

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE AIC	AFSN/SSAN ██████████
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TYPE UOTH	PERSONAL APPEARANCE	X	RECORD REVIEW
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COUNSEL	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 A01.04 A01.02 A01.08	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD														
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:5%; text-align:center;">1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td style="text-align:center;">2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="text-align:center;">3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td style="text-align:center;">4</td><td>BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td>COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td>TAPE RECORDING OF PERSONAL APPEARANCE</td></tr> </table>	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
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HEARING DATE 14 Dec 2004	CASE NUMBER FD-2004-00291	
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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.

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00291

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: The discharge is upgraded to general.

The Board finds the applicant submitted no issues contesting the equity or propriety of the discharge, but after a thorough review of the record, the Board identified an impropriety as detailed below.

ISSUE: Applicant was discharged under other than honorable conditions (UOTHC) for drug abuse after a random urinalysis returned positive for methamphetamine at the 3576 ng/ml level compared to the DoD cut-off of 500 ng/ml. In contemplation of court martial, member entered a Stipulation of Fact that he knew he had wrongfully used a contraband drug substance and felt its physical effects. He made an Offer for Alternative Disposition to plead guilty to the offense and accept trial by Summary Court Martial, as well as unconditionally waive his right to a discharge board hearing if his commander recommended he be separated UOTHC, while recognizing his commander did intend to recommend administrative separation upon conclusion of the court martial proceedings. Applicant's commander did in fact recommend he be separated UOTHC, and every level of review concurred. Additionally, at the time of discharge processing, applicant preserved his right to submit matters in his own behalf, and did so, requesting he be given a general (under honorable conditions) discharge.

During its records review, the Board discovered an impropriety. In accordance with Air Force Instruction 36-3208, "Administrative Separation of Airmen," airmen cannot be discharged UOTHC if the sole basis for discharge is a serious offense that resulted in conviction by court martial that did not adjudge a punitive discharge, unless such characterization of service is approved by the Secretary of the Air Force (SECAF). In this case, the court martial convening authority, upon the recommendation of member's commander, and in consonance with the legal reviews, directed a UOTHC discharge be executed without elevating the matter to the SECAF as required. Although a punitive discharge is not available through a Summary Court proceeding, AFI 36-3208 makes no distinction between what type of court martial convicted the separating member, or its sentencing limitations. It simply states that if convicted by court martial without a punitive discharge, a UOTHC discharge is not authorized unless approved by SECAF. That did not happen in this case, therefore the Board determined member's discharge should be upgrade to general (under honorable conditions).

CONCLUSIONS: The Discharge Review Board concludes that although the discharge was within the discretion of the discharge authority, it was not consistent with procedural and substantive requirements of the discharge regulation and the applicant was not provided full administrative due process.

In view of the foregoing findings the Board further concludes the discharge should be upgraded to general (under honorable conditions) under the provisions of Title 10 USC, Section 1553.

Attachment:
Examiner's Brief

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

[REDACTED]
 [REDACTED]
 (Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr Peterson AFB, CO on 13 Feb 01 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 6 Dec 76. Enlmt Age: 19 8/12. Disch Age: 24 2/12. Educ: HS DIPL. AFQT: N/A. A-94, E-71, G-86, M-81. PAFSC: J1C451 - Parachutist Tactical Command & Control Journeyman. DAS: 18 Jun 97.

b. Prior Sv: (1) AFRes 27 Aug 96 - 13 Nov 96 (2 months 18 days) (Inactive).
 (2) Enlisted as AB 14 Nov 96 for 4 yrs. Svd: 3 yrs 4 months 19 days, all AMS. AMN - Unknown. A1C - 14 Mar 98. SrA - 14 May 99. EPRs: 5,5.

3. **SERVICE UNDER REVIEW:**

- a. Enlisted as SrA 3 Apr 00 for 6 yrs. Svd: 0 Yrs 10 Mo 10 Das, all AMS.
- b. Grade Status: A1C - 17 Nov 00 (SCM, 17 Nov 00)
- c. Time Lost: None.
- d. Art 15's: None.
- e. Additional: None.
- f. CM: Summary Court Martial - 17 Nov 00

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

Specification: In that SrA [REDACTED] did, within the Continental United States, between on or about 12 Jul 00 and on or about 18 Jul 00, wrongfully use methamphetamine. Sentence adjudged on 17 Nov 00: To perform hard labor without confinement for 45 days, and reduction to A1C.

- g. Record of SV: 1 Jun 99 - 31 May 00 Fort Carson 5 (Annual)
- h. Awards & Decs: AAM W/2 DEVS, AFLSAR, AFTR, CRM, AFEM, AFGCM.
- i. Stmt of Sv: TMS: (4) Yrs (5) Mos (18) Das
 TAMS: (4) Yrs (3) Mos (0) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 20 Jul 04.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH
None.

25AUG04/ia



DEPARTMENT OF THE AIR FORCE

21ST SPACE WING (AFSPC)

FD 2004-00 291

MEMORANDUM FOR AIC [REDACTED] 13 ASOS

27 Dec 00

FROM: 13 ASOS/CC

SUBJECT: Notification Memorandum - Board Hearing

1. I am recommending your discharge from the United States Air Force for Drug Abuse under the provisions of AFPD 36-32 and AFI 36-3208, paragraph 5.54. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are that you did, within the continental United States, between on or about 12 Jul 00 and on or about 18 Jul 00, wrongfully used methamphetamine in violation of Article 112(a) of the Uniform Code of Military Justice. For this misconduct, you were convicted at a Summary Court-Martial on 17 Nov 00. Sentence consisted of reduction to the grade of airman first class and performance of hard labor without confinement for 45 days. (Atch 1)

3. This action could result in your separation with an Under Other Than Honorable Conditions (UOTHC) discharge. I am recommending that you receive a UOTHC discharge. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you receive an involuntary discharge, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces. Additionally, any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be presented by legal counsel at a board hearing.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights.

You must consult legal counsel before making a decision to waive any of your rights.

5. A separation physical has been obtain for you at 1300 hours on 28 Dec 2000, at the Peterson AFB Clinic. This is a mandatory appointment.

6. Military legal counsel has been obtained to assist you. An appointment has been scheduled for you to consult Cpt [REDACTED] 28 Dec 00 0900. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is

reasonably available as determined according to AFI 50-201. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who will also sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements on your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

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 at the orderly room.

9. If you request a board and fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. Execute the attached acknowledgment and return it to me immediately.

 SAF
Commander

Attachments:

1. Summary Court-Martial, dated 17 Nov 00 w/Atchs
2. Enlisted Performance Reports
3. Airman's Receipt of Notification Memorandum