

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AMN	AFSN/SSAN [REDACTED]
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TYPE GEN	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	<input checked="" type="checkbox"/>	

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
					<input checked="" type="checkbox"/>
					<input checked="" type="checkbox"/>
					<input checked="" type="checkbox"/>
					<input checked="" type="checkbox"/>
					<input checked="" type="checkbox"/>

ISSUES A01.21, A01.13, A01.39, A92.15, A92.21	INDEX NUMBER A67.30	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 03-04-22	CASE NUMBER FD2002-0294			

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, and the right to submit an application to the AFBCMR.

SIGNATURE OF RECORDER *[Signature]*

SIGNATURE OF BOARD PRESIDENT *[Signature]*

INDORSEMENT

DATE: **03-04-23**

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, 3RD FLOOR
ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0294

GENERAL: The applicant appeals for upgrade of discharge to honorable, to change the reason and authority for the discharge, and to change his reenlistment code.

The applicant appeared and testified before the Discharge Review Board without counsel at Andrews AFB, MD, on 22 April 2003.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's Contentions

Exhibit 6: Character Letter from [] dated 14 April 2003

Exhibit 7: Memo from 347 SUPS/CC dated 8 February 2002

Exhibit 8: Copy of Business Card for Capt [], Moody AFB Area Defense Counsel

Exhibit 9: Excerpt from the Journal of Credibility Assessment and Witness Psychology, Vol. 2, No. 1, 1999, regarding The Psychology of False Confessions

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

FINDINGS: Upgrade of discharge, change of reason and authority for the discharge, and change of reenlistment code are denied.

Issues. Applicant was discharged for misconduct, commission of a serious offense. Applicant received an Article 15 for attempting to use Ecstasy, a Schedule I controlled substance. Specifically, he allegedly asked another military member to purchase Ecstasy for him, and used it, as attested to in two signed sworn witness statements provided to the Air Force Office of Special Investigations. Member also admitted under oath and in a signed sworn statement that he had asked the other military member to buy Ecstasy for him, but the person instead gave him ephedrine pills, which he recognized as ephedrine because he often used the over-the-counter medication to help him stay awake. At the time of his discharge, member consulted counsel and submitted many character statements made on his behalf requesting an honorable separation. Applicant denies illegal drug use and possession, but attributes his association with another military member of questionable character to a lapse in judgment.

Issues 1 and 2. Applicant believes that his Area Defense Counsel could not adequately represent and advise him during his discharge processing because she also represented his accuser. Specifically, applicant contends his accuser's sworn statement against him was false, but the defense counsel would not have been able to raise such a defense because her first obligation was to defend the applicant's accuser, thus she could not support applicant's assertion of the false statement which would call her other client's credibility into question. Applicant testified however that he never raised the issue of his accuser's statement being false during his Article 15 proceeding or his discharge processing, and therefore by his own actions, no such defense was raised. In fact, applicant signed a sworn statement corroborating his accuser's statement. It should be noted that applicant was only charged with what he admitted to doing (attempting to use a controlled substance), and not what his accuser claimed applicant did (knowingly using ecstasy). Additionally, applicant has no documented evidence that the defense counsel represented his accuser other than hearsay verbal information from a separate party, which applicant learned of after his discharge. Furthermore, the Discharge Review Board surmised that had the defense counsel represented both applicant and applicant's accuser, it would nevertheless not have been a conflict of interest, nor under these facts even the appearance of a conflict of interest, in that it would have had no impact on the proceeding's results in that applicant was not entitled to a board hearing and was not being court-martialed. Therefore this issue is without merit.

Issue 3. Applicant now contends his signed sworn AFOSI statement was a false confession that he provided as a result of immense pressure and fear of being convicted of something more serious. Applicant testified he thought he would not be released from the interview unless he "implicated himself a little." Applicant could not explain why he continued to maintain the same "false" version of events throughout his Article 15 and discharge proceedings. He also testified that he agreed to take a polygraph examination to try to prove his innocence, but could not explain why he didn't take the opportunity to "correct" his earlier "false confession," nor why his test results indicated deception. Neither review of the records nor applicant's testimony supported applicant's contention of undue AFOSI influence to gain a confession nor a hostile investigative environment or technique. This issue is without merit.

Issue 4. Applicant infers discharge was inequitable because it was too harsh based on isolated behavior that was out of character for him. He notes his performance was otherwise excellent and he continued to be a hard worker even after his misconduct came to light. Records review disclosed applicant had three Records of Individual Counseling, a Letter of Admonishment, a Letter or Reprimand, and at least one verbal counseling. His disciplinary infractions included failure to go, disobeying a lawful order, dereliction of duty, and failure to disclose pre-service arrest information on his security screening application. While the records also reveal many laudatory accomplishments and much positive recognition, the various offenses committed by member brought discredit to the Air Force and when weighed against the overall record of performance, although not used as a basis for the discharge, warrant the characterization of discharge received. Additionally, the misconduct that was the basis for discharge could have been triable by court-martial and subject to a punitive discharge. Furthermore, member knew illegal drug use was incompatible with Air Force standards, but chose to ignore those standards by attempting to use an illegal substance. Misconduct of this serious nature constitutes a significant departure from conduct expected of airmen; the seriousness of attempted drug abuse outweighs his otherwise satisfactory service.

Issue 5. Applicant also noted that his post-service character has been commendable; he has been gainfully employed and pursuing more education, as well as having gotten married. Nevertheless, applicant's successes since his separation are not relevant to the period of service under review, are insufficient grounds to overcome the factors leading to his discharge, and do not provide a basis for an upgrade.

The Board points out that a member of the Air Force is expected to maintain high standards of conduct both on and off duty. The Board found the characterization of the discharge received by the applicant was appropriate and in accordance with Air Force policy.

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, change the reason for discharge, or to change his reenlistment code. 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 AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02/03/05 UP AFI 36-3208, para 5.52 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 77/09/03. Enlmt Age: 22 1/12. Disch Age: 24 6/12. Educ: HS DIPL. AFQT: N/A. A-82, E-81, G-78, M-87. PAFSC: 2F051 - Fuels Journeyman. DAS: 00/05/01.

b. Prior Sv: (1) AFRes 99/10/23 - 99/12/28 (2 months 6 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AMN 99/12/29 for 4 yrs. Svd: 02 Yrs 02 Mos 07 Das, all AMS.

b. Grade Status: AMN - 02/02/05 (Article 15, 02/02/05)
A1C - 00/10/29

c. Time Lost: None.

d. Art 15's: (1) 02/02/05, Moody AFB, GA - Article 80. You, did, near Valdosta, Georgia, between on or about 1 Sep 00 and on or about 31 Jan 01, attempt to wrongfully use 3,4-methylenedioxymethamphetamine or some derivative thereof, commonly known as ecstasy, a Schedule I controlled substance. Reduction to Airman, and 15 days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 99/12/29 - 01/08/28 Moody AFB 5 (Initial)

(Discharged from Moody AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (02) Yrs (04) Mos (13) Das
TAMS: (02) Yrs (02) Mos (07) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/07/22.
(Change Discharge to Honorable)

Issue 1: I believe my discharge to be inequitable because I believe the testimony made by my accuser to be false. The accusations were out of character for me. During my tenure in the Armed Forces, I was a proven hard worker and asset to everyone around me. I was chosen as my flight's sole representative in the Air Force Honor Guard for Squadron, Base, and Air Force. See attached document: #4 paragraph 3. All other attached documents reflect what I have said about my performance as a hard worker, excellent asset, and representative of my country.

ATCH

1. DD Form 214 (Member 1&4).
2. Congressional Correspondence.
3. Character Reference.
4. Enlisted Performance Report.
5. Three Performance Awards.
6. Nomination for Award.
7. Two Certificates of Appreciation.
8. AF Form 77, Letter of Evaluation.
9. Award Certificate.
10. Nomination for Award.
11. Two Certificates of Training.
12. Letter of Appreciation.
13. Certificate of Recognition.
14. Two Certificates of Training.
15. Professional Profile Recognition.
16. Eagle Scout Certificate.

02/10/10/ia

#4029

FD 2002-0294

STAFF SUMMARY SHEET

	TO	ACTION	SIGNATURE (Surname), GRADE AND DATE		TO	ACTION	SIGNATURE (Surname), GRADE AND DATE
1	RQW/CCC	Coord	[REDACTED]	6			
2	RQW/CCE	Coord	[REDACTED]	7			
3	RQW/CV	Coord	[REDACTED]	8			
4	RQW/CC	Sign	[REDACTED]	9			
5				10			

SURNAME OF ACTION OFFICER AND GRADE [REDACTED]	SYMBOL JA	PHONE 2139	TYPIST'S INITIALS dlb	SUSPENSE DATE
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SUBJECT
Administrative Separation - [REDACTED] DATE
26 Feb 02

SUMMARY

1. Tab 1 contains two memoranda for 347 RQW/CC's signature, the first directing that [REDACTED] be separated with an under honorable conditions (general) discharge and the second directing [REDACTED] be barred from Moody AFB. Tab 2 contains the 347 SUPS/CC's recommendation for a general discharge and the case file. Tab 3 contains the legal review finding 347 SUPS/CC's recommendation legally sufficient.

2. 347 SUPS/CC is recommending that 347 RQW/CC separate [REDACTED] with a general discharge under AFPD 36-32 and AFI 36-3208, paragraph 5.52, for commission of a serious offense. [REDACTED] has consulted military counsel and has submitted a statement for 347 RQW/CC's consideration.

3. I have reviewed the administrative separation file at Tab 2 and find it legally sufficient. (See the legal review at Tab 3.)

4. As the Special Court-Martial Convening Authority, RQW/CC has the following options:

- a. Direct that [REDACTED] be retained in the Air Force;
- b. Recommend to the General Court-Martial Convening Authority (9 AF/CC) that [REDACTED] be separated with an honorable discharge;
- c. Approve an under honorable conditions (general) discharge; or,
- d. Direct that the unit commander reinstate this action for processing IAW board hearing procedures if you believe that an under other than honorable conditions (UOTHC) discharge may be warranted.

RECOMMENDATION

5. RQW/CC sign letter at Tab 1 ordering [REDACTED] be (1) furnished an under honorable conditions (general) discharge and (2) barred from Moody AFB for a period of two years.

[REDACTED] USAF
Staff Judge Advocate

- 3 Tabs
- 1. RQW/CC Memo
- 2. Case File
- 3. Legal Review



DEPARTMENT OF THE AIR FORCE

347TH RESCUE WING (ACC)
MOODY AIR FORCE BASE, GEORGIA

21 February 2002

MEMORANDUM FOR [REDACTED]

FROM: 347 SUPS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Commission of a Serious Offense according to AFD 36-32 and AFI 36-3208, paragraph 5.52. If my Recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reason for this action is as follows:


You did, at or near Valdosta, Georgia, between on or about 1 September 2000 and on or about 31 January 2001, attempt to wrongfully use 3,4-methylenedioxymethamphetamine or some derivative thereof, commonly known as ecstasy, a Schedule I controlled substance. For this offense you received punishment pursuant to Article 15, UCMJ. Your punishment included reduction to the grade of airman and 15 days extra duty (Atch I).

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 service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be precluded from enlistment in any component of the armed forces. Any special pay, bonus, or education assistance funds may be subject to recoupment.

3. 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 [REDACTED] Area Defense Counsel, in Building 5107 Austin Ellipse, Moody AFB, GA, extension (DSN) 460-3421, on **21 February 2002 at 1400 hrs**. Please take your copy of this Notification Memorandum and attachments with you to your appointment. You may consult civilian counsel at your own expense.

4. You have the right to submit a statement on your own behalf. Any statements you want the separation authority to consider must reach me within **three** duty days after receipt of this notification letter unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. If you fail to consult counsel or to submit statements on your own behalf, your failure will constitute a waiver of your right to do so.
6. 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.
7. Execute the attached acknowledgment and return it to me immediately.


USAF
Commander, 347th Supply Squadron

Attachments:

1. AF Form 3070, 5 Feb 02
2. Receipt of Notification Memorandum