

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b>	<b>GRADE</b>  AB	<b>AFSN/SSAN</b>
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<b>TYPE GEN</b>	<b>PERSONAL APPEARANCE</b>	<b>X</b>	<b>RECORD REVIEW</b>
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<b>COUNSEL</b>	<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>No</b>	
	<b>X</b>	

<b>MEMBER SITTING</b>	<b>VOTE OF THE BOARD</b>				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

<b>ISSUES</b> A93.09	<b>INDEX NUMBER</b> A66.00	<b>EXHIBITS SUBMITTED TO THE BOARD</b>			
		<b>1</b>	ORDER APPOINTING THE BOARD		
		<b>2</b>	APPLICATION FOR REVIEW OF DISCHARGE		
		<b>3</b>	LETTER OF NOTIFICATION		
		<b>4</b>	BRIEF OF PERSONNEL FILE		
			COUNSEL'S RELEASE TO THE BOARD		
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
			TAPE RECORDING OF PERSONAL APPEARANCE		

<b>HEARING DATE</b> 15 Dec 2005	<b>CASE NUMBER</b> FD-2005-00169	
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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.

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MEMBER OF BOARD

<b>INDORSEMENT</b>		<b>DATE: 12/19/2005</b>
<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> 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-2005-00169**

**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 does not contest his discharge. He states that he had some personal problems at the time and as an escape from reality, he tried smoking marijuana. The records indicated the applicant received an Article 15 for wrongfully using marijuana. 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 AB) (HGH SRA)

**1. MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Malmstrom AFB, MT on 3 Apr 03 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

**2. BACKGROUND:**

a. DOB: 10 Aug 80. Enlmt Age: 19 4/12. Disch Age: 22 7/12. Educ: HS DIPL. AFQT: N/A. A-50, E-43, G-46, M-39. PAFSC: 3P051 - Security Forces Journeyman. DAS: 8 Jul 00.

b. Prior Sv: (1) AFRes 20 Dec 99 - 1 Feb 00 (1 month 13 days) (Inactive).

**3. SERVICE UNDER REVIEW:**

a. Enlisted as AB 2 Feb 00 for 6 yrs. Svd: 3 Yrs 2 Mo 2 Das, all AMS.

b. Grade Status: AB - 20 Mar 03 (Article 15, 20 Mar 03)  
SrA - 17 Jul 02  
A1C - 17 Mar 00

c. Time Lost: None.

d. Art 15's: (1) 20 Mar 03, Malmstrom AFB, MT - Article 112a. You did, at or near Great Falls, Montana, on divers occasions, between on or about 1 Sep 02, and on or about 3 Jan 03, wrongfully use marijuana. Reduction to AB. Forfeiture of \$575.00 pay per month for 2 months. Forty five days restriction to base (suspended). Forty five days extra duty (over 20 days suspended). Reprimand. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 2 Feb 00 - 1 Oct 01 Malmstrom AFB 3 (Initial)  
2 Oct 01 - 1 Oct 02 Malmstrom AFB 5 (Annual)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (3) Yrs (3) Mos (15) Das  
TAMS: (3) Yrs (2) Mos (2) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Apr 05.

(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. Two Enlisted Performance Reports.
3. Six Character References.

6JUL05/ia

April 14, 2005

Air Force Review Boards Agency  
SAF/MRBR  
550-C Street West, Suite 40  
Randolph AFB, TX 78150-4742

To whom it my concern,

[REDACTED] would like you to review my discharge for an upgrade from General/Under Honorable Conditions to Honorable, so that I may achieve great things in life. During the time that I was employed by the U.S Air Force, I was a model Airmen up to the time of my incident. The last year that I was in the Air Force I lost a very good friend of mine to a car accident, which made me relapse the memories of my older brother, which he also past away in a car crash engulfed with flames. I fill into a state of depression that I couldn't get out of, noted in my VA medical files. Depression is a disease, to escape from reality I tried smoking marijuana, which I know it wasn't the brightest idea. For failing my urinalysis I was discharged from the Air Force. I attempted to stay in the military and seek help but was denied by my First Sergeant. Military lawyers reviewed my case and advised me that I can fight my discharge, due to the retention criteria that I met. My First Sergeant quickly pushed towards my out-process, and out the military (which I learned to love and like) in a quick matter. Never in my life (besides the incident) did I, smoke marijuana before the military. According to AFI 36-3208/5.55.2. Retention Criteria and Consideration and I quote "A member found to have abused drugs will be discharged unless the member meets all seven of the following criteria":

1. Drug abuse is a departure from the members usual and customary behavior.
  - As soon as the incident happened stopped all use of the drug, because I wanted to change my life and seek help.
2. Drug abuse occurred as the result of drug experimentation (which is defined as one who has illegally or improperly used drug for reasons of curiosity, peerpressure, or other similar reasons).
  - In my case, Depression was the I illegally used the drug to try to escape reality. Noted in VA medical files.
3. Drug abuse does not involve recurring incident, other than the drug experimentation as defined above.
  - Depression is a disease that is hard to cure but able to maintain.
4. The member does not desire to engage in or intend to engage in drug abuse in the future.
  - While still in the military I tried to seek help which I didn't get. After the military I went to the VA clinic to seek help and learn more about the drug and its affect on people, so that I could better my life. I went on my own to the clinic to better understand my situation and my depression.
5. Drug abuse under all the circumstances is not likely to recur.
6. Members continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership and morale.
  - I was a model Airmen in the Air Force, never in trouble, no bad paperwork up Intel the time of the incident. READ my EPR's attached to the back.
7. Drug abuse did not involve drug distribution.
  - I was never charged with possession of marijuana or the distribution of marijuana. Just Failed a urinalysis test and my statement that I made during the incident.

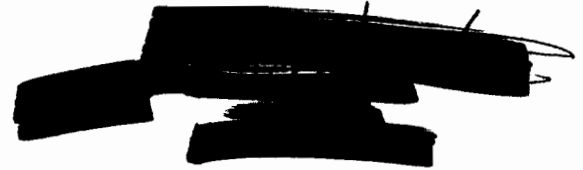
America was founded on second chance people. Since I am already out of the Air Force, all I want is a second chance to be able to prove that I can succeed in life. By having my discharge reviewed and changed to honorable, I can continue to better myself, my life, my studies, and my career. Today I am a model student at the El Paso Community College with a grade-point-average above 3.0. I'm minoring in Criminal Justices and majoring in

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Medicine. I was also employed by the Otero County Prison, as a Detention Officer which I enjoy very much, and want to keep pursuing this career. I am also turned back to my Catholic religious beliefs and try to follow the word of Christ our Savior. I attend mass and counseling with my pastor to keep me motivated in God, and my studies.

I ask you please! To grant me a second chance, and change my discharge to Honorable so that I may succeed in life. As away to confirm loyalty of my present actions and character, I attached some character reference letters from personnel that know me now; from my supervisor, to teachers, to families and friends. Please, take a moment to read the letters so that you may understand me better. Thank you very much for your time and consideration and may God bless you.

Sincerely,

A large, solid black rectangular redaction covers the signature area, completely obscuring the name and any handwritten notes or dates that might have been present.

- 5.54.2.1. Maintain discipline, good order, and morale.
- 5.54.2.2. Foster mutual trust and confidence among members.
- 5.54.2.3. Facilitate assignments and worldwide deployment.
- 5.54.2.4. Recruit and retain members.
- 5.54.2.5. Maintain public acceptability of military service.
- 5.54.2.6. Prevent breaches of security.

5.54.3. Evidence obtained through urinalysis or evidence furnished by the member in connection with initial entry in rehabilitation and treatment may be used to establish a basis for discharge. For limits on using such evidence in characterizing service, see paragraph 1.21.

### 5.55. Processing Procedures.

**5.55.1. Action required.** Commanders must act promptly when they have information indicating a member is subject to discharge for drug abuse. They evaluate the specific circumstances of the offense, the member's records, and the member's potential for future service and take action in accordance with the following paragraphs:

5.55.1.1. If it is warranted, discharge action must be started promptly. However, there is no time limit for initiating discharge action, and failure to do so does not at anytime constitute a constructive waiver. Discharge action is waived only if waiver is expressly approved under **Chapter 6, Section 6K**.

5.55.1.2. If the commander determines a waiver of discharge is appropriate, a request for waiver must be processed promptly. See **Chapter 6, Section 6K**.

### 5.55.2. Retention Criteria and Consideration.

5.55.2.1. A member found to have abused drugs will be discharged 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.

5.55.2.1.2. Drug abuse occurred as the result of drug experimentation (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).

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

5.55.2.1.4. The member does not desire to engage in or intend to engage in drug abuse 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 (Noncommissioned officers have special responsibilities by virtue of their status; fulfill an integral role in maintaining discipline; and, therefore, must exhibit high standards of personal integrity, loyalty, dedication, devotion to duty and leadership).

5.55.2.1.7. Drug abuse did not involve drug distribution. For the purpose of this paragraph, drug distribution means the delivery to the possession of another. Distribution does not occur with the transfer of the drugs from one person to another while such persons are engaged in the mutual use of drugs, except that individuals who obtain, or arrange for obtaining, the drugs used by others are involved in distribution. "Delivery" means the actual, constructive, or attempted transfer of the drugs, whether or not there exists an agency relationship.

5.55.2.2. The burden of proving that retention is warranted under these limited circumstances rests with the member. Findings regarding the existence of each of the limited circumstances warranting a member's retention are required of the board or the separation authority only if:

5.55.2.2.1. The member clearly and specifically raises such limited circumstances.

5.55.2.2.2. The board, or in the absence of a board, the separation authority relies upon such circumstances to justify the member's retention.

5.55.2.3. A member approved for discharge for drug abuse is not eligible for probation and rehabilitation in accordance with **Chapter 7**.

#### **5.56. Separation Authority:**

5.56.1. The SPCM authority personally approves or disapproves the recommendations for discharge under this section processed by:

5.56.1.1. Notification according to **Chapter 6, Section 6B**, and resulting in:

5.56.1.1.1. Retention.

5.56.1.1.2. General discharge under **Section 5H**.

5.56.1.1.3. Entry level separation under paragraphs **5.50.**, **5.51.**, **5.52.**, or **5.54**.

5.56.1.2. Board hearing according to **Chapter 6, Section 6C**, if the board recommends:

5.56.1.2.1. Retention and action to request discharge according to paragraph **1.2**. is not contemplated.

5.56.1.2.2. General discharge or entry level separation and referral to the GCM authority for consideration of honorable discharge is not warranted according to paragraph **5.48**.

5.56.1.2.3. If the SPCM authority is also the GCM authority, the vice commander may be designated, in writing, to personally act on actions listed in paragraphs **5.56.1.1.** and **5.56.1.2.**

5.56.2. The GCM authority approves or disapproves the recommendations for discharge under this section which are not listed in paragraph **5.56.1**. This includes conditional and unconditional board hearing waivers for misconduct cases and cases when the SPCM authority is the initiating commander.

5.56.2.1. The GCM authority must personally act on cases resulting in:

5.56.2.1.1. Discharge under other than honorable conditions.

5.56.2.1.2. An honorable discharge based on misconduct. The GCM may delegate to the SPCM authority to approve honorable separations when the sole evidence of misconduct is command-directed urinalysis results, which cannot be used for characterization of service, or





1 Apr 03  
(Date)

MEMORANDUM FOR 741 MSFS (ATTN: [REDACTED])

FROM: 741 MSFS/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 AFD 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, under honorable conditions.

2. My reason for this action is:

Between on or about 1 Sep 02 and on or about 3 Jan 03, you wrongfully used marijuana. For this misconduct, you received an Article 15 dated 20 Mar 03, with the following punishment: reduction to the grade of airman basic; forfeiture of \$575.00 pay per month for 2 months; restriction to Malmstrom AFB, MT for 45 days (suspended), 45 days extra duty, with number of days extra duty over 20 days suspended; and a reprimand. This document was placed in your unfavorable information file (UIF).

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. 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 the Area Defense Counsel, x4723, 7015 Goddard Drive, Bldg 145, Room 144 on 1 APR 03 at 1530. 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 COB 4 APR 03 (3 duty days) unless you request and receive an extension for good cause shown. I will send all submitted statements 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.

FOR OFFICIAL USE ONLY

*Guardians of the High Frontier*

7. You have been scheduled for a medical examination. You must report to the 341st Medical Group Force Health Management Section, x3613, at 0700 hours on 3 Apr 03 for the examination. You MUST be in uniform for this appointment. If you wear glasses, you must also bring them to this appointment.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208, *Administrative Separation of Airmen*, is available for your use at your orderly room.

9. Execute the attached acknowledgement and return it to me immediately.



Capt, USAF  
Commander, 741st Missile Security Forces Sq

Attachments:

1. Supporting documents:
  - a. Article 15/UIF dated 20 Mar 03
  - b. Documents in Attachment 6
2. Airman's Receipt of Notification Memorandum