

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████ | GRADE AB | AFSN/SSAN ████████████████ |
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|-----------------|----------------------------|---|----------------------|
| TYPE GEN | PERSONAL APPEARANCE | X | RECORD REVIEW |
| COUNSEL | | ADDRESS AND OR ORGANIZATION OF COUNSEL | |
| YES | No | | |
| | X | | |

| MEMBER SITTING | VOTE OF THE BOARD | | | | |
|----------------|-------------------|-----|-------|-------|------|
| | HON | GEN | UOTHC | OTHER | DENY |
| | | | | | X |
| | | | | | X |
| | | | | | X |
| | | | | | X |
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| 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 | |
| | | 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 06 Dec 2003 | CASE NUMBER FD-2003-00434 | | | |

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Randolph AFB, Texas.

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

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| INDORSEMENT | DATE: 12/6/2003 |
| 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-2003-00434

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

The applicant was offered a personal appearance before the Discharge Review Board (DRB) 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 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 two Article 15s. One for being AWOL and making a false official statement. The other Article 15 was for wrongfully using Ecstasy. In addition, he received three Letters of Reprimand and one Letter of Counseling for failure to maintain accountability of his weapon, failure to meet dress and appearance standards, late for work and dormitory room filthy. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The applicant claims he is innocent of the charges. However, the record clearly implicates the applicant and the wrongful use of Ecstasy. 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 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

MISSING MEDICAL RECORDS

(Former AB) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 16 May 02 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 29 Jun 80. Enlmt Age: 17 3/12. Disch Age: 21 10/12. Educ:HS DIPL. AFQT: N/A. A-40, E-62, G-42, M-48. PAFSC: 3P031 - Security Forces. DAS: 1 Oct 98.

b. Prior Sv: (1) AFRes 14 Oct 97 - 26 May 98 (7 Months 13 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as A1C 27 May 98 for 4 yrs. Svd: 3 Yrs 11 Mos 20 Das, of which AMS is 3 Yrs 11 Mos 16 Das (Ex: 4 Das lost time).

b. Grade Status: AB - 19 Apr 02 (Article 15, 19 Apr 02)
 AMN - 1 Mar 01 (Article 15, 1 Mar 01)
 SRA - 27 Sep 00

c. Time Lost: (12 Feb 01 - 15 Feb 01) 4 Days

d. Art 15's: (1) 19 Apr 02, Kirtland AFB, NM - Article 112a. You did, between on or about 1 Apr 01 and on or about 30 Jun 01, wrongfully use methylenedioxy-methamphetamine (Ecstasy), a Schedule I controlled substance. Reduction to AB, and forfeiture of \$200.00 pay. (No appeal) (No mitigation)

(2) 1 Mar 01, Kirtland AFB, NM - Article 86. You did, on or about 12 Feb 01, without authority, absent yourself from your unit at which you were required to be, and did remain so absent until on or about 16 Feb 01. Article 92. You, having knowledge of a lawful order issued by MSgt [REDACTED] to wit: to report for duty on 12 Feb 01, an order which it was your duty to obey, did, on or about 12 Feb 01, fail to obey the same by wrongfully not reporting for duty. Article 107. You did, on or about 12 Feb 01, with intent to deceive, make to MSgt [REDACTED] an official statement, to wit: you had a flat tire and would not be able to report for duty, which statement was totally false, and was then known by you to be so false. Reduction to AMN. (No appeal) (No mitigation)

e. Additional: LOR, 26 FEB 02 - Dormitory room filthy.
 LOC, 23 JAN 00 - Late for work.
 LOR, 18 JAN 00 - Failure to meet dress and appearance standards.
 LOR, 22 DEC 98 - Failure to maintain accountability of weapon.

f. CM: None.

g. Record of SV: 27 May 98 - 15 Oct 99 Kirtland AFB 4 (Dir by HAF)
 16 Oct 99 - 29 Mar 00 Kirtland AFB 4 (Initial)
 30 Mar 00 - 29 Mar 01 Kirtland AFB 2 (Annual) REF

(Discharged from Kirtland AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (4) Yrs (6) Mos (29) Das
 TAMS: (3) Yrs (11) Mos (16) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 2 Oct 03.
 (Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF

ATCH

1. Applicant's Issues.
2. Congressional Inquiry.

16 Oct 03/cr

ATTACHMENT 1

Subject: Response to box # 6 on form DD 293

My discharge from the military was due to an investigation I was under after being accused of drug abuse by a fellow airman who was found guilty of using and distributing illegal drugs while on active duty. I was given the option of accepting Non-Judicial Punishment or stand trial at a Court Martial. By my defense advocate's opinion I chose to accept Non-Judicial Punishment and leave the judgment to my commander. In his opinion my commander felt that I had committed the accusations made by the airman disregarding the lack of evidence and the incompetence of the person making them. By this decision I was found guilty for something I did not commit. I am deeply concerned that this will affect my future not only for my career but also my education. I would like to pursue a career in the Federal Government but do not believe that it is possible because of this false decision by my commander. I believe I was punished not because of irrefutable evidence but my past history with my commander. When I was discharged I had only 10 days to complete my 1st term of active duty. I urged my commander to let me complete the 10 days and get out of the military with an honorable discharge so that I could continue my education using the MGIB. When I received the Article 15 by my commander that being my 2nd one at the time I was discharged from the Air Force with a General (under honorable conditions). With this letter I present to you I hope that your decision is a correct and just one.

Respectfull




DEPARTMENT OF THE AIR FORCE
377TH SECURITY FORCES SQUADRON (AFMC)
KIRTLAND AIR FORCE BASE NEW MEXICO

FD2003-00434

6 MAY 02

MEMORANDUM FOR AB [REDACTED]

FROM: 377 SFS/CCQ

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically, drug abuse. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.54.

2. My reason for this action is as follows:

You did, at or near Albuquerque, New Mexico, between on or about 1 April 2001 and on or about 30 June 2001, wrongfully use methylenedioxy-methamphetamine (Ecstasy), a Schedule I controlled substance. For your actions you received nonjudicial punishment under Article 15 of the UCMJ. Your punishment consisted of a reduction from Airman to Airman Basic and forfeiture of \$200.00 pay. (Atch 1).

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 service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force. Special pay, bonuses, or education assistance funds may be subject to recoupment.

4. Since you were found to have abused drugs, you will be discharged unless you meet all seven of the following criteria:

- a. Drug abuse is a departure from your usual and customary behavior.
- b. Drug abuse occurred as the result of drug experimentation (a drug experimenter is defined as one who illegally or improperly used a drug for reasons of curiosity, peer pressure, or other similar reasons).
- c. Drug abuse does not involve recurring incidents, other than drug experimentation as defined above.
- d. You do not desire to engage in or intend to engage in drug abuse in the future.

- e. Drug abuse under all circumstances is not likely to recur.
- f. Under the particular circumstances of the case, your continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale.
- g. 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.
5. The burden of proving that retention is warranted under these limited circumstances rests with you, the member. If you desire a waiver, you should request one from me, your squadron commander.
6. You have the right to consult counsel. You will contact Capt. [REDACTED] located at Mt. Home AFB, ID via the local area defense counsel's office located at building 20200, ext. 6-5554, on _____ at _____ hours. You may consult civilian counsel at your own expense.
7. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within **3 workdays** from today unless you request and receive an extension for good cause shown. I will send them to the separation authority.
8. 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.
9. You will complete a medical examination at the 377th Medical Group (Family Practice) on _____ at _____.
10. 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 your unit orderly room.

[REDACTED]
[REDACTED] USAF
Section Command

Attachments:

1. Article 15, dated 29 Apr 02
2. Other Derogatory Information