orderly room. This copy of AFI 36-3208 must be returned to your orderly room upon the completion of this action.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. The discharge board or, the discharge authority will make the finding and recommendations required under 10 U.S.C. 2005(g).

11. Execute the attached acknowledgment and return it to me immediately.


Commander 1st Col, USAF

Attachments:

1. Supporting documents -- for the reason for discharge
 - a. LOR, dtd 25 Mar 96.
 - b. General Court-Martial Order Number 41, dtd 17 Apr 96.
2. Documents containing derogatory information -- which are not listed in the notification letter.
3. Airman's acknowledgment, dated _____.