

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

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

ISSUES	A93.17 A94.05	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
16 Aug 2005	FD-2005-00051

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: 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-2005-00051

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: Applicant contends discharge was inequitable because it was too harsh and based on hearsay and a written statement. The records indicated the applicant was discharged with a general discharge for misconduct, specifically, drug abuse, after a positive urinalysis. 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.

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 SSGT) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Buckley ANGB, CO on 1 Oct 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 23 Oct 76. Enlmt Age: 23 4/12. Disch Age: 27 11/12. Educ: HS DIPL. AFQT: N/A. A-77, E-88, G-96, M-85. PAFSC: 4B051 - Bioenvironmental Engineering Specialist. DAS: 24 Sep 03.

b. Prior Sv: (1) Enlisted as AB 8 Mar 00 for 4 yrs. Svd: 3 yrs 1 month 13 days, all AMS. AMN - 8 Sep 00. A1C - 8 Jul 01. SrA - 8 Sep 02. EPRs: 5,5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 22 Apr 03 for 4 yrs. Svd: 1 Yrs 5 Mo 9 Das, all AMS.

b. Grade Status: SSGt - 1 Jan 04.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 19 JUL 04 - Positive urinalysis for marijuana.

f. CM: None.

g. Record of SV: 08 Nov 02 - 02 Aug 03 RAF Lakenheath 5 (CRO)
03 Aug 03 - 21 Jul 04 Buckley ANGB 1 (Cmdr Dir)REF

h. Awards & Decs: AFTR, NDSM, NCOPMER, AFLSAR.

i. Stmt of Sv: TMS: (4) Yrs (6) Mos (24) Das
TAMS: (4) Yrs (6) Mos (24) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 27 Jan 05.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

11MAR05/ia

AA

FD 2005-00051

APPLICATION FOR THE REVIEW OF DISCHARGE FROM THE ARMED FORCES OF THE UNITED STATES

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Service and Communications Directorate (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.

a. BRANCH OF SERVICE (X one) ARMY MARINE CORPS NAVY AIR FORCE COAST GUARD

b. NAME (Last, First, Middle Initial) c. GRADE/RANK AT DISCHARGE d. SOCIAL SECURITY NUMBER
 [REDACTED] E-5 / SSgt [REDACTED]

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)
 20041001

4. DISCHARGE CHARACTERIZATION RECEIVED (X one)

<input type="checkbox"/> HONORABLE	<input checked="" type="checkbox"/> CHANGE TO HONORABLE
<input type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS	
<input checked="" type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS	
<input type="checkbox"/> BAD CONDUCT (Special court-martial only)	
<input type="checkbox"/> UNCHARACTERIZED	<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
<input type="checkbox"/> OTHER (Explain)	<input type="checkbox"/> CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)
	<input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION TO:

5. BOARD ACTION REQUESTED (X one)

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION
 460 MDS / Buckley AFB

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.)
 My commanding officer originally recommended a General discharge. This was reduced solely based on a letter written to my commander by my wife. My wife at that time had kidnapped my son and was using any tactic available to ensure I would not gain custody. No investigation was ever conducted to prove any of her accusations. My commander reduced my discharge characterization based on nothing but hearsay. My military record was perfect until a positive for THC on a command directed UA.

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: (Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)
 VA has all my medical records.

9. TYPE OF REVIEW REQUESTED (X one)

CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD.

I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.

I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city and state) (NOTE: The Navy Discharge Review Board does not have a traveling panel.)

10.a. COUNSEL/REPRESENTATIVE (if any) NAME (Last, First, Middle Initial) AND ADDRESS (See item 10 of the instructions about counsel/representative.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

d. FAX NUMBER (Include Area Code)

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print) and relationship by marking a box below.

SPOUSE WIDOW WIDOWER NEXT OF KIN LEGAL REPRESENTATIVE OTHER (Specify)

12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE (Forward notification of any change in address.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

d. FAX NUMBER (Include Area Code)

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

a. SIGNATURE - REQUIRED (Applicant or person in item 11 above)

b. DATE SIGNED - REQUIRED (YYYYMMDD)

20050127

CASE NUMBER (Do not write in this space.)
 FD 2005 - 00051

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

No investigation was conducted concerning a potential false positive on my test. I was taking large quantities of Ibuprofen for a disease that I have known as Fibrous Dysplasia. This effects the growth of my skull bone and causes severe headaches. It is well known that Ibuprofen can cause false positives for THC. I did, however, choose not to fight this charge as my wife had absconded to Texas with my son. I felt that taking the General discharge originally offered to me was my only hope of ever seeing him again. I do feel that reducing the characterization of my discharge based only on my wife's word was unfair considering my exemplary military record and the fact my wife had plenty of motives to lie.

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

16. REMARKS (If applicable)

All of my awards and decorations:

- Basic Training Honor Graduate
- Air Force Good Conduct Medal
- Air Force Achievement Medal
- National Defense Service Medal
- Senior Airman Below the Zone
- 2002 48th Fighter Wing, Bioenvironmental Engineering Airman of the Year
- Oct - Dec 2002 48th Fighter Wing, Airman of the Quarter
- Jan - Mar 2002 48th Medical Group, Airman of the Quarter
- Oct - Dec 2002 48th Medical Group, Airman of the Quarter
- Oct - Dec 2001 48th Aerospace Medicine Squadron, Airman of the Quarter
- Jan - Mar 2002 48th Aerospace Medicine Squadron, Airman of the Quarter
- Oct - Dec 2002 48th Aerospace Medicine Squadron, Airman of the Quarter

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

<p style="text-align: center;">ARMY</p> <p>Army Review Boards Agency Support Division, St. Louis 9700 Page Avenue St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)</p>	<p style="text-align: center;">NAVY AND MARINE CORPS</p> <p>Naval Council of Personnel Boards 720 Kennon Street, S.E. Room 309 (NDRB) Washington Navy Yard, DC 20374-5023</p>
<p style="text-align: center;">AIR FORCE</p> <p>Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742</p>	<p style="text-align: center;">COAST GUARD</p> <p>U.S. Coast Guard Commandant (G-WPM) 2100 Second Street, S.W. Room 5500 Washington, DC 20593</p>



DEPARTMENT OF THE AIR FORCE
460TH SPACE WING (AFSPC)

SEP 01 2004


MEMORANDUM FOR SSGT [REDACTED]

FROM: 460 MDS/CC


SUBJECT: Addendum to Notification Memorandum—Board Hearing, dated 28 Jul 04

1. I recommended you for discharge from the United States Air Force for Misconduct: Drug Abuse, on 28 Jul 04. The authority for this action is AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54. Additional information has been received regarding this case. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.
2. My reason to amend this action:
 - a. You did at or near New Market, England and the continental United States on divers occasions between on or about 1 February 2003 and 30 June 2004 wrongfully use marijuana. ^{22 April}
 - b. You did within the continental United States on divers occasions between 1 September 2003 and 30 April 2004 wrongfully use and distribute cocaine.
3. This action could result in your separation with an Under Other Than Honorable Conditions (UOTHC) Discharge. I am recommending that you receive an Under Other Than Honorable Conditions (UOTHC) 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 United States 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. Submit statements on your behalf in addition to, or in lieu of, the board hearing.
 - c. Be represented by legal counsel at a board hearing.
 - d. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You have the right to consult counsel. 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 51-201, *Administration of Military Justice*. In addition to military counsel, you have the right to employ civilian counsel. The Military Component does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.
6. 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 Command Support Staff.
7. Execute the attached acknowledgment and return it to me immediately.


Commander, USAF, BSC

Attachments:

1. Supporting Documents
 - a. Sworn Affidavit - Mrs. 
2. Receipt of Notification Memorandum

Affidavit

I, [REDACTED], affirm that the following is true and accurate to the best of my knowledge and belief.

I have been married to [REDACTED] since July 15, 2000. He is currently an Air Force Staff Sergeant assigned to Buckley Air Force Base. While he was stationed at Buckley AFB, I resided with him until May 26, 2004. I now reside outside of the state of Colorado.

During the time I resided with Staff Sergeant [REDACTED] I observed him use illegal drugs on many occasions.

He used marijuana every day after work and all weekend. I am familiar with the differences between marijuana and tobacco. I have observed the consumption of both. The substance was of a bright green-yellow color, and had a strong odor. The odor was not of sweet smelling tobacco. [REDACTED] kept it in a zip lock bag. He smoked it with a glass pipe which he kept in a little red bag. The glass pipe was a swirl of different colors. One end had the shape of a "bowl" that the substance was put in so that it could be lit. The other end was straight. He referred to the substance as "weed," "bud" and "marijuana."

I also saw [REDACTED] snort cocaine. He went on one of his many trips to Boulder, spent the night, and came back the next morning and told me that he bought \$500.00 worth of cocaine (after he told me that we didn't have the money to get the heater in my truck fixed). He also said that he tried to sell what he didn't use, but could not. He brought the remainder of the unsold cocaine to the home and spent two days snorting it. [REDACTED] had me go to the store to buy razor blades. He used these to chop up the "rocks" of cocaine into a powder that could be snorted. He used a piece of paper rolled up really tight as an instrument to snort the cocaine with. Afterwards, he was complaining of his heart beating really fast when he moved. He had to move ever so slowly so that his heart would not feel like it was going to explode. [REDACTED] also used cocaine while we were enroute to Colorado. We were in Oklahoma at his dad's house. He did not snort cocaine at his dad's house. He did smoke marijuana there. He would leave me and [REDACTED] my son, at his dad's house while he would go out and do who knows what. He wouldn't come back either until real late at night or the next day. When he came back, he sounded as if he had a stuffy nose. I asked him if he did cocaine, and he said that he did. His friend also sounds like that when he has snorted cocaine. I had also seen him snort it while we were in Oklahoma with his friend, and they both sound like they have stuffy noses. He also took a pill afterwards so that it would help him sleep. I do not recall the name of the medication. I believe that it was not over-the-counter.

I also know that [REDACTED] used masking agents. He purchased an herbal drink from GNC. It costs approximately \$50. You had to ask for it because it is kept out of view of the customers. It came in a plastic bottle, and came in different flavors. He kept a bottle in his car, I have seen it. When he was chosen for a urinalysis, he would go to his car and consume the drink and water.

While we were in England, [redacted] friends visited Amsterdam, and one of his friends came to England to visit us. [redacted] gave his friend some money so that he could buy some Afghani hash for [redacted]. His friend had to catch his plane back to states from Amsterdam. His friend mailed him the Afghani hash to our home from Amsterdam. The hash was concentrated THC in the shape of a square. [redacted] made a water bong from a water bottle, some pipe, and pipe fittings. I saw him construct this bong, and he used it to smoke the hash. He smoked it with other military members, but they are not in Colorado. He smoked it everyday until it was gone. Our office was shared by our son's nursery b/c we had a 2 bedroom home, and he would sometimes go in there with his friends to smoke. My son was not in the room at the time, but the smell was still there by the time I put him to bed.

[redacted] made two attempts to grow hallucinogenic mushrooms. He tried it once in England. He failed at that attempt due to either contamination or bad spores. He purchased the spores, and soil specific for mushroom growth online. He also tried while we were in Colorado. He bought a magic mushroom greenhouse kit, and had the "operation" in the closet of our apartment. He failed at that one too due to either contamination or bad spores. He purchased all equipment on line. He gave the equipment to his friend (in Boulder) so that he could give it a shot.

I had a temporary protective order against him effective May 26, 2004 and expired June 26, 2004. He violated that protective order many times. He wrote me e-mails with idle threats, tried to contact me at home, and on my Colorado cell phone when he went TDY in Atlanta, GA during the period when he was ordered not to contact me or my son.

[redacted]

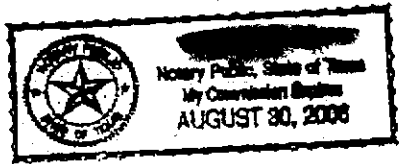
STATE OF TEXAS
County of Boulder

I, [redacted], A Notary Public in and for [redacted], Texas, do hereby certify that on 29 day of August, 2004, before me personally appeared [redacted] who signed and executed the foregoing instrument.

In Witness Whereof, I have heretounto set my hand and official seal this day and year above

[redacted]

My commission Expires: AUGUST 30, 2006





DEPARTMENT OF THE AIR FORCE
460TH AIR BASE WING (AFSPC)

FD7005-00051

JUL 28 2004

MEMORANDUM FOR SSGT [REDACTED]

FROM: 460 MDS/CC

SUBJECT: Notification Memorandum --Board Hearing

1. I am recommending your discharge from the United States Air Force for Misconduct: Drug Abuse. The authority for this action is AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, 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:

An investigation has disclosed on 29 June 2004, your commander directed urinalysis test results came back positive for THC. The Air Force cut-off level for THC is 15ng/ml and your results showed a level of 41ng/ml. A positive urinalysis with this level of THC is indicative of marijuana use. For this misconduct you received a Letter of Reprimand, dated 19 July 04.

3. This action could result in your separation with an Under Other Than Honorable Conditions (UOTHC) Discharge. I am recommending that you receive an Under Honorable Conditions (General) 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 United States 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 in your 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. You have been scheduled for a medical examination. You must report to 830 S. Potomac Cir., Ste 105, on 02 AUG 2004, at 0800 hours for the examination.

6. 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 Area Defense Counsel at 18401 E. A-Basin Ave., on the 28 day of July 2004, at 0930 hours. 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 51-201, *Administration of Military Justice*. In addition to military counsel, you have the right to employ civilian counsel. The Military Component 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 also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your 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 Command Support Staff.

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.


Colonel, USAF, BSC
Commander

Attachments:

1. Supporting Documents
 - a. Letter of Reprimand, dtd 19 Jul 04
 - b. Member's Response to LOR w/attchs, dtd 20 Jul 04
 - c. Positive Results Report
2. Receipt of Notification Memorandum
3. Airman's Statement
4. Recoupment Statement
5. EPRs/LOEs
6. Records Review RIP