

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 1.2em;"></div>		GRADE SSGT	AFSN/SSAN <div style="background-color: black; width: 100%; height: 1.2em;"></div>														
TYPE	PERSONAL APPEARANCE		X RECORD REVIEW														
COUNSEL <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">YES</td> <td style="width: 50%; text-align: center;">NO</td> </tr> <tr> <td style="text-align: center;"> </td> <td style="text-align: center;">X</td> </tr> </table>		YES	NO		X	NAME OF COUNSEL AND OR ORGANIZATION ADDRESS AND OR ORGANIZATION OF COUNSEL											
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MEMBERS SITTING		VOTE OF THE BOARD															
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ISSUES A94.01	INDEX NUMBER A67.30	EXHIBITS SUBMITTED TO THE BOARD <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 5%; text-align: center;">1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td style="text-align: center;">2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="text-align: center;">3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td style="text-align: center;">4</td><td>BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td>COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td>TAPE RECORDING OF PERSONAL APPEARANCE HEARING</td></tr> </table>		1	ORDER APPOINTING THE BOARD	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
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HEARING DATE 4 NOV 02	CASE NUMBER FD2002-0192																
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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.																	
SIGNATURE OF RECORDER <div style="background-color: black; width: 100%; height: 1.2em;"></div>		SIGNATURE OF BOARD PRESIDENT <div style="background-color: black; width: 100%; height: 1.2em;"></div>															
INDORSEMENT		DATE: 4 NOV 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

FD02-0192

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: Applicant contends discharge was improper and quotes two law cases: Wood vs Secretary of Defense and Doe vs Secretary of the Air Force and states that it should have been honorable. 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 tested positive for BZE, the metabolite of cocaine, at 34,805 ng/ml, well above the DoD cutoff of 100 ng/ml. He received an Under Other Than Honorable Conditions discharge for Misconduct, Commission of a Serious Offense, Drug Abuse. In Wood vs Secretary of Defense, less than honorable discharges had been issued to four Army inactive reservists for civilian misconduct. They sought a judgment requiring DoD officials to review and upgrade their discharges unless the civilian misconduct relied upon were found to have affected their military service. These four members were in the inactive reserve. The applicant was an active reservist and an aircraft Loadmaster and was subjected to a random urinalysis when he reported for duty on 12 July 1998. The amount of BZE found in his urinalysis was found, by a preponderance of the evidence, to have adversely affected his military duties on that day. In Doe vs Secretary of the Air Force, this issue is found to be without merit as that case involved an active duty Major accused of committing homosexual acts with a fifteen-year-old boy. The Board concluded the misconduct was a significant departure from conduct expected of all military members and concluded that the characterization of the applicant's discharge was appropriate due to the misconduct.

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

[REDACTED] (FORMER SSGT) (HGH TSGT) MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 99/05/14 UP AFI 36-3209, para 3.21.3.2 (Misconduct - Commission of a Serious Offense, Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 64/06/09. Enlmt Age: 20 5/12. Disch Age: 34 11/12. Educ: HS DIPL. AFQT: N/A. A-75, E-66, G-61, M-47. PAFSC: X1A251 - Aircraft Loadmaster Journeyman. DAS: 84/11/13.

b. Prior Sv: Enld in AFRes as AB 84/11/13 for 6 yrs. Svd: 6 Mos 12 Days, AMS. Reenld 87/09/01 for 6 yrs. Svd: 1 Yr 0 Mo 26 Days, AMS. AMN - (Unknown), A1C - 86/03/21. SRA - Unknown. SSGT - 88/03/11. TSGT - Unknown.

EXAMINER'S NOTE: It appears the applicant was promoted to TSGT based on award of an Air Force Commendation Medal in the grade of TSGT (Special Order G021, 17 May 91). His record also indicates he later retrained into a new career field (Air Operations to Loadmaster), which resulted in his assignment to a loadmaster SSGT position, and the loss of his grade from TSGT to SSGT.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SSGT 93/05/22 for 6 yrs. Ext: 97/05/01 for 2 Mos. Svd: 1 Yr 5 Mos 9 Das, AMS.

b. Grade Status: None

c. Time Lost: None

d. Art 15's: None.

e. Additional: None.

f. CM: None

g. Record of SV: None

(Discharged from McGuire AFB)

h. Awards & Decs: AFCEM, ARFMSM (4OLC), AFLSAR (2OLC), AFTR, AFOUA (2OLC), AFRM, NDSM.

i. Stmt of Sv: TMS: (13) Yrs (0) Mos (14) Das
TAMS: (3) Yrs (0) Mos (17) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/25.
(Change Discharge to Honorable)

Issue: Discharge characterization is improper. It should be honorable in accordance with AFI 36-3209, para A2.2 et seq; AFR 20-10, para 19e, DODD 1332.28 atch 4, Wood v. Secretary of Defense, 196 F.Supp 192 (D.C. Dist 1980) (see especially p. 197 dicta) and Doe v. Secretary of the Air Force, 563 F. Supp. 4 (D.C. Dist 1982).

ATCH

None.

02/08/13/cr



DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND



13 April 1999

MEMORANDUM FOR CV

FROM: JA

SUBJECT: Legal Review of Administrative Discharge Board [REDACTED]
[REDACTED]

1. I have reviewed the administrative discharge board proceedings against SSgt [REDACTED] and find the proceedings legally sufficient.
2. The commander of the 732 AS recommended that [REDACTED] be separated with an Under Other Than Honorable Conditions discharge for Misconduct, Commission of a Serious Offense, Drug Abuse, IAW AFI 36-3209, paragraph 3.21.3.2. More specifically, [REDACTED] was being recommended for discharge for using cocaine. In a random urinalysis conducted 12 July 1998, [REDACTED] tested positive for BZE, the metabolite of cocaine, at 34,805 ng/mL, well above the DoD cutoff of 100 ng/mL. On 28 October 1998, the Chief, Personnel Division, HQ AFRC, sent a Letter of Notification of Separation Action (LON) to [REDACTED]. [REDACTED] acknowledged receipt and requested an administrative discharge board on 2 November 1998. The board was held 13 January 1999. [REDACTED] was not present, but was represented by legal counsel.
3. The board found, by a preponderance of the evidence, that the respondent did wrongfully use cocaine, as evidenced by the cocaine metabolite in his urine sample. Consistent with the findings, the board recommended [REDACTED] be separated from the USAFR and issued a General (Under Honorable Conditions) discharge. Presumably, this was based upon testimony from [REDACTED] commander and first sergeant, who believe that when considering [REDACTED] entire enlistment, the best-fitting characterization was a General discharge. Furthermore, they both testified to the lack of impact [REDACTED] actions had on their unit. [REDACTED] had a spotless, positive record prior to this positive random urinalysis.
4. The discharge file reflects [REDACTED] has completed about 13 years of satisfactory service toward a Reserve retirement. His decorations include the Air Force Commendation Medal, the Air Force Outstanding Unit Award (2 OLC), the Reserve Forces Meritorious Service Medal (4 OLC), the National Defense Service Medal, the Air

Force Longevity Service Award Ribbon (2 OLC), the Armed Forces Reserve Medal, and the Air Force Training Ribbon.

5. A factual basis for separation must be established before the questions of appropriateness of separation and characterization are determined. The case file concerning [REDACTED] establishes a sufficient factual basis for discharge. Once the factual basis for discharge is determined, the member's entire military record should be reviewed to determine whether separation or retention is appropriate. The current enlistment is examined to determine the proper characterization of the discharge. Guidance on characterization includes:

a. Honorable: The Honorable characterization is appropriate when the quality of the member's service has generally met Air Force standards of acceptable conduct and duty performance. It may also be appropriate when a member's service is so meritorious, that any other characterization would be inappropriate.

b. General (Under Honorable Conditions): If a member's service has been honest and faithful, but significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record, it is appropriate to characterize that service as General (Under Honorable Conditions). However, conduct in the civilian community of a USAFR member not on active duty or active duty for training may be used to characterize service as General (Under Honorable Conditions) only if the conduct has an adverse impact on the overall effectiveness of the Air Force, including military morale and efficiency.

c. Under Other Than Honorable Conditions: Characterization of service as Under Other Than Honorable Conditions may be appropriate when the reason for separation is based on one or more acts or omissions that constitute a significant departure from the conduct expected. Conduct in the civilian community of a USAFR member not on active duty or active duty for training may be used to characterize service as Under Other Than Honorable only if the conduct directly affects the performance of military duties.

6. The member is neither eligible for retirement nor lengthy service probation.

7. The member is not eligible for probation and rehabilitation.

8. OPTIONS: The options available to you are:

a. Approve the board findings and recommendations, and recommend the respondent be discharged with a General (Under Honorable Conditions) discharge; or

b. Approve the board findings, and recommend the respondent be discharged with an Honorable discharge; or

c. Disapprove the discharge case and retain the respondent.

9. RECOMMENDATION: I recommend you approve the boards findings and recommendations and discharge [REDACTED] with a General (Under Honorable Conditions) discharge.

[REDACTED]



DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND



MEMORANDUM FOR CV

04 JAN 1993

FROM: AFRC/JA

SUBJECT: Legal Review - Conditional Waiver, Administrative Discharge, [REDACTED]

1. The evidence against the respondent is legally sufficient to support the administrative discharge pursuant to AFI 36-3209, Chapter 3, paragraph 3.21.3.2, Misconduct, Commission of a Serious Offense, Drug Abuse. The file establishes, by a preponderance of evidence, that on or about 12 Jul 98, [REDACTED] was selected for random urinalysis testing. The test resulted in a positive for cocaine, in a quantity at or above the DoD cutoff level. There was nothing in the case file, nor was any evidence offered to show that [REDACTED] was taking any prescribed substances or participating in any medical trials which could result in a positive for cocaine. An Under Other Than Honorable Conditions discharge was recommended.
2. After receiving notification of the discharge action, the respondent has elected to waive his right to a discharge board hearing. This waiver is conditioned on his receiving no less than a General (Under Honorable Conditions) discharge. The government does not support this outcome.
3. Membership in the United States Air Force Reserve is not an individual's inherent right, but a privilege. A member not qualified or not able to properly fulfill his or her obligation to serve may be separated or discharged from the USAFR. Pursuant to AFI 36-3209, a commander will evaluate any information received that indicates a member should be discharged and determine whether discharge proceedings should be initiated. As a rule, the acts or conditions on which a recommendation for discharge is based will have occurred or existed in the current enlistment. AFI 36-3209, paragraphs 3.21 and 3.21.3 provide that a member may be discharged for misconduct, including the commission of a serious offense, if the specific circumstances of the offense warrant separation or discharge and a punitive discharge would be authorized for the same or a closely related offense under the UCMJ. Offenses deemed serious enough to merit consideration under this section include drug abuse, paragraph 3.21.3.2. The member's conduct falls squarely within these provisions. Consequently, discharge from the USAFR is appropriate.
4. Once it has been determined that discharge is appropriate, the member's entire military record may be considered to determine whether the member should be in fact discharged. In this instance, notwithstanding his participation in Desert Storm, a review of [REDACTED] records indicate that discharge remains the appropriate course of action. When it has been determined that discharge is appropriate, consideration must next be given to what characterization is appropriate. When determining the propriety of a given characterization of service, only the member's current enlistment is evaluated. The commander recommended an Under Other Than Honorable Conditions discharge. The following is provided as a guide in determining the appropriate characterization of service in this case:

a. Honorable: The Honorable characterization is appropriate when the quality of the member's service has generally met Air Force standards of acceptable conduct and duty performance. It may also be appropriate when a member's service is so meritorious, that any other characterization would be inappropriate.

b. General (Under Honorable Conditions): If a member's service has been honest and faithful, but significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record, it is appropriate to characterize that service as General (Under Honorable Conditions).

c. Under Other Than Honorable Conditions: Characterization of service as Under Other Than Honorable Conditions may be appropriate when the reason for separation is based on one or more acts or omissions that constitute a significant departure from the conduct expected. Conduct in the civilian community of a USAFR member not on active duty or active duty for training may be used to characterize service as Under Other Than Honorable Conditions only if the conduct directly affects the performance of military duties.

5. A review [REDACTED] records indicates he has 13 years of satisfactory service. Cocaine use is a gross and significant departure from the conduct expected of all members of the Air Force Reserve, especially non-commissioned officers. In light of the nature of this offense I strongly recommend a discharge characterization of Under Other Than Honorable Conditions.

6. The member is neither retirement eligible nor is he eligible for lengthy service probation.

7. OPTIONS:

a. Reject the waiver and direct further processing of the case;

b. Accept the conditional waiver and discharge the respondent with an Honorable or General (Under Honorable Conditions) discharge;

c. Disapprove the discharge case and retain the respondent.

8. RECOMMENDATION: Based upon the facts in this case, I recommend that you reject the waiver and direct further processing of the case.

[REDACTED]



DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND



28 OCT 1998

MEMORANDUM FOR SSGT [REDACTED]

FROM: HQ AFRC/DPM
155 2nd St
Robins AFB GA 31098-1635

SUBJECT: Notification of Initiation of Separation Action under AFI 36-3209

1. By this memorandum, separation action is being initiated against you for misconduct, commission of a serious offense, drug abuse. The authority for this separation action is AFI 36-3209, Chapter 3, paragraph 3.21.3.2. Information regarding your entitlement to submit statements about your case, the lawful usage of such statements and their disclosure is provided in the attached Privacy Act Statement (Atch 1). A description of the reasons for this separation action is set forth in the attached Statement of Reasons (Atch 2) along with supporting documents. AFI 36-3209 is available for your review at your servicing Military Personnel Flight. The types of separation authorized are Honorable, General (Under Honorable Conditions) and Under Other Than Honorable Conditions. The type of separation recommended in your case is an Under Other Than Honorable Conditions Discharge.

2. Within 24 hours after you receive this memorandum, you must complete and return the attached acknowledgment of receipt (Atch 3) of this memorandum and the attachments thereto.

3. The following is a summary of your rights:

a. You are entitled to consult with a military legal counsel who is qualified under Article 27(B)(1), Uniform Code of Military Justice (UCMJ), at no cost to you. You may also consult with civilian legal counsel of your choice, but at your own expense. [REDACTED], a Judge Advocate who is qualified under Article 27(B)(1), UCMJ, has been designated to represent you in connection with this separation action. Her mailing address is HQ AFRC/JAS, 155 2nd St, Robins AFB GA 31098-1635. Her phone numbers are DSN 497-1588, 1-800-458-5391, or (912) 327-1588.

b. You have the right to submit pertinent statements and/or documents in your behalf which you desire to be considered in the disposition of your case. If you elect to exercise your right to submit statements, and you return the attached form (Atch 4) within 15 days of receipt, you may submit statements or documents at any time during the administrative discharge process. Your decision on requesting or waiving the board hearing does not affect your right to submit statements or documents during the administrative discharge process. The form must be signed either by you or your legal counsel and returned to HQ AFRC/DPM, 155 2nd St, Robins AFB GA 31098-1635.

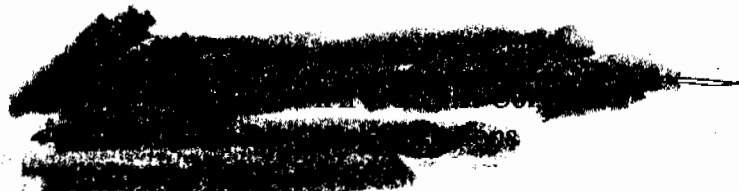
c. If you need additional time to respond to this separation action, either you or your legal counsel may submit a written request to HQ AFRC/DPM, 155 2nd St, Robins AFB GA 31098-1635, for an extension of time, stating why you need the extra time and how much you'll need. The request must be submitted in sufficient time to reach this office within 15 days after receipt of this memorandum.

4. You are eligible for an administrative discharge board. Within 15 days after you receive this memorandum, you may request to have your case heard by an administrative discharge board at this headquarters by completing and returning the attached form (Atch 5) requesting a board hearing. If you desire a board hearing, you must mail the completed form in sufficient time to reach this headquarters within 15 days after your receipt of this memorandum. Otherwise, your right to have your case heard by an administrative discharge board will be considered waived. Within 15 days after you receive this memorandum, you may waive your right to have your case heard by an administrative discharge board by completing and returning the attached form (Atch 6), evidencing your waiver. Information regarding an administrative discharge board is provided at Attachment 7.

5. You are not eligible to apply for transfer to the Retired Reserve.

6. You should note that failure to respond on the selection of one of these options, or failure to request a delay within 15 days after you receive this memorandum, will constitute waiver of all your rights. This includes the right to have your case heard by an administrative discharge board, and will result in your case being processed on the basis of all the evidence then available.

7. Return envelopes are attached (Atch 8) for your convenience.



Attachments:

1. Privacy Act Statement
2. Statement of Reasons w/
Supporting Documentation
3. Acknowledgment of Receipt
4. Selection of Rights
5. Request for Board Hearing
6. Waiver of Board Hearing
7. Discharge Board Info
8. Envelopes (2)

cc:

HQ AFRC/JAS

514 MSS/DPMSA w/o Attachments