

# AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 1.2em;"></div>			GRADE  TSGT		AFSN/SSAN <div style="background-color: black; width: 100%; height: 1.2em;"></div>	
TYPE UOTH	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE			RECORD REVIEW	
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION			ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No				Texas Veterans Commission	
<input checked="" type="checkbox"/>		<div style="background-color: black; width: 100%; height: 1.2em;"></div>				
MEMBER SITTING				VOLE OF THE BOARD		
				HON	GEN	UOTHC
						OTHER
						DENY
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ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD		
A94.05		A67.30		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		CASE NUMBER				
07 Dec 2003		FD-2003-00374				

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: 100%; height: 1.2em;"></div>		SIGNATURE OF BOARD PRESIDENT <div style="background-color: black; width: 100%; height: 1.2em;"></div>	
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-2003-00374

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

The applicant appeared before the Discharge Review Board at Randolph AFB, Texas, on 7 December 2003. He 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.

The applicant submitted the following additional documentary evidence:  
Exhibit #5, Statement from Applicant with 23 attachments, dated 7 December 2003.

**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.

**ISSUES:**

Issue 1. Applicant contends his discharge was inequitable because it was too harsh. The records indicated the applicant's urine tested positive for tetrahydrocannabinol (THC), the metabolite found in marijuana. He was offered an administrative discharge board, but waived his right not only to legal counsel, but also to present matters to the administrative discharge board. The applicant contends that his waiver of his right to counsel and an administrative discharge board was a result of the custody battle in which he was involved at the time of his discharge after more than 18 years of satisfactory service. He also states that he has never used marijuana and contends that his positive urinalysis was the result of either his innocent ingestion of marijuana smoke emitting from the marijuana his girlfriend at the time smoked or from his legal ingestion of pep pills or Ma Hwang, an herbal tea.

The applicant contends that the Ma Hwang which he ingested came from a container purchased at a local health and nutrition store by a friend of his. The applicant stated he gave personnel at AFRC/DPML a copy of the label from the container of the Ma Hwang on which there was a statement indicating that ingesting Ma Hwang could result in a positive urine test for THC. That copy, however, is not in the case file. To the contrary, the case file contains documentation which provides background on Ma Hwang. Although that summary states the Ma Hwang contains ephedrine—which can be converted to methamphetamine—it makes no reference to potential positive test results for THC.

Issue 2 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well and has a good job. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the applicant's term of service was appropriately characterized.

The Board concluded 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, 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]  
[REDACTED]  
(Former TSGT) (HGH TSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAFR 17 Aug 01 UP AFI 36-3209, para 3.21.3.2 (Misconduct - Commission of a Serious Offense - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 24 Feb 61. Enlmt Age: 19 4/12. Disch Age: 40 5/12. Educ: HS DIPL. AFQT: N/A. A-34, E-54, G-61, M-78. PAFSC: 4N031 - Medical Service Apprentice. DAS: 15 Nov 93.

b. Prior Sv: (1) AFRes 26 Jun 80 - 8 Sep 80 (2 months 14 days) (Inactive).

(2) Enlisted as AB 9 Sep 80 for 6 yrs. Extended 7 May 85 for 6 months. Extended 4 Feb 87 for 17 months. Reenlisted as Sgt 27 Feb 87 for 4 yrs. Extended 15 Oct 90 for 7 months. Svd: 11 yrs 0 months 17 days, all AMS. AMN - Unknown. AlC - Unknown. Sgt - 1 Oct 82. No EPRs.

(3) Reenlisted AFRes as Sgt 4 Dec 93 for 4 yrs. Svd: 3 yrs 10 months 27 days, of which AMS is 6 months 24 days. SSgt - 1 May 94.

ART 15: (1) 12 Nov 82, Randolph AFB, TX - Article 134. You did, on or about 5 Oct 82, wrongfully distribute some quantity of marijuana. Suspended reduction to AlC, forfeiture of \$100.00 pay for 2 months. (No appeal) (No mitigation)

3. **SERVICE UNDER REVIEW:**

a. Reenlisted AFRes as SSgt 1 Nov 97 for 4 yrs. Svd: 3 Yrs 9 Mo 16 Das, of which AMS is 1 month 16 days.

b. Grade Status: TSgt - 1 Jul 99

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 14 Nov 93 - 14 Nov 97 Lackland AFB 4 (Biennial)  
15 Nov 97 - 14 Nov 99 Lackland AFB 4 (Biennial)

(Discharged from Kelly AFB)

h. Awards & Decs: NCOPMER, AFGCM, AFLSAR, NDSM, AFOSLTR, AFTR, ARFMSM.

i. Stmt of Sv: TMS: (18) Yrs (11) Mos (0) Das  
TAMS: (11) Yrs (8) Mos (28) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 21 Sep 03.  
(Change Discharge to Honorable)

Issue 1: I [REDACTED], respectfully request my discharge be changed to Honorable. When I stated at the original time of discharge I did not directly use marijuana but used poor judgement by being around it frequently. The woman I loved, my fiancée at the time was an avid user and I spent a lot of time with her. I could feel minor effects of the smoke but didn't think it would cause a positive urinalysis.

During this time frame, pending discharge, I was trying to gain full custody of my daughter and was concerned an appeal would hinder my chances of gaining custody. (I did smarten up and break up with my Fiancée).

I did finally about (sic) a year later get full custody and we are very happy together living responsible law abiding lives.

Due to my excellent work history with the United States Air Force please consider these statements and change my Other Than Honorable discharge to Honorable so we may improve our standard of life.

**ATCH**

None.

29SEP03/ia

FD 2003 - 00374



DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND

FEB 27 2001

MEMORANDUM FOR TSGT [REDACTED]  
[REDACTED]

FROM: HQ AFRC/DPM  
155 Richard Ray Blvd  
Robins AFB GA 31098-1635

SUBJECT: Notification of Initiation of Separation Action under AFI 36-3209

1. By this memorandum, separation action is being initiated against you for misconduct, commission of a serious offense, drug abuse. The authority for this separation action is AFI 36-3209, Chapter 3, paragraph 3.21.3.2. Information regarding your entitlement to submit statements about your case, the lawful usage of such statements and their disclosure is provided in the attached Privacy Act Statement (Atch 1). A description of the reasons for this separation action is set forth in the attached Statement of Reasons (Atch 2) along with supporting documents. AFI 36-3209 is available for your review at your servicing Military Personnel Flight. The types of separation authorized are Honorable, General (Under Honorable Conditions) and Under Other Than Honorable Conditions Discharge. The type of separation recommended in your case is an Under Other Than Honorable Discharge.

2. Within 24 hours after you receive this memorandum, you must complete and return the attached acknowledgment of receipt (Atch 3) of this memorandum and the attachments thereto.

3. The following is a summary of your rights:

a. You are entitled to consult with a military legal counsel who is qualified under Article 27(B)(1), Uniform Code of Military Justice (UCMJ), at no cost to you. You may also consult with civilian legal counsel of your choice, but at your own expense. Capt [REDACTED] a Judge Advocate qualified under Article 27(B)(1), UCMJ, has been designated to represent you in connection with this separation action. His mailing address is HQ AFRC/JAS, 155 Richard Ray Blvd, Robins AFB GA 31098-1635. His telephone numbers are DSN 497-1588, or commercial (478) 327-1588. His fax numbers are commercial (478) 327-0590 or DSN 497-0590.

b. You have the right to submit pertinent statements and/or documents in your behalf which you desire to be considered in the disposition of your case. If you elect to exercise your right to submit statements, and you return the attached form (Atch 4) within 15 days of receipt, you may submit statements or documents at any time during the administrative discharge process. Your decision on requesting or waiving the board hearing does not affect your right to submit statements or documents during the administrative discharge process. The form must be signed either by you or your legal counsel and returned to HQ AFRC/DPM, 155 Richard Ray Blvd, Robins AFB GA 31098-1635.

c. If you need additional time to respond to this separation action, either you or your legal counsel may submit a written request to HQ AFRC/DPM, 155 Richard Ray Blvd, Robins AFB GA 31098-1635, for an extension of time, stating why you need the extra time and how much you'll need. The request must be submitted in sufficient time to reach this office within 15 days after receipt of this memorandum.

4. You are eligible for an administrative discharge board. Within 15 days after you receive this memorandum, you may request to have your case heard by an administrative discharge board at this headquarters by completing and returning the attached form (Atch 5) requesting a board hearing. If you desire a board hearing, you must mail the completed form in sufficient time to reach this headquarters within 15 days after your receipt of this memorandum. Otherwise, your right to have your case heard by an administrative discharge board will be considered waived. Within 15 days after you receive this memorandum, you may waive your right to have your case heard by an administrative discharge board by completing and returning the attached form (Atch 6), evidencing your waiver. Information regarding an administrative discharge board is provided at Attachment 7.

5. You are not eligible to apply for transfer to the Retired Reserve.

6. You should note that failure to respond on the selection of one of these options, or failure to request a delay within 15 days after you receive this memorandum, will constitute waiver of all your rights. This includes the right to have your case heard by an administrative discharge board, and will result in your case being processed on the basis of all the evidence then available.

7. Return envelopes are attached (Atch 8) for your convenience.

  
Chief, Military Personnel Operations  
Military Personnel Division

Attachments:

1. Privacy Act Statement
2. Statement of Reasons w/  
Supporting Documentation
3. Acknowledgment of Receipt
4. Selection of Rights
5. Request for Board Hearing
6. Waiver of Board Hearing
7. Discharge Board Info
8. Envelopes (2)

cc:

HQ AFRC/JAS  
433 MSS/DPMSA (Relocation) wo Attachments