

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00038

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.

ISSUE:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for wrongful use of marijuana. The board noted the applicant was age 19 when his misconduct occurred, essentially the same age as other airmen who complete their enlistments without disciplinary infractions, and there was no evidence he did not know right from wrong. 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.

Issue 2 & 3 pertains to applicant's allegation of inadequate counsel and loss of benefits. These issues are without merit. Member was appointed counsel and consulted counsel. No inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

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 AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Dyess AFB, TX on 24 Feb 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 20 Jan 84. Enlmt Age: 18 1/12. Disch Age: 20 1/12. Educ: HS DIPL. AFQT: N/A. A-84, E-84, G-86, M-86. PAFSC: 2S031 - Supply Management Apprentice. DAS: 4 Jan 03.

b. Prior Sv: (1) AFRes 25 Feb 02 - 02 Sep 02 (6 months 8 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 3 Sep 02 for 4 yrs. Svd: 1 Yrs 5 Mo 22 Das, all AMS.

b. Grade Status: AB - 31 Dec 03 (Article 15, 31 Dec 03)
Amn - 3 Mar 03

c. Time Lost: None.

d. Art 15's: (1) 31 Dec 03, Dyess AFB, TX - Article 112a. You, did, on or about 25 Nov 03, wrongfully use marijuana. Reduction to AB. Forfeiture of \$575.00 pay per month for 2 months. Forty five days restriction (remitted). Forty five days extra duty. (Appeal/Granted) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: AFTR, NDSM.

i. Stmt of Sv: TMS: (1) Yrs (12) Mos (0) Das
TAMS: (1) Yrs (5) Mos (22) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Jan 05.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. DD Form 214.
2. Applicant's Issues.
3. Four Character References.

12APR05/ia

My name is [REDACTED]. I received a general discharge, from the United States Air Force for misconduct; specifically drug use. I write this letter in hopes that you may understand my circumstance, and may also consider upgrading my discharge.

I will attempt to explain this very complicated story in three parts. 1. The events leading up to my drug use. 2. Events that took place throughout the process of my discharge. 3. How I am currently living, and how this discharge has affected me.

1. I in no way wish to pass responsibility of my actions on to circumstance or fate. I acknowledge the mistake that I made, but hope that you may look beyond the mistake itself and understand why I did what I did.

My trouble in the Air Force began around July of 2003. I was deployed to Diego Garcia in support of Operation Iraqi Freedom and Operation Enduring Freedom. I was with the supply unit responsible for running the warehouse. It was a deployment full of long hours and a physically challenging work schedule. Our Chief of Supply was a Senior Master Sergeant. He was at the point in his career that if he did not make Chief Master Sergeant, he would be forced to retire. My self and supervisors included, saw this as his last chance to make an impression, his last chance to do things right and get his promotion. His actions supported this belief. We were continuously ordered to arrange and re-arrange our warehouse. We had adequate space, the building fulfilled our requirement, but we still were required to do many tasks that were felt to be unnecessary. A majority of the work we did was not out of necessity or functionality, it was a matter of completing tasks that would look good for promotions, we did work for the sake of doing work. We worked 12 hour shifts, three days on, one day off. Everyone felt rundown, supervisors included, but it didn't matter. Everyone in our group had a complaint about the type of conditions we were working in, but no matter what problem was brought to our Chief of Supply, nothing changed. It was apparent to us that we were no longer serving the mission, we were serving the interests of our Chief. Please do not misinterpret, I do not make it a practice of complaining or running from hard work. I take pride in the hard work that I do. What I do have a problem with though is working hard for something that does not need to be done. If it is not broken don't fix it.

It was in the August / September timeframe in which I suffered an injury to my lower back during one of our particularly strenuous days. We were having a major swap-out of our bombers. We had both planes, and support equipment coming in and going out. It was on one of these days that our chief decided to expand our duties. He had us down on the airfield, building pallet trains, loading and securing cargo. We were supply troops, we had absolutely no training in this. He new this, and his answer was to trade a civilian that worked down there goods for some training. The individual he found was a Phillipino who could not speak intelligible English. To make this short, we spent all day trying to get this cargo ready to be loaded on the planes, only to have an individual from Quality Assurance come over and say that everything we just finished would have to be done over because neither himself or the crew chief would allow those items secured in that manner aboard the plane. It was a day wasted doing something that our Chief new that we were not qualified to do, a day where at some point I incurred an injury to my back, doing something that I should not have been doing.

After this incident I began experiencing extreme pain and loss of mobility in my lower back. I went to Flight Medicine and explained that I was having some problems. Without even looking at my back I was given Motrin and told to take it easy. A few days later, the pain had not dissipated so I went to a different clinic. I explained again what had happened, and the

doctor this time put me on a profile to prevent me from lifting and also gave me some muscle relaxers. A few weeks later, my condition had still not improved so I went again to the clinic, seeking aid. The doctor told me he really wasn't sure what the problem was, so he gave me more meds and told me to just give it more time. Time did not help. My deployment ended towards the end of November, and from then on I began experiencing more pain. After returning to home station I went to the doctors on base for help. This time they said that I could probably use physical therapy, to improve the condition, but as far as the pain went, all he would give me was Motrin. I explained this was not helping me, but that was all he would give me. I was frustrated to say the least. It had been months since I first hurt my back, and after all this time with no improvement, I still was not able to receive anything to help manage the pain. The Motrin I was taking only made me sick and did nothing for my pain. Every day during my lunch, I could not go and get something to eat, I had to go to my dorm room to lay down because the pain was so extreme. This was the point at which I began self medicating.

I was at a friends house, he new of my situation, and he said that he had something that would help. He told me that he had some marijuana. Now what did I know about this? I new that it was wrong, I new that by joining the United States Air Force, this was something that I had made the commitment not to do; but I also new how this drug helps. I have a father that has battled cancer for over 14 years now, who has lived his life in more pain than ever hope to understand. He was prescribed a synthetic form of marijuana, Marinol. I knew what kind of relief this drug could offer. I knew that there are natural receptors for Tetra Hydro Cannibinol (aka THC which is the active chemical in Marijuana) in every persons body, even if you have never used this drug. I knew that there is a connection with the reception of this chemical in the brain and the brains reception of pain. I knew marijuana could be used medicinally for pain management. At this point I did not know what else to do. I had gone to doctors over and over again for aid; aid that I did not receive. I couldn't deal with the pain any longer; doctors did not offer help, so in my mind I decided I would have to help myself. Was it wrong, yes. Was it my position to self prescribe medications, no. I should have continued my pursuit for help through the correct channels, but I didn't. At the time I felt helping myself was the only option.

Why did he choose marijuana you may be wondering? It was not because there was some addiction to it, it was not because I just wanted to get high. It was because that was the only form of relief I had available to me. I look back and wonder, "What if?" What if I had known how to get some other pain killer? What If I had been caught using a mainstream prescription drug? Now I knew a handful of folks that had been caught using prescription drugs, in the past, simply for recreational purposes. What happened to them? Letter of Reprimand, and a few addiction classes. This was the general punishment for recreational use of un-prescribed drugs. I honestly feel that if I had been involved with another prescription drug, the situation would have been looked at in an entirely different way. It would have been easier for the Powers that Be to believe that I simply had a problem with pain management. That would have made sense. As we all know, marijuana has been widely understood as being a recreational drug, a drug with no medicinal qualities. I said I used pot for pain relief, and I am sure everyone believed that was just an excuse. Even though modern medicine has begun to show what benefits can come from this all natural drug, what type of relief cannabis can offer to cancer patients, glaucoma patients , aids patients. Am I trying to categorize my self with these types of cases, absolutely not, their pain is much worse. The point is that this a drug is available in the medical field, and it does serve more of a purpose than just accommodating a good time. If I believed

their was some other option available to me, I would have taken it, but this was it. This was, in my mind, the only relief in sight.

I found relief, but that did not stop me from going after help the right way. I continued to go to the doctors on base. Unfortunately I did not begin receiving the help I needed until after I helped myself. They did eventually though see the need for pain killers as I had. It was after I was caught using marijuana, that I began receiving medications from the clinic. I first given codeine, a narcotic, but that did little to relieve pain. They began trying different combinations of prescriptions including, Vioxx with Codeine, Codeine and Motrin, Darvaset (also a narcotic), and finally Tramadol (an aggressive pain killer). This is also when I began physical therapy. I went three times a week, receiving sonogram, electro stimulation, and also massage therapy. It was around 3 or 4 moths since the injury and nothing was better. I finally went to a civilian doctor, and explained the situation. He could not believe that after all of my visits, and after all this time, not one of the doctors I saw ever requested x-rays or an MRI. He did put in a request for me, and I did receive both x-rays and an MRI. The MRI showed that there was a disc protrusion that was putting pressure on my spinal cord, which was an explanation for the extreme pain. There was an issue there that doctors on base had not properly addressed. There was an injury, there was an explanation for the pain, and there was a need for painkillers. This was not some story I made up to stay out of trouble. Everything is documented in my medical records. I should not have self medicated, but I should have received medications from the doctors when I needed it.

2. The second part of my story is what took place during my discharge process. I was caught using marijuana at another airman's house who had been under investigation. After becoming involved with Operations of Special Investigation (OSI) it became necessary to go to the Area Defense Council for representation. Because there was only lawyer, and both myself and the other airman required representation, they were only able to help him due to conflict of interest. That being said I was appointed council that was located at a different base in a different state. Any council I received had to be done over the phone or through e-mail. I had much paperwork that was needed for the Article 15 I received and also for the actual discharge. I did not have enough time to prepare what was needed. I explained this to my First Sergeant but did not change the amount of time I was given for preparations. Needless to say everything had to put together in a hurry so that it could be faxed or e-mailed to this other base for review, and then sent back for corrections. My second problem that I found with my council was the matter of my back problem. I explained the problem I had and the severity of the situation. I asked if there was anything that could be done to possibly receive a medical discharge. I was told that it was best to accept responsibility for what I did, and not give excuses. He also said that it would be best not to pursue a medical discharge, which I went along with in part because I didn't know better and also because I did not want any kind of discharge. I wanted to remain in the military. I put together a request to my commander requesting that I be allowed to continue my service with the military. I explained my impeccable work history. I began working in our base's Equipment Liaison Office as an E-1. This position was normally reserved for Senior Airman or above. It was a challenge but I leaned the job and excelled in it. I explained how I had not received any negative paperwork or counseling. I explained how I just returned from deployment with no negative paperwork, and that I received a Letter of Appreciation for my support of Operation Iraqi Freedom and Operation Enduring Freedom. I told my commander of what kind of airman I was. How I did volunteer work the local Dyess We Care Team, Habitat for Humanity, various

fund raisers, and was also volunteering my lunch breaks at a local junior high school working with students that needed extra help with reading. I also submitted numerous Character Letters from current and past supervisors, and also others who had worked with me and could attest to my character. There is a list of requirements you must meet to be eligible for a waiver for drug use. I explained how I met these requirements, and requested that my commander put in a request for this waiver. He did not. Later on I found out that my commander Col. [REDACTED] was about to lose his command around the time I was being discharged. He has since lost his command. I also found out that our base commander was about to lose his command, which he has. I feel this is a major reason that my request was not considered. To many people that would have to make that decision were on the verge of losing their commands; I feel that they did not want to take any risks. I feel this was a major reason my situation was handled the way it was.

3. I was discharged under general for misconduct. When I left I lost all of my medical benefits. I had to stop my physical therapy, and was not able to receive my medications. I had no way to support myself. I had a back injury which still prevents me from doing any kind of physical labor. All of the jobs that I had prior to the military were well paying but physically demanding jobs. I had to try and get a job that I had little experience in. It was over three months after my discharge that I was able to find a job. I was fired from that job only three months later because I was having to go to so many appointments to the V.A in trying to receive benefits and most importantly treatment. Since my discharge I have begun receiving disability, I only have a 10% rating but have put in a request to have that increased based on the fact that my condition has gotten worse. I am still fighting to have this problem taken care of. The first time I went to the V.A clinic, I explained that I injured my back almost a year ago, and that the pain was getting worse. He gave me some pain killers, asked me not to use them so much, and come back in six months. I have treated my back as I was instructed, and because of doing what I was told, my back is continuing to get worse. The doctor has recognized this, and has finally put in a request to allow me to once again go through physical therapy. I should never have stopped physical therapy, but still ten months later I am still waiting to get the treatment that I need. I feel that the system has let me down. I feel that I slipped through the cracks. I have begun working with the V.A's vocational rehabilitation program. They have recognized that I am no longer physically able to do the work in which I am qualified for and have accepted me into their program. Because of their help I will be attending college. I have begun the enrollment process with plans to first receive an Associates Degree, and then plan on continuing to get my Bachelor's Degree in Business Management. I am not a bad seed. I have stayed out of trouble, I am going to college to better myself, and also to become a contributing member of our society. It is hard enough to find a job in today's economy. It is even harder to find one when you have a disability, and also a discharge for misconduct.

I ask that you really look at my situation and understand what I have went through. Please consider upgrading my discharge. I feel that I have been punished enough, I just want to go on with my life now. I want to better myself and achieve everything that I am capable of, but I feel that the categorization of my discharge will hold me back from excelling to my full potential.

I thank you very much for both your time and your consideration.

[REDACTED]



DEPARTMENT OF THE AIR FORCE

7TH LOGISTIC READINESS SQUADRON
DYESS AIR FORCE BASE, TEXAS

FD 2005-00038

MEMORANDUM FOR [REDACTED]

4 FEB 04

FROM: 7 LRS/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 AFPD 36-32 and AFI 36-3208, Chapter 5, section H, paragraph 5.54. If your discharge is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).
2. My reason for this action is: You did, on or about 25 Nov 03, wrongfully use marijuana. For this misconduct you received Article 15 punishment, as evidenced by AF Form 3070, dated 31 Dec 03
3. Copies of the documents to support this recommendation are attached and will be forwarded to the separation authority. 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 Capt [REDACTED], Area Defense Counsel, 397 3rd St, Bldg 7235, Dyess AFB, TX, DSN 461-4233 on 4 Feb 04 at 1000 hours. 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 0800 hours on 9 Feb 04 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 7th Medical Group Hospital, 697 Hospital Rd, Dyess AFB, TX, on 9 Feb 04 at 0910 hours. You will need to report 15 minutes early for this appointment.

- 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 unit orderly room.
- 9. Execute the attached acknowledgment and return it to me immediately.

[Redacted Signature]

JR, Lt Col, USAF

Commander

Attachments:

- 1. Receipt of Notification Memorandum
- 2. AF Form 3070, dated 31 Dec 03
- 3. Summary of Investigation 222-C112AC1-2731603330
- 4. Sworn Statement From Amn [Redacted]
- 5. Drug Urine Testing Result, dated 10 Dec 03
- 6. Current Positives Results Report, dated 9 Dec 03
- 7. Screening of Medical and Dental Records for Drug Abuse, dated 9 Dec 03