

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

INITIAL)

TYPE GEN	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL			
YES	No		
<input checked="" type="checkbox"/>			

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES	A94.05	INDEX NUMBER	A94.39	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	18 May 2005	CASE NUMBER	FD-2005-00124
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Washington, D.C. via video-teleconference with St. Augustine, FL

Advise applicant of the decision of the Board 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: 6/1/2005
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-2005-00124

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reenlistment code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, [REDACTED], at Andrews AFB via video-teleconferencing at St. Augustine, Florida, on 18 May 2005.

The following additional exhibits were submitted at the hearing:

Exhibit #5: A Memorandum from [REDACTED], dated 11 May 2005

Exhibit #6: Letter from Capt. [REDACTED] dated 16 May 2005

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge and change of reenlistment code are 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: Implicit in the member's issue is that his discharge was too harsh. The record reflects the applicant received a letter of reprimand, dated 12 January 2004, for wrongful use of marijuana, an act which he has denied. The notification memorandum from the applicant's commander reflects he was offered to have the allegation against him evaluated through a special court-martial, with the attendant rules of evidence and burden of proof. The applicant declined the offer on the advice of his defense counsel. The record also reflects the applicant was interviewed by an agent of the Office of Special Investigation (OSI) wherein he again denied any use of illegal drugs; however, at one point in the interview the applicant uttered the words, "If you say I did drugs, then I did it;" following which the interview was terminated. When asked by the DRB why he would make such a statement to an OSI agent, the applicant responded that he had been there for a long time and was fed up, or words to that effect. However, a signed witness statement from a co-worker, with information obtained from a third party present at the time of the applicant's alleged offense, places him and at least two other individuals in an off-base residence wherein the applicant participated in the smoking of a marijuana cigarette. The applicant believes that he was "maliciously and falsely accused by [the aforementioned] co-worker of smoking marijuana," near Clovis, New Mexico in mid-October 2003. When asked by the DRB if there was any reason the particular witness would deliberately provide a false official statement, the applicant replied that they were friends and co-workers and knew of no reason the witness would lie. Interviews from the two other individuals, who allegedly participated in the offense, were also solicited by an OSI agent. Each responded with a request for legal counsel after advisement of their Article 31 rights and the interviews were terminated. Additionally, in the course of investigating applicant's criminal history (National Crime Information Center), it was discovered the applicant had previously been arrested on 12 August 2001 and charged with two misdemeanors: marijuana possession and narcotics equipment possession. The applicant provided plausible testimony that the vehicle in which the illegal substance and equipment were discovered did not belong to him and he had no knowledge of its presence. No case disposition was available for the charges. The Board also considered the applicant's negative drug urine screens collected on 25 September 2003 and 8 November 2003, but found these do not conclusively rule out a singular use of marijuana in "mid-October 2003."

CONCLUSIONS: With the presumption of regularity in the applicant's case, 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.

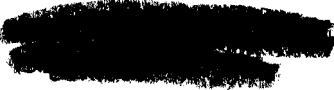
In view of the foregoing findings the Board further concludes that there exists no legal or equitable basis for upgrade of discharge, thus the applicant's discharge should not be changed.

Attachment:

Examiner's Brief

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

FD2005-00124A

 (Former A1C) (HGH A1C) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a Gen Dish fr Cannon AFB, NM on 10 Feb 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse) Appeals for Honorable Discharge.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 27 Jul 04.

b. The AFDRB reviewed case on 16 Feb 05 (non-appearance with counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 8 Mar 05. (Change Discharge to Honorable)

ISSUE: I have not use (sic) any illegal substance, marijuana and was order (sic) to sign the LOR.

Atch

1. Account of Events Surrounding Discharge.
2. Congressional Correspondence.
3. Response to Letter of Reprimand and Suspension of Security Access.
4. Three Character References.
5. DD Form 214 (Member-1).

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

[REDACTED]

(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Cannon AFB, NM on 10 Feb 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 8 Jan 82. Enlmt Age: 20 5/12. Disch Age: 22 1/12. Educ: HS DIPL. AFQT: N/A. A-77, E-87, G-92, M-92. PAFSC: 1C131 - Air Traffice Control. DAS: 7 Jun 03.

b. Prior Sv: (1) AFRes 2 Jul 02 - 9 Dec 02 (5 months 8 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 10 Dec 02 for 6 yrs. Svd: 1 Yrs 2 Mo 1 Das, all AMS.

b. Grade Status: A1C - 24 Jan 03

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 12 JAN 04 - Wrongfully used marijuana.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: NDSM, AFTR, BC&COB.

i. Stmt of Sv: TMS: (1) Yrs (7) Mos (9) Das
TAMS: (1) Yrs (2) Mos (1) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Jun 04.
(Change Discharge to Honorable)

Issue 1: I was maliciously and falsely accused by a co-worker of smoking marijuana near Clovis, New Mexico in mid October of 2003.

I was advised by the JAG officer by telephone from San Antonio, TX "that since there was no formal charges against you there was nothing we can do. However, when and if charges are brought against you we will intervene in your behalf." I had only two brief contacts with the JAG officer by telephone.

I have been denied access to any all (sic) evidence of this alleged incident of marijuana use.

ATCH

1. Written Presentation to Discharge.
2. Memorandum for All Reviewing Parties.
3. Congressional Correspondence.
4. Response to Letter of Reprimand.
5. Three Character Reference.
6. DD Form 214.
7. Character Reference.
8. DD Form 149.

27JUL04/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 27th FIGHTER WING (ACC)
CANNON AIR FORCE BASE NEW MEXICO

PD2005-00124A

23 Jan (

MEMORANDUM FOR A1C [REDACTED] 27 OSS

FROM: 27 OSS/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, paragraph 5.54. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.
2. My reason for this action is:
 - a. In mid-October 2003, you wrongfully used marijuana at or near Clovis, New Mexico, as evidenced by a Letter of Reprimand (LOR), dated 12 Jan 04. In your response to the LOR, you denied the allegation and maintained you were not being given enough information about the allegation to properly respond to it. Based on your LOR response, the legal office contacted your defense counsel and offered to have the allegation evaluated through a special court-martial, with the attendant rules of evidence and burden of proof. On 20 Jan 04, through your defense counsel, you declined this offer. I am therefore proceeding based on the information from the OSI investigation and recommending your separation from the Air Force. (Atch a)
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 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, bonuses, 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. An appointment will be made for you to consult with your military legal counsel. You may consult civilian counsel at your own expense.
5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within **3 duty days** from today 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 on your own behalf, your failure will constitute a waiver of your right to do so.

FD2005-00124A

7. You will complete a medical examination at the 27th Medical Group on 28 JAN 04 at 0900 hours.

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 your unit orderly room, or you may download a copy from <http://afpubs.hq.af.mil/>.



Lt Col, USAF

Commander, 27 OSS

Attachment:

a. Letter of Reprimand, dated 12 Jan 04, w/response