

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100px; height: 1.2em; margin-top: 5px;"></div>		GRADE SRA	AFSN/SSAN <div style="background-color: black; width: 80px; height: 1.2em; margin-top: 5px;"></div>																																			
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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 RECORDING OFFICER <div style="background-color: black; width: 200px; height: 1.2em; margin-top: 5px;"></div>		SIGNATURE OF BOARD PRESIDENT <div style="background-color: black; width: 150px; height: 1.2em; margin-top: 5px;"></div>																																				
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, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002																																				

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2002-0205

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

The applicant appeared before the Discharge Review Board (DRB) with a representative from the Texas Veterans Commission at Randolph AFB, Texas.

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: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for failure to go, a Vacation action under the UCMJ for wrongfully using marijuana, three Letters of Reprimand for failure to comply with dress standards, failure to follow standard procedures and for his duty performance not up to standards. And, a Letter of Counseling for failure to comply with dress standards. The applicant met an Administrative Discharge Board and they found the applicant guilty on several charges including the marijuana use. Since the applicant could not recall any of the events surrounding the marijuana use, the DRB went with the presumption of regularity along with the three witness statements, and the applicant's own statement at the time of discharge, and concluded that the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

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]
(Former SRA) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02/02/13 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 68/10/20. Enlmt Age: 18 8/12. Disch Age: 33 3/12. Educ: HS DIPL. AFQT: N/A. A-67, E-67, G-64, M-69. PAFSC: 2A671A - Aerospace Propulsion. DAS: 98/08/28.

b. Prior Sv: (1) AFRes 87/07/07 - 88/02/23 (7 Mos 17 Days) (Inactive).

(2) Enld as AB 88/02/24 for 4 Yrs. Reenld 91/03/13 for 4 Yrs. Reenld 95/03/10 for 2 Yrs. Svd: 9 Yrs 10 Mos 0 Days, all AMS. AMN - 88/08/24. A1C - 89/06/24. SRA - 91/02/24. SSGT - 97/10/01. APR: 9. EPRs: 4,4,4,4,5,4,4,5,5.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SSgt 97/12/24 for 5 Yrs. Svd: 4 Yrs 1 Mo 20 Das, all AMS.

b. Grade Status: SrA - 01/05/09 (Vacation of Art 15, 01/07/31)

c. Time Lost: None.

d. Art 15's: (1) 01/07/31, Vacation, Nellis AFB, NV, Article 112a. You, did, on or about 25 May 01, wrongfully use marijuana. Reduction to the grade of SRA, and forfeiture of \$300.00 pay per month for 2 months. (No appeal) (No mitigation).

(2) 01/05/09, Nellis AFB, NV, Article 86. You, did, on or about 14 Apr 01, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Boulder Station Hotel. Suspended reduction to SRA, suspended forfeiture of \$300.00 pay per month for 2 months, and 30 days extra duty. (No appeal) (No mitigation).

e. Additional: LOR, 4 DEC 00 - Duty performance not up to standards.
LOR, 22 SEP 00 - Failure to follow standard procedures.
LOR, 7 JUN 00 - Failure to comply with dress standards.
RIC, 17 APR 00 - Failure to comply with dress standards.

f. CM: None.

g. Record of SV: 97/11/16 - 98/07/02 Travis AFB 5 (CRO)
98/07/03 - 99/07/02 Kadena AB 4 (Annual)
99/07/03 - 00/07/02 Kadena AB 4 (Annual)
00/07/03 - 01/07/02 Kadena AB 3 (Annual)

(Discharged from Randolph AFB)

h. Awards & Decs: AFAM (3OLC), AFLSA (2OLC), AFTR, AFOLTR (1OLC), NDSM, NCOPMER, AFEM, AFOUUA (4 OLC), JMUA, AFGCM (3OLC).

i. Stmt of Sv: TMS: (14) Yrs (7) Mos (7) Das
TAMS: (13) Yrs (11) Mos (20) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/04/29.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

02/08/16/cr



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

28 January 2002

MEMORANDUM FOR 18 WG/CC

FROM: 18 WG/JA

SUBJECT: Legal Review - Administrative Discharge - SRA [REDACTED]
961 AACS (PACAF), Kadena Air Base, Okinawa, Japan

1. BASIS: Lt Col [REDACTED] 961 AACS/CC, initiated this administrative discharge action against SrA [REDACTED] for Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.50.2. The initiating commander has recommended an under honorable conditions (general) discharge without probation and rehabilitation.

2. ALLEGATIONS:

a. On or about 17 Apr 00, SrA [REDACTED] was counseled for exposing a gold necklace while in uniform, as well as on numerous occasions in the past 6 months, which is in violation of the dress and appearance instruction, AFI-2903, Table 2.5, Item 9. As a result, he received a Record of Individual Counseling on 17 Apr 00 (Tab 1-1).

b. On or about 25 Aug 00, SrA [REDACTED] failed to follow standard operating procedures and to document his work. As a result, he received a Letter of Reprimand on 22 Sep 00 (Tab 1-2).

c. On or about 6 Jun 00, SrA [REDACTED] failed to obey an order and regulation by wearing a gold necklace exposed on the outside of his t-shirt during duty hours. As a result, he received a Letter of Reprimand on 7 Jun 00 (Tab 1-3).

d. On or about 28 and 29 Nov 00, SrA [REDACTED] failed to follow published technical data and orders given to him by a senior ranking NCO. As a result, SrA [REDACTED] received a Letter of Reprimand (LOR) on 4 Dec 00 (Tab 1-4).

e. On or about 14 Apr 01, SrA [REDACTED] failed to go at the time prescribed to his appointed place of duty. As a result of his actions, SrA [REDACTED] received Nonjudicial Punishment pursuant Article 15, UCMJ, on 9 May 01. His punishment included reduction to the grade of Senior Airman, suspended until 8 Nov 01; forfeiture of \$300.00 pay per month for 2 months, suspended until 8 Nov 01; and 30 days extra duty. An Unfavorable Information File (UIF) was established and a copy of the 9 May 01 Article 15 was placed in the UIF (Tab 1-5).

f. On or about 25 May 01, SrA [REDACTED] did, at Torii Station, Okinawa, Japan, wrongfully use marijuana. As a result, his Suspended Nonjudicial Punishment, was vacated on 31 Jul 01 (Tab 1-6).

3. ADMINISTRATIVE DISCHARGE BOARD:

a. An administrative discharge board was convened under AFI 36-3208, Kadena Air Base, Okinawa, Japan, on 11 December 2001. The board members considered the aforementioned allegations of misconduct, and at the conclusion of the evidence, found that all but two allegations were supported by a preponderance of the evidence. Specifically, the board members made the following findings of fact: The Repondent, SrA [REDACTED] - -

- (1) Did on or about 17 April 00 expose a gold necklace while in uniform as well as on numerous occasions in the past six months, which is in violation of dress and appearance instruction, AFI 36-2903, Table 2.5, Item 9.
- (2) Did on or about 6 Jun 00, fail to obey an order and regulation by wearing a gold necklace exposed on the outside of his t-shirt during duty hours.
- (3) Did not on or about 25 Aug 00, fail to follow standard operating procedures and to document his work.
- (4) Did not on or about 28 and 29 Nov 00, fail to follow published technical data and orders given to him by a senior ranking NCO.
- (5) Did on or about 14 Apr 01, fail to go at the time prescribed to his appointed place of duty.
- (6) Did on or about 25 May 01 at Torii Station, Okinawa, Japan, wrongfully use marijuana.

b. Based on their findings, the board members recommended that SrA [REDACTED] be discharged from the United States Air Force with an under honorable conditions (general) service characterization. Moreover, the board members recommended SrA [REDACTED] be denied probation and rehabilitation.

4. MATTERS SUBMITTED BY THE RESPONDENT: At the administrative discharge board, the respondent submitted 47 items of documentary evidence consisting mostly of character statements, awards, letters of appreciation, certificates of training. The respondent called two (2) live witnesses, one (1) witness by videotape, and made an unsworn statement before the board members.

5. ERRORS OR IRREGULARITIES: In the Notification Memorandum, dated 21 Aug 01, to follow chronological order, paragraph 2(c), 2 Jun 00 incident, should have been placed before 2(b) 25 Aug 00 incident.

6. DISCUSSION:

a. AFI 36-3208, paragraph 5.50 authorizes the involuntary separation of airmen whose misconduct in the current enlistment forms a pattern that is more serious than the conduct considered under paragraph 5.49, Minor Disciplinary Infractions. More specifically, according to AFI 36-3208, paragraph 5.50.2, this pattern of misconduct can consist of conduct that tends to disrupt order, discipline, or morale within the military community. SrA [REDACTED] clearly demonstrated this pattern of misconduct with one (1) letter of counseling, three (3) letters of reprimands, one (1) Article 15, one (1) vacation of a suspended punishment, and the establishment of an Unfavorable Information File. His misconduct reflected his inability to meet standards, follow regulations, obey orders, and follow the law.

b. AFI 36-3208, paragraph 5.48 allows an airman to receive an honorable, under honorable (general) service conditions or under other than honorable conditions discharge. According to AFI 36-2208, paragraph 1.18.2, an under honorable conditions (general) discharge is appropriate when significant negative aspects of the airman's conduct or duty performance outweigh positive aspects of the airman's military record. Accordingly, characterization of SrA [REDACTED] service as under honorable (general) conditions is appropriate.

c. I concur with Lt Col [REDACTED] and the discharge board that probation and rehabilitation, pursuant to AFI 36-3208, Chapter 7, is not appropriate for this airman. The unit gave SrA [REDACTED] ample opportunity through the various QFM tools to rehabilitate himself. SrA [REDACTED] did not take advantage of those opportunities as evidenced by the documented escalation of misconduct.

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

- a. Retain SrA [REDACTED] if you consider discharge is unwarranted;
- b. Recommend that 5 AF/CC direct an honorable discharge with or without probation and rehabilitation; or
- c. Direct an under honorable conditions (general) discharge with or without probation and rehabilitation.

8. RECOMMENDATION: I recommend that you direct an under honorable conditions (general) discharge with or without probation and rehabilitation by signing the attached letter.

[REDACTED] 1st Lt, USAF
Assistant Staff Judge Advocate, 18 Wing

Attachment:
Case File

1st Ind, 18 WG/JA

MEMORANDUM FOR 18 WG/CC

I concur/~~nonconcur~~ with this recommendation.

[REDACTED] Col, USAF
Staff Judge Advocate, 18 Wing

This legal opinion is a privileged document and is provided only for command use. It should not be released to the general public or to the subject of this particular review.



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

MEMORANDUM FOR SRA [REDACTED]

21 Aug 01

FROM: 961 AACS/CC

SUBJECT: Notification Memorandum - Board Hearing

1. I am recommending your discharge from the United States Air Force for Pattern of Misconduct - Conduct Prejudicial to Good Order and discipline under the provisions of AFPD 36-32 and AFI 36-3208, paragraph 5.50.2. If my recommendation is approved, then your service will be characterized as either honorable, under honorable conditions (general), or under other than honorable conditions (UOTHC). I am recommending that your service be characterized as under honorable conditions (general). If your discharge is approved, then I am further recommending that you not receive probation and rehabilitation.

2. My specific reasons for this action are:

a. On or about 17 Apr 00, you were counseled for exposing a gold necklace while in uniform, as well as on numerous occasions in the past 6 months, which is in violation of dress and appearance instruction, AFI-2903, Table 2.5, Item 9. As a result, a Record of Individual Counseling was prepared on 17 Apr 00 (Tab 1-1).

b. On or about 25 Aug 00, you failed to follow standard operating procedures and to document your work. As a result, you received a Letter of Reprimand on 22 Sep 00 (Tab 1-2).

c. On or about 6 Jun 00, you failed to obey an order and regulation by wearing a gold necklace exposed on the outside of your t-shirt during duty hours. As a result, you received a Letter of Reprimand on 7 Jun 00 (Tab 1-3).

d. On or about 28 and 29 Nov 00, you failed to follow published technical data and orders given to you by a senior ranking NCO. As a result, you received a Letter of Reprimand (LOR) on 4 Dec 00 (Tab 1-4).

e. On or about 14 Apr 01, you failed to go at the time prescribed to your appointed place of duty. As a result of your actions, you received Nonjudicial Punishment pursuant Article 15, UCMJ, on 9 May 01. Your punishment included reduction to the grade of Senior Airman, suspended until 8 Nov 01; forfeiture of \$300.00 pay per month for 2 months, suspended until 8 Nov 01; and 30 days extra duty. An Unfavorable Information File (UIF) was established and a copy of the 9 May 01 Article 15 was placed in the UIF (Tab 1-5).

f. On or about 25 May 01, you did, at Torii Station, Okinawa, Japan, wrongfully use marijuana. As a result, your Suspended Nonjudicial Punishment, was vacated on 31 Jul 01 (Tab 1-6).

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 United States Air Force and, if you are discharged, how your service will be characterized. If you are discharged, then you will be ineligible for reenlistment in the Air Force.

4. You have the right to:

a. Consult legal counsel.

- b. Present your case to an administrative discharge board.
 - c. Be represented by legal counsel at a board hearing.
 - d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
 - e. Waive the above rights. Before making a decision to waive any of your rights, you must consult legal counsel.
5. You have been scheduled for a medical examination. You must report to the Physical Examinations Section, 18th Medical Group, Kadena AB, at 27 Aug 01 on 0815.
6. Military legal counsel Sgt [REDACTED] has been obtained to assist you. An appointment has been scheduled for you to consult with him/her on 0900 22 Aug 01 at the Area Defense Counsel at Building 1460. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.
7. Confer with your counsel and, within seven (7) duty days, specify in a written reply, which of the above-referenced rights you chose to exercise. The statement must be signed in the presence of your counsel, who will also sign it. If you waive your right to a hearing before an administrative discharge board, then you may submit written statements on your own behalf. I will send the statements, the case file, and this recommendation to the discharge authority for consideration. If you fail to timely respond, then such failure will constitute a waiver of your right to have this matter presented before an administrative discharge board.
8. The Privacy Act Statement of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use at the Area Defense Counsel office.
9. If you request a board and you fail to appear without good cause, then such failure constitutes a waiver of your right to be present at the hearing.
10. The discharge board or the discharge authority will make the findings and recommendations required under 10 U.S.C. 2005(g).
11. Execute the attached acknowledgment and return it to me immediately.



Lt Col, USAF
Commander, 961st Airborne Air Control Squadron

Attachments:

1. AF Form 174
2. Letter of Reprimand, 22 Sep 00
3. Letter of Reprimand, 7 Jun 00
4. Letter of Reprimand, 4 Dec 00
5. AF Form 3070, 9 May 01; AF Form 1137
6. AF Form 366, 31 Jul 01; Member's Response, 27 Jun 01; ADC's Response
7. Airman's Receipt of Notification Memorandum
8. Statement of Understanding Regarding Recoupment of Education Assistance, Special Pay, or Bonuses