

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00259

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Andrews AFB, MD on 06 October 2005.

The following additional exhibits were submitted at the hearing:

Exhibit #5: Letter of Recommendation, 5 October 2005 from [REDACTED]

Exhibit #6: Character Letter, 28 September 2005 from [REDACTED]

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

FINDINGS: The Board grants the requested relief. The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's discharge reason, discharge characterization and reenlistment code inequitable.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records and the applicant's testimony showed that the applicant's poor duty performance was due to his inability to put his knowledge into actual practice and that his misconduct was quite minor. While he committed serious misconduct when he lied to investigators about an incident at a party, there was nothing in the record to show that the incident was anything other than a one time lapse in judgment brought on by the applicant's fear. The majority of the DRB accepted the applicant's argument that his discharge under the drug abuse provision of the discharge regulation was too harsh under the particular facts of his case.

CONCLUSIONS: The Discharge Review Board concluded 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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge and the reason for the discharge is more accurately described as misconduct, minor disciplinary infractions, under the provisions of Title 10, U.S.C. 1553. The board further directs that the applicant's re-enlistment code be changed to 3K.

Attachment:

Examiner's Brief

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

(Former AB) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr Dover AFB, DE on 17 Jan 03 UP AFI 36-3208, para 5.50.2 & 5.54 (Patter of Misconduct - Conduct Prejudicial to Good Order and Discipline & Drug Abuse). Appeals for Honorable Discharge.

2. BACKGROUND:

a. DOB: 31 Dec 80. Enlmt Age: 18 10/12. Disch Age: 22 0/12. Educ: HS DIPL. AFQT: N/A. A-65, E-67, G-76, M-71. PAFSC: 1A231 - Aircraft Loadmaster Apprentice. DAS: 14 Sep 00.

b. Prior Sv: (1) AFRes 10 Nov 99 - 14 Dec 99 (1 month 5 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 15 Dec 99 for 4 yrs. Svd: 3 Yrs 1 Mo 3 Das, all AMS.

b. Grade Status: AB - 03 Oct 02 (Article 15, 03 Oct 02)
A1C - 15 Apr 01
Amn - 15 Jun 00

c. Time Lost: None.

d. Art 15's: (1) 03 Oct 02, Dover AFB, DE - Article 112a. You, did, between on or about 1 Oct 01 and on or about 28 Feb 02, wrongfully posses marijuana. Article 107. You did, on or about 31 Jul 02, with intent to deceive, sign an official AF Form 1168, Statement of Suspect, which AF Form 1168, Statement of Suspect was totally false, and was then known by you to be so false. Reduction to AB, 14 days restriction to base, 30 days extra duty, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOR, 21 OCT 02 - Failed to report to duty on time.
LOC, 29 NOV 01 - Late for work.
RIC, 20 JUL 01 - Late for work.

f. CM: None.

g. Record of SV: 15 Dec 99 - 14 Aug 01 Dover AFB 2 (Initial) **REF**
15 Aug 01 - 14 Aug 02 Dover AFB 3 (Annual)

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

i. Stmt of Sv: TMS: (03) Yrs (02) Mos (08) Das

TAMS: (03) Yrs (02) Mos (08) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 26 Jun 05.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED

ATCH

None.

9AUG05/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 436TH AIRLIFT WING (AMC)

FD 2805-00 259

22 Dec 2002

MEMORANDUM FOR [REDACTED]

FROM: 9 AS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for a Pattern of Misconduct, specifically, Conduct Prejudicial to Good Order and Discipline and Drug Abuse. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.50.2. 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. On or about 17 Oct 02, you failed to report on time to your assigned duty location. For this misconduct you received a Letter of Reprimand, dated 21 Oct 02.

b. Between on or about 1 Oct 01 and 28 Feb 02, you wrongfully possessed Marijuana and on 31 Jul 02 you signed an official AF Form 1168, Statement of suspect, which you knew to be false. For this misconduct you received an Article 15, dated 25 Sep 02.

c. On or about 28 Nov 01, you failed to report on time to your assigned duty location. For this misconduct you received a Letter of Counseling, dated 29 Nov 01.

d. On or about 19 Jul 01, you failed to report to work at the designated time and stated that you had overslept. For this misconduct you received a Letter of Counseling, dated 20 Jul 01.

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 and 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 higher education assistance funds may subject to recoupment.

3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. You will be consulting with the Andrews Air Force Base Area Defense Counsel, [REDACTED] regarding this matter. Please make contact with her as soon as possible to schedule an appointment. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within **3 duty days** unless you request and receive an extension for good cause shown. I will send them to the separation authority. 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. The Privacy Act of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use in the Orderly Room.
5. You have been scheduled for a **medical examination**. You must report to Family Practice, Second Floor, Building 305, **at 0920 on Friday, 20 December 2002, for the examination with [REDACTED]**. If you have any questions or need to reschedule this appointment, please call 677-6130.
6. You have been scheduled for a **Separations Briefing**. Please report to Building 520, Room 112, ext 2155 on **Tuesday, 24 Dec 02 at 0900 hours**.
7. Execute the attached acknowledgement and return it to me immediately.



Attachments:

1. Letter of Reprimand, dated 21 Oct 02
2. AF Form 3070, Article 15, dated 25 Sep 02
3. Letter of Counseling, dated 29 Nov 01
4. Letter of Counseling, dated 20 Jul 01
5. Airman's Receipt of Notification Memorandum
6. ID Card Withdrawal letter