

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE A1C	AFSN/SSAN [REDACTED]	
TYPE GEN	PERSONAL APPEARANCE		X RECORD REVIEW	
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO			
	X			
MEMBERS SITTING			VOTE OF THE BOARD	
			HON	GEN
			UOTHC	OTHER
				X
				X
				X
				X
				X
ISSUES A93.23, A92.15, A93.17		INDEX NUMBER A67.10		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
HEARING DATE 03-01-08		CASE NUMBER FD2002-0234		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 Washington, D.C.				
Advise applicant of the decision of the Board and the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.				
SIGNATURE OF RECORDER <i>[Signature]</i>		SIGNATURE OF BOARD PRESIDENT <i>[Signature]</i>		
INDORSEMENT			DATE: 03-01-09	
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

FD2002-0234

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

The applicant was offered a personal appearance before the Discharge Review Board but declined to exercise this right.

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 or that provided by the applicant substantiates an impropriety or inequity that would justify an upgrade of the discharge to honorable.

Issues. Applicant was discharged for minor disciplinary infractions and drug abuse. She had an Article 15, a vacation of suspended punishment, three letters of reprimand (LORs), and a Record of Individual Counseling. Her misconduct included late to work, failure to obey a lawful order, failure to pay a just debt, writing bad checks, failing her quarters inspection, and according to her own spontaneous verbal admissions and a signed, sworn statement soon after submitting to an urinalysis, using marijuana on at least two occasions. These offenses all occurred within an 8-month period. At the time of the discharge action, member waived her right to submit statements in her own behalf. Applicant now contends she was suffering from deep depression, but concedes her judgment was intolerable and brought discredit to her and the Air Force. Member's medical records were not available to the board to review, however the discharge records indicate member was a patient on an in-patient psychiatry ward for 2 weeks due to her depression. In spite of member's mental health situation, she was still responsible for her actions of misconduct and must be held accountable for those; existence of a potential character and behavior disorder does not bar separation for any other authorized reason, such as misconduct, if that reason is more appropriate; a discharge for a mental health disorder is not appropriate if the airman's record supports discharge for misconduct. Furthermore, while understandable that members experiencing personal problems may have additional stress, applicant submitted no documentary evidence of those problems, how they were unique, or that she sought help from available agencies such as the Chaplain, Family Support Center, or her chain of command. The Board concluded member's misconduct was an extremely significant departure from conduct expected of all military members, and further noted that she was counseled several times in an effort to help her correct her deficiencies, and had multiple opportunities to improve her behavior but failed to respond to those rehabilitative efforts. Member was the same age as other airmen who had adhered to the standards when her misconduct occurred, and she knew right from wrong. No inequity or impropriety was found in this discharge in the course of the records review.

Applicant cited her desire to receive his G.I. Bill education benefits as justification for an upgrade. While the Board was sympathetic to the impact of the loss of these benefits on applicant, this is not a matter of equity or propriety that warrants an upgrade.

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 A1C) (HGH SRA)

(NO MEDICAL RECORD)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02/01/18 UP AFI 36-3208, paragraphs 5.54 and 5.49 (Misconduct - Drug Abuse and Minor Disciplinary Infractions). Appeals for Honorable Discharge, to Change the Reason and Authority for Discharge, and to Change the RE Code.

2. **BACKGROUND:**

a. DOB: 79/05/15. Enlmt Age: 17 3/12. Disch Age: 22 8/12. Educ: HS DIPL. AFQT: N/A. A-58, E-56, G-57, M-50. PAFSC: 1T151 - Aircrew Life Support Journeyman. DAS: 00/06/25.

b. Prior Sv: (1) AFRes 96/08/23 - 97/06/24 (10 Mos 2 Days) (Inactive).

~~(2) Enld as AB 97/06/25 for 4 yrs. Ext: 99/06/22 for 3 Mos.~~

Svd: 3 Yrs 1 Mo 16 Das, all AMS. AMN - 97/12/25. A1C - 98/10/25. SRA - 00/06/25. EPRs: 5,5,5.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SRA 00/08/11 for 6 yrs. Svd: 1 Yr 5 Mos 8 Das, all AMS.

b. Grade Status: A1C - 01/07/17 (Vacation of Article 15, 01/10/05)

c. Time Lost: None.

d. Art 15's: (1) 01/10/05, Vacation, Columbus AFB, MS, Article 92. You, who knew of your duties, on or about 14 Sep 01, were ~~derelict in the performance of those duties in that you~~ willfully failed to maintain your quarters within acceptable standards, as it was your duty to do. Reduction to the grade of A1C. (No appeal) (No mitigation).

(2) 01/07/17, Columbus AFB, MS, Article 134. You did, on divers occasions, between on or about 2 Apr 01 and on or about 14 Jun 01, make and utter to ----- Wine and Liquor Store certain checks in the amount of \$84.80, signed by you for the purchase of merchandise, and did thereafter dishonorably fail to maintain sufficient funds in the ---Bank of Commerce for payment of such checks in full upon their presentment for payment. Suspended reduction to the grade of A1C. (No appeal) (No mitigation).

- e. Additional: LOR, 24 AUG 01 - Failure to maintain living quarters to an acceptable standard.
LOR, 12 MAR 01 - Failure to pay debt.
LOR, 30 JAN 01 - Failure to obey a lawful order, and making a false statement.
RIC, 20 DEC 00 - Late for work.
- f. CM: None.
- g. Record of SV: 00/08/02 - 01/08/01 Columbus AFB 2 (Annual) REF
(Discharged from Columbus AFB)
- h. Awards & Decs: AFAM, AFLSA, AFTR, NCOPMER, AFEM, AFOUA, AFGCM.
- i. Stmt of Sv: TMS: (5) Yrs (4) Mos (26) Das
TAMS: (4) Yrs (6) Mos (24) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/05/22.
(Change Discharge to Honorable, Change the Reason and Authority for Discharge, and Change the RE Code.)

Issue: Please consider changing my discharge to Honorable. I admit that my judgement was not tolerable and I brought discredit upon myself as well as the United States Air Force. I was going through deep depression and was hospitalized due to the fact but if you will notice you will see that from my EPRs alone I was a valuable asset to the Air Force, until I started having severe depression. By the time I received help dealing with the issues I had already ruined my career. I hope that someday I can re-enter the military and make a career doing what I love to do, serving our country. Thank you for your consideration.

ATCH
None.

02/09/05/cr



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

FY 2002-0234

MEMORANDUM FOR 14 FTW/CC

29 Oct 01

FROM: 14 FTW/JA

SUBJECT: Legal Review of Administrative Discharge [REDACTED]
[REDACTED] 41st Flying Training Squadron

1. **Overview:** On 25 Oct 01, 41 FTS/CC initiated discharge action against [REDACTED] (herein the respondent) for Misconduct in accordance with AFPD 36-32, *Military Retirements and Separations* and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section H, Misconduct, Paragraph 5.54, Drug Abuse and Paragraph 5.49, Minor Disciplinary Infractions. On 25 Oct 01, the respondent waived her option to consult counsel and waived her right to submit statements for your consideration. 41 FTS/CC recommends you separate the respondent with a general discharge without probation and rehabilitation (P&R). After review, I concur.

2. **Personal History:** The respondent is 22 years old and is divorced with one child. She enlisted in the Air Force on 25 Jun 97 and reenlisted for a term of six years on 11 Aug 00. She arrived at Columbus Air Force Base on 11 Sep 99. She has received four Enlisted Performance Reports. Three of her Enlisted Performance Reports have overall ratings of 5 and the most recent has an overall rating of 2.

3. **Facts:** The salient facts from the respondent's file are as follows:

a. On 20 Dec 00, the respondent failed to report to work on time for the second day in a row. She was verbally counseled for her first failure. As a result of her second failure, the respondent was given a Record of Individual Counseling, dated 20 Dec 00. (See Atch 4 of Notification Memorandum)

b. On or about 18 Jan 01, the respondent failed to obey a lawful order given to her by [REDACTED] NCOIC, 41 FTS Life Support, to report to the medical clinic at 0800 hrs for Search and Recovery Team training. As a result, she received a Letter of Reprimand, dated 30 Jan 01. (See Atch 5 of Notification Memorandum)

c. On or about 15 Dec 00, the respondent was indebted to her Master Card for personal charges totaling \$1,500.00. Additionally, she failed to pay the debt after notification on more than one occasion that it was past due. For her failure, the respondent received a Letter of Reprimand, dated 12 Mar 01. (See Atch 6 of Notification Memorandum)

d. Between on or about 2 Apr 01 and 14 Jun 01, the respondent wrote certain checks to Old Tyme Wine and Liquor Store for the purchase of merchandise and dishonorably failed to maintain sufficient funds in the National Bank of Commerce for payment of the checks in full upon their presentment for payment. For her actions, nonjudicial punishment proceedings were initiated against her. As a result of the nonjudicial punishment proceedings, the respondent received a suspended reduction to the grade of Airman First Class. (See Atch 7 of Notification Memorandum)

e. On 21 Aug 01, during an inspection of her government quarters by [REDACTED], it was determined that the respondent failed to maintain her living quarters within reasonably acceptable standards. As a result, she was given a Letter of Reprimand, dated 24 Aug 01. The respondent was also informed that she was subject to random quarters inspections as a result of her failure. (See Atch 8 of Notification Memorandum)

f. On or about 14 Sep 01, the respondent was derelict in the performance of her duties by willfully failing to maintain her quarters within acceptable standards. As a result, the suspension of her nonjudicial punishment was vacated and she was reduced to the grade of Airman First Class on 5 Oct 01. See Atch 9 of Notification Memorandum)

g. On 26 Sep 01, the respondent made a verbal statement to [REDACTED] that she used marijuana on more than one occasion. The respondent also made a written statement on the same day on an AF Form 1168, Statement of Suspect/Witness/Complainant to [REDACTED] 14 OG First Sergeant, that she had used marijuana twice during the preceding two weeks. On 27 Sep 01, the respndent made a statement to the Air Force Office of Special Investigations (AFOSI) on an AF Form 1168, Statement of Suspect/Witness/Complainant that she used marijuana on two occasions. (See Atchs 1, 2, 3 of Notification Memorandum)

4. **Matters Submitted by the Respondent:** The respondent waived her right to submit matters.

5. **Discussion:**

a. *Sufficiency of the Evidence:*

(1) IAW AFI 36-3208, Chapter 5, Section H, Paragraph 5.54, drug abuse is incompatible with military service and airmen who abuse drugs one or more times are subject to discharge for misconduct. In this case, the evidence consists of verbal and signed statements to drug use by the respondent. The evidence demonstrates that the respondent wrongfully used marijuana and legally supports a discharge.

(2) IAW AFI 36-3208, Chapter 5, Section H, Paragraph 5.49, airmen are subject to discharge for minor disciplinary infractions when there is at least a preponderance of the evidence they violated non-punitive regulations or committed minor offenses. Minor disciplinary infractions may involve informal counselings, formal counselings, letters of reprimand, or nonjudicial punishment under Article 15 The evidence in this case clearly shows a series of violations of non-punitive regulations and minor offenses. These violations and offenses were

documented as a formal counseling, letters of reprimand, nonjudicial punishment, and vacation of suspended nonjudicial punishment. All of these violations occurred within a span of only eight months. The evidence is more than sufficient to support this discharge action.

b. *Retention Criteria:* Because drug abuse is the basis for discharge, the respondent must be separated unless he has produced a preponderance of evidence showing all of the following:

1. Drug abuse is a departure from the respondent's usual or customary behavior.
2. Drug abuse occurred as the result of 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).
3. Drug abuse does not involve recurring incidents, other than drug experimentation as defined above.
4. The respondent does not desire to engage in or intend to engage in drug abuse in the future.
5. Drug abuse under all the circumstances is not likely to recur.
6. Under the particular circumstances of the case, the respondent'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.
7. Drug abuse did not involve distribution. For the purpose of this paragraph, drug distribution means the delivery to the possession of another. Distribution does not occur with the transfer of the drugs from one person to another while such persons are engaged in the mutual use of drugs, except that individuals who obtain, or arrange for obtaining, the drugs used by others are involved in distribution. "Delivery" means the actual, constructive, or attempted transfer of the drugs, whether or not there exists an agency relationship.

The evidence shows the respondent is not an experimenter. Her statements indicate she used marijuana on more than one occasion. She fails to meet all seven retention criteria. Therefore discharge is required.


c. *Characterization of Service:* 41 FTS/CC recommends that the respondent's service be characterized as general. According to Paragraph 1.18.2 of AFI 36-3208, "If an airman's service has been honest and faithful, this characterization is warranted when significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record." In this case, the respondent used drugs, and drug use is incompatible with military service. The fact that drug use is incompatible with military service has been well publicized by the Air Force. Additionally, in her statements, the respondent admitted to using drugs. Her negative conduct clearly outweighs any positive aspects there may have been in her military career. Thus, a general discharge is warranted.

d. *Probation and Rehabilitation* (P&R): AFI 36-3208, Chapter 7, Section A, Paragraph 7.2.6 states that airmen discharged for drug abuse are not eligible for probation and rehabilitation.

6. **Commander's Options:** As the separation authority you may:

- a. Retain the respondent;
- b. Direct the respondent be separated with a general discharge without the opportunity for P&R;
- c. Forward the file to 19 AF/CC along with your recommendation the respondent be separated with an honorable discharge; or
- d. Direct this case to a discharge board if you believe a UOTHC is appropriate.

7. **Recommendation:** Direct the respondent be separated from the United States Air Force with a general discharge without the opportunity for P&R.



FD 2002-0234



DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

25 Oct 01

MEMORANDUM FOR [REDACTED]

FROM: 41 FTS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Drug Abuse and Minor Disciplinary Infractions. The authority for this action is AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, Chapter 5, Section H, Misconduct, Paragraph 5.54, Drug Abuse and Paragraph 5.49, Minor Disciplinary Infractions. 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:

a. On 20 Dec 00, you failed to report to work on time for the second day in a row. You were verbally counseled for your first failure. As a result of your second failure, you were given a Record of Individual Counseling, dated 20 Dec 00. (See Atch 4)

b. On or about 18 Jan 01, you failed to obey a lawful order given to you by [REDACTED] NCOIC, 41 FTS Life Support, to report to the medical clinic at 0800 hrs for Search and Recovery Team training. As a result, you received a Letter of Reprimand, dated 30 Jan 01. (See Atch 5)

c. On or about 15 Dec 00, you were indebted to your Master Card for personal charges totaling \$1,500.00. Additionally, you failed to pay the debt after notification on more than one occasion that it was past due. For your failure, you received a Letter of Reprimand, dated 12 Mar 01. (See Atch 6)

d. Between on or about 2 Apr 01 and 14 Jun 01, you wrote certain checks to Old Tyme Wine and Liquor Store for the purchase of merchandise and dishonorably failed to maintain sufficient funds in the National Bank of Commerce for payment of the checks in full upon their presentment for payment. For your actions, nonjudicial punishment proceedings were initiated against you. As a result of the nonjudicial punishment proceedings, you received a suspended reduction to the grade of Airman First Class. (See Atch 7)

e. On 21 Aug 01, during an inspection of your government quarters by [REDACTED] it was determined that you failed to maintain your living quarters within reasonably acceptable standards. As a result, you were given a Letter of Reprimand, dated 24 Aug 01. You were also informed that you were subject to random quarters inspections as a result of your failure. (See Atch 8)

f. On or about 14 Sep 01, you were derelict in the performance of your duties by willfully failing to maintain your quarters within acceptable standards. As a result, the suspension of your nonjudicial punishment was vacated and you were reduced to the grade of Airman First Class on 5 Oct 01. (See Atch 9)

g. On 26 Sep 01, you made a verbal statement to [REDACTED] that you used marijuana on more than one occasion. You also made a written statement on the same day on an AF Form 1168, Statement of Suspect/Witness/Complainant to [REDACTED] 14 OG First Sergeant, that you had used marijuana twice during the preceding two weeks. On 27 Sep 01, you made a statement to the Air Force Office of Special Investigations (AFOSI) on an AF Form 1168, Statement of Suspect/Witness/Complainant that you used marijuana on two occasions. (See Atchs 1, 2, 3)

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 discharge will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force 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 has been obtained to assist you. Please consult the Area Defense Counsel ([REDACTED]) at Keesler AFB at DSN 597-2429 or (228) 377-2429. 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 COB 30 Oct 01 (three workdays from your receipt of this notification memorandum) 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 Columbus AFB Clinic, Physical Exam Section at 1515 hrs on 26 Oct 01 for the examination.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act. A copy of AFI 36-3208 is available for your use in your unit orderly room.

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



Attachments:

1. Memorandum For Record, dated 26 Sep 01
 2. AF Form 1168, Statement of Suspect/Witness/Complainant, dated 26 Sep 01
 3. AF Form 1168, Statement of Suspect/Witness/Complainant, dated 27 Sep 01
 4. AF Form 1174, Record of Individual Counseling, dated 20 Dec 00
 5. Letter of Reprimand, dated 30 Jan 01
 6. Letter of Reprimand, dated 12 Mar 01
 7. AF Form 3070, dated 17 Jul 01
 8. Letter of Reprimand, dated 24 Aug 01
 9. AF Form 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment, dated 5 Oct 01
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10. Airman's Receipt of Notification Memorandum