

# AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN			
		AB				
TYPE	X PERSONAL APPEARANCE		RECORD REVIEW			
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO	VETERANS OF FOREIGN WARS				
X						
MEMBERS SITTING		VOTE OF THE BOARD				
		HON	GEN	UOHC	OTHER	DENY
						X
						X
		X				
					X	
ISSUES A92.21/22      A94.05/06		INDEX NUMBER A66.00		EXHIBITS SUBMITTED TO THE BOARD		
				1	ORDER APPOINTING THE BOARD	
HEARING DATE 12 December 2002		CASE NUMBER FD2002-0167		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 Washington, D.C.  Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.						
SIGNATURE OF RECORDER			SIGNATURE OF BOARD MEMBER			
INDORSEMENT			DATE:			
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

FD2002-0167

**GENERAL:** The applicant appeals for upgrade of discharge to Honorable, a change of reason for discharge, and a change of reenlistment eligibility (RE) code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, Maryland on 12 December 2002. The following witness also testified on the applicant's behalf: Mr. [REDACTED] the applicant's father.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Six character letters, one letter from Police Dept., Meriden, Conn., and a Real Estate Certificate from Middlesex Community-Technical College.

The attached brief contains 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 DRB finds no evidence of record or that provided by the applicant in verbal testimony that substantiates an inequity or impropriety, which would justify a change of discharge.

**ISSUES:** The applicant feels that his punishment was too harsh and reflected an inaccuracy in that "Drug Abuse" is listed as the reason for his discharge from military service. He denies ever using drugs, which he says is supported by at least 6 negative urine drugs screens before the incident, one negative urine drug screen after the incident, and one negative urine screen from his employer since his separation. The applicant admits making the phone call to an ex-girlfriend for the purpose of arranging for a friend to purchase illegal drugs, by driving the friend to make the transaction, while he observed from a distance. While the member's DD Form 214 lists Misconduct as the reason for his General Discharge, a letter of legal review and notification from the 341 Space Wing/JA to the 341 Space Wing/CC specifically states under "*Evidence For The Government*" the following statement: On 10 January 00, Respondent wrongfully used marijuana. A final "*Recommendation*" is made to Discharge AB Fox IAW AFI 36-3208, paragraph 5.54, for drug abuse with a general discharge without probation and rehabilitation. Under current law, a person who participates in or arranges the purchase or use of an illegal drug by another person via a prearranged agreement to do so is also guilty of said purchase/use of the illegal drug. In the current wording of the law governing charges for Misconduct or Unfitness for a drug-related offense, the term "Illegal use of drugs" is utilized to describe the violation (after 1 July 1983), even though the illegal drug may not have been actually introduced into the body. Prior to 1 October 1982, the offense was worded more inclusively as, "Drug use, sale or possession". The member desires a change in the description of his offense.

**CONCLUSIONS:** The Discharge Review Board finds 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 change of reason for discharge and change of RE code, thus the applicant's discharge should not be changed. The Board encourages the applicant to seek further remedy via BCMR to more clearly record his Misconduct as a conspirator in the purchase/sale/use of an illegal drug, but not as a "user or abuser" of illegal drugs.

Attachment:

Examiner's Brief

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

[REDACTED]  
(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/03/14 UP AFI 36-3208, para 5.54, (Misconduct - Drug Abuse). Appeals for Honorable Discharge and Upgrade of RE Code.

2. **BACKGROUND:**

a. DOB: 80/03/25. Enlmt Age: 17 4/12. Disch Age: 19 11/12. Educ: HS DIPL. AFQT: N/A. A-20, E-41, G-48, M-40. PAFSC: 3P031 - Security Apprentice. DAS: 99/01/18.

b. Prior Sv: (1) AFRes 97/08/20 - 98/08/11 (1 yr 0 mos 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/08/26 for 4 yrs. Svd: 01 Yrs 06 Mo 18 Das, all AMS.

b. Grade Status: AB - 00/02/15 (Article 15, 00/02/15)  
AMN/A1C - Unknown

c. Time Lost: none.

d. Art 15's: (1) 00/02/15, Malmstrom AFB, MT - Article 81. You, did, at or near Cascade County, Montana, on or about 10 Jan 00, conspire with A1C ----- to commit an offense under the Uniform Code of Military Justice, to wit: wrongful use and possession of a controlled substance, and in order to effect the object of the conspiracy you did arrange for the purchase of marijuana by A1C ----- Article 107. Further, you, did, on or about 26 Jan 00, wrongfully impede an investigation, in the case of A1C ----- by making a false official statement to the investigator. Reduction to AB, forfeiture of \$502.00 pay per month for 2 months, and 30 days extra duty. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: none.

(Discharged from Malmstrom AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (02) Yrs (06) Mos (19) Das  
TAMS: (01) Yrs (06) Mos (18) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 01/11/30.  
(Change Discharge to Honorable and Change the RE Code)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. Six Character References.
3. Background Check.
4. Real Estate Certification.
5. DD Form 149 w/attachments.

02/08/06/ia



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 341ST SPACE WING (AFSPC)

FD 2002-0167

MEMORANDUM FOR 341 SW/CC

9 MAR 2000

FROM: 341 SW/JA

SUBJECT: Legal Review, Administrative Discharge Action - [REDACTED]

1. ACTION: On 1 Mar 00, [REDACTED] 490 MS/CC, initiated administrative discharge action against [REDACTED] (hereinafter Respondent) IAW AFI 36-3208, paragraph 5.54, for drug abuse. [REDACTED] recommends a general discharge without offer of probation and rehabilitation.

2. PERSONAL DATA:

- a. Date and Term of Current Enlistment: 26 Aug 98, 6 years
- b. Age: 19
- c. Pay Date: 26 Aug 98
- d. TAFMSD: 26 Aug 98
- e. Overall Ratings on Performance Reports: (N/A)

3. EVIDENCE FOR THE GOVERNMENT: The following provides the basis for discharge and may be considered on the issues of retention and service characterization.

On 10 Jan 00, Respondent wrongfully used marijuana. For this misconduct Respondent received an Article 15 dated 15 Feb 00.

4. EVIDENCE FOR THE RESPONDENT: The Respondent waived his right to consult counsel and chose not to submit statements.

5. DISCUSSION:

a. The file is legally sufficient to support [REDACTED] recommendation that the Respondent be discharged for drug abuse. In accordance with AFI 36-3208, Chapter 5, Section H, paragraph 5.55.2.1, a member found to have abused drugs must be discharged unless the member presents evidence justifying retention. In this case, the Respondent has presented no such evidence.

b. In accordance with AFI 36-3208, paragraph 7.2.6, probation and rehabilitation is not authorized when the reason for discharge is drug abuse.

6. OPTIONS:

- a. Disapprove the discharge action and order retention of Respondent.
- b. Recommend to 20 AF/CC that Respondent receive an honorable discharge for drug abuse with or without probation and rehabilitation.
- c. Approve the discharge and order Respondent's general discharge for drug abuse with or without probation and rehabilitation.
- d. Recommend that Respondent receive an under other than honorable conditions discharge with or without probation and rehabilitation. If you determine that this is the appropriate disposition of this case, please return the file for discharge board processing.

7. RECOMMENDATION: Discharge AB Fox IAW AFI 36-3208, paragraph 5.54, for drug abuse with a general discharge without probation and rehabilitation, as recommended by

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachment:

Case File [REDACTED]

FD2002-0167



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 341ST SPACE WING (AFSPC)

MEMORANDUM FOR 490 MS [REDACTED]

1 MAR 00

FROM: 490 MS/CC

SUBJECT: Notification Memorandum

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

2. My reasons for this action are:

On 10 Jan 00, you wrongfully conspired to procure and use marijuana. For this misconduct you received an Article 15 dated 15 Feb 00.

3. Copies of the above documents that will be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM 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 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. I have made an appointment for you to consult the Area Defense Counsel, 7015 Goddard Drive, Bldg 145, Room 144 on 2 MAR 00 at 1000L. You may consult civilian counsel at your own expense.


5. You have the right to submit statements in your own behalf. You have three duty days from the date of this letter (COB 4 MAR 00), to provide me with any statements you want the separation authority to consider. You may request and receive an extension for good cause shown. I will send all submitted 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. You must receive a medical examination. You are scheduled for a medical examination at the 341st Medical Group Physical Examination Section on 2 MAR 00 at 1300L.

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8. The Privacy Act Statement as explained in AFI 36-3208, Atch 6, covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use at your Orderly Room.

  
USAF  
Commander

Attachments:

1. Supporting documents:
  - a. Article 15 dtd 15 Feb 00
2. Airman's Receipt of Notification Memorandum



FD 2002-0167



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 341ST SPACE WING (AFSPC)

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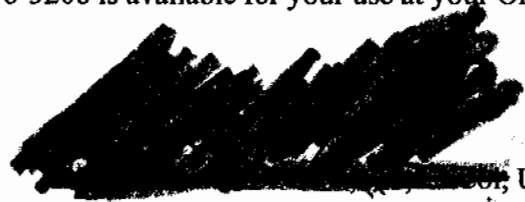
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\_\_\_\_\_, USAF  
Commander

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