

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████		GRADE A1C	AFSN/SSAN ██████████				
TYPE HON	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE		RECORD REVIEW			
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	No	Mr. ██████████		██████████ Washington DC			
<input checked="" type="checkbox"/>							
MEMBER SITTING			VOTE OF THE BOARD				
			HON	GEN	UOTHC	OTHER	DENY
							X
							X
							X
						X+	X
ISSUES	A01.55	INDEX NUMBER	A94.39	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	27 Jan 2004	CASE NUMBER	FD-2003-00420				
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE							
Case heard at Washington, D.C.							
Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.							
+ CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY							
INDORSEMENT				DATE: 2/3/2004			
TO:		FROM:					
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742		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-2003-00420**

**GENERAL:** The applicant requests the narrative reason cited on his discharge certificate (DD Form 214) be changed from "misconduct" to "convenience of the government." The applicant appeared before the Discharge Review Board (DRB) in person and testified on his own behalf. The applicant's father, [REDACTED], and, US Representative [REDACTED] (U.S. Congressman, [REDACTED] Democrat), also testified on the applicant's behalf. In addition to testifying, Congressman [REDACTED] represented the applicant before the DRB.

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

**FINDINGS:** The DRB denies the applicant's request to change the narrative reason cited on his discharge certificate. The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify the requested change to the narrative reason for the applicant's separation.

**BACKGROUND:** The applicant was honorably discharged for misconduct, specifically drug abuse, after he told a mental health worker in Feb 2001 that the previous month he had used cocaine three times. Under these circumstances, the governing instruction permitted the applicant's commander to discharge him for drug abuse but prohibited him from using evidence derived from his admission for the purpose of characterizing the applicant's service (AFI 36-3208, para 1.21.4.1). There is no other misconduct in the applicant's file which would justify a discharge less favorable than fully honorable. Based on the foregoing, the applicant received an honorable discharge despite his admitted cocaine use. As he was being processed for discharge, the applicant claims his defense counsel and an official from the base education office advised him that the reason for his separation would be "convenience of the government (COG)" instead of misconduct. If he had been discharged for COG and met minimum service requirements, the applicant believed he would retain his eligibility for the Montgomery GI Bill (MGIB). Based on this erroneous advice, the applicant contributed an additional \$600 to enhance the MGIB benefits he expected to receive following his discharge. The applicant raised the following issues:

Issue 1: Based upon the erroneous advice he claims to have received from his defense counsel and the employee from the education office, the applicant believes he is entitled to a change in the narrative reason for his discharge from "misconduct" to "convenience of the government." Based upon his admitted misconduct, the applicant's commander appropriately initiated separation action for misconduct (i.e., drug abuse) IAW AFI 36-3208, para 5.54. The applicant is not, and never was, eligible for a separation based upon COG. When the applicant used cocaine he set in motion a train of events that culminated not only in his discharge but the loss of his eligibility for MGIB. A COG discharge is appropriate where a discharge for cause is not appropriate and where it is in the best interest of the Air Force to separate the airman. COG discharges arise where airmen face difficult childcare issues, have insufficient retainability for retraining, or have a condition which interferes with military service (AFI 36-3208, para 5.7). In this case, discharge for cause was appropriate and none of the other COG related issues are applicable to the applicant's case. As the applicant was appropriately separated for his admitted drug use, he is not entitled to a separation based on COG or the MGIB. The incorrect advice allegedly provided by the applicant's defense counsel and the education office employee cannot restore an eligibility which he forfeited when he used illegal drugs. The requirements for the MGIB are set out by statute (38 USC 3011) and the Veterans Administration (VA) administers the program. As the applicant noted, the VA determined he was not eligible for the MGIB. His early discharge for misconduct prevented him from completing his initial term of obligated service as required by the statute. The DRB is sympathetic to the impact the loss of these benefits is having on the applicant, but this is not a matter of inequity or impropriety which would warrant a change in the narrative reason for his separation.

Issue 2: Based on the erroneous advice he received from his defense counsel and the education office employee, the applicant contributed an additional \$600 to enhance the MGIB he expected to receive. The applicant's evidence and testimony show he sincerely believed he would receive the MGIB after he was discharged from the Air Force. The DRB believes the applicant acted upon this sincere but erroneous belief when he paid the additional \$600 to enhance his expected MGIB benefit. Although the DRB is without authority to direct a refund of this money, the DRB urges the applicant to seek relief from the Air Force Board for Correction of Military Records (AFBCMR). Assuming the AFBCMR finds an error or injustice, they would have the authority to change the applicant's military records in such a way as to authorize a refund of the additional \$600 he paid into the MGIB.

**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 the applicant was provided full administrative due process. In view of the foregoing findings the DRB further concludes that there exists no legal or equitable basis for changing the narrative reason for his separation from "misconduct" to COG.

Attachment:  
Examiner's Brief

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

FD2003-00420-A

 (Former A1C) (HGH A1C) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a HON Dish fr USAF 24 MAY 01 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Change in Reason and Authority for Discharge.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 25 Feb 03.

b. The AFDRB reviewed case on 16 May 03 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 27 Aug 03. (Change Reason and Auth for Discharge)

NO ISSUES PRESENTED WITH THIS APPLICATION.

Atch

Letter to Air Force Discharge Review Board with Multiple Attachments.

23SEP03/ai

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

[REDACTED]  
[REDACTED]  
(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a HON Disch fr USAF 24 MAY 01 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Change in Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 9 Nov 76. Enlmt Age: 21 9/12. Disch Age: 24 6/12. Educ: HS DIPL. AFQT: N/A. A-87, E-54, G-55, M-18. PAFSC: 2E633 - Telephone Systems Apprentice. DAS: 25 Sep 00.

b. Prior Sv: (1) AFRes 14 Aug 98 - 17 Nov 98 (3 months 4 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 18 Nov 98 for 4 yrs. Svd: 2 Yrs 6 Mos 6 Das, all AMS.

b. Grade Status: A1C - 18 Mar 00  
AMN - Unknown.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 26 APR 01 - Admitted use of cocaine use to health provider.

f. CM: None.

g. Record of SV: 18 Nov 98 - 17 Jul 00 Osan AB 5 (Initial)

(Discharged from Davis-Monthan AFB)

h. Awards & Decs: AFTR, AFOSSTR.

i. Stmt of Sv: TMS: (2) Yrs (9) Mos (11) Das  
TAMS: (2) Yrs (6) Mos (6) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Oct 02.  
(Change Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Personal Statement.
2. Disabled Veterans Correspondence.
3. DD Form 149.
4. VA Form 21-22.
5. Seven Letters of Support.
7. Recovery Plan.
8. DD Form 214.

25FEB03/ia



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS TWELFTH AIR FORCE (ACC)  
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA

7 MAY 01

MEMORANDUM FOR AIC [REDACTED] 612 ACOMS

FROM: 612 ACOMS/CC


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. If my recommendation is approved, your service will be characterized as honorable.
2. My reason for this action is that on or about 7 Feb 01, you voluntarily disclosed to a mental health provider that you had used cocaine in January 2001. As a result, you received a Letter of Reprimand (LOR) (Tab 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 and will probably be denied enlistment in any component of the armed forces and any special pay, bonus, or education assistance may be subject to recoupment.
4. You have the right to consult counsel. Military legal counsel, the Area Defense Counsel, Capt [REDACTED] Bldg 3510, at 228-5664, has been obtained to assist you. An appointment has been scheduled for you to consult him on 8 MAY at 1400 hours. In addition to military counsel, you have the right to employ civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 10 MAY 2001 unless you request and receive an extension for good cause shown. I will send them to the separation authority.
6. If you fail to consult counsel or to submit statements in your own behalf, 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 the Physical Exams Office of the Aeromedical Facility, Bldg 400, Rm 163, at 1230, on 9 MAY, for the examination. x2731

8. You have been scheduled for an initial outprocessing briefing. You must report to the Military Personnel Flight (MPF), Separations Element, Bldg 3200, Rm 20, at 0900, on 8 MAY 2001, for the outprocessing briefing.
9. 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 at the Area Defense Counsel's office, Bldg 3510.
10. Execute the attached acknowledgment and return it to me immediately.

  
Commander, Colonel, USAF

Attachments:

1. Supporting Documents  
LOR, 26 Apr 01 (2 pages); Summary of Treatment on AIC  19 Apr 01; LOR Response, 1 May 01 (2 pages)
2. Airman's Receipt of Notification Memorandum