

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

MEMBER SITTING	VOLE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A01.13 A92.37	INDEX NUMBER A74.00	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 27 Feb 2004	CASE NUMBER FD-2003-00505	
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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, 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	INDICATED BY	DATE: 2/27/2004
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

FD2003-00505

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 applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issues. Applicant received an Under Other Than Honorable Conditions (UOTHC) discharge pursuant to his request to be discharged in lieu of trial by court martial. Member was accused of using marijuana and psilocybin mushrooms on divers occasions, distribution of marijuana, and introduction of marijuana with intent to distribute, all offenses occurring between 1 May and 14 October 2001. During the course of an investigation by the Air Force Office of Special Investigations, three witness statements corroborated applicant's illegal drug use. Additionally, applicant had other misconduct consisting of a failed dormitory room inspection and dereliction of duty. For these infractions he had three Letters of Reprimand. Applicant now comes stating he was singled out and the evidence against him was insufficient, but he requested discharge to avoid further humiliation and save the Air Force resources. The Board concluded member's misconduct was a particularly serious failure to meet Air Force standards and an extremely significant departure from conduct expected of all military members. The Air Force's drug policy was well publicized and members were continually made aware that illegal drug use was not tolerated. For the period of service under review, his misconduct was sufficient reason for receiving a UOTHC discharge. The Board further notes that applicant voluntarily submitted his request for discharge in lieu of trial by court martial, thus not attempting to establish his innocence or present any extenuating or mitigating factors. In doing so he acknowledged that under these circumstances his characterization of service could be deemed under other than honorable conditions in accordance with discharge regulations, wherein airmen so discharged usually do have their service characterized as UOTHC. The Board found no wrongful action by the Air Force, and could find no inequity or impropriety on which to base an upgrade to the discharge.

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 SRA) (HGH SRA)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 30 Sep 02 UP AFI 36-3208, Chapter 4 (Triable by Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 3 Oct 78. Enlmt Age: 19 6/12. Disch Age: 23 11/12. Educ: HS DIPL. AFQT: N/A. A-95, E-62, G-66, M-37. PAFSC: 2W051 - Munitions Systems Journeyman. DAS: 5 Apr 00.

b. Prior Sv: (1) AFRes 28 Apr 98 - 11 Aug 98 (3 months 15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 12 Aug 98 for 4 yrs. Svd: 4 Yrs 1 Mo 19 Das, all AMS.

b. Grade Status: SrA - 12 Aug 01
 A1C - 12 Jun 99

c. Time Lost: None.

d. Art 15's: None.

e. Additional: (Examiner's Note: The following documents are missing from file, but are listed on the Legal Review).

LOR, 24 JUN 02 - Dereliction of duty.

LOR, 26 OCT 01 - Failed room inspections.

LOR, 27 MAR 01 - Dereliction of duty.

f. CM: None.

g. Record of SV: 12 Aug 98 - 02 Aug 00 Spangdahlem AFB 5 (Initial)
 02 Aug 00 - 01 Aug 01 Spangdahlem AFB 5 (Annual)

(Discharged from Hickam AFB)

h. Awards & Decs: AFAM, AFTR, AFEM, NDSM, AFLSAR, AFOUA.

i. Stmt of Sv: TMS: (4) Yrs (5) Mos (3) Das
 TAMS: (4) Yrs (1) Mos (19) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 19 Oct 03.
 (Change Discharge to Honorable)

ISSUES ATTACHED TO BREIF.

ATCH

1. Applicant's Issues.
2. Letter of Evaluation.
3. Letters of Appreciation(2).
4. Enlisted Performance Report.
5. Armed Forces Expeditionary Medal.
6. Enlisted Performance Report.
7. Enlisted Promotion Information.
8. Letter of Evaluation.
9. Record of Individual Counseling.
10. Enlisted Promotion Information.
11. Character References (7).

9DEC03/ia

Attachment 1. The narrative reason for my separation is improper because my record of performance shows that I was a good service member.

As opposed to the description of my separation as described on my DD form 214, my military service reflected good service and merit. Though what is recorded shows only negative characteristics, I have provided in documentation my history of service. As a first term airman stationed at Davis-Monthan Air Force Base, I gained reputable recognition for my work within my flight (*Documentation 1*) as well as in my squadron (*Documentation 2A and 2B*). Upon departure of my permanent change in station, I was rewarded with an Air Force achievement medal. Stationed in Spangdahlem Air Base, I continued my stellar performance receiving a "firewall" 5 on my initial Enlisted Performance Report (*Documentation 3*) in August of 2000 as well as receiving an Air Force Expeditionary Medal (*Documentation 4*) in December of 2000. The following year, I continued above and beyond my performance receiving another 5 on my annual Enlisted Performance Report (*Documentation 5*) putting me in good standards for promotion to E-5 when eligible. Prior to being under investigation, I did not receive any derogatory action for my service. The highest level of discipline I received was not more than a letter of reprimand, though being "singled-out" because of the situation. While losing my security clearance in October of 2001 due to an investigation of my alleged involvement, I maintained my bearing and remained optimistic by achieving positive evaluations (*Documentation 6A and 6B*) and being selected of staff sergeant (*Documentation 7*) despite being out of my specialty area for the rest of my tainted career. In September of 2002, 11 months after the alleged involvement, the Air Force decided to prefer charges and pursue to court-martial me after the fact my active duty and foreign tour of duty expired in August of 2002 without formal notification of eligibility for reenlistment or involuntary extension. Regardless of the situation I faced and the apathy of my flight towards my future, there were those who spoke on my behalf and about my character (*Documentation 8A - 8E*).

Knowing the consequences as advised to me by my council to opt out of court-martial, the result reflects a stigma on the narrative reason for my separation. It is identified by the separation code of JKK that I have used drugs and failed rehabilitation provided by the Air Force. In essence it states that the reason for my separation was for misconduct as stated by the Spangdahlem Legal office for violation of the UCMJ, which was solely based on one testimony that was not evidentiary. Documentation I have provided clearly describes a positive completion of my full active term of service.

Though the case against me was not strong enough to resolve a conviction but instead risked an acquittal, I chose to be discharged to prevent further humiliation on myself and sacrificed my career to save the Air Force their resources rather than waste any more than what was already wasted on my particular case. I humbly request the board to please reconsider the narrative reason for my separation and my eligibility to reenter in the armed forces for I have the desire to serve and continue my career in the United States Air Force.



DEPARTMENT OF THE AIR FORCE
52D FIGHTER WING (USAFE)

FD 2003-00505

12 SEP 2002

MEMORANDUM FOR 52 FW/CC

FROM: 52 FW/JA

SUBJECT: Request for Discharge in Lieu of Court-Martial, SrA [REDACTED]
[REDACTED] 52d Equipment Maintenance Squadron

1. FACTS: SrA [REDACTED] has been charged with four specifications of violating Article 112a, Uniform Code of Military Justice (UCMJ). Specifically, he is accused of divers use of marijuana, divers use of mushrooms containing psilocybin, distribution of marijuana and introduction of marijuana with the intent to distribute. All of these offenses occurred between 1 May 2001 and 14 October 2001.

a. The case against SrA [REDACTED] was initially developed based on evidence from the previous written statements, and stipulation of fact exhibits, of three other airmen (AB [REDACTED], AB [REDACTED] and AB [REDACTED] who had been involved with the drug abuse in question. As these airmen were tried by court-martial, and subsequently granted immunity, it became clear that the status of the evidence was not nearly as strong as the previous statements might have indicated. In fact, two of these airmen (AB [REDACTED] and AB [REDACTED], who were immunized on 4 Sep 02) denied having any memory of any involvement with SrA [REDACTED]. AB [REDACTED] cannot recall any specific details of his involvement with SrA [REDACTED]. In the end, the only available evidence against SrA [REDACTED] came from AB [REDACTED] who also has difficulty recalling many of the details he had initially described in his written statements to OSI investigators. Conversely, AB [REDACTED] (who was tried, convicted and immunized on 10 Sep 02) is now directly contradicting the testimony provided by AB [REDACTED]. As my prosecution team approached trial, they became more and more concerned that they would not be able to meet the necessary standard of proof to convict SrA [REDACTED] of the charged offenses.

b. As the facts have developed, it is now clear that if SrA [REDACTED] trial were to proceed, its determination would come down to the testimony of one convicted drug abuser against the testimony of another convicted drug abuser. I should also note that AB [REDACTED] now the sole prosecution witness, was also convicted of fraudulent enlistment for lying on his enlistment papers regarding pre-service drug use. This fraudulent enlistment conviction would likely be used by the defense to further undermine the credibility of AB [REDACTED].

c. SrA [REDACTED] has some prior history of misconduct. He has received three previous LetterS of Reprimand as described in Maj [REDACTED] recommendation letter (Atch 1).

2. On 5 September 2002, Maj [REDACTED] Commander, 52 EMS, preferred charges against SrA Lacara. The charge sheet is included as an attachment.

3. LAW: As the Special Court-Martial Convening Authority, AFI 36-3208, Chapter 4 provides you with two options:

- a. Recommend that 3AF/CC approve SrA [REDACTED] request and that he be discharged in lieu of trial by court-martial; or
- b. Disapprove SrA [REDACTED] request and return it to 52 EMS/CC. The court-martial would then continue to proceed to trial.

4. RECOMMENDATION: Given the change in the posture of this case, and the evidentiary difficulties we now face, I believe an acquittal is more than likely. Therefore, I recommend you forward SrA [REDACTED] request for discharge in lieu of court-martial to 3 AF/CC with a recommendation that it be approved.

[REDACTED]
[REDACTED] Lt Col, USAF
Staff Judge Advocate

Attachments:

1. 52 EMS/CC Recommendation Letter
2. Charge Sheet