

## AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)	GRADE <b>AMN</b>	AFSN/SSAN
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TYPE	<b>PERSONAL APPEARANCE</b>	<b>X RECORD REVIEW</b>								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 2px;">COUNSEL</td> <td rowspan="3" style="padding: 5px;">NAME OF COUNSEL AND OR ORGANIZATION</td> <td rowspan="3" style="padding: 5px;">ADDRESS AND OR ORGANIZATION OF COUNSEL</td> </tr> <tr> <td style="padding: 2px;">YES</td> <td style="padding: 2px;">NO</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;">X</td> </tr> </table>	COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL	YES	NO		X		
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
					X
					X
					X
					X
					X

ISSUES <b>A92.35</b>	INDEX NUMBER <b>A67.70</b>	EXHIBITS SUBMITTED TO THE BOARD
		1 ORDER APPOINTING THE BOARD
		2 APPLICATION FOR REVIEW OF DISCHARGE
		3 LETTER OF NOTIFICATION
HEARING DATE <b>11 Oct 02</b>	CASE NUMBER <b>FD2002-0187</b>	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 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 with/without counsel, and the right to submit an application to the AFBCMR.**

INDORSEMENT	DATE: <b>11 Oct 02</b>
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<b>TO:</b> SAF/MIRR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> 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
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**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 the evidence of record nor that provided by the applicant substantiates an iniquity or impropriety, which would justify a change of discharge.

The applicant's issues are listed in the attached brief.

Issue 1. The applicant states that her discharge was based on one isolated incident in 39 months of service with no other adverse actions. The DRB agreed that the applicant's discharge was based on a single incident of misconduct; however, the Board found that the seriousness of that misconduct i.e., drug abuse, outweighs the applicant's otherwise satisfactory service. The Board found no evidence of iniquity or impropriety on which to base a decision to upgrade.

Issue 2. The applicant contends that she could have been rehabilitated because she met the seven criteria for retention listed in AFI 36-3208, paragraph 5.55.2.1. The Board found that it was clear from the statement she provided in response to the Article 15 action that she is a recurrent marijuana user. In her response, the applicant admitted to smoking marijuana on 15 November 2001. In addition, in an OSI statement, the applicant admitted to receiving 3 "shotguns" of marijuana from a friend on 22 November 2001. The Board concluded the misconduct of the applicant appropriately characterized her term of service.

Issue 3. The applicant stated that her discharge was iniquitable because it was not treated in the same manner as other drug abuse cases at Seymour Johnson AFB. The Board concluded that it would be inappropriate to compare the applicant's case to other drug abuse cases that may have been processed at the same time.

**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, 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 AMN) (HGH SRA)

(MISSING DOCUMENT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02/01/15 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 80/04/08. Enlmt Age: 18 1/12. Disch Age: 21 9/12. Educ: HS DIPL. AFQT: N/A. A-86, E-26, G-41, M-14. PAFSC: 3A051 - Information Management Journeyman. DAS: 99/01/14.

b. Prior Sv: (1) AFRes 98/05/16 - 98/09/22 (4 Mos 7 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 98/09/23 for 4 yrs. Svd: 3 Yrs 3 Mos 23 Das, all AMS.

b. Grade Status: AMN - 01/12/20 (Article 15, 01/12/20)  
SRA - 01/03/23  
A1C - 00/01/23  
AMN - 99/03/23

c. Time Lost: None.

d. Art 15's: (1) 01/12/20, Seymour Johnson AFB, NC, Article 112a. You, did, on or about 19 Oct 2001 and on or about 22 Nov 2001, wrongfully use marijuana. Reduction to the grade of AMN. Appeal denied. (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 98/09/23 - 00/05/22 Seymour Johnson AFB 5 (Initial)  
00/05/23 - 01/05/22 Seymour Johnson AFB 4 (Annual)

(Discharged from Seymour Johnson AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (3) Yrs (8) Mos (0) Das  
TAMS: (3) Yrs (3) Mos (23) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/18.  
(Change Discharge to Honorable)

Issue 1: My discharge was inequitable because it was based on one isolated incident in 39 months of service with no adverse action.

Issue 2: I also believe my discharge should be upgraded because there is a retention criteria and consideration category that I fell into and my commander did not take the package that I submitted into consideration although the regulation stated otherwise.

Issue 3: My discharge was inequitable because there were othe drug abuse incidents on Seymour Johnson Air Force Base where a NCO was abusing steriods and his case made it to MAJCOM where as my case didn't get the same respect.

**ATCH**

1. Enlisted Performance Reports
2. Response to Administrative Discharge Action
3. Retention Criteria and Consideration

02/08/08/cr



FD 2002-0187

**DEPARTMENT OF THE AIR FORCE**

4TH FIGHTER WING (ACC)  
SEYMOUR JOHNSON AIR FORCE BASE NC

9 January 2002

MEMORANDUM FOR 4 FW/CC

FROM: 4 FW/JA

SUBJECT: Legal Review—Discharge Under AFI 36-3208, Chapter 5, Section H, Paragraph 5.54,  
Airm [REDACTED] FR [REDACTED] 4 LSS

1. HISTORY: The 4th Logistics Support Squadron Commander has recommended that Airm [REDACTED] be discharged from the Air Force for misconduct, specifically drug abuse. The basis for this recommendation is AFI 36-3208, Chapter 5, Section H, Paragraph 5.54. The commander recommends a general discharge without a period of probation and rehabilitation (P&R). The respondent is eligible for, and has been processed by, notification procedures in accordance with AFI 36-3208, paragraph 6.2. The respondent did consult military counsel and did submit a statement in her own behalf. Her response is at Tab 6.

2. BASIS FOR ACTION: Between on or about 19 October 2001 to on or about 22 November 2001, Airm [REDACTED] wrongfully used marijuana. On 14 December 2001, Airm [REDACTED] received Article 15 punishment that resulted in her demotion to airman.

3. EVIDENCE FOR THE RESPONDENT: Airm [REDACTED] is 21 years old and has served on active duty since 23 September 1998. The respondent has received two enlisted performance reports with overall ratings of 5 and 4 (oldest to most recent). In her statement, the member requests you consider retaining her on active duty and explains that she believes she fits the criteria for retention in AFI 36-3208. Alternatively, if you determine discharge is appropriate, she requests her discharge be characterized as honorable.

4. ERRORS AND IRREGULARITIES: None

5. CONCLUSIONS:

a. Discharge is appropriate under AFI 36-3208, Chapter 5, Section H, Paragraph 5.54, which states that drug abuse is incompatible with military service and that airmen who abuse drugs one or more times are subject to discharge for misconduct. 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 maintain members; maintain public acceptability of military service and prevent breaches of security.

b. A member found to have abused drugs will be discharged unless the member meets all seven of the criteria listed in AFI 36-3208, paragraph 5.55.2.1. The burden for proving these criteria is on the member, according to paragraph 5.55.2.2. Although Airm [REDACTED] alleges in her memorandum to the convening authority that she meets all seven criteria necessary for retention, it is clear from the statements she provided for her Article 15 response and the OSI statement she provided in response to this action that she is a recurrent drug user. Specifically, in her Article 15 response, Airm [REDACTED] admitted to smoking

marijuana on 15 November 2001; she was selected for a random urinalysis on 19 November 2001. In addition, in the statement Amn [REDACTED] provided to the OSI (page 2 of AF Form 1168) she admitted to receiving three "shotguns" of marijuana from a friend on 22 November 2001. Based on the information Amn [REDACTED] provided, it is clear that she does not meet retention criteria because she has engaged in recurrent marijuana use, rather than mere experimentation. As a result, she has failed to prove that she meets all seven retention criteria, therefore, discharge is appropriate in Amn [REDACTED] case.

c. Characterization of Service: I concur with the commander's recommendation of a general discharge. According to AFI 36-3208, paragraph 5.48.4, an honorable characterization is appropriate in a discharge for misconduct when "the member's record has been so meritorious that any other characterization would be clearly inappropriate." In such cases, the GCM convening authority approves the service characterization. On the other hand, a general discharge is warranted, according to paragraph 1.18.2, when "significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record." Amn [REDACTED] wrongful use of drugs outweighs the positive aspects of her service; therefore, a general discharge is appropriate.

d. Probation and Rehabilitation: Members approved for discharge for drug abuse are not eligible for probation and rehabilitation in accordance with AFI 36-3208, paragraph 7.2.6.

6. LEGAL SUFFICIENCY: This case file is legally sufficient, contingent upon a finding that the respondent is medically qualified for worldwide duty.

7. OPTIONS: As the separation authority, you have the following options in this case:

- a. Retain the respondent; or
- b. Approve separation and recommend to the 9 AF (P)/CC that the respondent be discharged with an honorable discharge without probation and rehabilitation; or
- c. Approve separation and discharge the respondent with a general discharge without probation and rehabilitation; or
- d. If you believe an under other than honorable conditions (UOTHC) discharge is appropriate, return the case file to the squadron commander and direct processing by administrative board procedures IAW AFI 36-3208, paragraph 6.13.

8. RECOMMENDATION: That you approve the separation of Amn [REDACTED] from the United States Air Force with a general discharge, without probation and rehabilitation, by signing the attached memorandum.

[REDACTED]  
[REDACTED], Lt Col, USAF  
Staff Judge Advocate

Attachment:  
Case File—Amn [REDACTED]



FD2002-0187

**DEPARTMENT OF THE AIR FORCE**

4TH FIGHTER WING (ACC)  
SEYMOUR JOHNSON AIR FORCE BASE NC

3 Jan 02

MEMORANDUM FOR AMN [REDACTED] FR [REDACTED] 4 LSS

FROM: 4 LSS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically drug abuse. The authority for my recommendation is AFPD 36-32 and AFI 36-3208, Chapter 5, Section H, Paragraph 5.54. Pursuant to Table 1.3 and Paragraph 5.48 of AFI 36-3208, your service can 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: Between on or about 19 October 2001 and on or about 22 November 2001, you wrongfully used marijuana. For this misconduct, you were given an Article 15 that resulted in your demotion to Airman. These actions are documented by AF Form 3070, dated 14 December 2001 (Tab 1a).
3. Copies of the documents to 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, 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 Captain [REDACTED] Area Defense Counsel, at 1185 Cannon Street, Suite 308, Seymour Johnson AFB NC. The Area Defense Counsel can be reached at ext. 2-5345 or DSN 722-5345. Your appointment has been scheduled on 3 JAN 02 (date) at 0930 //15 (time). 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 1100 08 JAN 02 (allow three duty days) 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 scheduled for a mandatory medical examination at the Physical Examination Section, 4th Medical Group, Seymour Johnson AFB, at 1200 hours on 4 January 2002. You are scheduled for a mandatory follow-up examination at Family Practice (Blue Team) at 1300 hours on 4 January 2002 with PA [REDACTED]

*Global Power For America*

8. You have been scheduled for a mandatory Transition Assistance Program (TAPs) briefing on 7 JAN 2002 at 1300 hours. You must report to MSgt [REDACTED] at building 3602 for your TAPs counseling.

9 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 at the unit orderly room or the Area Defense Counsel office.

10. Execute the attached acknowledgement and return it to me immediately.

[REDACTED]

[REDACTED], Major, USAF  
Commander, 4 LSS

Attachments:

Supporting Documentation:

- a. AF Form 3070, dated 14 December 2001