

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE AMN	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	UOHC	OTHER	DENY
					X
					X
					X
					X
					X

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 Aug 2004	CASE NUMBER FD-2004-00133	
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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.

INDORSEMENT		DATE: 8/9/2004
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

FD2004-00133

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.

ISSUES.

Issue 1. Applicant was discharged for drug abuse. Member received an Article 15 for wrongful use of marijuana when a urinalysis came back containing THC well above the DoD cut-off of 15 ng/ml, specifically 105 ng/ml. Applicant feels a general discharge was too harsh for this offense. The Board noted 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 and thus the characterization of service member 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. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366, on December 12, 2000) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

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 AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Kirtland AFB, NM on 16 Jun 03 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 7 Jun 81. Enlmt Age: 19 3/12. Disch Age: 22 9/12. Educ: HS DIPL. AFQT: N/A. A-57, E-45, G-55, M-36. PAFSC: 4A031 - Health Services Management. DAS: 4 May 01.

b. Prior Sv: (1) AFRes 13 Sep 00 - 27 Nov 00 (2 months 15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 28 Nov 00 for 4 yrs. Svd: 2 Yrs 6 Mo 20 Das, all AMS.

b. Grade Status: AMN - 21 May 03 (Article 15, 21 May 03)
A1C - 30 Mar 02
AMN - 30 May 01

c. Time Lost: None.

d. Art 15's: (1) 21 May 03, Kirtland AFB, NM - Article 112a. You did, in or near the continental United States, between on or about 11 Mar 03 and on or about 10 Apr 03, wrongfully use marijuana. Reduction to Airman, and forfeiture of \$645 pay per month for two months. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 30 Nov 00 - 27 Jul 02 Kirtland AFB 3 (Initial)

h. Awards & Decs: AFTR, NDSM.

i. Stmt of Sv: TMS: (2) Yrs (9) Mos (4) Das
TAMS: (2) Yrs (6) Mos (20) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 9 Apr 04.
(Change Discharge to Honorable)

Issue 1: The type of discharge received was too harsh for the offense

received. The upgrade is needed in order to further my education and received (sic) the G.I. Bill.

ATCH

1. DD Form 214.
2. Article 15 Response.

9JUN04/ia



DEPARTMENT OF THE AIR FORCE
377TH MEDICAL OPERATIONS SQUADRON (AFMC)
KIRTLAND AIR FORCE BASE NEW MEXICO

FD 2004-00133

05 JUN 2003

MEMORANDUM FOR AMN [REDACTED]

FROM: 377 MDOS/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, *Military Retirements and Separations* (14 Jul 93) and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54 (10 Mar 00). If my recommendation is approved, your service will be characterized as General (Under Honorable Conditions), or Under Other Than Honorable Condition. I am recommending a General (Under Honorable Conditions) discharge.

2. My reason for this action is as follows:

On 10 Apr 03, you tested positive for marijuana. For your actions you received an Article 15 (Atch A).

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 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. Military legal counsel will be obtained to assist you. The Legal Office will make an appointment for you to consult with the Area Defense Counsel, Captain [redacted] located in building 20361, 8201 K St, ext. 846-5554. You may consult civilian counsel at your own expense.

7. You have the right to submit statements on 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. The Legal Office will obtain a mandatory medical examination for you at the 377th Medical Group (Family Practice), and a Pre-Separation Counseling appointment with Family Support.

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.

[Large redacted signature block]

Commander

Attachment:

A. Art 15 dated 21 May 03