

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

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

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

<b>ISSUES</b> A93.17 A92.35 A01.31	<b>INDEX NUMBER</b> A94.07	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
		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

<b>HEARING DATE</b> 20 Oct 2004	<b>CASE NUMBER</b> FD-2004-00204	
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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., via video teleconference from Travis AFB, CA

Advise applicant of the decision of the Board, and the right to submit an application to the AFBCMR.

<b>INDORSEMENT</b>	<b>DATE: 10/19/2004</b>
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<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD-2004-00204

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

The applicant appeared and testified via video teleconference at Travis AFB, CA before the Board which met at Andrews AFB, MD on October 19, 2004.

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 inequity or impropriety that would justify a change of discharge.

**ISSUES:**

Issue 1. The applicant contends his discharge was inequitable because it was based on one isolated incident in 72 months of service. The applicant received a Letter of Counseling for a missed appointment. He felt that although he had missed the appointment, he had mitigating circumstances due to taking his child to a doctor's appointment. He rescheduled the appointment on his own initiative. The Board noted that the applicant did miss the appointment and that the commander's policy was to issue a letter of counseling to every member who failed to attend scheduled appointments. The Board did not find the Letter of Counseling to be a significant factor in their decision to deny the applicant's request.

Issue 2. Applicant contended on the DD Form 293 that his discharge was improper because his pre-service drug use was mentioned in the discharge package. The applicant did not further discuss this issue at the hearing, but the Board did not find the issue of prior service drug use relevant to its deliberations.

Issue 3. The primary issue raised by the applicant was inaccurate information on the report of his positive urinalysis (u/a). The facts that led to the applicant's discharge were thoroughly discussed by the applicant and are set forth below.

The applicant was involved in a motor vehicle accident on November 13, 2002. As required by the local instruction, he was directed to provide a urine sample. Later that day, when he arrived at the testing location to provide the sample, there was no documentation for the commander directed u/a. The applicant signed a consent form indicating that he was voluntarily providing the sample and that he understood that the results could be used against him in a trial by court-martial. On December 2, 2002, the notice that the applicant's urine tested positive for THC at the 19 nanogram level was sent to the applicant's commander. The report incorrectly stated that the date that he provided the sample was November 6, 2002. The applicant submitted, pursuant to a probable cause search authorization, a second urine sample on December 11, 2002. On December 19, 2002, the applicant was charged with negligently damaging a government vehicle and wrongful use of marijuana. On December 27, 2002, the applicant requested discharge in lieu of trial by court-martial. Shortly after the request for discharge was submitted, the lab notified the applicant's commander that second u/a was positive for THC at the 150 nanogram level. The charge sheet was amended on January 14, 2003, to add a second specification of wrongful use of marijuana between November 11 and December 11, 2002.

At the hearing the applicant testified concerning his request for discharge. The applicant told the DRB that at the time of the request, he was fed up with the military and wanted to get out. He understood that his service could be characterized as under other than honorable conditions. Nonetheless, he chose to separate rather than present his case at a court-martial. He testified at length concerning the discrepancy concerning the date he gave the first urine sample. He stated to the Board that he could not understand why there would be a typographical error between November 6 and 13. When asked to review the sample log, he noted that he was the last person to sign the log and that all the other individuals on the log had submitted their samples on November 6, 2002. The discrepancy in the date carried through to the charge sheet and the probable cause statement. The applicant felt that the Air Force should not be allowed to negatively affect a member's career when the documentation is inaccurate. The applicant submitted evidence that he had previously undergone drug tests that were not positive for illegal drugs. He also had documentation of providing a hair sample for a preemployment screening on January 30, 2003. He stated that had his preemployment screening result had been positive he would not have been offered employment with the Las Vegas Hilton. The applicant denied that he used marijuana in October, November or December 2002. The applicant noted his good duty performance as evidenced by his EPRS which were all rated 4 or 5. He said that he continues to work full-time at the Las Vegas Hilton while he also attends the University of Phoenix. He submitted his transcript from the University of Phoenix showing grades of "A" with one "B+." The applicant testified concerning his family life and his community service work with his Masonic lodge. The DRB specifically noted the applicant's excellent scholastic record and encouraged him to continue to pursue higher education. The DRB noted the inaccuracy in the date of his first u/a sample. They determined that such an obvious typographical error did not render the applicant's discharge inappropriate. The DRB specifically noted the timing of the applicant's request for discharge, which was after he gave the second sample, but before the positive result was reported. The DRB determined that the testimony of the applicant and the evidence in the file did not support the applicant's request.

Issue 4. The applicant cited his desire to pursue a career in law enforcement as justification for upgrade and the change in reason and authority for discharge. The applicant stated that when he applied for a civilian law enforcement position, he was told that his first positive u/a could be overlooked because of the date discrepancy; however, the second positive result could not be overlooked. The applicant asked the DRB to act on this opportunity to correct the earlier mistake. The Board was sympathetic to the impact of the characterization of his service on his future employment options, but determined that his inability to work in a law enforcement position 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

(Former SSGT) (HGH SSGT)

MISSING MEDICAL RECORDS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Nellis AFB, NV on 3 Mar 03 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 11 Aug 70. Enlmt Age: 21 1/12. Disch Age: 32 6/12. Educ: HS DIPL. AFQT: N/A. A-51, E-61, G-52, M-57. PAFSC: 3P071 - Security Forces Craftsman. DAS: (EPR Indicates): 17 Sep 97 - 16 Sep 98.

b. Prior Sv: (1) AFRes 18 Sep 91 - 23 Jan 92 (4 months 6 days) (Inactive).

(2) Enlisted as AB 24 Jan 92 for 4 yrs. Extended 6 Jan 94 for 9 months. Reenlisted as SrA 29 Feb 96 for 5 yrs. Svd: 8 yrs 10 months 7 days, all AMS. AMN - 24 Jul 92. A1C - 24 May 93. SrA - 24 Jan 95. SSgt - 1 Sep 00. EPRs: 4,4,5,4,5,5,4,5,5.

ART 15: (1) 16 Jun 95, Howard AFB, Panama - Article 86. You did, on or about 8 Jun 95, without authority, fail to go at the time prescribed to your appointed place of duty. Article 134. You were, on or about 8 Jun 95, as a result of wrongful previous overindulgence in intoxicating liquor or drugs, incapacitated for the proper performance of your duties. Suspended reduction to A1C. Forfeiture of \$250.00 pay per month for 2 months. (Appeal/Withdrawn) (No mitigation)

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 1 Dec 00 for 4 yrs. Svd: 2 Yrs 3 Mo 2 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOC, 2 JAN 03 - Missed appointment.

f. CM: None.

g. Record of SV: 8 Apr 00 - 7 Apr 01 Indian Springs AFAF 5 (Annual)  
 8 Apr 01 - 7 Apr 02 Indian Springs AFAF 4 (Annual)

h. Awards & Decs: AFEM, NCOPMER, SAEMR W/1 DEV, AFOSLTR, AFOSSTR, AFTR, AFLSAR W/1 DEV, NDSM W/1 DEV, JMUA, AFOUA W/2 DEVS, AFGCM W/2 DEVS.

i. Stmt of Sv: TMS: (11) Yrs (5) Mos (14) Das  
TAMS: (11) Yrs (1) Mos (8) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 1 Jun 04.  
(Change Discharge to Honorable, and Change the Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. 99<sup>th</sup> Security Forces Investigative Report.
3. Motor Vehicle Accident Report.
4. Charge Sheet and Urinalysis Results.
5. Letter of Counseling.
6. Enlisted Performance Reports/Performance Feedback Worksheets.
7. Copy of Toxicology Reports - Civilian and Military.
8. Statements of Others Involvement in Military Vehicle Accidents.
9. Awards and Decorations.

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**DEPARTMENT OF THE AIR FORCE**  
 HEADQUARTERS AIR WARFARE CENTER (ACC)  
 NELLIS AIR FORCE BASE, NEVADA

18 FEB 2003

MEMORANDUM FOR AWFC/CC

FROM: AWFC/JA

SUBJECT: Legal Review of Request for Discharge in Lieu of Trial by Court-Martial Under Chapter 4, AFI 36-3208, [REDACTED]

1. **BACKGROUND:** On 19 Dec 02, [REDACTED], preferred one charge and specification for damage of a government vehicle in violation of Article 108 of the Uniform Code of Military Justice (UCMJ); and one charge and specification for wrongful use of marijuana in violation of Article 112a of the UCMJ. On 27 Dec 02, we received [REDACTED] Request for Discharge in Lieu of Trial by Court-Martial under Chapter 4, AFI 36-3208. An Article 32 hearing date has not been set and the case has not yet been referred to a court-martial. On 14 Jan 03, [REDACTED], preferred an additional charge and specification against [REDACTED] for wrongful use of marijuana in violation of Article 112a of the UCMJ. The 99 GCTS/CC recommends you disapprove this request, however, 99 ABW/CC recommends you approve this request. I concur with 99 ABW/CC.

2. **ACTION REQUIRED:** As the General Court-Martial Convening Authority (GCMCA), you may approve or disapprove this request. Should you decide to approve this request, you will need to determine the characterization of [REDACTED] service. Customarily, discharge under Chapter 4 of AFI 36-3208 is characterized as under other than honorable conditions (UOTHC). Should you determine a more favorable characterization is appropriate, your decision must be accompanied by the rationale for the characterization.

3. **FACTS:** On 13 Nov 02, [REDACTED] damaged a government vehicle by crashing a trailer into a fence. On 2 Dec 02, a positive urinalysis message from the Mike O'Callaghan Federal Hospital revealed that [REDACTED] had tested positive for marijuana. On 2 Jan 03, a second positive urinalysis message from the Mike O'Callaghan Federal Hospital revealed that [REDACTED] had tested positive for marijuana again.

4. **DISCUSSION:**

a. The evidence clearly supports the charges. However, I recommend approval of [REDACTED] Request for Discharge in Lieu of Trial by Court-Martial. While the nature of [REDACTED] misconduct is serious, his military record makes it unlikely that he will be discharged with a bad-conduct discharge at a court-martial. Therefore, the more appropriate and expedient course of action is to approve his request for administrative discharge.

b. Should you decide to approve [REDACTED] Request for Discharge in Lieu of Court-Martial, it is important that his service is properly characterized in light of his misconduct. AFI 36-3208, *Administrative Separation of Airmen*, instructs that a UOTHC discharge is appropriate when an airman has engaged in acts that constitute a significant departure from the conduct expected of airmen. The offenses committed by [REDACTED] definitely constitute such a departure. If you approve his request, the accused's discharge should be characterized as under other than honorable conditions. A UOTHC discharge will address his misconduct, appropriately characterize his service, and swiftly remove [REDACTED] from the Air Force.

5. **RECOMMENDATION:** I recommend this Request for Discharge in Lieu of Court-Martial be approved. However, should you decide to approve the discharge request, I recommend characterizing the accused's discharge as under other than honorable conditions.

[REDACTED]