

PERSONAL APPEARANCE

X RECORD REVIEW

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

MEMBERS SITTING

VOTE OF THE BOARD

HON GEN UOTIC OTHER DENY

				X
				X
				X
				X
				X

EXHIBITS SUBMITTED TO THE BOARD

REPORT NUMBER A93.17	REPORT NUMBER A67.70	1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
HEARING DATE 21 AUG 02	CASE NUMBER FD2002-0133	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 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, and the right to submit an application to the AFBCMR.

INDORSEMENT

DATE: 21 AUG 02

TO: SAF/MIRR 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, EF WING, 3 RD FLOOR ANDREWS AFB, MD 20762-7002
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-01313

GENERAL: The applicant appeals for upgrade of discharge to Honorable and to change the Reason and Authority 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 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 believes his discharge is inequitable because it was never proven in a court of law that he did in fact abuse drugs. He states that he was discharged based on hearsay and that his discharge was inequitable because it was based on one isolated and unwarranted Letter of Reprimand in 3 years of unwavering service with no adverse actions. The applicant also believes his characterization of service was honorable and that his discharge has adversely affected his livelihood and constitutional right to equal opportunity education. Finally, the applicant states that he has been a respected, law abiding citizen since his discharge. 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 received a Letter of Reprimand for wrongfully using cocaine. The record indicates that two witnesses gave written sworn statements indicating that the applicant used cocaine on more than one occasion. One of the witnesses also took a polygraph examination, which supported the credibility of his sworn statement. 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. The DRB was pleased to see that the applicant was doing well and has a good job. However, no inequity or impropriety in his discharge was found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

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 SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 01/03/27 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge and to Change the Reason and Authority for Disch.

2. **BACKGROUND:**

a. DOB: 75/12/04. Enlmt Age: 22 0/12. Disch Age: 25 3/12. Educ: HS DIPL. AFQT: N/A. A-96, E-93, G-96, M-91. PAFSC: 1T051 - Survival, Evasion, Resistance, and Escape Instructor. DAS: 98/04/08.

b. Prior Sv: (1) AFRes 97/12/27 - 98/01/14 (21 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/01/15 for 4 yrs. Svd: 03 Yrs 02 Mo 13 Das, all AMS.

b. Grade Status: SRA - 00/07/15
A1C - 99/05/15
AMN - 98/07/15

c. Time Lost: none.

d. Art 15's: none.

e. Additional: LOR, 09 FEB 01 - Wronfully use cocaine.

f. CM: none.

g. Record of SV: 98/01/15 - 99/09/14 Fairchild AFB 5 (Initial)
99/09/15 - 00/09/14 Fairchild AFB 5 (Annual)

(Discharged from Fairchild AFB)

h. Awards & Decs: AFOUA, AFTR.

i. Stmt of Sv: TMS: (03) Yrs (03) Mos (04) Das
TAMS: (03) Yrs (02) Mos (13) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/03/15.

(Change Discharge to Honorable and Change the Reason and Authority for Discharge)

Issue 1: My separation from the United States Air Force was for drug abuse. I was never proven in a court of law that I did in fact abuse drugs. I was

administratively discharged based on heresay. The grounds for my separation were unfair, and if dealt with similarly under civil law, would be considered means for lawsuit as SLANDOR and/or DEFAMATION OF CHARACTER (see attachment #1, Discharge Package, pp 1,5,7,9,11,58, and 61, all sections highlighted in blue).

Issue 2: My discharge was inequitable because it was based on one isolated and unwarranted Letter of Reprimand (LOR) in 36 months of unwaivering service with no adverse action (see attachment #1, Discharge Package, pp 5 and 9, all sections highlighted in blue).

Issue 3: There is sufficient documented evidence to warrant my characterization of service as honorable (see attachment #1, Discharge Package, pp 5,11-55, and 58-109, all sections highlighted in orange).

Issue 4: My unfair discharge and subsequent barment letter have had adversely negative effects on my livelihood and constitutional right to equal opportunity education. My request to continue schooling was denied by telephone, and I was forced to disenroll and pay the balance of my tuition (see attachment #1, Discharge Package, pp 3-4, and attachment #2, Base Entry Request Letter, pp 1-2).

Issue 5: Since the time of my discharge, I have continued to accumulate documentation which supports my claim of being a respected, law abiding citizen (see attachment #3, Post separation accolades, pp 1-11).

ATCH

1. Annotated Discharge Package.
2. Base - Entry Request Letter.
3. Post Separation Accolades.

02/07/09/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92D AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE WASHINGTON

FD 2002-0133

MEMORANDUM FOR 92 ARW/CC

FROM: 92 ARW/JA

SUBJECT: Legal Review of AFI 36-3208, *Administrative Separation of Airmen*
Administrative Discharge [REDACTED]

1. I have reviewed the proposed involuntary separation action concerning [REDACTED], the respondent, and find it legally sufficient to support involuntary discharge for drug abuse under AFPD 36-32 and AFI 36-3208, paragraph 5.54.

2. Background: On 27 Jul 00, [REDACTED] of the 22d Training Squadron, Fairchild AFB, WA, tested positive for cocaine in a random drug urinalysis test. Before testing positive for cocaine, [REDACTED] had been an outstanding performer with a spotless record. In an interview the same day with the Office of Special Investigations, [REDACTED] admitted using cocaine at [REDACTED] residence on 8 Jul 00. In a sworn written statement to OSI, [REDACTED] stated that he was in [REDACTED] bedroom when cocaine was provided. [REDACTED] stated that he, [REDACTED] and [REDACTED] military roommate, [REDACTED] Provost, ingested the cocaine. During the course of the party, SrA [REDACTED] stated that he and SrA [REDACTED] used cocaine in the same manner at least two more times.

[REDACTED] agreed to take a polygraph examination on his sworn testimony. SrA [REDACTED] "passed" the polygraph examination, which supported the credibility of his sworn statement.

In addition, a second witness corroborated that [REDACTED] (and his military roommate) used cocaine on 8 Jul. A female civilian gave a written sworn statement stating that she also had used cocaine with [REDACTED] in [REDACTED] residence.

[REDACTED] and his military roommate were each charged with a single specification of cocaine use. Separate general courts-martial were set for 24 Jan 01 and 7 Feb 01 respectively. Despite extensive efforts, OSI could not locate the female civilian witness to serve a subpoena for the trials. Without the female civilian witness, only one witness (the airman) was left to testify at trial. Because of that fact, the cocaine charges were withdrawn. The charges were not withdrawn because they were found to be unsubstantiated, but rather based upon the unavailability of the civilian witness and the likelihood that her pretrial statement would not be admitted at trial.

On 22 Feb 01, the 336 TRG/CC initiated this separation action against the respondent for drug abuse. He recommends general discharge. The respondent acknowledged notification of this action on 22 Feb 01.

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3. The following misconduct supports this discharge which is warranted by the evidence:

On or about 8 Jul 00, at or near Spokane, Washington, [redacted] wrongfully used cocaine. For this action, he received a letter of reprimand dated 23 Jan 01.

4. Evidence favorable to [redacted] includes the following:

a. This 21-year-old airman has served on active duty for 3 years. He began his current term of enlistment on 15 Jan 98. His military record contains two performance reports with the following ratings: 5 (15 Jan 98 – 14 Sep 99) and 5 (15 Sep 99 – 14 Sep 00)

b. The respondent consulted counsel and submitted a statement on his behalf. He requests that you review his response and associated documents concerning his LOR.

5. Discussion: By a preponderance of the evidence, a basis for discharge exists for drug abuse pursuant to paragraph 5.54 of AFI 36-3208. Drug abuse is incompatible with military service. Airmen, who abuse drugs one or more times, are subject to discharge for misconduct. The presence in the military environment of persons who engage in drug abuse seriously impairs accomplishing the military mission. Members who abuse drugs adversely affect the ability of the Air Force to: maintain discipline, good order, and morale; foster mutual trust and confidence among members; facilitate assignments and worldwide deployment; recruit and retain members; maintain public acceptability of military service; and prevent breaches of security. The respondent's failure to comply with Air Force standards by using cocaine clearly indicates he is not fit to serve in the armed forces.

6. Airmen subject to discharge for drug abuse may be retained only if they meet all seven of the criteria listed in AFI 36-3208, paragraph 5.55.2.1. The seven criteria are as follows: (1) such abuse is a departure from his usual and customary behavior; (2) it occurred as a result of drug experimentation; (3) it does not involve recurring incidents (other than experimentation); (4) the member does not desire/intend to hereafter abuse drugs; (5) the abuse is not likely to recur; (6) the member's continued presence in the AF is consistent w/good order and discipline; (7) the abuse did not involve distribution. Probation and Rehabilitation (P & R) is not available in drug related discharges. The 22 TRS/CC recommends a general discharge. I concur.

7. As the special court-martial convening authority, you may:



a. Recommend to 15 AF/CC to grant a waiver of discharge, permitting retention of the respondent, if you believe he satisfies the seven retention criteria of paragraph 5.55.2.1, listed above.

b. Approve an Under Honorable Conditions (General) discharge. You are the discharge authority for this action. Probation and rehabilitation is *not* an option in drug abuse cases.

c. Forward the case file to the Commander, Fifteenth Air Force if you conclude an honorable discharge is warranted. The Commander, Fifteenth Air Force is the discharge authority for this action.

d. Direct reinitiation of administrative discharge processing (with board entitlement) if you conclude issuance of an Under Other Than Honorable Conditions discharge is warranted.

8. Recommendation: Approve a general discharge.



Capt, USAF
Chief, Military Justice



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

PD 2002-0133

22 FEB 01

MEMORANDUM FOR SRA [REDACTED] 22 TRS

FROM: 336 TRG/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for drug abuse in accordance with AFPD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as honorable, general, or under other than honorable conditions. I recommend your service be characterized as general.

2. My reasons for this action are:

On or about 8 Jul 00, at or near Spokane, Washington, you wrongfully used cocaine. For this action, you received a letter of reprimand dated 9 Feb 01.

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.

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, at DSN 382-2240 for an appointment on 26 FEB 01 at 0900 hrs. 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 27 FEB 01 unless you request and receive an extension for good cause shown. I will send them 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. You have been previously scheduled for a medical examination with Flight Medicine. Complete all follow up appointments.

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 unit orderly room.

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



Colonel, USAF

Commander

2 Attachments:

1. LOR dated 9 Feb 01 (2 pages)
2. Response to LOR dated 14 Feb 01 (45 pages)