

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE AB	AFSN/SSAN ██████████
--	--------------------	--------------------------------

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	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A92.15 A92.21 A01.39 A01.45	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 08 Sep 2004	CASE NUMBER FD-2004-00197	
------------------------------------	-------------------------------------	--

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.

[Handwritten Signature]

INDORSEMENT		DATE: 9/8/2004
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

FD2004-00197

GENERAL: The applicant appeals for upgrade of discharge to honorable, to change the reason and authority for the discharge, and to change his reenlistment code.

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, change of reason and authority for discharge, and change of reenlistment code are 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 received an Article 15 for marijuana use after his specimen from a consensual urinalysis tested positive for THC at 165 ng/ml, well above the DoD cut-off of 15 ng/ml. 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. 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 claimed he was innocent of the charges. 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. Results of subsequent negative drug tests are insufficient to lend credibility to this contention. Therefore, the Board finds it without merit. Furthermore, the Board was not persuaded by applicant's inference 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 3. Applicant contended his counseling regarding the negative impact of the discharge and about his transition to civilian life was inadequate. The Board noted that Capt B, an Area 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. At the time of the discharge processing applicant acknowledged he understood the specific basis for the discharge, had been counseled regarding his rights and options, and waived his right to submit further statements in his own behalf. There is no evidence the applicant's rights were violated in any way. In view of the records, the Board concluded this contention was also without merit, and that member was adequately represented throughout the administrative proceedings. The fact that the results of legal counsel or actions taken were not as he desired or expected does not constitute inadequacy.

Issue 4. Applicant contends that he should not be penalized indefinitely due to the adverse nature of his discharge. This contention is unfounded. The discharge regulations clearly gave his chain of command authority to recommend administratively discharging him based on unsuitability for further military service as a result of his serious misconduct. Facts and circumstances are different in each action and must be judged on a case-by-case basis. In doing so, a commander must consider the seriousness of the misconduct and how a member's retention might affect good order, discipline, and morale, not just the member's past record of service or rehabilitative potential. They must focus on conduct during the current enlistment, and

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

[REDACTED]

(Former AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Wright-Patterson AFB, OH on 11 Mar 96 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge, to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 29 Sep 75. Enlmt Age: 18 9/12. Disch Age: 20 5/12. Educ: HS DIPL. AFQT: N/A. A-95, E-84, G-74, M-58. PAFSC: 1N031 - Intel Operations Apprentice. DAS: 28 Feb 95.

b. Prior Sv: (1) AFRes 26 May 94 - 26 Jul 94 (2 months 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 27 Jul 94 for 4 yrs. Svd: 1 Yrs 7 Mo 13 Das, of which AMS is 1 Yr 7 Months 13 Days (excludes 1 day lost time).

b. Grade Status: AB - 22 Jan 96 (Article 15, 22 Jan 96)
AMN - 27 Jan 95

c. Time Lost: 1 Nov 95 (1 day).

d. Art 15's: (1) 22 Jan 96, Wright-Patterson AFB, OH - Article 112a. You, did, on or about 27 Oct 95, wrongfully use marijuana. Reduction to AB, and suspended forfeiture of \$199.00. (No appeal) (No mitigation)

e. Additional: LOR, 13 NOV 95 - Failure to go.

f. CM: None.

g. Record of SV: None.

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

i. Stmt of Sv: TMS: (1) Yrs (9) Mos (14) Das
TAMS: (1) Yrs (7) Mos (12) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 24 May 04.

(Change Discharge to Honorable, Change the RE Code, Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Form 214 (Member-4).
3. Two Certificates of Recognition.
4. Certificate of Appreciation.
5. Bachelor of Science Degree.
6. DD Form 214 (Member-1).

16JUL04/ia

APPLICATION FOR THE REVIEW OF DISCHARGE & SEPARATION CODE**ADDENDUM TO DD FORM 293****# 6. ISSUES: WHY AN UPDGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST****INTRODUCTION**

There is no comparable credential for which I am as proud of as my Air Force career and accompanying achievements and awards. By all accounts my service was faithful and honest. Now that I have graduated from law school, I would like to be able to fully leverage my proud service. Based on several misunderstandings surrounding the circumstances of my discharge, I respectfully request the Board to take the following action:

- Grant an upgrade of my discharge from *Under Honorable Conditions (General)*, to *Honorable*; and
- Remove "Misconduct" as the reason for separation and change the accompanying separation code to one that is more general, such as miscellaneous, early release, or to attend school.
- Change my reentry code to one that would enable me to work as a Judge Advocate upon graduation from law school.

The requested action is based on fairness under the circumstances and to more properly reflect the true character of my military service. I do not request and will never seek any back pay or reinstatement.

FACTUAL BACKGROUND**Military Service**

I enlisted in the United States Air Force in the summer of 1994, at the age of 18, just after graduating from High School. (See Exhibit A: Certificate of Release). I spent the normal time in basic training at Lackland Air Force Base and received training for Intelligence Operations at Goodfellow Air Force Base where I received two Certificates of Recognition: one for academic achievement and one for most valuable team member. (See Exhibits B & C). I was ultimately stationed at Wright-Patterson Air Force Base where I served on the 24-hour Watch Team with a top-secret security clearance. During that time, I served in support of Operation Desert Shield/Storm and in direct support of the historical Balkan Peace Talks. (See Exhibit D).

My position on the 24-hour watch team always provided me with two days off per week. My hometown and close family and friends were approximately a two-hour drive from Wright-Patterson so I often visited them on my days off. On one occasion, a fellow airman called in sick so I was needed to work on my day off, but I was away from the base at that time. Because of this, I was found to be AWOL. Luckily, my commander and supervisors were otherwise accommodating and assured me everything would be okay and this would only be a minor bump in my career. I consented to a voluntary urinalysis in connection with the being found AWOL.

I was told that my urinalysis was positive for marijuana. I denied taking the drug. A subsequent search of my belongings and my barracks turned up nothing. Significantly, a second and third urinalysis came back negative. I had a great deal of support from my commander who allowed me to continue to work at the National Air Intelligence Center, even though my security clearance was temporarily revoked. My commander informed me that I might be discharged or,

if I wanted, he might be able to keep me in if I wanted. I informed my commander that I would prefer not to be discharged, but would do whatever he thought best:

Ultimately, my commander informed me that it would be best for me to accept a discharge, and that I would receive no punishment whatsoever, and he encouraged me to pursue a civilian career in medicine or law (two professions my commander knew I was interested in). Based on this trust in my commander, I accepted his offer and was discharged on March 11, 1996. I was told that my discharge was not punitive. I was not informed that I had any right to apply for a change in discharge or separation code. I just learned this year that I am allowed to do so and feel that, given the circumstances, justice supports such action.

The circumstances surrounding my last weeks in the Air Force was marked with irregularities, with no advice on transitioning into civilian life, and only misleading assistance as to the meaning of my discharge, and imprecise information about the ramifications of requesting to remain the military.

Civilian Life

After being discharged, I immediately applied for, and was accepted to college. I have since graduated with honors receiving a Bachelor of Science degree in business from Indiana University. (See Exhibit E). I was then accepted to Northeastern University School of Law, where I am set to graduate on May 28, 2004. During my law school tenure, I interned for two highly respected government offices: (1) for a Massachusetts State Senator and (2) for a United States Circuit Court Judge. I am now considering applying to several full-time positions, many of which I would like to emphasize my proud military service, rather than brush it under the rug. This feeling of stressing my military background is especially intense given the current state of

America as country in need of pervasive patriotism. I pray this Board will correct my record by granting me a discharge upgrade to properly reflect my military service as Honorable.

JURISDICTION

This Board has the authority to grant a discharge upgrade and change in separation code, even in regards to a discharge in 1996 where the service member just reasonably discovered his right to apply to the Board.

ISSUES

- 1. I Request The Board Upgrade My Discharge and Change the Separation Code and Narrative Reason Based Upon the Irregularities and Imprecise Information I Relied Upon During My Separation Process.**

I was informed that accepting the General Discharge would be the best course of action for me, especially since I wanted to go to college. I agreed, but not before requesting to remain in the Air Force. My commander informed me that I might be able to remain in the Air Force and even get my security clearance back. I relied upon this advice, but was later told that I should accept the discharge. Unfortunately, my record shows that my separation is classified as "involuntary." I was never informed that accepting the General Discharge was involuntary and would have negative ramifications on my record. Had I known that my separation would be characterized as "involuntary," I would have not made an effort to try and remain enlisted. In fact, I was told that my separation was in no way punitive in nature. I relied upon this advice, but now understand that it was incorrect. *This administrative discharge paints my service record as one marred by a single incident, where I subsequently tested negative for all drugs.*

My DD Form 214 (See Exhibit A) shows that I was discharged for "misconduct." Upon separation, I was told not to worry about that explanation because I could just submit the alternative DD Form 214 that does not show this information. (See Exhibit F). I was not told that I had a right to request an upgrade and only recently discovered this option. Therefore, despite the fact that I was discharged eight years ago, it is in the interests of fairness and justice that this Board upgrade my discharge and change my narrative reason for separation.

My separation did not involve the routine counseling that service members often get regarding their discharge and transition into civilian life. Rather, I was given quick, summary advice that I relied upon, but which led me to believe my discharge properly reflected my service. I am proud of my life before, during, and after the Air Force and my above-cited achievements and awards are currently tarnished by an unfair General Discharge with an overly harsh narrative reason for separation.

The only advice I received was that (1) I should accept the discharge; (2) that my only punishment would be the Article 15 for being AWOL, a reduction in rank, and a loss of the G.I. Bill; and that (3) a General Discharge is not punitive. In reality, I did have some discretion on whether or not to accept the discharge and should have been informed on the ramifications of giving a preference, i.e., that it would result in an "involuntary" separation. At the very least, I should have been given correct advice on my rights to apply to this Board, including the standard transitional advice that all service members receive upon discharge.

In a time where serving in the military is needed and respected like never before, I wish to display my distinguished service to all people I encounter in life. I hope this Board takes the requested action and makes my record more accurately reflect the true character of my military service.

2. I Request The Board Take the Above-Requested Action Where the Record Shows That All Subsequent Urinalysis Tests Were Negative and To Properly Reflect the True Nature of My Military Service.

In addition to being given only substandard advice, and often, incorrect or no advice at all, I respectfully request this Board upgrade my discharge because subsequent urinalysis examinations turned up negative. My 20 months of service exemplified outstanding academic achievement and quality teamwork collaboration. (See Exhibits B & C). I understand that my request is by no means automatically granted, nor should it be. That being said, this is the exact type of situation – one involving a young airman with otherwise exemplary service – in which this Board should grant a discharge upgrade. I have already been punished by leaving the military early, being reduced in rank, losing the G.I. Bill, and receiving an Article 15.

As a proud veteran, and now a college graduate and soon-to-be attorney, I respectfully request that this Board (1) upgrade my discharge; (2) change my separation code and narrative reason for separation; and (3) change my reentry code to allow me to apply for a Judge Advocate position once I graduate from law school; or (4) any one of the foregoing actions based on the Board's decision.

Thank you for your kind consideration.



May 24, 2004

FD2004-00191

DEPARTMENT OF THE AIR FORCE
AIR INTELLIGENCE AGENCY



FEB 23 1996



MEMORANDUM FOR [REDACTED]

FROM: NAIC/CCQ

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct - Drug Abuse. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as Under Honorable Conditions (General) or Honorable. I am recommending that your service be characterized as Under Honorable Conditions (General).
2. My reasons for this action are:
 - a. On or about 31 Oct 95 you failed to go for which you received a Letter of Reprimand on 14 Nov 95 and an UIF was established.
 - b. On or about 27 Oct 95, you wrongfully used Marijuana, for which you received an Article 15 punishment of reduction to the grade of E1 and forfeiture of \$199.00, suspended until 22 Mar 96.
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. If you are discharged, you will be ineligible for reenlistment in the Air Force.
4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [REDACTED] the Area Defense Counsel's office, Building 268, Area C, Wright-Patterson AFB OH, Telephone 77841 on 23 Feb 96 at 1030. You may consult 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 28 Feb 96 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 74 Medical Group, Aerospace Medicine, Building 830, Wright-Patterson AFB OH at 0800 on 27 Feb 96 for the examination, and 29 Feb 96 at 0820 with Physician Assistant Hamm.

8. 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 the orderly room.



1. Art 15, 1 Jan 96
2. Msg -
3. CCQ Input
4. AF Form 2745
5. Msg 011452zdec95
6. UIF/LOR 13 Nov 95
7. Nonrecommendation for Prom ltr
8. Report of Inquiry, 3Nov 95.