

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

TYPE GEN	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	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES	A93.17 A92.21 A93.01	INDEX NUMBER	A67.70	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	CASE NUMBER
15 Jun 2005	FD-2005-00001

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.

Names and votes will be made available to the applicant at the applicant's request.

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT

INDORSEMENT	DATE: 6/15/2005
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TO:	FROM:
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	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-2005-00001

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 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. Applicant contends discharge was inequitable because it was based on one isolated incident and too harsh. The records indicated the applicant was court-martialed and found guilty for drug abuse, specifically, use of psychedelic mushrooms. 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, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

Issue 3. 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, on 31 Mar 97) 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.

Issue 4. Applicant contends that he met the seven retention criteria listed in AFI 36-3208, paragraph 5.55.2. However, he failed to prove he met step 3, which states drug abuse does not involve recurring incidents (aside from the experimentation). Member admitted to using mushrooms on two occasions. Additionally, he failed step 6, which states the member's continued service in the Air Force is consistent with good order and discipline. The applicant's commander believed retaining the member would have an adverse affect on his command and; therefore, he recommended the member for discharge, which is the commander's prerogative. The DRB concluded that the characterization of the applicant's discharge was appropriate due to the misconduct.

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 A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr McGuire AFB, NJ on 12 Apr 00 UP AFI 36-3208, para 5.54 (Pattern of Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 25 Nov 76. Enlmt Age: 20 1/12. Disch Age: 23 4/12. Educ: HS DIPL. AFQT: N/A. A-92, E-89, G-96, M-96. PAFSC: 3E731 - Fire Protection Apprentice. DAS: 19 Sep 97.

b. Prior Sv: (1) AFRes 31 Dec 96 - 18 Mar 97 (2 months 16 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 19 Mar 97 for 4 years Svd: 03 Yrs 00 Mo 26 Das, all AMS.

b. Grade Status: AB - 17 Feb 00 (SPCMO No. 1, 13 Mar 00)
A1C - 19 Jul 98
AMN - 19 Sep 97

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: Special Court Martial Order No. 1 - 13 Mar 00.

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

Specification: Did, within the territorial limits of the US, on divers occasions on or about 1 Apr 98 to on or about 30 April 98, wrongfully use psychedelic mushrooms. Sentence adjudged on 17 Feb 00. Reduction to AB.

g. Record of SV: 19 Mar 97 - 18 Nov 98 McGuire AFB 5 (Initial)
19 Nov 98 - 18 Nov 99 McGuire AFB 4 (Annual)

h. Awards & Decs: AFTR, AFOUA W/2 BOLCS, AFGCM.

i. Stmt of Sv: TMS: (03) Yrs (03) Mos (13) Das
TAMS: (03) Yrs (00) Mos (26) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 4 Jan 05.

(Change Discharge to Honorable)

Issue 1: ISSUES ATTACHED TO BRIEF

ATCH

- 1 - Applicant's Issues.
- 2 - Military Records.
- 3 - Certificate of Adoption of Son.
- 4 - Congratulatory Letter for Completing Basic Firefighting Training Program.
- 5 - Twenty Certificates of Training.

16FEB05/day

II. Attachment #1**6. ISSUES: WHY AN UPGRADE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST**

I am currently a firefighter for the City of Middletown in Orange County, New York. As you will see in the enclosed documents, I have always wanted to be a firefighter and I love my job. I was appointed to my current position on 11 Mar 2002 and am only the 99th person to wear this badge since 1882.

At this time in my employment, I am close to a degree and I wish to improve on-the-job performance by continuing my education. With my current character of service (General), I am unable to use Montgomery G.I. Bill benefits. If my discharge is upgraded, I will be able to get benefits enabling me to pursue a Bachelor's degree and work towards a promotion to Lieutenant.

On 12 April 2000, I was discharged based on one isolated incident in 37 months of service with no other adverse action.

In a special court-martial held on 17 February 2000, I pled guilty to wrongful use of mushrooms. In accordance with my plea, I was convicted and sentenced to reduction to the grade of E-1. The people that know me best described my bravery, duty performance and positive attitude. They spoke of how much I loved the Air Force and why I should have been given a second chance. I trust that you will read this in the enclosed documents. The members of the jury decided on that day that I should be allowed to continue to serve my country in the United States Air Force. Unfortunately, my unit commander did not. I requested clemency in March of 2000 but my request for retention was declined by the unit commander. Enclosed documents will show my Air Force record was stellar. The incident for which I was discharged occurred nearly two years before I was disciplined and has not recurred to date. It was, indeed, a one time incident.

I believe the sentence adjudged on 17 February 2000 was fair. If the jury had its way, I would still be serving my country as a firefighter in the Air Force today. I admitted my mistake exemplifying the #1 Air Force core value, Integrity.

I was recently celebrated my second wedding anniversary, adopted a wonderful son, and bought my first home. My little brother recently enlisted in the Air Force Delayed Entry Program and leaves for Basic Training in 2005. I was incredibly proud of his decision and I know he will succeed in his chosen career field. He knows of my situation and I am grateful that he gets to learn a lesson through me.

It is my understanding that there are procedures to be followed when administratively discharging an airman. I have read Air Force Instruction 36-3208 and I understand that although I was ineligible for probation and rehabilitation in accordance with Chapter 7, I did meet the seven retention criteria outlined in section 5.55.2. On the following pages, I will outline those seven criteria and show evidence provided at my court martial that proves that my continued presence in the Air Force was consistent with the Air Force in maintaining proper discipline, good order, leadership and morale. If it wasn't, the jury would have discharged me. You must know that my desire all along was

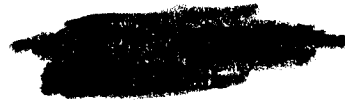
not to lie to anyone, or to get away with anything, but only to serve my country in the United States Air Force.

In conclusion, I know that I made a mistake and I know that I deserved punishment. I feel the punishment recommended by the jury fit the crime. After my discharge, it took me nearly a year to get back on my feet. I was crushed. The fact that I did get back up is what makes the difference here. I still have a great attitude about the Air Force and about my future. I only want to be the best firefighter I can be. I want to do the best job I can for the residents of the City of Middletown. Allowing me to receive Montgomery G.I Bill benefits will allow me to do that. I thank you for your time and appreciate your considering my application.

Sincerely,

A large, dark, irregular redacted area covering the signature of the sender.

III. Attachment #2



5.55.2 Retention Criteria and Consideration

5.55.2.1 A member found to have abused drugs will be discharge unless the member meets all seven of the following criteria:

5.55.2.1.1 Drug abuse is a departure from the member's usual and customary behavior.

It was stated many times during my trial by respected members of the McGuire Air Force Base team that this was a departure from my usual and customary behavior. First, it was stated by MSgt [redacted] on page 24 of my Record of Trial. It was also stated by my direct supervisor on page 32 and by the Assistant Fire Chief on page 43. Many of the character reference letters from the people who know me best prove this.

5.55.2.1.2 Drug abuse occurred as a result of drug experimentation

I can assure you that until April 1997, I had never tried psychedelic mushrooms and have not since. A drug experimenter is defined as one who has illegally or improperly used a drug for reasons of curiosity, peer pressure, or other similar reasons. I believe it was a combination of curiosity and peer pressure that caused me to experiment with mushrooms.

5.55.2.1.3 Drug abuse does not involve recurring incidents, other than drug experimentation as defined above.

During the stipulation of facts, I stated that in April of 1998, [redacted] and myself went to the Jersey shore and purchased psychedelic mushrooms, ate some that night and again several nights later. Once the mushrooms that we purchased were gone, we did not experiment with mushrooms or any other drug again. I do believe that you can experiment with a drug on diverse occasions.

5.55.2.1.4 The member does not desire to engage or intend to engage in drug abuse in the future.

This one is the easiest one to expand upon and it is closely related to the next subsection. I believe it is fairly obvious that going through this process has successfully curbed the appeal of drugs. I will state it now for the record. Since the incident that I pled guilty to in April of 1998, I have not used any other illegal substance nor do I desire or intend to in the future.

5.55.2.1.5 Drug abuse under all the circumstances is not likely to recur

5.55.2.1.6 Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership and morale.

Who decides what is consistent with the interest of the Air Force? I believe that my supervisors and senior NCOs can make this case for me. My supervisors, the Assistant Chief of the McGuire AFB Fire Department, and my co-workers might shed some insight. The people who know me the best know that I love the Air Force. They know that I embraced the discipline, the core values, showed leadership and morale for wearing the uniform. I ask you to read the letters submitted on my behalf, entered as Defense Exhibits B-K. Also, if you read the testimony of several Senior NCOs and supervisors (pages 20-45) who stated under oath that they still felt that I was an asset to the Air Force. MSgt [REDACTED] stated that I was in the top 5 airmen that he had seen and that he saw me as a possible station chief in 10-12 years and that he would trust me to fight a fire at his house. MSgt [REDACTED], TSgt [REDACTED] and MSgt [REDACTED], all spoke of their desire to see the Air Force retain me. In the legal review of my trial, included in the military documents packet, it is stated that I do not meet this criteria because the commander wanted to discharge me. I highlighted this section because I do not believe that that can be a valid reason to end an airman's career.

5.55.2.1.7 Drug abuse did not involve drug distribution

No drug distribution occurred in this instance.

I believe that I have outlined these seven criteria accurately and have made my case that I meet all seven criteria. In the enclosed Recommendation for Discharge letter, Colonel [REDACTED] stated in paragraph 3 that he did not think that I met items 2, 3, 5 or 6 of the above criteria. I believe that he was wrong. I do not feel that Col. [REDACTED] read the Record of trial. I don't think that he talked to my supervisors. If he did, I feel that he would have seen that I was indeed an asset to the United States Air Force, that I made a mistake, showed integrity by admitting my mistake, and fought for another chance to do my duty as an American. In the enclosed legal review, Captain [REDACTED] stated in paragraph 4 ii, that I failed to meet only numbers 3 and 6 of the retention criteria. Number 3 was proven by the fact that after the mushrooms that we purchased at the shore were gone, we never again tried them. The only evidence shown for me not meeting number 6 is that "the commander wants to discharge respondent". It is my responsibility to prove that the seven criteria exist. How can I prove that I am an asset to the service if the only response is that the commander wants to discharge me? If I was allowed to continue my service in the Air Force, I would have gotten an honorable discharge and would have been eligible for Montgomery G.I. Bill benefits. I also feel that Col. [REDACTED] classifying my discharge as General was a mistake.

The definition of a General Discharge in AF Instruction 36-3208 states that the service was marred by negative aspects of a person's duty performance or personal

conduct AND that the negative aspects definitely outweigh the good. I do sincerely hope that the incident that occurred in April 1998 off duty, off base, and out of uniform, does not outweigh all that I did on duty, on base, and in uniform. I don't think it does. I would like the chance to prove that I can still be an asset to the United States Air Force. I thank you very much for your time.

Sincerely,

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DEPARTMENT OF THE AIR FORCE
305th Civil Engineering Squadron

ZIMAR00

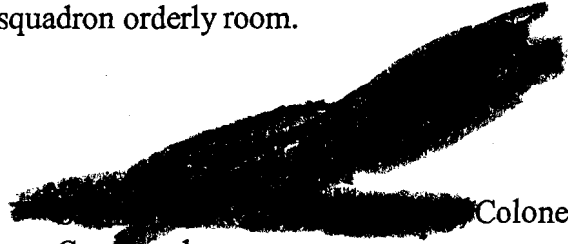
MEMORANDUM FOR AIRMAN BASIC [REDACTED]

FROM: 305 CES/CC

SUBJECT: Notification Letter

1. I am recommending your discharge from the United States Air Force for *Drug Abuse*. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as general.
2. My reason for this action is that on 17 February 2000, you were convicted of using psychedelic mushrooms. For this offense you were reduced to E-1 (Airman Basic).
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 make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces.
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 with Capt [REDACTED] the Area Defense Counsel, at Bldg 2906, first floor, on 21 MAR 00 at 1530 hrs. 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 24 MAR 00 (3 workdays from the date of this memorandum) 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 WALSON FAMILY PRACTICE on 31 MAR 00 at 1100 hrs.

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 squadron orderly room.



Colonel, USAF
Commander

Attachments:

1. Special Court-Martial Order No. 1, 13 March 00
2. Action, 13 March 00
3. Airman's Receipt of Notification