

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

SRA

TYPE GEN

PERSONAL APPEARANCE

X

RECORD REVIEW

COUNSEL

NAME OF COUNSEL AND OR ORGANIZATION

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

12 Oct 2004

CASE NUMBER

FD-2004-00231

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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: 10/12/2004

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

FD-2004-00231

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.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for wrongfully using marijuana. Applicant believes he was wronged and would like to clear his name. He also would like to receive the GI Bill. 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. 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) 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

(Former SRA) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Malmstrom AFB, MT on 19 Feb 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 15 Aug 80. Enlmt Age: 18 3/12. Disch Age: 23 6/12. Educ: HS DIPL. AFQT: N/A. A-53, E-84, G-66, M-82. PAFSC: 3P051 - Security Forces Journeyman. DAS: 15 Feb 00.

b. Prior Sv: (1) AFRes 7 Dec 98 - 7 Sep 99 (9 months 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 8 Sep 99 for 6 yrs. Svd: 4 Yrs 5 Mo 12 Das, all AMS.

b. Grade Status: SrA - 17 Dec 03 (Article 15, 17 Dec 03)
 SSgt - 01 Jun 03
 SrA - 22 Aug 01
 A1C - 22 Oct 99

c. Time Lost: None.

d. Art 15's: (1) 17 Dec 03, Malmstrom AFB, MT - Article 112a. You did, within the continent of North America, on divers occasions, between on or about 1 Nov 02 and on or about 31 Mar 03, wrongfully use marijuana. Reduction to SrA, forfeiture of \$874.00 pay per month for 2 months. (Appeal/Denied) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 08 Sep 99 - 15 Apr 01 Malmstrom AFB 5 (HAF Dir)
 16 Apr 01 - 15 Apr 02 Malmstrom AFB 5 (Annual)
 16 Apr 02 - 15 Apr 03 Malmstrom AFB 5 (Annual)

h. Awards & Decs: AFAM, AFTR, NDSM, NCOPMER, AFLSAR, AFGCM, AFOUA W/1 OLC, BFPB.

i. Stmt of Sv: TMS: (5) Yrs (2) Mos (13) Das
 TAMS: (4) Yrs (5) Mos (12) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 25 May 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Form 214.
3. VA Letter, 20 May 04.
4. Article 15.
5. Report of Investigation with Attachements.


28JUL04/ia

01 June 2004

To:



Dear,

Thank you for looking to my case. As you know I am  and I used to be a NCO in the United States Air Force. If you read the enclosed documents you see how events unfolded that brought me to my current status. I was wronged and things turned out badly for my career and future. All I wish to accomplish is the clearing of my name.

Since my discharge from the United States Air Force, I've attempted to go back to school and make something of my life. However around every corner I've faced opposition. Due to the nature of my discharge and my re-enlistment status I have been denied my Montgomery G.I. Bill. I wish to have this decision reversed but above all else my discharge upgraded to Honorable.

Regarding the "evidence" against me, the words against me are simply not true. This has been proven time and again since my discharge. I opted out with an Article 15 in hopes that my Squadron Commander or someone deciding my fate would see the clear injustice brought upon me. Sadly no one (in my chain-of-command) would come to my defense. I even had a compelling, if not undeniable, piece of evidence in my favor, and yet I was still denied.

I regret everyday making the choice of an Article 15 versus a Courts-Martial but given the outcome of everything preceding the Article 15 "hearing" I thought that it was

best to accept an Article 15 than go to a Courts-Martial and receive a felony conviction. It's even tougher knowing that the outcome most likely would have been non-guilty. How do I know this? In April of 2004 a fellow Airman in the same position as myself decided to fight the allegations brought on him by Courts-Martial. His name is Senior Airman [REDACTED]. His name is stated in [REDACTED] statement. During the Courts-Martial of [REDACTED] was once again called upon to give testimony on his written statement. During that testimony [REDACTED] stated that he never really saw anyone do anything. Consequently, [REDACTED] was exonerated and given an Honorable discharge. I question the fairness of that decision in relation to the decision of my discharge.

I do not believe that it's fair that his characterization of service is any different than mine. My judge was biased and pressured from above and therefore did not make a just decision on my behalf. I wish to have the judgment reversed and have my dignity and honor restored.

I left a few spots blank on my DD Form 293 because I'm not sure if I am able to take time off from work to go to Washington D.C. If the traveling board comes anywhere near Redding, CA I will make the effort to be seen in person. Thank you for reviewing this and your time.

Sincerely,

[REDACTED]

FD 2004-80231



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 341ST SPACE WING (AFSPC)

14 Jan 04
(Date)

MEMORANDUM FOR 741 MSFS (ATTN: [REDACTED])

FROM: 741 MSFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for 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 honorable or general. I am recommending that your service be characterized as general, under honorable conditions.

2. My reason for this action is:

Between on or about 1 Nov 02 and on or about 31 Mar 03, you wrongfully used marijuana. For this misconduct, you received an Article 15 dated 17 Dec 03, with the following punishment: reduction to the grade of senior airman and forfeiture of \$874.00 pay per month for 2 months.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Court-Martial jurisdiction or a 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 and any special pay, bonus, or education assistance funds may be subject to recoupment.

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 the Area Defense Counsel, x4723, 7015 Goddard Drive, Bldg 145, Room 144 on _____ at _____. 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 COB 20 Jan 04 (3 duty days) unless you request and receive an extension for good cause shown. I will send all submitted statements 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 the 341st Medical Group Force Health Management Section, x³⁹⁹⁵3613, at 1300 hours on 15 Jan 04 for the examination. You **MUST** be in uniform for this appointment. If you wear glasses, you must also bring them to this appointment.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208, *Administrative Separation of Airmen*, is available for your use at your orderly room.

9. Execute the attached acknowledgement and return it to me immediately.

[REDACTED]
Lt Col, USAF
Commander, 741st Missile Security Forces Sq

Attachments:

1. Supporting documents:
 - a. Article 15 dated 17 Dec 03
 - b. Documents in Attachment 6
2. Airman's Receipt of Notification Memorandum

[REDACTED]