

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AB	AASN/SSAN [REDACTED]
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TYPE UOTH	PERSONAL APPEARANCE	X RECORD REVIEW
NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	
	X	

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

ISSUES A92.21	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 18 Aug 2004	CASE NUMBER FD-2004-00180	
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APPLICANT'S STATEMENT

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: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00180

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 the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was unable to identify any that would justify a change of discharge.

Issue 1. Applicant received an under other than honorable conditions discharge for misconduct. The records indicated the applicant received an Article 15 for disrespect to a noncommissioned officer in the execution of his duties, and pursuant to his guilty pleas, was convicted by Summary Court Martial of wrongful methamphetamine use. Although the administrative discharge package was unavailable to the Board for review, some of the court martial documents were. They revealed that member admitted his illegal drug use in a Stipulation of Fact, describing the circumstances by which he came to use it and knowing that it was illegal. He was subsequently caught by a random urinalysis that came back at a level of 2994 ng/ml compared to the cut-off of 500 ng/ml. Member did not dispute the drug test procedures or result, and continues to admit his wrongdoing and accept full responsibility. Additionally, member entered into a Pre Trial Agreement whereby he waived his rights to a trial and acknowledged he could be administratively discharged under other than honorable conditions, and if the government chose to do so, he waived his right for the administrative discharge to be heard by a board. Because the member did receive an administrative discharge, not a punitive discharge, the Board must find an inequity or impropriety on which to base an upgrade; clemency is not available as a reason for upgrading an administrative discharge. The Board noted that drug abuse constitutes serious misconduct that is not compatible with Air Force standards. The Air Force's drug policy was and is well publicized and all members are continually made aware that illegal drug use is not tolerated. 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.

Issue 2 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well and has a good job. However, this does not reflect on his period of service or provide a basis in inequity or impropriety which warrants an upgrade. The Board concluded the applicant's misconduct appropriately characterized his term of service.

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

(Former AB) (HGH SRA)

MISSING DISCHARGE DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Buckley ANGB, CO on 7 Oct 98 UP AFI 36-3208 (Misconduct). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 29 Apr 75. Enlmt Age: 19 4/12. Disch Age: 23 5/12. Educ: HS DIPL. AFQT: N/A. A-72, E-68, G-57, M-49. PAFSC: 3P051 - Security Police Journeyman. DAS: 16 Aug 95.

b. Prior Sv: (1) AFRes 28 Sep 94 - 28 Mar 95 (6 months 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 29 Mar 95 for 4 yrs. Svd: 3 Yrs 6 Mo 9 Das, of which AMS is 3 yrs 5 months 16 days (23 days lost time).

b. Grade Status: AB - 2 Sep 98 (Summary Court Martial, 25 Aug 98)
SrA - Unknown
A1C-(EPR Indicates): 29 Mar 95 - 28 Nov 96

c. Time Lost: 25 Aug 98 thru 17 Sep 98 (23 days).

d. Art 15's: (1) 17 Dec 97, Buckley ANGB, CO - Article 91. You, on or about 26 Nov 97, did treat with disrespect in language toward SSgt [REDACTED] a noncommissioned officer, then known by you to be a superior noncommissioned officer, who was then in the execution of his office, by saying to him, "fuck that and fuck you", shove it up your ass", or words to that effect. Suspended reduction to Airman, and 20 days extra duty. (No appeal) (No mitigation)

e. Additional: Unknown.

f. CM: Summary Court Martial - 25 Aug 98

CHARGE: Article 112a. Plea: Guilty. Finding: Guilty.

Specification: In that SrA [REDACTED] USAF 821 SFS, Buckley ANG Base, CO, did, at or near the state of Colorado, between on or about 25 May 98 and on or about 1 Jun 98, wrongfully use methamphetamine. Sentence adjudged on 25 Aug 98: Reduction to AB, forfeiture of \$617.00 pay, and confinement for 30 days.

29 Nov 96 - 08 Oct 97 Buckley ANGB 4 (CRO)

h. Awards & Decs: AFOUA, NDSM, AFTR.

i. Stmt of Sv: TMS: (3) Yrs (11) Mos (17) Das
TAMS: (3) Yrs (5) Mos (16) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 6 May 04.
(Change Discharge to Honorable)

Issue 1: I am petitioning to have my discharge upgraded from other than honorable to honorable, not because there was an error made by the Air Force in the charges brought against me, but because I am not the same person I was then. I still accept full responsibility for my actions, as I did six years ago. I have no excuses for my poor judgement and will not even try to justify my actions, as there is no excuse for taking drugs. I accepted my punishment without contention then and quite honestly I am embarrassed now to admit that I was foolish enough to give into peer pressure. And that I was not strong enough to stand up for what I knew was right.

In conclusion, I understand that this board has full discretion in the overturning of discharges and that while the charges brought against me were totally justified, I am hoping you will take into account the years since my separation from the military. I have become a journeyman in the Heating and Air Conditioning field. I have been subjected to periodic urinalysis and have never tested positive. I give this as further testament that what happened was an isolated incident and not indictive (sic) of the person I am today.

ATCH

None.

29JUN04/ia

REPORT OF RESULT OF TRIAL

(This form may also be used for reporting the result of trial by summary court-martial)

DATE

25 Aug 98

TO: (Address to immediate commander of accused)

821 SFS/CC
Buckley Air National Guard Base, CO

NOTIFICATION UNDER MCM 1984, R.C.M. 1101(a), IS HEREBY GIVEN IN THE CASE OF:

NAME: [REDACTED]

RANK

SSN

SrA

ORGANIZATION

821st Security Forces Squadron
Buckley Air National Guard Base, CO

TYPE OF COURT

GENERAL

SPECIAL

JUDGE ALONE

JUDGE ALONE

X

SUMMARY

SUMMARY OF CHARGES, SPECIFICATIONS, PLEAS AND FINDINGS

UCMJ ARTICLE	NATURE OF OFFENSE	PLEAS	FINDINGS
CHARGE: Article 112a Specification:	In that SrA [REDACTED] USAF 821 SFS, Buckley ANG Base, CO, did, at or near the state of Colorado, between on or about 25 May 98 and on or about 1 Jun 98, wrongfully use methamphetamine.	GUILTY GUILTY	GUILTY GUILTY

SENTENCE

Reduction to the grade of E-1, forfeiture of \$617.00 pay, and confinement for 30 days.

PRETRIAL CONFINEMENT CREDIT (including military and civilian confinement) (In days.)

0

DATE SENTENCE ADJUDGED (Or acquittal announced)

25 Aug 98

INSTRUCTIONS TO COMMANDER BY SUMMARIZING OFFICER

- 1 - 14 AF/CC/JA
- 1 - 21 SW/CC/JA
- 1 - 821 SFS/CC
- 1 - 821 SG/CC
- 1 - 21 CPTS/FMFP
- 1 - 821 SPTS/DPMPE/DPMAR
- 1 - 21 SFS/CC/SFAI
- 1 - [REDACTED] AFOSI, Det 431
- 1 - Individual
- 1 - Confinement Facility Officer

INCL. CIVIL

TRIAL COUNSEL

X

SUMMARY COURT OFFICER

DETAILED BY

[REDACTED] Brig Gen, USAF

TYPED NAME AND GRADE

[REDACTED] Maj, USAF

SIGNATURE

FD 2004-00180

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CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)		2. SSN	3. GRADE OR RANK	4. PAY GRADE
5. UNIT OR ORGANIZATION		6. CURRENT SERVICE		
821 Security Forces Squadron Buckley Air National Guard Base, Colorado 80011		a. INITIAL DATE	b. TERM	
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$1,280.40	\$0.00	\$1,280.40	N/A	N/A

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 112a

SPECIFICATION:

In that SENIOR AIRMAN [redacted], United States Air Force, 821 Security Forces Squadron, Buckley Air National Guard Base, Colorado, did, at or near the state of Colorado, between on or about 25 May 1998 and on or about 1 June 1998, wrongfully use methamphetamine.

III. PREFERRAL

1a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
[redacted]	Major	821 Security Forces Squadron
		e. DATE
		11 August 1998

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 11 day of August, 19 98, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

[redacted]
 Typed Name of Officer
 Captain
 [redacted]
 Signature

21 Spacc Wing
 Organization of Officer
 Assistant Staff Judge Advocate
 Official Capacity to Administer Oath
 (See R.C.M. 307(b) must be commissioned officer)

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12. On 11 August, 19 98, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

[Redacted] 821 Security Forces Squadron
 Typed Name of Immediate Commander Organization of Immediate Commander

Major
 Grade

[Redacted]

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1800 hours, 11 August, 19 98 at 21 Space Wing, Peterson Air Force Base, Colorado 80914-1154
 Designation of Command or Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

[Redacted] FOR THE 1 COMMANDER
 Typed Name of Officer Staff Judge Advocate

Lieutenant Colonel
 Grade

[Redacted]
 Official Capacity of Officer Signing

V. REFERRAL SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>21st Space Wing (AFSPC)</u>	b. PLACE <u>Peterson AFB, Colorado</u>	c. DATE <u>18 AUG 98</u>
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Referred for trial to the SUMMARY court-martial convened by the undersigned, pursuant to MCM 1995, R.C.M. 1302(c)

18 August 19 98, subject to the following instructions:² Major [Redacted]
 USAF, is detailed Summary Court-Martial and shall sit at Peterson AFB, Colorado, unless otherwise directed

By ORDER of the 21st Space Wing Commander
 Command or Order

[Redacted] COMMANDER
 Typed Name of Officer Official Capacity of Officer Signing

Brigadier General
 Grade

[Redacted]
 Signature

5. On 19 August, 19 98, I (caused to be) served a copy hereof on ~~(each of)~~ the above named accused.

[Redacted] Captain
 Typed Name of Trial Counsel Grade or Rank of Trial Counsel

[Redacted]
 Signature

FOOTNOTES: 1 When an appropriate commander signs personally, inapplicable words are stricken.

FOOTNOTES: 1 When an appropriate commander signs personally, inapplicable words are stricken.
2 See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse, AUG 84

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consider him competent to represent me at this Court-Martial.

~~PROSECUTION EXHIBIT 2~~ ~~FOR ID~~
P 1 of 3

Received Time 

AUG-13-98 THU 01:42 PM USAF JUDICIARY/ADP