

## AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> [REDACTED]	<b>GRADE</b> AB	<b>AFSN/SSAN</b> [REDACTED]
--	--------------------	--------------------------------

<b>TYPE</b>	<b>PERSONAL APPEARANCE</b>	<b>X RECORD REVIEW</b>
<b>COUNSEL</b>		<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>NO</b>	
	X	

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

<b>ISSUES</b> A94.05	<b>INDEX NUMBER</b> A66.00	<b>EXHIBITS SUBMITTED TO THE BOARD</b>		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
<b>HEARING DATE</b> 20 DEC 02	<b>CASE NUMBER</b> FD2002-0327	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.

<b>SIGNATURE OF RECORDER</b> [REDACTED]	<b>SIGNATURE OF BOARD PRESIDENT</b> [REDACTED]
--	---

<b>INDORSEMENT</b>	<b>DATE: 20 DEC02</b>
--------------------	-----------------------

<b>TO:</b> SAF/MIBR 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
--	---

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD02-0327

**GENERAL:** The applicant appeals for upgrade of discharge to Honorable, change the Reason and Authority for discharge 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 there was no evidence of drug use during his enlistment and that he only possessed paraphernalia. The records indicated the applicant received an Article 15 for wrongfully possessing marijuana. While the applicant points out that he was only in possession of marijuana and there is no evidence of use, the discharge instruction makes it clear that airmen who "abuse drugs" must be discharged. Abuse of drugs is defined as "illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug." The Board concluded the possessing of drugs 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

[REDACTED]  
[REDACTED]  
(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 99/09/29 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge, to Change the RE Code and Reason and Authority for Disch.

2. **BACKGROUND:**

a. DOB: 79/01/02. Enlmt Age: 19 1/12. Disch Age: 20 8/12. Educ: HS DIPL. AFQT: N/A. A-82, E-80, G-90, M-72. PAFSC: 2A431 - Aircraft Guidance and Control Apprentice. DAS: 98/11/15.

b. Prior Sv: (1) AFRes 98/02/18 - 98/03/03 (14 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/03/04 for 4 yrs. Svd: 01 Yrs 06 Mo 26 Das, all AMS.

b. Grade Status: AB - 99/08/30 (Article 15, 99/08/30)  
A1C - 99/07/11  
AMN - Unknown

c. Time Lost: None.

d. Art 15's: (1) 99/08/30, Grand Forks AFB, ND - Article 112a. You, on divers occasions between on or about 01 Dec 98, and on or about 29 Jan 99, wrongfully possess marijuana. Reduction to AB. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: None.

(Discharged from Grand Forks AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (01) Yrs (07) Mos (12) Das  
TAMS: (01) Yrs (06) Mos (26) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/07/30.

(Change Discharge to Honorable, Change RE Code, and Change Reason and Authority for Discharge)

Issue 1: My discharge was inequitable because it was based on one isolated incident in 18 months of service with no other adverse action. There also was no evidence of drug use during my enlistment, only the possession of paraphenalia. I know it was wrong of me not to get rid of said paraphenalia, and I regret not doing so. I would like to re-enter the military, and can not do so with my discharge as it is. I would like for my discharge to be upgraded to honorable, my separation code to be changed, (as well as my re-entry code), to something that would allow me to continue military service.

During my first term of service, I portrayed the defining characteristics of an exemplary Airman. If given the opportunity and, as it were, a DD Form 214 upgrade, I know I would continue this performance excellence.

Thank you for your time in this matter.

**ATCH**

1. Six Certificates of Training.
2. Performance Excellence Award.
3. Certificate of Completion.
4. Two Letters of Recommendation.
5. Two Letters of Appreciation.
6. Five Character Reference.

02/11/13/ia



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 319TH AIR REFUELING WING (AMC)  
GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

FD 2002-0327

21 Sept 99

MEMORANDUM FOR 319 ARW/CC

FROM: 319 ARW/JA

SUBJECT: AFI 36-3208 Discharge Legal Review - [REDACTED]

1. We reviewed and found legally sufficient the attached AFI 36-3208 discharge package, contingent upon the inclusion of a medical report clearing the respondent for separation. The respondent is eligible for separation per AFI 36-3208, paragraph 5.54 (drug abuse), and should be separated with a general discharge.
2. 319 AGS/CC initiated this action on 20 Sept 1999 because the respondent willfully committed the following offense:
  - a. On divers occasions between or about 1 Dec 98 and on or about 29 Jan 99 he wrongfully possessed marijuana.
3. The respondent is subject to discharge per AFI 36-3208, paragraph 5.54 (drug abuse). 319 AGS/CC recommends a general discharge without probation and rehabilitation.
4. The respondent is 20 years old and began his first and only four-year enlistment on 4 Mar 98. He has not received any EPRs. The respondent consulted with counsel and submitted a statement on his own behalf. He asks that you consider the statements he submitted in response to his Article 15 action plus one additional letter from his flight commander. These letters are included as attachments to this legal review for your consideration. In his response to his Article 15, he apologizes for his offense. He states that he accepts responsibility for his actions and the consequences. He requests that you not discharge him from the Air Force so he can continue to offer his skills and technical expertise to the Air Force. His area defense counsel also provided a response to the Article 15. He urged the unit commander to seek a waiver from the automatic discharge provisions for drug abuse and emphasized the lack of evidence of drug use.
5. Since this is a notification case, the respondent may receive only an honorable or general discharge, unless you choose to refer this case to a discharge board. The respondent's possession of marijuana is a significant negative aspect of his service record that outweighs any period of satisfactory duty performance. [REDACTED] has proven that he cannot live up to the standards expected of a member of the Air Force and that he should be discharged. While the defense counsel accurately points out that he was only in possession of marijuana and there is no evidence of use, the discharge instruction makes it clear that airmen who "abuse drugs" must be

**Attorney client privilege material and/or attorney work product.**

This document was prepared in direct or indirect anticipation of litigation. Not for release or transfer outside of the Air Force without specific approval of the originator or higher authority. Not subject to discovery or release under P.L. 95-502 (5 USC 552).

discharged. Abuse of drugs is defined as "illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug." Therefore, the mere possession triggers an automatic discharge action. The only time a member who abuses drugs may be retained on active duty is if the member receives a waiver by meeting seven criteria outlined in para. 5.55.2.1: 1) drug abuse is a departure from usual behavior; 2) drug abuse occurred as a result of experimentation; 3) drug abuse does not involve recurring incidents; 4) member does not desire or intend to engage in drug abuse again; 5) drug abuse occurred under circumstances unlikely to occur again; 6) the member's continued presence in the Air Force is consistent with good order, discipline and morale; 7) drug abuse did not involve distribution. The General Court-Martial Convening Authority is the approval authority for such waivers. In this case, the unit commander did not support a waiver request and we do not recommend one. [REDACTED] possession of marijuana is a serious offense and warrants a general discharge. No substantive or procedural errors materially prejudice the respondent's rights in this case.

6. If you determine that the allegations against the respondent support discharge and that he should be discharged, you must decide whether or not his discharge should be suspended for a period of probation and rehabilitation (P&R). In this case, however, P&R is not available for a member discharged for drug abuse, per para. 7.2.6.

7. As SPCM separation authority, you may:

- a. Recommend retaining the respondent by requesting a waiver from the GCM;
- b. Approve the respondent's separation with a general discharge without probation and rehabilitation;
- c. Forward the case to 15 AF/CC recommending separation with an honorable discharge without probation and rehabilitation; or
- d. Direct reinitiation of the action if you determine that an under other than honorable conditions discharge is the only appropriate service characterization in this case.

We recommend you approve the respondent's separation with a general discharge without P&R.

[REDACTED]  
USAF  
Chief, Adverse Actions

**Attorney client privilege material and/or attorney work product.**

This document was prepared in direct or indirect anticipation of litigation. Not for release or transfer outside of the Air Force without specific approval of the originator or higher authority. Not subject to discovery or release under P.L. 95-502 (5 USC 552).

I concur.

[REDACTED]  
[REDACTED] USAF  
Staff Judge Advocate

17 Atchs

[REDACTED] response to the discharge package (1 pg)

Ltr from flight commander (1 pg)

[REDACTED] response to his Article 15 (2 pgs)

ADC ltr (1 pg)

Ltr from [REDACTED] (1 pg)

Ltr from [REDACTED] (1 pg)

Ltr from [REDACTED] (1 pg)

Ltr from [REDACTED] (1 pg)

Ltr from [REDACTED] (1 pg)

Ltr from [REDACTED] (1 pg)

Ltr from [REDACTED] (2 pgs)

Ltr of appreciation from [REDACTED] (1 pg)

Cert of appreciation from [REDACTED] (1 pg)

Ltr of commendation from [REDACTED] (1 pg)

Performance Excellence (1 pg)

81<sup>st</sup> Training Wing cert (1 pg)

Statement of financial status (2 pgs)

**Attorney client privilege material and/or attorney work product.**

This document was prepared in direct or indirect anticipation of litigation. Not for release or transfer outside of the Air Force without specific approval of the originator or higher authority. Not subject to discovery or release under P.L. 95-502 (5 USC 552).



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 319TH AIR REFUELING WING (AMC)  
GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

FD 2002-0327

20 SEP 1999

MEMORANDUM FOR [REDACTED]

FROM: 319 AGS/CC

SUBJECT: Notification Letter

1. I am recommending your discharge from the United States Air Force for drug abuse. The authority for this action is AFPD 36-32 and AFI 36-3208 in accordance with paragraph 5.54. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.
2. My reasons for this action are: You did, at Grand Forks AFB, ND, on divers occasions, between on or about 1 Dec 98 and on or about 29 Jan 99 wrongfully possess marijuana. For this misconduct, you were punished under Article 15 on 30 Aug 99. Punishment consisted of reduction to Airman Basic with a new date of rank of 30 Aug 99. (Attachment A)
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 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.
4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. You have been scheduled an appointment at the Office of the Area Defense Counsel at Building 216 on 20 Sep 99 at 1625 hours. 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 23 Sep 99 at 1545 hours 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 319th Medical Group on 22 Sep 99 at 0745 hours for the examination.

8. Deliver to me immediately your military identification card and those of your dependents. I have requested that temporary identification cards be issued IAW AFI 36-3001, paragraph 4.2. You will report to me by COB 21 Sep 99, to verify that issuance of Temporary Identification Card(s) has been accomplished.

9. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A Privacy Act statement is attached. A copy of AFI 36-3208 is available for your use in the squadron orderly room.

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

  
USAF  
Commander, 319 AGS

Attachments:

1. Privacy Act Statement
2. Supporting Documents
  - a. Article 15 dated 30 Aug 99 and supporting documents
3. Respondents Data
4. Personnel Data