

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)	GRADE A1C
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TYPE GEN	X	PERSONAL APPEARANCE	RECORD REVIEW						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="text-align: left; padding: 2px;">COUNSEL</th> </tr> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">No</td> </tr> <tr> <td style="text-align: center; padding: 2px;">X</td> <td style="padding: 2px;"></td> </tr> </table>		COUNSEL		YES	No	X		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
COUNSEL									
YES	No								
X									

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
	X*				
	X*				
	X*				
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ISSUES A94.02 A01.14 A94.12 A01.32	INDEX NUMBER A66.00	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: left; padding: 2px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr> <td style="width: 5%; padding: 2px;">1</td> <td style="padding: 2px;">ORDER APPOINTING THE BOARD</td> </tr> <tr> <td style="padding: 2px;">2</td> <td style="padding: 2px;">APPLICATION FOR REVIEW OF DISCHARGE</td> </tr> <tr> <td style="padding: 2px;">3</td> <td style="padding: 2px;">LETTER OF NOTIFICATION</td> </tr> <tr> <td style="padding: 2px;">4</td> <td style="padding: 2px;">BRIEF OF PERSONNEL FILE</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE</td> </tr> </tbody> </table>	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
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HEARING DATE 02 Feb 2006	CASE NUMBER FD-2005-00323
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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.

Names and votes will be made available to the applicant at the applicant's request.

* Change Reason and Authority to Misconduct

SIGNATURE OF BOARD PRESIDENT

INDORSEMENT		DATE: 2/2/2006
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-2005-00323

GENERAL: The applicant appeals for upgrade of discharge to honorable.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Andrews AFB on 02 Feb 2006.

The following additional exhibits were submitted at the hearing:

- Exhibit 5: Written Statement By Applicant With Contentions;
- Exhibit 6: Letter of Congratulation—Honor Graduate of Air Force Basic Military Training;
- Exhibit 7: Letter of Appreciation—313th Training Squadron Honor Guard Team; and
- Exhibit 8: Ten Certificates of Training, Achievement, and Appreciation

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

FINDINGS: The reason for discharge is changed to misconduct and upgraded to honorable.

ISSUE:

Issue 1. Applicant contends that he was wrongfully accused of ingesting “magic mushrooms” for which he received a Letter of Reprimand (LOR). The applicant asserted that he denied use in a voluntary statement to the Air Force Office of Investigation (OSI), in response to his LOR and in response to his administrative discharge. He said he understood the information about his use came from a confidential source which he had no opportunity to confront. A summary of his AFOSI file shows that the confidential source identified the applicant as being present at a party where “magic mushrooms” were being ingested. The confidential source, however, did not state that the applicant was observed using mushrooms or that he overheard the applicant or others state that the applicant had done so. The AFOSI summary pointed to no other evidence of the applicant’s use. The Board concluded, as a matter of propriety, that there was insufficient evidence to support the incident alleged in the LOR. The remaining basis for drug abuse discharge is the applicant’s admitted inhalation of nitrous oxide from cans of commercially available whipped cream for which he received nonjudicial punishment. The applicant was charged with a violation of Article 134 of the Uniform Code of Military Justice (UCMJ) for conduct prejudicial to good order and discipline and not Article 112a, UCMJ, wrongful use of a controlled substance. Use of nitrous oxide is drug abuse as defined by AFI 36-3208, paragraph 5.54.1 and the administrative discharge on that basis is still legally sufficient. However, the Board concluded, as a matter of equity, that under the totality of circumstances of this case it was now more appropriate to reflect the applicant’s discharge as “misconduct” as opposed to “drug abuse.”

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. However, in view of the foregoing findings, the Board further concludes the applicant’s characterization and reason for discharge should be changed to “honorable” and “misconduct” under the provisions of Title 10, USC 1553.

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 Misawa AB, Japan on 10 Sep 03 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 26 Sep 79. Enlmt Age: 20 2/12. Disch Age: 23 11/12. Educ: HS DIPL. AFQT: N/A. A-61, E-74, G-72, M-65. PAFSC: 1N251 - Signals Intelligence Production Journeyman. DAS: 01 Oct 01.

b. Prior Sv: (1) AFRes 9 Dec 99 - 25 Apr 00 (4 months 26 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 26 Apr 00 for 6 yrs. Svd: 03 Yrs 04 Mo 15 Das, all AMS.

b. Grade Status: A1C - 01 Jul 03 (Article 15, 01 Jul 03)
SrA - 09 Oct 02
A1C - 09 Jun 00

c. Time Lost: None.

d. Art 15's: (1) 1 Jul 03, Misawa AB, Japan - Article 134. You, did, in Misawa City, Japan, between on or about 1 Jun 01 to on or about 30 Nov 01, on divers occasions, wrongfully inhale nitrous oxide gas, with the intent to become intoxicated, which conduct under the circumstances was to the prejudice of good order and discipline in the armed forces. Reduction to A1C, and restriction to the limits of Misawa AB, Japan for 60 days. (No appeal) (No mitigation)

e. Additional: LOR, 01 AUG 03 - Wrongfully used psilocin.

f. CM: None.

g. Record of SV: 26 Apr 00 - 29 Dec 01 Misawa AB 5 (Initial)
30 Dec 01 - 29 Dec 02 Misawa AB 5 (Annual)
30 Dec 02 - 11 Aug 03 Misawa AB 2 (HAF Dir) REF

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

i. Stmt of Sv: TMS: (03) Yrs (09) Mos (01) Das
TAMS: (03) Yrs (04) Mos (15) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 03 Aug 05.
(Change Discharge to Honorable)

Issue 1: My discharge was unfair being it was based on one inccodent (sic) that did occure (sic) and on i (sic) was accused of but never committed (sic).

Issue 2: I, John H. Lorah III, am requesting an upgrade to a Honorable Discharge to better myself by attending college and having an gonorable (sic) discharge on my record when i (sic) apply for new jobs. The upgrade will enable me to receive my Montgomery G.I. Bill wich (sic) will make it possible for me to afford to go back to college. I have held a full time job since my discharge and had no trouble since my discharge.

ATCH

1. Notification Memorandum.
2. Letter of Reprimand, 1 Aug 03.
3. Response to Article 15 Action.
4. Response to Letter of Reprimand.
5. Article 15, 1 Jul 03.

19SEP05/ia



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

FD 2005-00323

12 AUG 2003

MEMORANDUM FOR A1C

301 IS

FROM: 301 IS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Drug Abuse, in accordance with AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.54. If my recommendation is approved, your service will be characterized as under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).
2. My reasons for this action are:
 - a. From about 1 Jun 01 to on or about 30 Nov 01, you wrongfully inhaled nitrous oxide gas, with the intent to become intoxicated. For this misconduct, you received an Article 15 (Art15), dated 1 Jul 03.
 - b. Between on or about 01 January 2002 to February 2002, you wrongfully used psilocin (mushrooms). For this misconduct, you received a Letter of Reprimand (LOR), dated 1 Aug 03.
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, 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 Captain _____ the Area Defense Counsel, at Building 514, on 13 Aug, 2003, at 0930 hours. 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 within three workdays of your receipt of this Notification Memorandum, unless you request and receive an extension for good cause shown. I will forward them to the separation authority.
6. If you fail to consult counsel or to submit statements in your own behalf within the time allotted, your failure shall constitute a waiver of your right to do so.