

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	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">COUNSEL</td> <td style="width: 50%; padding: 2px;">NAME OF COUNSEL AND OR ORGANIZATION</td> </tr> <tr> <td style="padding: 2px;"> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">NO</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table> </td> <td style="padding: 2px;">ADDRESS AND OR ORGANIZATION OF COUNSEL</td> </tr> </table>	COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">NO</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px; text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>	YES	NO		<input checked="" type="checkbox"/>	ADDRESS AND OR ORGANIZATION OF COUNSEL	
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YES	NO								
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MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTIC	OTHER	DENY
[REDACTED]					<input checked="" type="checkbox"/>
[REDACTED]					<input checked="" type="checkbox"/>
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[REDACTED]	<input checked="" type="checkbox"/>				
[REDACTED]					<input checked="" type="checkbox"/>

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	
HEARING DATE 4 JUN 03	CASE NUMBER FD2002-0005	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 RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

REMARKS

Case heard at Scott AFB, Illinois.

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

SIGNATURE OF RECORDER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
INDORSEMENT	DATE: 4 JUN 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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0005

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Scott AFB, IL on June 2, 2003. The following additional exhibits were submitted at the hearing:

- Exhibit 5: Applicant's contentions.
- Exhibit 6: Applicant's transcripts
- Exhibit 7: Character Reference Letter
- Exhibit 8: Resume

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

FINDINGS: Upgrade of discharge to Honorable is denied.

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

ISSUES: The applicant was discharged with a General Discharge for misconduct and, more specifically, drug abuse. Member received an Article 15 for use of marijuana, a Schedule I controlled substance. After being served with notice of the discharge the applicant neglected to submit statements or consult counsel. Applicant now states that he would like a honorable discharge because he realizes the error in judgment and regrets it to this day. The DRB, however, could discern no evidence of impropriety in the processing of his discharge case. Nor was there any other indication of an inequity of any sort. The DRB concluded that the characterization of the applicant's discharge was appropriate given the nature of the applicant's misconduct.

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.

Attachment:
Examiner's Brief

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

(Former AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/09/01 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 78/07/16. Enlmt Age: 19 8/12. Disch Age: 22 1/12. Educ:HS DIPL. AFQT: N/A. A-80, E-73, G-74, M-44. PAFSC: 1C451 - Tactical Air Command Specialist. DAS: 98/12/16.

b. Prior Sv: (1) AFRes 98/04/14 - 98/05/05 (22 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/05/06 for 4 yrs. Svd: 02 Yrs 03 Mo 26 Das, all AMS.

b. Grade Status: AMN - 00/08/07 (Article 15, 00/08/07)
A1C - 99/09/06
AMN - 98/11/06

c. Time Lost: none.

d. Art 15's: (1) 00/08/07, McChord AFB, WA - Article 112a. You did, on or about 3 Jul 00, wrongfully use marijuana. Reduction to Amn. (No appeal) (No mitigation)

e. Additional: none.

f. CM: none.

g. Record of SV: 98/05/06 - 00/01/05 Fort Lewis AIN 4 (Initial)

(Discharged from McChord AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (02) Yrs (04) Mos (18) Das
TAMS: (02) Yrs (03) Mos (26) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/01/07.
(Change Discharge to Honorable)

Issue 1: My name is ----- . I was an Airman First Class at Ft. Lewis, Washington before being general discharged with an honorable mention from the

U.S. Air Force.

Today, I am requesting that my status be upgraded from a general discharge to an honorable discharge.

Born in Daytona Beach, Florida, I moved to Switzerland at the age of six with my parents and younger brother. I attended all grades up through the ninth grade before I, my family and younger brother moved back to the United States where I finished high school.

Shortly after high school I joined the U.S. Air Force. Having accomplished many tasks and responsibilities while in the service, my life was changed for the better soon after graduating from basic training. Some of the tasks I completed during my time in the Air Force include: 1) graduating from Technical training, 2) participating in several unit projects, helping fellow airmen and NCOICs with tasks and responsibilities, 3) graduating from survival school, 4) becoming 'HAZMAT" certified, and 5) traveling on many TDY trips including NTC in California with sole responsibility for keeping all unit tactical vehicles checked and operational.

Currently I am living in Mackinaw, Illinois with my wife and one year old daughter. Due to a work-related accident, which caused the loss of a finger on my right hand. I then realized quickly life-changing events can occur and how short life can be. Consequently I am now on workman compensation and I am also looking for a new job due to the recent accident. The general discharge status does add additional challenges to my ability to adequately provide for my family.

I am attending a local college and I am pursuing computer science training. Due to my current financial situation, it is difficult to follow the course schedule I would like and at the same time provide for my family.

Nonetheless, the reasons for my September 1, 2001 discharge were just. I realize the error in judgment I made and I still regret it to this day. I also realized that many people make mistakes everyday, and that those same people realize their mistakes and are forgiven.

In closing, I am writing this letter to respectfully request that my general discharge be upgraded to an honorable discharge to better my life and my opportunities. If you could find it in your heart to forgive me for the mistakes I made, I would be sincerely grateful.

ATCH

1. Applicant's Issues.
2. Resume.
3. Dantes Score Report.
4. College Transcript.
5. References.

02/04/24/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 62D AIRLIFT WING (AMC)

AUG 25 2000

MEMORANDUM FOR 62 AW/CC

FROM: 62 AW/JA

SUBJECT: Legal Review of AFI 36-3208, *Administrative Separation of Airmen*
Administrative Discharge - Amn [REDACTED]

1. On 16 Aug 00, the 5 ASOS/CC initiated administrative discharge action against the respondent, Amn [REDACTED] under AFI 36-3208, *Administrative Separation of Airmen*, para. 5.54, based on Drug Abuse. The respondent was properly notified of this action and was informed of both his right to counsel and his right to submit statements. After consulting with counsel, the respondent elected to submit statements for your consideration. The 5 ASOS/CC recommends that the respondent receive a General (Under Honorable Conditions) discharge. Under this discharge basis, probation and rehabilitation is not an option.
2. **FACTS:** On 3 Jul 00, the respondent used marijuana in violation of Article 112a of the Uniform Code of Military Justice (UCMJ). The respondent tested positive for marijuana use in a group sweep conducted on 5 Jul 00 and later confessed to SFO1 that he used marijuana. For this misconduct, the 5 ASOS/CC offered the respondent an Article 15. The respondent subsequently waived his right to demand trial by court-martial and accepted nonjudicial proceedings for his offense. The respondent also submitted a written presentation for his commander's consideration. After weighing the evidence and considering his rebuttal, the 5 ASOS/CC determined that the respondent had committed the offense of wrongfully using marijuana. The 5 ASOS/CC punished the respondent with a reduction to the rank of airman. This Article 15 initiated the respondent's Unfavorable Information File (UIF). (See Tab B1.)
3. **LEGAL ANALYSIS:**
 - a. **Discharge.** Drug abuse is incompatible with military service and airmen who abuse drugs even one time are subject to discharge for misconduct. AFI 36-3208, para. 5.54, defines drug abuse as the illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug. IAW para. 5.55.2.1, a member found to have abused drugs *will* be discharged absent unusual circumstances. More specifically, para. 5.55.2.2 states that the respondent *must be discharged* unless (1) he presents evidence that he meets ALL seven specific criteria (in para. 5.55.2.1) and (2) if you (the separation authority) can justify keeping the respondent in the Air Force based on special circumstances that may exist in his case. The AFI states that the respondent carries the burden of proving facts that show that his retention in the Air Force is warranted. The respondent claims that he meets the seven retention criteria. Upon

comparing the evidence to the criteria, however, the respondent fails not one, but four, of the required retention criteria:

(1) The first criterion requires the respondent to show that his drug abuse is a departure from his usual and customary behavior. The respondent claims that, with the exception of this episode, he has not used drugs since he enlisted in the Air Force. As the government has no evidence that contradicts this statement, the respondent apparently does not abuse drugs as part of his usual and customary behavior.

(2) The second criterion requires the respondent to show that his "drug abuse occurred as a result of drug experimentation...for reasons of curiosity, peer pressure, or other similar reasons." The respondent claims that his use on 3 Jul 00 was the result of peer pressure and submits that the use at issue qualifies as drug "experimentation." The respondent's own admission that he used drugs on two occasions prior to entering the military goes against this very notion. Because the respondent has intentionally used illicit drugs on three separate occasions, his use on 3 Jul 00 does not qualify as experimental.

(3) The third criterion requires the respondent to show that his drug abuse does not involve recurring incidents. Based on the respondent's history of past uses of marijuana, he fails to meet this criterion.

(4) The fourth criterion requires the respondent to show that he does not "desire to engage in or intend to engage in drug abuse in the future." The respondent states that he does not desire to engage in such misconduct in the future.

(5) The fifth criterion requires the respondent to show that his drug abuse "under all the circumstances is not likely to recur." The respondent claims that because he is "about to become a father," his drug abuse is unlikely to recur. This is unlikely. The respondent has abused drugs both before and during his military enlistment. In addition, the respondent knew that his wife was pregnant when he chose to smoke marijuana in July. Therefore, the respondent's upcoming status as a father is unlikely to alter his recurring use of illicit drugs.

(6) The sixth criterion requires the respondent to show that his "continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale." The Air Force needs airmen who set a consistent and positive example for their peers and subordinates. The 5 ASOS/CC perhaps said it best when he stated that the respondent "compromised his integrity and...demonstrated that he cannot be trusted." As such, discharging the respondent is consistent with the interest of the Air Force in maintaining good order and discipline.

(7) The seventh criterion requires the respondent to show that his "drug abuse did not involve drug distribution." There is no evidence that the respondent has distributed drugs.

In sum, the respondent fails to meet the criteria required for retention.

b. Characterization. AFI 36-3208, para. 1.18.2, states that a General (Under Honorable Conditions) discharge is appropriate when the respondent's service has been honest and faithful, but when significant negative aspects of his conduct or performance of duty outweigh positive aspects of his military record. In this case, a General (Under Honorable Conditions) discharge is the most appropriate characterization because the respondent's drug use is a significant negative aspect of his conduct that outweighs any positive aspects of his military record. The respondent's choice to disobey Air Force rules on the use of illegal drugs was a clear statement by the respondent that he is willing to disregard authority in order to obtain a quick high. Additionally, AFI 36-3208, paragraph 5.48.4, states that the service of a member discharged may be characterized as Honorable *only if* the member's record has been so meritorious that any other characterization would be clearly inappropriate. In contrast to that standard, a General discharge in this case would be highly appropriate, given the respondent's behavioral choices. Knowing that Air Force rules prohibit the use of marijuana and knowing that the consequences could have included trial by court-martial, the respondent made a calculated decision to disregard those rules and to put his service characterization in jeopardy. His choice to disobey authority ultimately became his choice regarding how his service should be characterized.

c. Probation and Rehabilitation (P&R). AFI 36-3208, para. 5.55.2.3, specifically provides that members approved for discharge based on Drug Abuse are not eligible for probation and rehabilitation. Thus, P&R is not an option for the respondent.

4. OPTIONS:


a. Direct that this action be discontinued and retain the respondent in the Air Force, if you believe: (1) the respondent did not wrongfully abuse drugs or (2) the respondent has affirmatively met his burden to prove that he meets *all* seven criteria as listed in AFI 36-3208, para. 5.55.2.1, and if you can justify keeping him in the Air Force based on special circumstances that may exist in his case.

b. Direct that the respondent be discharged from the Air Force with a General (Under Honorable Conditions) service characterization.

c. Forward this case file to the 15 AF/CC if you believe that the respondent should be separated from the Air Force with an Honorable service characterization, but only if you determine that any other service characterization would be clearly inappropriate.

d. Direct reinitiation of this action for processing in accordance with AFI 36-3208, Section C (Board Hearing or Board Waiver), if the issuance of an Under Other Than Honorable Conditions discharge is warranted. The respondent would then be entitled to an administrative discharge board.

5. RECOMMENDATION: Discharge the respondent from the Air Force under AFI 36-3208, para. 5.54, based on Drug Abuse, with a General (Under Honorable Conditions) characterization of service. If you concur with my recommendation, please sign the letter attached to the inside front cover of this package.

A large black rectangular redaction covers the signature area of the letter.

Lt Col USAF

Staff Judge Advocate

Attachment:

Case File (Amn )



DEPARTMENT OF THE AIR FORCE
5 AIR SUPPORT OPERATIONS SQUADRON (ACC)

16 AUG 02

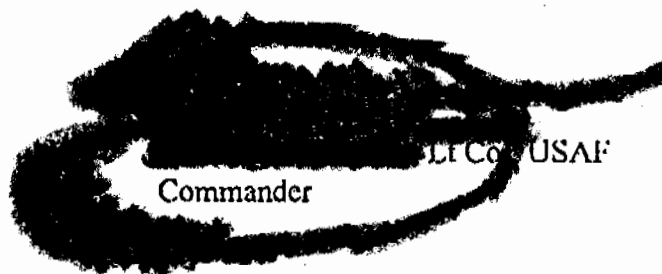
MEMORANDUM FOR AMN [REDACTED]

FROM: 5 ASOS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force based on drug abuse. The authority for this action is AFD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54. If my recommendation is approved, then your service will be characterized as Honorable or General (Under Honorable Conditions). I am recommending that your service be characterized as General.
2. I am taking this action because, on or about 3 Jul 00, you wrongfully used marijuana. For this misconduct, you received an Article 15. You were punished with a reduction to the grade of airman. This Article 15 initiated your Unfavorable Information File (UIF). (See Atchs 1a and 1b.)
3. I have attached copies of the documents to be forwarded to the separation authority in support of this recommendation. The commander exercising Special Court-Martial (SPCM) jurisdiction or a higher authority will decide whether you are discharged or retained in the 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 and will probably be denied enlistment in any component of the armed forces. Any special pay, bonus, or education assistance funds may be subject to recoupment.
4. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. You have an appointment to consult the Area Defense Counsel, in building 100, room 2004, 17 Aug 02 at 1000, 984-2240. You may consult civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. Any statements that you want the separation authority to consider must reach me by MONDAY 21 AUG 02 1300 (three workdays) unless you request and receive an extension for good cause. I will forward any such statements to the separation authority.
6. If you fail to consult counsel or to submit statements in your own behalf, then 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 Physical Exams in building 173 on 17 AUG 00 at 0900 with your medical records.
8. You have been scheduled for a mandatory Transition Pre-separation Counseling appointment at the Family Support Center, bldg 552, on 22 Aug 00 at 1300, with Ms. Vollmer.
9. The Privacy Act of 1974 protects any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use in the orderly room.
10. Execute the attached acknowledgment and return it to me immediately.


LI Co USAF
Commander

Attachments:

1. a. AF Form 3070, dtd 7 Aug 00, w/ atch
b. AF Form 1137, undated
2. Airman's Receipt of Notification Memorandum