

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE SRA	AFSN/SSAN [REDACTED]
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	X	

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A94.01	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD		
		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 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 [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 18 DEC02
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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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0276

GENERAL: The applicant appeals for upgrade of discharge to Honorable and to change the RE Code.

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 too severe a punishment. The applicant indicates that after inhaling from a rolled cigarette he felt an odd sensation that is not consistent with tobacco inhalation. He then felt obligated to notify his superiors of the incident on the following duty day. The records indicated the applicant received a Memorandum For Record for his statement concerning drug use and a Letter of Reprimand for wrongfully using drugs. The record further indicates that on 4 May 98, the applicant was selected for a random urinalysis. Four days later, on 8 May 98, the applicant told the 1st Sergeant that he smoked marijuana last weekend (2-3 May 98). It was only after the urinalysis test came back negative that the applicant denied using marijuana. 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 SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 98/07/31 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge and Change of Reentry Code. Disch.

2. **BACKGROUND:**

a. DOB: 76/04/17. Enlmt Age: 18 11/12. Disch Age: 22 3/12. Educ: HS DIPL . AFQT: N/A. A-70, E-81, G-74, M-70. PAFSC: 2A353J - Tactical Aircraft Maintenance Journeyman. DAS: 95/09/16.

b. Prior Sv: (1) AFRes 95/04/14 - 95/04/25 (12 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 95/04/26 for 4 yrs. Svd: 3 Yrs 3 Mos 6 Das, all AMS.

b. Grade Status: SRA - 98/04/26
A1C - 96/08/26
AMN - 95/10/26

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 2 JUL 98 - Wrongful use of drugs.
MFR, 11 MAY 98 - Statement concerning drug use.

f. CM: None.

g. Record of SV: 95/04/26 - 96/12/25 Davis Monthan AFB 5 (Initial)
96/12/26 - 97/12/25 Davis Monthan AFB 5 (Annual)

(Discharged from Davis Monthan AFB)

h. Awards & Decs: AFTR, NDSM, AFOUA W/V DEV, AFGCM.

i. Stmt of Sv: TMS: (3) Yrs (3) Mos (18) Das
TAMS: (3) Yrs (3) Mos (6) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/06/25.
(Change Discharge to Honorable and Reentry Code)

Issues: I contend that on 31 July 1998, I was involuntarily seperated (sic) from the United States Air Force with a General Discharge under Honorable Conditions for the following events:

from a rolled cigarette. Which at the time I assumed was nothing more than tobacco. Shortly thereafter I felt an odd sensation that is not consistent with tobacco inhalation. I then felt obligated to notify my superiors of the aforementioned incident on the following duty day.

2) After my notification to my supervisors I was then issued a letter of reprimand and an unfavorable information file. After said actions were taken, I then submitted the attached letter of rebuttal. See ATTCH: 4

3) I therefore respectfully request that my discharge be upgraded to HONORABLE and my re-entry code reflect accordingly.

I have attached other supporting documentation in concurrence with this application.

ATCH

1. DD Form 214.
2. Enlisted Performance Reports.
3. Response to Letter of Reprimand.
4. Two Letter of Appreciation.
5. Five Letters of Reference.

02/10/04/cr



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 355TH WING (ACC)
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA

JUL 30 1998

MEMORANDUM FOR 355 WG/CC

FROM: 355 WG/JA

SUBJECT: Legal Review of Proposed Discharge of [REDACTED]
358 FS

1. **LEGAL SUFFICIENCY:** I have reviewed the administrative discharge case file regarding [REDACTED] the Respondent. The proposed discharge is supported by the evidence. There are no errors that prejudice the rights of the Respondent. Therefore, the file is legally sufficient, subject to a medical determination that the Respondent is qualified for worldwide duty and separation.

2. **BASIS FOR DISCHARGE AND REHABILITATIVE MEASURES:** [REDACTED] 358 FS/CC recommends the Respondent be discharged from the Air Force under AFI 36-3208, paragraph 5.54, drug abuse, without probation and rehabilitation. He recommends the Respondent's service be characterized as under honorable conditions (general). The basis for the proposed discharge is the Respondent's use of marijuana. In this case, the Respondent voluntarily admitted to using marijuana. On 8 Jun 98, 4 days after participating in the random urinalysis program, the Respondent voluntarily provided information about his marijuana use to the first sergeant. His statement about his marijuana use was unsolicited and very unexpected. It was only after his urinalysis test came back negative that the Respondent denied using marijuana. Ultimately, the commander believed the Respondent did use marijuana on 2 Jun 98. As a result, the Respondent received a Letter of Reprimand (LOR) and an Unfavorable Information File (UIF) was established.

3. **SERVICE HISTORY:** The Respondent has been on active duty for approximately 3 years and 2 months. He has received overall ratings of 5 and 5 on his performance reports. His awards and decorations include the Air Force Outstanding Unit Award, Air Force Good Conduct Medal, National Defense Service Medal, and the Air Force Training Ribbon.

4. **RESPONDENT'S CASE:** The Respondent consulted counsel and submitted a statement in his behalf. In his statement, the Respondent denies using marijuana. He states that he has never possessed, used, distributed, or been tempted to use a controlled substance. He goes on to say when the urinalysis results came back negative, he realized the cigarette did not contain a controlled substance. He adds that he's completely against the use of illegal drugs and has always avoided them. The Respondent states he went to the first sergeant because of his integrity and adherence to core values. He goes on to say he joined the Air Force to serve his country and to attend college. The Respondent requests retention or an honorable discharge. He goes on to list several of his accomplishments while on active duty. The Respondent apologized for any

embarrassment he may have caused his supervisors and the squadron for this misunderstanding. He believes this situation arose due to his adherence to core values. In conclusion, he states he has learned from this experience and reiterates that going to his first sergeant was the right thing to do.

5. CHARACTERIZATION OF SERVICE AND P & R: If you determine there are sufficient grounds to discharge the Respondent, you must decide whether he should be retained or discharged. The record of drug abuse warrants his discharge. Pursuant to AFI 36-3208, paragraph 5.55.2, an airman found to have abused drugs must be discharged unless the airman meets all seven of the retention criteria set forth in paragraph 5.55.2.1. The burden of proving these criteria is on the airman (paragraph 5.55.2.2). The Respondent has not submitted any matters to establish or prove the seven criteria. In fact, the Respondent now denies using marijuana. However, the Respondent initially gave an unsolicited confession to the first sergeant about his illegal drug use. Based on the sequence of events in this case, there is no reason to doubt the Respondent's confession. Even if the Respondent did request a waiver, it appears that the Respondent does not meet all seven retention criteria. Specifically, Respondent's continued presence in the Air Force is not consistent with the interests of the Air Force in maintaining proper discipline, good order, leadership, and morale. If you choose to separate the Respondent, you must also decide the proper service characterization. A general characterization is appropriate in this case because the negative aspects of the Respondent's conduct outweigh the positive aspects of his military record. Given the nature of the misconduct in this case and the positive aspects of the Respondent's military record, an under other than honorable conditions (UOTHC) service characterization is not warranted. Probation and rehabilitation is not authorized in this case in accordance with AFI 36-3208, Chapter 7.

6. OPTIONS: As the Separation Authority you may:

- a. Discharge the Respondent with a general discharge as recommended by his commander;
or
- b. Retain the Respondent on active duty; or
- c. Recommend to HQ 12 AF/CC the Respondent receive an honorable discharge, with or without P&R; or
- d. Terminate the notification discharge process and direct that this case be processed under board hearing procedures making the Respondent subject to a UOTHC service characterization.

7. **RECOMMENDATION:** I recommend you discharge the Respondent with a general service characterization. If you elect any other option, please return the Respondent's package to my office att: [REDACTED] for further processing.

[REDACTED]

[REDACTED] USAF

Staff Judge Advocate



FD 2002-0276

DEPARTMENT OF THE AIR FORCE

358TH FIGHTER SQUADRON (ACC)
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA

21 Jul 98

MEMORANDUM FOR [REDACTED]

FROM: 358 FS/CC


SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically drug abuse. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service may be characterized as honorable or general. I am recommending that your service be characterized as general.
2. My reason for this action is that on or about 2 May 98, you wrongfully used some amount of marijuana, prior to being identified for Random Urinalysis testing scheduled on 4 May 98. As a result, you received a Letter of Reprimand (LOR) and an Unfavorable Information File (UIF) was established.
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 and will probably be denied enlistment in any component of the armed forces 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, [REDACTED] building 3510, 3rd floor, west end, extension 5664, has been obtained to assist you. An appointment has been scheduled for you to consult him on 22 Jul 98 at 1330 hours. In addition to military counsel, you have the right to employ 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 24 Jul 98 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 medical examination. You must report to the Physical Exams Office of the Aeromedical Facility, Bldg 412, Rm 3 at 0900 on 22 Jul 98 for the examination.

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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 at the Area Defense Counsel's office, bldg 3510.

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


USAF
Commander

Attachments:

1. Supporting Documents
 - a. AF Form 1058 UIF, dated 20 Jul 98
AF Form 1137 UIF Summary, dated 2 Jul 98
LOR, dated 2 Jul 98, (2 pages)
 - b. SrA Anderson's Response to LOR w/atchs, dated 15 Jul 98 (34 pages)
2. Airman's Receipt of Notification Memorandum