

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN
[REDACTED]		A1C	[REDACTED]

TYPE	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	AMERICAN LEGION
<input checked="" type="checkbox"/>		
NAME OF COUNSEL AND OR ORGANIZATION		
MR. [REDACTED]		

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

ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD			
A66.00	A66.00	1	ORDER APPOINTING THE BOARD		
		2	APPLICATION FOR REVIEW OF DISCHARGE		
		3	LETTER OF NOTIFICATION		
HEARING DATE	CASE NUMBER	4	BRIEF OF PERSONNEL FILE		
24 Oct 02	FD2002-0115		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 ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

**REMARKS**  
 Case heard at Andrews AFB, MD.

Based on a majority vote, the Board decided to upgrade the applicant's discharge to an honorable and to change the reason for discharge to Secretarial Authority. A majority of the Board voted against upgrading the applicant's reenlistment eligibility (RE) code to 3K.

\*Change the Reason for Discharge to: Secretarial Authority SPD:  
 + Upgrade RE Code to 3K

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT
[REDACTED]	[REDACTED]

INDORSEMENT	DATE: 17 Dec 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 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD2002-0115

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

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, MD on October 24, 2002. The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions.

Exhibit 6: 4 character letters

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

**FINDINGS:** The discharge is upgraded to Honorable, and the reason for discharge is changed to Secretarial Authority. The Board finds that the evidence of record substantiates an impropriety that justifies upgrade of the discharge.

**ISSUES:** The applicant was discharged with a General Discharge for Misconduct – drug abuse. The applicant challenged the validity of his discharge on the basis that it was not supported by credible evidence. The evidence of his alleged drug use consisted of only two witness statements. The applicant challenged the credibility of both witnesses. He and Airman [redacted] testified at the Board proceeding as to the lack of credibility of the only witnesses who made incriminating statements against the applicant. Airman [redacted] further testified that one of the witness statements also incriminated him in wrongful drug use. The applicant testified that the other witness against him had a motive to lie. Both testified that they had never used illegal drugs. The Board concluded that the two witness statements against the applicant lacked the credibility. In reaching this conclusion, the Board found the applicant and Airman [redacted] to be credible. Airman [redacted] also testified that an involuntary discharge action based on drug abuse was initiated against him and that the discharge authority dismissed the action. While the Board granted due deference to the fact-finding and discretion of the discharge authority, the Board found the evidence insufficient to establish that the applicant wrongfully used drugs.

**CONCLUSIONS:** The Discharge Review Board concludes that the sole allegation supporting the discharge action was not supported by a preponderance of the evidence. In view of the foregoing findings, the Board concludes that the applicant's discharge should be upgraded as a matter of propriety. Furthermore, the reason for the discharge is more accurately described as Secretarial Authority. The applicant's characterization and reason for discharge should be changed to Honorable and Secretarial Authority under the provisions of Title 10, USC §1553.

Attachment:  
Examiner's Brief

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

(Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/12/12 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable & Change the Reason & Authority for Disch.

2. **BACKGROUND:**

a. DOB: 76/12/27. Enlmt Age: 19 0/12. Disch Age: 24 11/12. Educ: HS DIPL. AFQT: N/A. A-61, E-51, G-46, M-46. PAFSC: 3P051 - Security Journeyman. DAS: 98/11/30.

b. Prior Sv: (1) AFRes 96/01/08 - 96/05/28 (4 months 20 days) (Inactive).

(2) Enlisted as AB 96/05/29 for 4 yrs. Svd: 3 yrs 1 month 23 days, all AMS. AMN - 97/09/29. A1C-(EPR Indicates): 96/05/29-98/01/28. SRA - 99/05/29. EPRs: 2,3.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SRA 99/07/23 for 4 yrs. Svd: 02 Yrs 04 Mo 19 Das, all AMS.

b. Grade Status: A1C - 01/05/01 (Article 15, 01/05/01)

c. Time Lost: none.

d. Art 15's: (1) 01/05/01, Holloman AFB, NM - Article 112a. You, did, on divers occasions between on or about 1 Oct 00 and on or about 31 Oct 00 wrongfully use marijuana. Rdn to A1C, forfeiture of \$50.00 pay per month for 2 months, and 30 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: 98/10/01 - 99/09/30 Holloman AFB 5 (Annual)  
99/10/01 - 00/04/18 Holloman AFB 5 (CRO)  
00/04/19 - 00/12/14 Holloman AFB 5 (CRO)

(Discharged from Holloman AFB)

h. Awards & Decs: JMUAR W/1 BOLC, AFOUA W/1 BOLC, AFGCM, AFEM W/1 BS, AFSM, AFOULTR, NCOPMER, AFLSAR, AFTR, NATOM.

i. Stmt of Sv: TMS: (05) Yrs (11) Mos (04) Das

TAMS: (05) Yrs (06) Mos (14) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/03/12.  
(Change Discharge to Honorable & Change RE Code)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. Thirteen Character References.
3. DD Form 214.

02/06/27/ia

I Believe the investigation conducted was done poorly, was incomplete and the information used was untrue.

From 18 Jan 01 to 10 Dec 01 (10 1/2 months) this investigation was opened and closed three separate times due to incompleteness with inconsistencies.

The investigators did not conduct a urine analysis, nor did they search my living quarters or my personal vehicle. All of which are S.O.P.'s in any drug investigation. (I requested all three multiple times throughout the 10 1/2 months)

The two people accusing me of wrong doing <sup>were not truthfull w/ their statements and</sup> admitted to others they had lied. One of the two people admitted that she had been coerced by the investigators.

Upon completion of the first investigation only two written statements were presented accusing me of wrongful act's under ART. 112a

One statement from a felon convicted of the use, possession, distribution and introduction of cocaine and marijuana into the Air Force.

The other statement came from someone who has had an unfavorable information file for being reprimanded in the past for falsifying statements.

A second investigation was initiated based on a Senator inquiry requested by me, an I.G. investigation into my unit commander for abuse of power. A polygraph test request and information received that the two

accuseing parties Had lied and been coerced.

UPON completion OF THE Second investigation a Discharge package was issued to me on 18 JUN 01. Approximately one week Later the discharge package was withdrawn By my wing commander upon belief that Both investigations were incomplete, Had unanswered questions and were inconsistent.

A THIRD investigation was initiated and upon completion NO Further information was Found proving that I Had committed the crime I was accused of.

ON 06 DEC 01 a second discharge package was served to me based solely on the Accusations From THE First investigation.

THE first investigation Being the same one my Wing commander deemed incomplete, inconsistent and with unanswered questions.

my wing commander and vice wing commander were Both TDY AND THE Decision Making was left to the Support Group Commander.

I Believed that THE discharge and punishment I received was unfair Because I am not guilty as charged.

I Am Asking that I Receive A Honorable Discharge with A RE-1 Reentry Code. I am asking that these Changes Be made so I may enter the U.S. Armed Forces and complete my military career.



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 49TH FIGHTER WING (ACC)  
HOLLOMAN AIR FORCE BASE, NEW MEXICO

FD2002-0115

MEMORANDUM FOR 49 FW/CC

FROM: 49 FW/JA

SUBJECT: Legal Review - Administrative Discharge Action - [REDACTED]  
[REDACTED], 49th Security Forces Squadron

1. EXECUTIVE SUMMARY: The attached file in the proposed discharge action against [REDACTED], has been reviewed and found legally sufficient to support administrative discharge under AFI 36-3208, Section H, paragraph 5.54, for drug abuse, with an under honorable conditions (general) discharge without probation and rehabilitation (P & R).

2. BACKGROUND:

a. On 13 November 2001, [REDACTED], 49 SFS/CC, notified [REDACTED] that he was recommending he be discharged from the United States Air Force for drug abuse, pursuant to AFI 36-3208, Section H, paragraph 5.54. [REDACTED] recommends an under honorable conditions (general) discharge without probation and rehabilitation. [REDACTED] acknowledged receipt of the letter of notification on 13 November 2001.

b. Pursuant to paragraph 6.2.2, Respondent is not entitled to a board hearing. Thus, this case is being processed by the notification procedure in Section B, Chapter 6, AFI 36-3208. [REDACTED] was given written notice of his commander's recommendation for discharge, of the reasons for the recommendation, and of the least favorable type of separation authorized. He was provided with copies of the documents to be forwarded to the separation authority in support of the recommendation. He was also advised of his rights to consult counsel, to submit statements to the separation authority, and to waive any or all of these rights. [REDACTED] consulted counsel and submitted a statement for your consideration.

3. PERSONAL DATA:

a. Date and Term of Enlistment: 23 July 1999, 4 years.

b. Total Active Federal Military Service Date: 29 May 1996.

c. Performance Report: 29 May 1996 - 28 January 1998 (2); 29 January 1998 - 30 September 1998 (3); 1 October 1998 - 30 September 1999 (5); 1 October 1999 - 18 April 2000 (5); 19 April 2000 - 14 December 2000 (5).

4. EVIDENCE FOR THE GOVERNMENT: This discharge recommendation is based on the following documented acts of misconduct: Respondent did, at or near Alamogordo, New Mexico, on divers occasions between on or about 1 October 2000 and on or about 31 October 2000 wrongfully use marijuana. For his misconduct, he received nonjudicial punishment by Article 15, UCMJ, with a corresponding UIF action on 1 May 2000.

5. EVIDENCE FOR THE RESPONDENT: Respondent has consulted counsel and has submitted a detailed statement for your consideration. In his statement, the Respondent claims that out of three investigations that took ten months to complete, only two statements were presented as evidence showing that he used a controlled substance. The Respondent claims that he requested on multiple occasions that a urinalysis and inspection of living quarters and POV be conducted. Also, the Respondent states that the initial allegation against him was made by [REDACTED] who is currently in a military detention facility for the use, possession, distribution and introduction of cocaine and marijuana. The Respondent additionally points out that the second witness, [REDACTED], who corroborated the initial allegation, received a previous LOR with a corresponding UIF for false official statement. She also has derogatory paperwork for financial irresponsibility and is "known to fabricate stories and lies".

6. DISCUSSION:

a. Basis for Discharge: Respondent's drug abuse is sufficient to support a discharge under paragraph 5.54. The incident constitutes a sufficient basis for discharge and this discharge action is legally sufficient.

b. Appropriateness of Discharge:

(1) In his response the Respondent claims that due to the paucity of evidence, the pending discharge is inappropriate. The Respondent claims that the evidence supporting his Article 15 is not credible. However, it was the Respondent, after consulting with counsel, who chose to accept the Article 15. He indicated that his decision was based on saving the Air Force the time and expense associated with a litigated court-martial. Notwithstanding the Respondent's rationale, the Respondent accepted the Article 15 for wrongful use of marijuana.

(2) Second, the Respondent asserts that the AFOSI investigation was inadequate. To support his contention he explains that he offered to consent to a urinalysis and offered to consent to the search of his quarters and vehicle. The Respondent fails to realize, that once he asserted his right to counsel, the AFOSI could not legally conduct searches of his urine, quarters and vehicle. Probable cause to search did not exist because the evidence supported the conclusion that the offenses occurred approximately three months prior to Respondent's interview with the OSI.

(3) Third, the Respondent challenges the credibility of the statements made by [REDACTED] as well as [REDACTED]. On 20 December 2000, the local authorities found [REDACTED] at a house in Alamogordo where drugs were discovered. [REDACTED] was turned over to OSI. He subsequently made a statement that he used marijuana. Additionally, he indicated that he had smoked marijuana with five other members of the 49 SFS.



Three of the five members admitted to using marijuana and have since been administratively discharged. The remaining two refused to make a statement and asserted their right to counsel. Although a drug-user, it appears from the totality of circumstances that [REDACTED] 20 December 2000 statement is both reliable and credible. [REDACTED] made a sworn statement that the Respondent approached her in October 2000 and said that he had stopped smoking marijuana. The Respondent has indicated in his own statement that [REDACTED] is not a credible source of information, and that she has, in the past, received administrative action for a false official statement. However, [REDACTED] was re-interviewed by the OSI and has reiterated that her original statement was indeed the truth. Taken together, both [REDACTED] and [REDACTED] statements support the charge which constitutes the basis for this action.

(4) The presence in the military environment of those who engage in drug abuse seriously impairs accomplishing the military mission. Members separated for drug abuse pursuant to AFI 36-3208 are not eligible for probation and rehabilitation under Chapter 7.

c. Characterization of Service: Paragraph 1.18 and paragraph 5.48 of AFI 36-3208 provide that when a member is discharged for misconduct, service may be characterized as honorable only when the member's service has been so meritorious that any other characterization would be inappropriate. An under honorable conditions (general) discharge is warranted when the member's service has been honest and faithful, but significant aspects of the member's conduct or performance outweigh positive aspects of the member's military record. Characterization as under other than honorable conditions (UOTHC) is appropriate when the reasons for separation include a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. Because significant negative aspects of Respondent's conduct outweigh positive aspects of his record, I believe an under honorable conditions (general) discharge is the most appropriate.

d. Medical Evaluation: Respondent is medically qualified for world-wide service.

7. OTHER MATTERS: On 13 June 2001, the Respondent, in an attempt to prove his innocence, consented to a polygraph conducted by the AFOSI. The Respondent was asked two questions: First, "[h]ave you used any form of marijuana since arriving at Holloman AFB?" Second, "[h]ave you used any form of marijuana since arriving at Holloman AFB, even if just once?" The Respondent answered "no" to both questions. The analysis of the results examined by a qualified OSI agent indicated that the Respondent's responses were indicative of deception. The 49 SFS/CC considered this information and has decided to proceed with the pending action.

8. OPTIONS: As the Special Court-Martial Convening Authority, you may:

a. Direct that Respondent be retained if you determine the evidence is insufficient to support discharge;

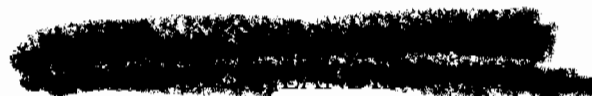
b. Approve discharge with an under honorable conditions (general) discharge, without P&R;

c. Direct reinitiation for a board hearing if you determine a UOTHC discharge is warranted;

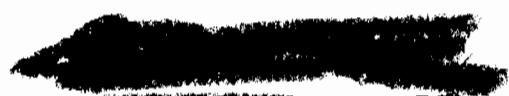

d. Refer the case to 12 AF/CC with your recommendation for an honorable discharge, if you determine that an honorable service characterization is warranted;

e. Direct reinitiation under a more appropriate section of AFI 36-3208, if you determine this discharge action was processed under an inappropriate section.

9. RECOMMENDATION: Approve Respondent's separation with an under honorable conditions (general) discharge, without probation and rehabilitation, for drug abuse pursuant to AFI 36-3208, Section H, paragraph 5.54. I further recommend that the member be barred from this installation upon separation from the Air Force.

 USAF  
Chief, Military Justice

I concur.

  
 USAF  
Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 49TH FIGHTER WING (ACC)  
HOLLOMAN AIR FORCE BASE, NEW MEXICO

FD 2002-0175

MEMORANDUM FOR [REDACTED]

13 Nov 01


FROM: 49 SFS/CC

SUBJECT: Letter of Notification

1. I am recommending your discharge from the United States Air Force for drug abuse. The authority for this action is AFI 36-3208, Section H, paragraph 5.54. If my recommendation is approved, you will receive an honorable or under honorable conditions (general) discharge. I am recommending that you receive an under honorable conditions (general) discharge.
2. My reasons for this action are as follows: You did, at or near Alamogordo, New Mexico, on divers occasions between on or about 1 October 2000 and on or about 31 October 2000 wrongfully use marijuana. For your misconduct, you received nonjudicial punishment by Article 15, UCMJ, with a corresponding UIF action on 1 May 2001.
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 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, will probably be denied enlistment in any component of the armed forces, and any special pay, bonus, or education assistance funds may be subjected to recoupment.
4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [REDACTED], Area Defense Counsel, Cannon AFB, DSN 681-2915, at 1330 hours on 13 November 2001. 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 16 Nov 01 unless you request and receive an extension for good cause shown. I will forward your statements 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. Pursuant to AFI 48-123, paragraph 5.5.1.1, you already completed a medical assessment documented by DD Form 2697 dated 19 June 2001.

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 the office of the Area Defense Counsel.

9. You must execute the attached receipt and return it to me immediately. This receipt does not admit or deny any of the allegations against you, nor does it mean that you agree with the discharge action. It is simply an acknowledgment that you have received this Letter of Notification.

  
Commander, USAF

Attachments:  
Article 15 w/UIF, 1 May 2001