

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

E INITIAL)

TYPE UOTH		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	UOTHC	OTHER	DENY
					X
					X
		X			
					X
					X

ISSUES A94.01 A66.00	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 16 Aug 2005	CASE NUMBER FD-2005-00045
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE 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.

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INDORSEMENT		DATE: 8/16/2005
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-2005-00045

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 was discharged with an Under Other than Honorable Discharge for misconduct--specifically, drug abuse. The records indicated the applicant received an Article 15, for using marijuana at or near the country of Turkey, while receiving special pay under Title 37 U.S.C. 310. The Board noted the applicant was a 23-year old noncommissioned officer serving his second enlistment when his misconduct occurred. 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 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 statements (DD Form 2366, on May 5, 1997 and his unconditional waiver, December 5, 2002) 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 UOTHC Disch fr Incirlik ABS, Turkey on 29 Jan 03 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 06 Jan 79. Enlmt Age: 18 2/12. Disch Age: 24 0/12. Educ: HS DIPL. AFQT: N/A. A-48, E-41, G-39, M-33. PAFSC: 2T051 - Transportation Journeyman. DAS: 08 Jun 02.

b. Prior Sv: (1) AFRes 11 Mar 97 - 22 Apr 97 (1 month 12 days) (Inactive).

(2) Enlisted as AB on 23 Apr 97 for 4 years. SVD: 03 yrs 04 mos 00 das, all AMS. Amn - 23 Oct 97, A1C - 23 Aug 98, SrA 23 Apr 00. EPRs: 5,5.

3. **SERVICE UNDER REVIEW:**

a. Renlisted as SrA 22 Aug 00 for 4 years Svd: 02 Yrs 05 Mo 08 Das, all AMS.

b. Grade Status: SrA - 25 Nov 02 (Article 15, 25 Nov 02)
SSgt - 1 Apr 02

c. Time Lost: None.

d. Art 15's: (1) 25 Nov 02, Incirlik ABS, Turkey, Article 112a. You, did at or near the country of Turkey from about 3 Jun 02 to about 3 Jul 02, wrongfully use marijuana while receiving special pay under 37 USC 310. Reduction to SrA. Forfeiture of \$250.00 pay per month for 2 months. Restriction to Base for 30 days and 30 days extra duty. Reprimand. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 23 Dec 99 - 22 Dec 00 Barksdale AFB 5 (Annual)
23 Dec 00 - 22 Dec 01 Osan AB 5 (Annual)

h. Awards & Decs: AFAM, AFLSA, AFTR, NCOPMER, NDSM, AFOUA, AFGCM.

i. Stmt of Sv: TMS: (05) Yrs (10) Mos (20) Das
TAMS: (05) Yrs (09) Mos (08) Das

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

Issue 1: I have been a model citizen and been doing good in my community. I have started college and need this to get my GI Bill benefits.

ATCH
None.

21Mar05/day



DEPARTMENT OF THE AIR FORCE
39TH WING (USAFE)

5 Dec 02

MEMORANDUM FOR SRA [REDACTED]

FROM: 39 LRS/CC

SUBJECT: Notification Memorandum -- Board Hearing

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

2. My reason for this action is:

From 3 Jun 02 to about 3 Jul 02, you wrongfully used marijuana while receiving special pay under 37 United States Code § 310. For this misconduct you received an Article 15, dated 25 Nov 02. This Article 15 established a UIF, dated 4 Dec 02.

3. This action could result in your separation with under other than honorable conditions. I am recommending that you receive an under other than honorable discharge. The commander exercising special court-martial 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 and any special pay, bonus or education assistance funds may be subjected to recoupment.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements on your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult counsel before making a decision to waive any of your rights.

5. You have been scheduled for a medical examination. You must report to 39th Medical Group Family Practice at 0915 hrs on 9 Dec 02 for the examination.

6. Military legal counsel, Capt [redacted] Bldg 948, 6-6908 has been obtained to assist you. An appointment has been scheduled for you to consult him at 1500 hrs on 5 Dec 02 at Bldg 948. Instead of the appointed counsel, you may have another active duty military defense counsel, if the lawyer you request is reasonably available as determined according to AFI 51-201, *Administration of Military Justice*. 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 in 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 Area Defense Counsel.

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

10. If you received advanced educational assistance, special pay, or bonuses, and have not completed the period of active duty you agreed to serve, you may be subject to recoupment

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

[redacted signature]
[redacted]
[redacted] Maj, USAF
[redacted] mmander

Attachments:

- 1. Document supporting the reason for discharge:
 - AF Form 3070, dated 25 Nov 02
 - Positive Urinalysis Test Memorandum
- 2. Airman's Receipt of Notification Memorandum
- 3. Beyaname Clearance Letter
- 4. Issue of Temporary ID Card
- 5. Airman's Statement of Board Hearing