

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

MEMBER (LAST, FIRST MIDDLE INITIAL)

TYPE GEN	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 A93.17 A94.05	INDEX NUMBER A66.00	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 26 Aug 2005	CASE NUMBER FD-2005-00183
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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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INDORSEMENT		DATE: 8/26/2005
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-2005-00183

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.

ISSUES:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for wrongfully possessing and use of marijuana. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The Board also noted the applicant was age 24 and on his second enlistment when his misconduct occurred and there is no indication he did not know right from wrong. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. 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 a statement (DD Form 2366, on December 29, 1997) 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 A1C) (HGH SRA)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr Los Angeles AFB, CA on 2 Oct 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. BACKGROUND:

a. DOB: 13 Oct 79. Enlmt Age: 17 10/12. Disch Age: 24 11/12. Educ: HS DIPL. AFQT: N/A. A-67, E-71, G-94, M-68. PAFSC: 4Y051 - Dental Assistant Journeyman. DAS: 18 Aug 02.

b. Prior Sv: (1) AFRes 27 Aug 97 - 17 Dec 97 (3 months 21 days)(Inactive).

(2) Enlisted as AB 18 Dec 97 for 6 yrs. Svd: 4 yrs 4 months 17 days, all AMS. AMN - 18 Jun 98. A1C - 18 Apr 99. SrA - 18 Dec 00. EPRs: 4,4,4.

3. SERVICE UNDER REVIEW:

a. Reenlisted as SrA 3 May 02 for 4 yrs. Svd: 2 Yrs 5 Mo 0 Das, all AMS.

b. Grade Status: A1C - 9 Aug 04 (Article 15, 9 Aug 04)

c. Time Lost: None.

d. Art 15's: (1) 9 Aug 04, Los Angeles AFB, CA - Article 112a. You, did, at or near Fort MacArthur, San Pedro, California, on or about 10 Jun 04, wrongfully possess 15.92 grams of marijuana, a schedule(I) controlled substance in or at a housing facility used by the armed forces or under the control of the armed forces, to wit: building 33, room 216. You did, at or near Fort MacArthur, San Pedro, California, on or about 10 Jun 04, wrongfully use marijuana in or about a housing facility used by the armed forces or under the control of the armed forces, to wit: building number 33, room 216. Reduction to A1C. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 18 Aug 01 - 02 Jul 02 Lackland AFB 3 (CRO)
03 Jul 02 - 02 Jul 03 Los Angeles AFB 5 (Annual)
03 Jul 03 - 02 Jul 04 Los Angeles AFB 1 (Annual)REF

h. Awards & Decs: AFTR, AFLSAR W/1 DEV, NDSM, NCOPMER, AFOUA W/1 DEV, AFGCM W/1 DEV.

i. Stmt of Sv: TMS: (7) Yrs (1) Mos (6) Das
TAMS: (6) Yrs (9) Mos (15) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 29 Apr 05.
(Change Discharge to Honorable)

Issue 1: I request an upgrade for the purpose of obtaining MGIB benefits (sic) to pursue a dental hygiene career and a business degree to aid in me becoming a successful (sic) entrepreneur.

ATCH

1. Four Training Certificates.
2. Certificate of Recognition.
3. Six Letters of Appreciation.
4. Eight Training Certificates.

15JUN05/ia



DEPARTMENT OF THE AIR FORCE
61 MEDICAL SQUADRON
LOS ANGELES AIR FORCE BASE, CALIFORNIA 90245

FD 2005-80 183

23 Aug 04

MEMORANDUM FOR A1C [REDACTED]

FROM: 61 MDS

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:
 - a. Your wrongful possession of marijuana, a Schedule I controlled substance, on or about 10 June 2004, for which you received an Article 15, dated 9 August 2004; and
 - b. Your wrongful use of marijuana, a Schedule I controlled substance, as evidenced by a positive urinalysis result on 10 June 2004, for which you received an Article 15, dated 9 August 2004.
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.
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 61 MDS on 19 Aug 2004, at 1300 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 Captain [REDACTED], on 23 Aug 04, at 1345 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 AF Pubs.
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]
Colonel, USAF
Commander, Medical Squadron

Attachments:

1. Article 15, dated 9 August 2004
2. Member's response to Article 15
3. AMJAMs rip
4. Urinalysis Report
5. Receipt of Notification Memorandum