

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE SSGT	AFSN/SSAN ████████████████
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TYPE UOTH	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	DENY
					X
					X
					X
					X
					X

ISSUES A01.13 A01.39 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 23 Jan 2004	CASE NUMBER FD-2003-00498	
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCLOSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Washington, D.C.

Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

TO: SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	FROM:	DATE: 1/28/2004 SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2003-00498

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 nor that provided by the applicant substantiates an impropriety or inequity that would justify an upgrade of the discharge.

Issue 1. Applicant was discharged for drug abuse and contends he was punished too severely. During the enlistment under review, member, who was a reservist on active duty at the time, received an Article 15 for marijuana use after his specimen from a random urinalysis tested positive for THC at 147 ng/ml, well above the DoD cut-off of 15 ng/ml. Member was recommended for an Under Other Than Honorable Conditions (UOTHC) discharge and after consulting his military defense counsel, submitted an unconditional waiver to his right to an administrative board hearing or to submit statements in his own behalf. The Board recognized applicant had about 19 years of satisfactory service, and as a result member was considered for lengthy service probation but again failed to submit any matters in his own behalf. At the time of his discharge, the Air Force's drug policy was well publicized and members were continually made aware that illegal drug use was not tolerated. Marijuana use is viewed as a very serious failure to meet Air Force standards, particularly for a noncommissioned officer with the rank and tenure applicant had. The Board noted that because drug abuse is not compatible with Air Force standards, the characterization of service he received is warranted and appropriate due to that misconduct. The Board could find no inequity or impropriety on which to suggest a basis to upgrade the discharge.

Issue 2. Applicant contended his legal representation was inadequate. The Board noted that Capt BCH, a Circuit Defense Counsel, assisted applicant for both his Article 15 proceeding and his administrative discharge processing. Applicant signed statements acknowledging military legal counsel was made available to him and that he consulted counsel. Within 15 minutes of being offered the Article 15, applicant had consulted his counsel and replied to the action, electing not to make either a written or oral presentation. Additionally, he made no appeal of the punishment. At the time of the discharge processing and subsequent lengthy service review, the counsel submitted statements on behalf of his client contending the discharge was unjust, and noting applicant's prior service record devoid of any other misconduct. There is no evidence the applicant's rights were violated in any way. In view of the records, the Board concluded applicant's contention was without merit, and that he was adequately represented throughout the administrative proceedings. The fact that the results of legal counsel or actions taken were not as he desired does not constitute legal inadequacy.

Issue 3. Applicant claims he is innocent of the charges and was the victim of a contaminated specimen. The record indicates applicant's attorney suggested an argument of "innocent ingestion" at the time of the discharge, while conceding the difficulty of establishing such a defense. Applicant offered no actual evidence at the time of the discharge, or now, to disprove the presence of the illegal metabolite in his system, or to impugn the integrity of the drug testing process. Therefore, the Board also finds this contention without merit. Furthermore, the Board was not persuaded by applicant's contention in that he failed to fully use the options available to him to prove his innocence at the time of the Article 15 and subsequent discharge.

Issue 4. Applicant contends that he should not be penalized indefinitely due to the adverse nature of his discharge. The DRB recognized the applicant was 40 years of age when the discharge took place and the negative impact it may have had on him. The Board noted applicant was older than the vast majority of members who properly adhere to the Air Force's standards of conduct, and concluded that the characterization of the applicant's discharge was appropriate due to the serious 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.

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 SSgt) (HGH TSgt)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UO~~T~~H Disch fr USAFR 2 Jul 03. UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 13 Apr 63. Enlmt Age: 18 1/12. Disch Age: 40 2/12. Educ: HS DIPL. AFQT: N/A. A-33, E-60, G-66, M-66. PAFSC: 2A571 - Aerospace Maintenance Craftsman. DAS: 14 Dec 94.

b. Prior Sv: (Examiners Note: Because some DD Form 4s are missing from the file, prior service was extracted from MILPDS).

(1) Prior Service: 19 yrs, 8 months 24 days, of which AMS is 5 yrs 0 months 14 days. AMN-(APR Indicates): 23 Jul 81-19 Apr 82. A1C-(APR Indicates): 20 Apr 82-19 Apr 83. SrA/Sgt - Unknown. SSgt - 1 Jul 88. TSgt - 1 Sep 99. APRs: 8,8,9,9. EPRs: 4.

ART 15: 10 Sep 82, Nellis AFB, NV - Article 131. You were, on or about 28 Aug 82, drunk and disorderly in station. Suspended reduction to Airman, and forfeiture of \$200.00 pay per month for two months. (No appeal) (No mitigation)

3. **SERVICE UNDER REVIEW:**

a. Reenlisted AFRes as TSgt 18 Nov 00 for 6 yrs. Svd: 2 Yrs 7 Mo 14 Das, of which AMS is 1 yr 8 months 19 days.

b. Grade Status: SSgt - 10 Oct 02 (Article 15, 10 Oct 02)

c. Time Lost: None.

d. Art 15's: (1) 10 Oct 02, Westover ARB, MA - Article 112a. You did, while on active duty with the 439th Aircraft Generation Squadron at Westover Air Reserve Base, Chicopee, MA, from on or about 25 Mar 02 through 25 Apr 02, wrongfully use marijuana, a controlled substance. Reduction to SSgt, and forfeiture of \$1,000 pay. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 16 Jun 99 - 15 Jun 01 Westover ARB 3 (Biennial)

(Discharged from Westover ARB)

h. Awards & Decs: AFLSAR W/3 DEVS, NDSM W/1 DEV, NCOPMER, AFRM W/BH, AFTR, AFOUA, ARFMSM W/2 DEVS.

i. Stmt of Sv: TMS: (22) Yrs (4) Mos (7) Das
TAMS: (6) Yrs (9) Mos (3) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 8 Oct 03.
(Change Discharge to Honorable)

Issue 1: On July 2, 2003 I was separated from the US Air Force from active duty with a dishonorable discharge. Narrative Reason for separation was misconduct, drug abuse board waved (sic). I have been in the Airforce (sic) 22 years and have served honorably. I believe I was punished severely for the positive urinalysis which I did not get proper legal representation in the first place. Being activated to active duty on a reserve base gave me no on base ADC. My point of contact was in McGuire AFB which provided no face to face support. My ADC was changed because he left my case mid-point and left me empty-handed pertaining to my case. I was tossed back & forth from Hanscom AFB & McGuire AFB, NJ. I took advise (sic) not to go Court Marshall (sic) route, for being told I stood a good chance for confinement if convicted. I have said before that I am innocent and have been ruined by all this. I stand by my proclamation of innocent. I was either or the urine specimen exposed to contaminates (sic) that caused a positive test for THC. I was never offered a follow up test or help if it was believed I was taking drugs. I have been fined \$1000, loss of rank, received Under Honorable Conditions discharge, loss of any retirement and loss of use of Veterans Clinic. I lost my business by being activated in Oct 2001 and am in a situation where being denied unemployment for the type of discharge may make me lose my assets. I feel I should be given some retirement and an upgrade to Honorable discharge. If I went a Court-Marshall (sic) route I feel that I could have vindicated myself. I wasn't aware that there was so much compounded-lifetime punishment. I can't even get a job with a discharge such as mine. Please review my situation and based on my service to the US from 1981-2003 upgrade my DD-214 and provide some benefits so as not to be a lifetime punishment. Thank you for your consideration.

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None.

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