

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE AB

AFSN/SSAN

TYPE GEN

PERSONAL APPEARANCE

RECORD REVIEW

NAME OF COUNSEL AND OR ORGANIZATION

ADDRESS AND OR ORGANIZATION OF COUNSEL

YES

No

MEMBER SITTING

NOTES OF THE BOARD

HON

GEN

UOTHC

OTHER

DENY

X

X

X

X

X

ISSUES A94.05

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 DATE

03 Dec 2003

CASE NUMBER

FD-2001-0394

Case heard at Randolph AFB, Texas.

Advise applicant of the decision of the Board, and the right to submit an application to the AFBCMR

SIGNATURE OF RECORDER

SIGNATURE OF BOARD PRESIDENT

ENDORSEMENT

DATE 12/5/2003

TO:
SAF/MRBR
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, 3RD FLOOR
ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2001-0394

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant appeared before the Discharge Review Board (DRB) at Randolph AFB, Texas. The applicant was represented by [REDACTED] of the Texas Veterans Commission.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of Discharge is denied.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

ISSUE: The applicant's principal issue is that his discharge was inequitable "because it was based on one isolated event." The applicant contended that his use of marijuana between on or about 12 January 2001 and on or about 14 January 2001 was an act of "drug experimentation." However, the Board found compelling evidence of record, which includes witness statements from several individuals and an OSI report, which led the Board to believe the applicant's use of marijuana was indeed not experimental. Additionally, when asked during testimony which block did he mark ("yes or no") on his military entrance questionnaire regarding pre-service marijuana use, the applicant answered initially in the affirmative ("yes"), but quickly changed his answer to "no". Subsequently, 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.

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 AB) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 01/06/27 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 80/03/11. Enlmt Age: 19 2/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A. A-63, E-55, G-52, M-58. PAFSC: 2A531G - Aerospace Maintenance Specialist. DAS: 00/05/31.

b. Prior Sv: (1) AFRes 99/05/28 - 99/12/28 (7 months 1 day) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 99/12/29 for 6 yrs. Svd: 01 Yrs 06 Mo 07 Das, all AMS.

b. Grade Status: AB - 01/04/12 (Article 15, 01/04/12)
A1C - Unknown

c. Time Lost: none.

d. Art 15's: (1) 01/04/12, Offutt AFB, NE - Article 112a. You did, between on or about 12 Jan 01 and on or about 14 Jan 01, wrongfully use marijuana. Reduction to Amn, forfeiture of \$500.00 pay per month for two months, 30 days extra duty, and 30 days restriction, and a reprimand. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: none.

(Discharged from Offutt AFB)

h. Awards & Decs: AFTR

i. Stmt of Sv: TMS: (02) Yrs (01) Mos (00) Das
TAMS: (01) Yrs (06) Mos (00) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 01/10/01.
(Change Discharge to Honorable)

Issue 1: My discharge was inequitable because it was based on one isolated

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incident in 18 months of service with no other adverse action. I hope you will consider granting me with an Honorable Discharge in the fact that I am only 21 years old and would like to continue on with my life with a strong background.

ATCH
none.

02/03/06/ia



FD2001-0394

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

MEMORANDUM FOR 55 WG/CC

JUN 26 2001

FROM: 55 WG/JA

SUBJECT: Legal Review: Administrative Discharge Action--AB [REDACTED]
[REDACTED] 55 MXS (ACC)

1. **INITIATION OF ACTION:** On 19 June 2001, 55 MXS/CC notified AB [REDACTED] 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 that AB Parsons receive a general discharge without probation and rehabilitation (P&R).

2. **RESPONDENT:** The respondent is a twenty-one year old Aerospace Maintenance Apprentice. He has completed one year and five months of his six year enlistment (TAFMSD: 29 December 1999) and was assigned to his unit on 31 May 2000.

3. **REASON FOR DISCHARGE:**

Between 12 January 2001 and 14 January 2001, the respondent wrongfully used marijuana. For this incident he received Nonjudicial Punishment, dated 12 April 2001, consisting of reduction to airman basic, forfeiture of \$500.00 per month for two months, 30 days extra duty, 30 days restriction to Offutt Air Force Base, Nebraska, and a reprimand. Additionally, an Unfavorable Information File was established.

4. **RESPONDENT'S SUBMISSION:** By letter dated 20 June 2001, the respondent consulted with counsel and waived his right to submit a statement.

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 of military service; and prevent breaches of security. In this case, the respondent's wrongful use of marijuana 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, I do not believe the respondent meets the seven retention criteria. Abusing drugs is something the Air Force preaches against from day one of his enlistment. The message is clear--abuse drugs and your career is over. The respondent chose to ignore this message. His continued presence is not consistent with maintaining good order and discipline. Accordingly, discharge is appropriate.

c. **Characterization of Service:** Table 1.3 to AFI 36-3208 provides that discharges for Misconduct--Drug Abuse or Pattern of Misconduct 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 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, paragraph 7.2.6. Under that paragraph, if the basis for discharge is drug abuse, members are not eligible for this program.

e. **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.
- 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 you discharge the respondent with a general discharge without P&R. Additionally, due to the nature of the respondent's discharge, I recommend he be barred from Offutt Air Force Base for a period of one year from the date of his discharge.



, Colonel, USAF
Staff Judge Advocate



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

PD 2001-0394

19 JUN 2001

MEMORANDUM FOR AB [REDACTED] 55 MXS, (ACC)

FROM: 55 MXS/CC

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 AFD 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 that your service be characterized as general.

2. My reason for this action is:

You did, within the limits of the continental United States, between on or about 12 January 2001 and 14 January 2001, wrongfully use marijuana. For this incident you received Nonjudicial Punishment, dated 12 April 2001, consisting of reduction to airman basic, forfeiture of \$500.00 per month for two months, 30 days extra duty, 30 days restriction to Offutt Air Force Base, Nebraska, and a reprimand. Additionally, an Unfavorable Information File was established. (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. In addition, any special pay, bonus, or education assistance funds 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 Captain [REDACTED] Area Defense Counsel, Bldg 323C, RM 302, Phone 4-3939, at _____ on _____.

5. You have the right to submit statements on your behalf. Any statements you want the separation authority to consider must reach me by 22 JUN 2001 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 55th Medical Group, Red team at 1500 on 19 JUN 01 for the examination.

JUN 20 2001
EIP

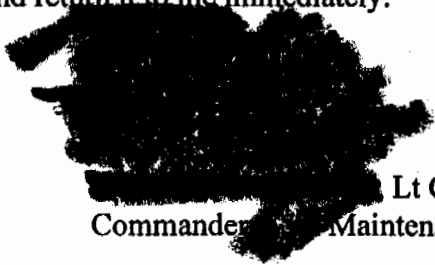
Global Power For America

8. You have been scheduled for a pre-separations briefing. You must report to the Family Support Center at 1330 on 27 JUN for the briefing.

9. 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 1230 on 19 ~~APR~~ 01 with your escort.
JUN 19 01 ETD

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.



[Redacted Name], Lt Col, USAF
Commander, Maintenance Squadron

Attachments:
Atch 1-1; Nonjudicial punishment, dated 12 Apr 01