

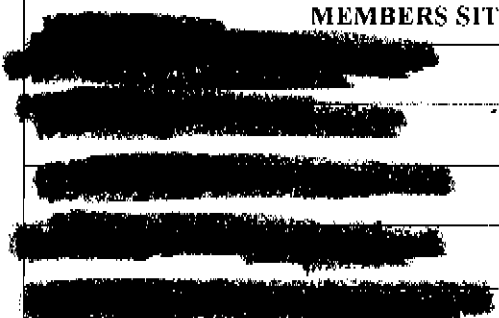




## AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) 		GRADE AMN	AFSN/SSAN 			
TYPE	<b>PERSONAL APPEARANCE</b>		<b>X RECORD REVIEW</b>			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION				
YES	NO	ADDRESS AND OR ORGANIZATION OF COUNSEL				
	X					
<b>MEMBERS SITTING</b> 		<b>VOTE OF THE BOARD</b>				
		HON	GRN	DOTHC	OTHER	DENY
						X
						X
						X
						X
ISSUES A94.05		INDEX NUMBER A66.00		<b>EXHIBITS SUBMITTED TO THE BOARD</b>		
HEARING DATE 3 OCT 02		CASE NUMBER FD2002-0249		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						
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.						
SIGNATURE OF RECORDER 		SIGNATURE OF BOARD PRESIDENT 				
ENDORSEMENT				DATE: 3 OCT 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

FD02-0249

**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 based on one isolated incident in 24 months of service with no other adverse actions. Also, the applicant believes his discharge was improper because of the lack of education on using prescription drugs. 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 General discharge for Misconduct – Drug Abuse and was found guilty by a Summary Court Martial. 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 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 AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/03/06 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 77/03/05. Enlmt Age: 20 7/12. Disch Age: 23 0/12. Educ: HS DIPL. AFQT: N/A. A-96, E-90, G-84, M-72. PAFSC: 2A432 - Aircraft Communications and Navigation Systems Apprentice. DAS: 98/11/22.

b. Prior Sv: (1) AFRes 97/10/24 - 98/03/03 (4 months 10 days)(Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AMN 98/03/04 for 4 yrs. Svd: 02 Yrs 00 Mo 03 Das, all AMS.

b. Grade Status: AMN - 99/11/10 (Summary Court Martial, 99/11/05)  
 A1C - 99/01/04

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: Summary Court Martial - 99 Nov 05

CHARGE: Article 112a. Plea: Guilty. Finding: Guiltng.

Specification: Did, at or near Bellevue, Nebraska, between on or about 1 May 1999 and on or about 30 Jun 99, wrongfully use perocet, a Schedule II controlled substance. Sentence: adjudged on 5 Nov 99: Seven days confinement, forfeiture of \$250.00 pay, reduction to E-2, and 21 days hard labor without confinement.

g. Record of SV: 98/03/04 - 99/11/15 Offutt AFB 2 (Initial)REF

(Discharged from Offutt AFB)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (02) Yrs (04) Mos (13) Das  
 TAMS: (02) Yrs (00) Mos (03) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/06/06.

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

Issue 1: My discharge was inequitable because it was based on one isolated incident in 24 months of service with no other adverse action including Article 15 and UIF.

Issue 2: My discharge was improper because of the need for more education informing airmen of the repercussions involved misusing prescription drugs. Many soldiers are warned on the use of marijuana or cocaine, but lack the understanding of the serious nature of prescription drugs and how they are categorized.

**ATCH**

1. Memorandum For Discharge Review Board.
2. Three Character References.
3. Scholarship Award Letter.
4. Phi Theta Kappa Honor Society Certificate.
5. College Transcript.
6. Award Letter.
7. Eagle Scout Certificate.
8. Acceptance Letter.
9. Clearance.
10. Applicant's Issues.

02/09/18/ia

**DEPARTMENT OF THE AIR FORCE****HEADQUARTERS 68TH WING (ACC)  
OFFUTT AIR FORCE BASE, NEBRASKA**

MEMORANDUM FOR 55 WG/CC [REDACTED]

01 MAR 2000

FROM: 55 WG/JA

SUBJECT: Legal Review: Administrative Discharge Action--Amn [REDACTED]  
[REDACTED] (ACC)

1. **INITIATION OF ACTION:** On 17 February 2000, 55 MXS/CC notified Amn [REDACTED] that he was recommending his discharge for Misconduct--Drug Abuse pursuant to AFD 36-32 and AFI 36-3208, paragraph 5.54. The commander further recommended Amn [REDACTED] receive a general discharge without probation and rehabilitation (P&R).
2. **RESPONDENT:** The respondent is a twenty-two year old Aircraft C-3 Navigation Apprentice. He has completed one year and eleven months of his four year enlistment (TAFMSD: 4 March 1998) and was assigned to his unit on 22 November 1998. This is his first enlistment.
3. **REASONS FOR DISCHARGE:** Between on or about 1 May 1999 and 30 June 1999, at or near Bellevue, NE, the respondent did wrongfully use percocet, a schedule II controlled substance. For this incident the respondent was found guilty in a summary court-martial and sentenced to 7 days confinement, forfeiture of \$250.00 pay, reduction to the grade of Airman with a new date of rank of 10 November 1999, and 21 days of hard labor without confinement.
4. **RESPONDENT'S SUBMISSION:** By letter dated 23 February 2000, the respondent consulted with counsel, and submitted a statement on his own behalf. In his statement, he requests that he be retained in the Air Force and suggests that he meets all seven parts of the retention criteria stated in AFI 36-3208, paragraph 5.55.2.1.
5. **ERRORS AND IRREGULARITIES:** None.
6. **DISCUSSION:**
  - a. **Basis for Discharge:** Under AFI 36-3208, paragraph 5.54., 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

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of military service; and prevent breaches of security. In this case, the respondent's wrongful use of percocet provides a sufficient basis for discharge.

b. **Appropriateness of Discharge:** The respondent's misconduct does not support continued military service. Drug abuse is clearly incompatible with military service. Under AFI 36-3208, paragraph 5.55.2.1., a member found to have abused drugs must be discharged unless the member shows that he meets all seven of the following criteria: drug abuse is a departure from the member's usual and customary behavior; drug abuse occurred as the result of drug experimentation; drug abuse does not involve recurring incidents other than drug experimentation; the member does not desire to engage in or intend to engage in drug abuse in the future; the member's continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale; and drug abuse did not involve drug distribution. In this case, the respondent submitted a statement attempting to show that he meets all of the seven retention criteria, in addition to numerous character letters. However, his commander feels that despite Airman [REDACTED] professed good intentions and support from friends, family and co-workers, his retention in the Air Force is not in the best interest of good order and discipline, and would be detrimental to morale. After evaluating Airman [REDACTED] written submission and the underlying misconduct, I concur that he has failed to show that his retention is consistent with maintaining proper discipline, good order, and morale. Therefore, discharge is appropriate.

c. **Characterization of Service:** Table 1.3 to AFI 36-3208 provides that discharges for Misconduct--Drug Abuse may be characterized as honorable, general, or under other than honorable conditions. A general discharge is appropriate when significant negative aspects of an airman's conduct outweigh positive aspects of the airman's military record. The respondent's drug use clearly outweighs any positive aspects of his military career. A general discharge is appropriate in this case.

d. **Probation & Rehabilitation:** The respondent is not eligible for P&R under AFI 36-3208, Chapter 7.

c. **Legal Sufficiency:** This action is legally sufficient.

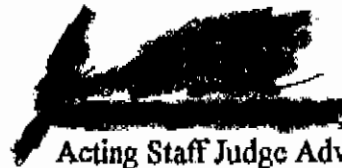
7. **OPTIONS:** As the special court-martial convening authority, you may:

- a. Retain the respondent if you find the seven criteria in paragraph 5.55.2.1. are satisfied;
- b. Approve discharge with a general discharge without P&R;
- c. Return the file to the unit with a recommendation that the respondent be processed for discharge with an under other than honorable conditions discharge; or

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d. Forward the file to the general court-martial convening authority with a recommendation for an honorable discharge without P&R.

8. RECOMMENDATION: I recommend the respondent be discharged with a general discharge without P&R, and, due to the nature of his discharge, he be barred from Offutt Air Force Base for a period of one year from the date of his discharge.



Major, USAF

Acting Staff Judge Advocate

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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 55TH WING (ACC)  
OFFUTT AIR FORCE BASE, NEBRASKA

MEMORANDUM FOR AMN [REDACTED]

FROM: 55 MXS/CC

17 Feb 00

SUBJECT: Letter of Notification

1. I am recommending your discharge from the United States Air Force for Misconduct--Drug Abuse. The authority for my recommendation is AFPD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending a general discharge.
2. My reason for this action is: You did, at or near Bellevue, Nebraska, between on or about 1 May 1999 and on or about 30 June 1999, wrongfully use percocet, a Schedule II controlled substance. For this incident you were found guilty in a summary court-martial and sentenced to 7 days confinement, forfeiture of \$250.00 pay, reduction to the grade of Airman, and 21 days of hard labor without confinement. (Atch 1-1)
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. If you are discharged, you will be ineligible for reenlistment in the Air Force and probably any other branch of the military.
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] 323C, RM 302, phone 4-3939, at 0830 on 17 Feb 00. You may consult civilian counsel at your own expense.
5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me by 23 Feb 00 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 on your own behalf, your failure will constitute a waiver of your right to do so.



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7. You have been scheduled for a medical examination. You must report to the 55th Medical Group, Physical Exams, Room 115, Building 527 (Fairchild Hall), at 1300 on 18 Feb 00 for the examination. Please pick up your medical records 24 hrs prior to your appointment.
8. You have been scheduled for an initial separation appointment. You must report to the 55th Mission Support Squadron, Separations and Retirements Section, Room 235, Bldg 323C, at 0900 on 18 Feb 00 with your escort.
9. You have been scheduled for a pre-separation briefing. You must report to the Family Support Center at \_\_\_\_\_ on \_\_\_\_\_ for the briefing.
10. 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 unit orderly room.
11. Execute the acknowledgment provided and return it to me immediately.

  
\_\_\_\_\_, Major, USAF  
Commander, 55<sup>th</sup> Maintenance Squadron

## Attachments:

Atch 1-1; Record of Trial by Summary Court-Martial dated 29 November 1999