

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE [REDACTED]	AFSN/SSAN [REDACTED]
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW										
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MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
	X*				
	X*				
	X*				
	X*				
	X*				

ISSUES A94.06, A92.22	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD
		1 ORDER APPOINTING THE BOARD
		2 APPLICATION FOR REVIEW OF DISCHARGE
		3 LETTER OF NOTIFICATION
HEARING DATE 21 October 2003	CASE NUMBER FD00-00033	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 Denver, CO.

*** Change reason and authority for the discharge to Secretarial Authority.**

Advise applicant of the decision of the Board.

INDORSEMENT	DATE: 21 OCT 03
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

FD00-00033

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 available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: The Board grants the requested relief. The discharge is upgraded to honorable and the reason for discharge is changed to Secretarial Authority.

ISSUE:

The applicant contends his discharge was inequitable because it was too harsh and he was not offered the opportunity for rehabilitation as recommended by various members in his chain of command. The records indicated the applicant received an Article 15 for wrongful marijuana use but demonstrated outstanding duty performance. The Board determined the behavior was a departure from the member's usual behavior and he appears to express sincere remorse. The Board also acknowledged the cooperation the applicant provided in bringing the issue to light, and his truthful reporting of the incident during the investigation. The applicant's post-service activities were also taken into account and the DRB was pleased to see that the applicant was doing well and exemplifies good citizenship.

CONCLUSIONS:

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable Discharge. The applicant's characterization or reason for discharge should be changed to Secretarial Authority under the provisions of Title 10, USC 1553.

Attachment:

Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

(Former AMN)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 99/04/26 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Hon Disch.

2. BACKGROUND:

a. DOB: 78/01/09. Enlmt Age: 18 0/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A A-72, E-67, G-66, M-41. PAFSC: 1N631 - Electronic Security Specialist. DAS: 96/11/02.

b. Prior Sv: AFRes 96/01/17 - 96/06/05 (4 months 19 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enld as AB 96/06/06 for 4 yrs. Svd: 2 Yrs 10 Mo 21 Das, all AMS.

b. Grade Status: AMN - 98/09/01 (ART 15, 98/09/01)

c. Time Lost: none.

d. Art 15's: (1) 98/09/01, Vogelweh Cantonment AIN, Germany - You did, o/a 31 May 97, wrongfully use marijuana. Rdn to Amn, 15 days extra duty, and 15 days restriction. (No appeal) (No mitigation).

e. Additional: none.

f. CM: none.

g. Record of SV: 96/06/06 98/02/05 Vogelweh Cantonment AIN 5 (Initial)
98/02/06 99/02/05 Vogelweh Cantonment AIN 3 (Annual) REF
(Discharged from Peterson AFB)

h. Awards & Decs: AFTR, AFOUA, AFOSLTR.

i. Stmt of Sv: TMS: (3) Yrs (3) Mos (10) Das
TAMS: (2) Yrs (10) Mos (21) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 99/10/10.
(Change Discharge to Honorable)

Issue 1: In May of 1997 I attended a rock concert. It was during the first day of this concert that I abused marijuana. I admit as I did before this was the worst decision I have ever made. I lost my career because of this snapshot in time. This incident was isolated in that it brought forth the only adverse

effects I experienced in my entire military career. My records will reflect this entire ordeal as a single isolated incident.

Issue 2: A. I have attached the Legal Review of Discharge letter from the 86 AW/JA to the 86 AW/CC. In this letter (Attachment 1, paragraph 4b, line 12) the Chief of Military Justice refers to my prior use of marijuana in high school. This incident was stated on my enlistment papers. Because of the fact I abused drugs in high school, the Chief of Justice felt that I would forget about my experience in the military and abuse drugs again in the future. I understand where the Chief of Justice is coming from, however I feel that because I suffered no consequences from the incident in High School, I didn't really learn anything from that experience. In the Air Force, I suffered major consequences and I learned the importance of the choices I make in my every day life. B. This idea in no way excuses my mistake. I believe fully in the Air Force's standard of "no tolerance" when it comes to drug abuse. But, the fact remains the Chief of Justice did use my prior use in High School as grounds for dismissal. I wish I had surrounded myself around some better friends than I did at that concert in May of 1997. Today, that is something I constantly watch, who I surround myself with. I think that because of the fact I lost so much from my ordeal in the military, (some good friends, a career, and important educational benefits) I learned just why focusing and persevering toward a single goal without straying is so important. I strayed, but now I am clearly back on track. My hope is that now this incident can be looked at as something in my past, something that I grew from and learned from. In the next issue I will illustrate how much I have grown and learned.

Issue 3: A. This final issue is focused on my current state and position in my community. Here are some accomplishments: Currently enrolled in 14 credit hrs. at ----- Community College. I am pursuing a degree in Business Administration to transfer to a four-year institute and finish out my degree. I am a work study student with ----- Community College. Working 20 to 25 hrs a week along with the full-load of classes. Became employed two weeks after discharge from the Air Force. Currently a volunteer with the ----- County Sheriff's Department. I have attached current and past character reference letters in Attachment 2. B. At this point I would like to address the fact that due to my current General discharge, I cannot take advantage of the Montgomery GI Bill. If my discharge is upgraded, my Montgomery GI Bill benefits will be used to complete my Bachelor's degree and begin graduate school. I realized when I made the mistake in 1997 that there were a lot of benefits from the military I jeopardized or would lose. I have really been facing with that fact now with the costs of college tuition. the Montgomery GI Bill would help in this matter. With it I would be able to go to a four year school and complete my degree without having to cover the ever rising costs of tuition by working full time (I would still work part time). Not having to work full time allows me to concentrate more on my studies. Currently, my working 20 to 25 hours a week only barely covers my current Community College tuition. I feel that my attending a four-year institution will be an excellent investment, both for the government and my future. In conclusion I hope that these issues I have presented are considered along with my prior reference letters and awards that will be in my files. If these files can't be located please let me know and I will be able to quickly send copies. Thank you for this opportunity to show you how I have grown and focused in my life from my experiences in the

military, all of which turned out to positive ones.

ATCHS

1. Legal Review.
2. five Character References.
3. Talking Paper.
4. Letter of Recommendation.

00/01/26/ia



DEPARTMENT OF THE AIR FORCE
86TH AIRLIFT WING (USAFE)

13 APR 1999

MEMORANDUM FOR 86 AW/CC

FROM: 86 AW/JA

SUBJECT: Legal Review of Discharge - [REDACTED] 26 IS

1. I have reviewed the administrative discharge action against Amn [REDACTED] initiated on 24 Mar 99 by [REDACTED] 426 IS/CC, and find it legally sufficient to support discharge.

2. BASIS FOR THE ACTION: Administrative discharge action is based on the respondent's drug abuse. The regulatory authority for this discharge is AFI 36-3208, Section H, paragraph 5.54. The worst characterization a discharge under this paragraph may receive is under other than honorable conditions. Since [REDACTED] was not offered a board hearing, the worst characterization [REDACTED] may receive is a general discharge under honorable conditions. [REDACTED] discharge is based upon his wrongful use of marijuana, at or near Koblenz, Germany, between on or about 1 May 97 and on or about 31 May 97. For this action, he received nonjudicial punishment on 1 Sep 98 (Atch 1). This Article 15 was filed in his Unfavorable Information File (UIF) on 8 Sep 98.

3. MATTERS SUBMITTED BY THE RESPONDENT:

a. After conferring with the Area Defense Counsel on 26 Mar 99, the respondent submitted a statement, dated 29 Mar 99, in which he requested to be retained, or in the alternative, be given an honorable discharge. In his statement, the respondent summarized his background, accomplishments, and his past accounts with drugs. The respondent also explained how he believes he meets the seven criteria for a waiver. The respondent also submitted 15 character statements and various other letters of appreciation and awards.

b. The respondent did not submit the letter outlined in AFI 36-3208 in which he indicates whether he submitted statements or consulted counsel. However, it is obvious that the respondent submitted statements. Further, he also consulted counsel as evidenced by the letter, dated 26 Mar 99, from his ADC, [REDACTED] requesting an extension for the respondent to submit statements. While this is an irregularity it does not affect the legal sufficiency of the action.

4. DISCUSSION:

a. The respondent's commander has recommended that the respondent be separated from the United States Air Force with a general discharge under AFI 36-3208, paragraph 5.54. Under this paragraph, airmen are subject to discharge for drug abuse. Drug abuse is defined as the illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug. The term drug includes any controlled substance in schedules I, II, III, IV, and V of Title 21 U.S.C., Section 812. ██████████ was identified as wrongfully using marijuana, a Schedule I controlled substance. Drug abuse is incompatible with military service and airmen who abuse drugs one or more times are subject to discharge for misconduct. His actions fit the definition of drug abuse of paragraph 5.54.

b. According to AFI 36-3208, paragraph 5.55.2.1, a member found to have abused drugs will be discharged unless the member 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 (a drug experimenter is defined as one who has illegally or improperly used a drug for reasons of curiosity, peer pressure, or other similar reasons); drug abuse does not involve recurring incidents, other than drug experimentation as defined above; the member does not desire to engage in or intend to engage in drug abuse in the future; drug abuse under all the circumstances is not likely to recur; under the particular circumstances of the case, 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's use of marijuana may be likely to recur. The respondent stated that he forgot about his previous experience with marijuana in high school and lessons learned that occurred three years prior to this experience. The respondent's marijuana use is likely to recur because he may forget about what he learned from this experience sometime in the future. His continued presence in the Air Force is not consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale because drug abuse is incompatible with military service. As such, I do not believe the member meets all seven of the criteria.

5. OTHER MATTERS: I note that before the respondent can be discharged, he must be found medically qualified for worldwide duty in accordance with AFI 36-3208, paragraph 6.3. ██████████ had his medical appointment on 29 Mar 99, and AFI 36-3208, paragraph 6.16, instructs that processing should not be delayed to wait for the medical report. You may authorize the discharge, but it will not be executed until the medical report is complete.

6. CHARACTERIZATION OF SERVICE: Characterization of service should be based on the quality of the member's service in the current enlistment. The respondent has over 2 years and 10 months of military service. His current enlistment began on 6 Jun 96 for a term of 4 years. The respondent has received two EPRs in the current enlistment with promotion recommendations of 3 and 5. In accordance with AFI 36-3208, paragraph

5.54, the service of an airman discharged by notification procedure for drug abuse can be characterized as honorable or general. A general discharge is appropriate where an airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. AFI 36-3208, paragraph 1.18.2. The respondent's commander recommends a general discharge based upon the respondent's misconduct. The respondent's drug abuse in the current enlistment constitutes significant negative aspects of his military record. I concur that a general discharge is appropriate in this case.

7. PROBATION AND REHABILITATION: Under AFI 36-3208, Chapter 7, paragraph 7.2.6, airmen are not eligible for probation and rehabilitation (P&R) if the reason for discharge is Drug Abuse, paragraph 5.54.

8. ACTIONS WHICH MAY BE TAKEN: As the discharge authority, you have the following options:

a. If you find the respondent meets the seven criteria for a waiver, forward the case file to 3 AF/CC recommending approval of the waiver;

b. Forward the case file to 3 AF/CC, recommending that the respondent be separated from the United States Air Force (USAF) with an honorable discharge;

c. Direct that the respondent be separated from the USAF with a general discharge, or,

d. Return the case file to the unit for processing as an administrative discharge board case; this would permit a service characterization of under other than honorable conditions.

9. RECOMMENDATION: Direct that the respondent be separated from the USAF with a general discharge by signing at Attachment 1.


Acting Chief, Military Justice

Attachments:

1. Proposed Memo for 86 AW/CC
2. Discharge Package



DEPARTMENT OF THE AIR FORCE
AIR INTELLIGENCE AGENCY

24 Mar 99

MEMORANDUM FOR AM [REDACTED]

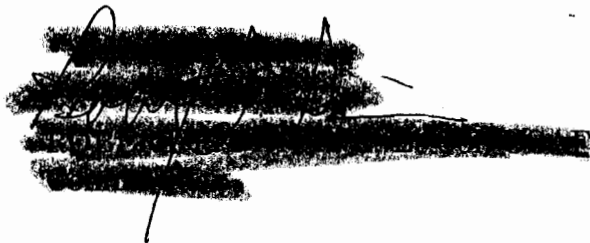
FROM: 426 IS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for drug abuse. The authority is AFPD 36-32 and AFI 36-3208, Section H, 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 reason for this action is that you did, at or near Koblenz, Germany, between on or about 1 May 97 and on or about 31 May 97, wrongfully use marijuana. For this action, you received nonjudicial punishment on 1 Sep 98 (Atch 1). This Article 15 was filed in a Unfavorable Information File (UIF) on 8 Sep 98.
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 United States 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 United States Air Force, and any special pay, bonus, or education assistance funds you have received may be subject to recoupment.
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 with Capt [REDACTED] at Aviano AB, Italy, Area Defense Counsel, Building 224, DSN 632-5588 on 25 Mar at 0900. You may consult civilian counsel at your own expense. The Area Defense Counsel requests that you stop by their office prior to your appointment to pick-up the Administrative Discharge Booklet.
5. You have the right to submit statements on your behalf. Any statements you want the separation authority to consider must reach me NLT (3 duty days) 29 Mar 99 at 1400 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 submit statements in your 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 in uniform with your medical records and an escort to the Ramstein Air Base Clinic, Physical Exams, Building 2182 on 29 Mar 99 1000 for the examination. If you wear glasses, you must bring them with you. If you wear contacts, you must be able to remove them. You must abstain from alcohol 72 hours, fast 12 hours, and abstain from caffeine and nicotine 10 hours prior to your appointment.

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 in the orderly room.



Attachments:

1. Supporting Documents: AF Form 3070, Record of Nonjudicial Punishment Proceedings, 1 Sep 98 w/supporting documents and response
2. Airman's Receipt of Notification Memorandum