

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	GRADE SSGT	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
---	----------------------	---

TYPE	UOTH	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE		RECORD REVIEW
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No				
	<input checked="" type="checkbox"/>				

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>		X			
		X			
		X			
		X			
		X			

ISSUES A94.53 A94.05	INDEX NUMBER A94.07	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 13 Apr 2006	CASE NUMBER FD-2005-00445	
------------------------------------	-------------------------------------	--

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 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.

SIGNATURE OF RECORDER 	SIGNATURE OF BOARD PRESIDENT
---------------------------	----------------------------------

INDORSEMENT		DATE: 4/14/2006
TO: SAI/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-2005-00445

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, MD, on 13 Apr 2006.

The following additional exhibits were submitted at the hearing:

Exhibit #5: Applicant's Biography

Exhibit #6: Eight Letters and Certificates of Appreciation

Exhibit #7: Eight Enlisted Performance Reports (EPRs)

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

FINDINGS: The discharge is upgraded to general.

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 characterization of discharge inequitable.

ISSUE: Applicant received an Under Other Than Honorable Conditions Discharge (Discharge in Lieu of Court Martial).

Issue 1. Applicant contends an upgrade will better his life as well as his family's quality of life so he can better his employment to continue his role as a responsible citizen and community role model. The Board was sympathetic to the impact that the discharge characterization was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

Issue 2. Applicant contends that the discharge was inequitable because it was too harsh and did not truly reflect his eight years of outstanding service, hard work, and commitment. The records indicated the applicant tested positive for the wrongful use of marijuana on two urinalysis tests from the AF Drug Testing Lab at Brooks AFB, TX, and that the applicant, through his civilian defense counsel, requested discharge in lieu of trial by court-martial. The DRB noted that, although the applicant's misconduct was serious, it was not aggravated. He had been an NCO for only eight months and, had he been a senior airman, the matter would likely have resulted in non-judicial punishment with a subsequent general discharge characterization. The DRB also noted that there is no evidence that he used drugs on duty, used with other active service members, or distributed drugs to anyone, that this case involves two low-level marijuana usages, and that the lab report indicated the concentration of drugs in applicant's system on both occasions was just above DoD cutoff for drug testing. The DRB took note of the applicant's duty performance as documented by his performance reports, letters of recommendation, awards and decorations, and other accomplishments over his eight years of service, and opined that a UOTHC discharge characterization did not accurately reflect his overall service. The DRB felt a general discharge characterization was more appropriate in that applicant's service had been honest and faithful, but that his wrongful use of marijuana outweighed the positive aspects of applicant's military record thus not warranting an upgrade to an honorable discharge.

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 that the overall quality of applicant's service is more accurately reflected by a discharge Under Honorable Conditions (General). The applicant's characterization should be changed to General 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 SSGT) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF Scott AFB, IL on 17 Sep 03 UP AFI 36-3208, Chapter 4, para 4.3 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 29 Jun 77. Enlmt Age: 17 9/12. Disch Age: 26 2/12. Educ: HS DIPL. AFQT: N/A. A-59, E-62, G-62, M-37. PAFSC: 3M071 - Services Craftsman. DAS: 9 Nov 01.

b. Prior Sv: (1) AFRes 31 Mar 95 - 15 Aug 95 (4 months 15 days) (Inactive).

(2) Enlisted as AB 16 Aug 95 for 4 yrs. Svd: 3 yrs 9 months 4 days, all AMS. AMN - 16 Feb 96. A1C - 16 Dec 96. SrA - 3 Sep 98. EPRs: 4, 2(REF), 4.

ART15: (1) 24 Nov 97, Whiteman AFB, MO - Article 121. You, did, on divers occasions, on or between 22 Sep and 25 Sep 97, stole meals from the Ozark Inn Dining Facility, military property, of a value under \$100.00, Article 107. You, did, on or about 22 Sep and 23 Sep 97, with intent to deceive, sign an official record, to wit: AF Form 1339, Meal Card Form, which was false in the signing for meals on a meal card form, that you were no longer entitled to and was then known by the said to be false. Suspended reduction to Airman. Forty five days extra duty. (No appeal) (No mitigation).

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 21 May 99 for 6 yrs. Svd: 04 Yrs 03 Mo 26 Das, all AMS.

b. Grade Status: SSGT - 01 Nov 01

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: none.

g. Record of SV: 04 Sep 98 - 17 Aug 99 Whiteman AFB 5 (CRO)
18 Aug 99 - 17 Aug 00 Whiteman AFB 5 (Annual)

18 Aug 00 - 17 Aug 01 Whiteman AFB 4 (Annual)
18 Aug 01 - 17 Aug 02 Klein Brogel AB 5 (Annual)

h. Awards & Decs: AFAM W/1 OLC, SAEMR W/1 SS, AFEM W/1 SS, NDSM W/1 SS, AFTR, AFLSAR W/1 OLC, NCOPMER, AFOUA W/1 OLC, AFGCM.

i. Stmt of Sv: TMS: (08) Yrs (05) Mos (16) Das
TAMS: (08) Yrs (01) Mos (02) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Nov 05.
(Change Discharge to Honorable)

Issue 1: My discharge does not truly (sic) reflect my 8 years of outstanding service, hard work and commitment. An upgrade to Honorable will better my life as well as my families quality of life so that I may better my employment to continue my role as a responsible (sic) citizen and community role model.

ATCH
None.

3JAN06/ia

FD 2005-00445



DEPARTMENT OF THE AIR FORCE
52D FIGHTER WING (USAFE)

13 AUG 2003

MEMORANDUM FOR 52 FW/CC

FROM: 52 FW/JA

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial – SSgt [redacted],
[redacted], 52d Munitions Support Squadron

1. SSgt [redacted] is charged with two specifications of wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice (UCMJ). The 52d Munitions Support Squadron commander, Lt Col [redacted], preferred the charges against SSgt [redacted] on 2 Jun 03, recommending a special court martial. You referred the case to a special court martial 5 Jun 03. On 16 Jun 03, through his civilian defense counsel, SSgt [redacted] requested discharge in lieu of trial by court-martial pursuant to AFI 36-3208, Chapter 4, paragraph 4.3. His squadron commander recommends approval. We concur with Lt Col [redacted] recommendation.

2. **OPTIONS:** The request for discharge case file is legally sufficient. The General Court-Martial Convening Authority is the approval authority. As the Special Court-Martial Convening Authority, you have the authority to deny the request or forward to 3 AF/CC recommending approval.

3. **STANDARDS FOR SERVICE CHARACTERIZATION:** An individual who submits a request for discharge in lieu of trial by court-martial normally receives a discharge with a service characterization of under other than honorable conditions (UOTHC). A UOTHC discharge is appropriate when the conduct of an airman constitutes a significant departure from the conduct expected of airmen. An under honorable conditions (general) discharge is appropriate when the member's service has been honest and faithful, but significant negative aspects of the individual's conduct or performance of duty outweigh the positive aspects of the member's military record. An honorable discharge may be given only if the member's record has been so meritorious that any other service characterization would be inappropriate.

4. **SERVICE CHARACTERIZATION IN THIS CASE:** Considering the seriousness of the alleged offenses, if the request is approved, I recommend a service characterization of UOTHC.

5. **ANALYSIS:** I recommend approval of the request. Considering the facts and circumstances of this particular case, it is in the best interest of the Air Force to approve the request for discharge in lieu of court-martial for the following reasons:

a. First, the primary evidence against SSgt [redacted] is the results of two urinalysis tests from the Air Force Drug Testing Lab at Brooks Air Force Base, Texas. Through the discovery process, the defense has requested and received two lengthy documents detailing concerns at the Brooks lab. These documents consist of a commander directed investigation focusing on personnel problems at the lab and an unfinished Air Force Audit Agency report examining

sample-testing problems at the lab. These documents cover the period of time SSgt [redacted] urine samples were tested at the lab.

b. Second, the drug usage at issue in this case likely occurred during August, September or October 2002. For a variety of reasons, trial has been delayed several times. Most recently the military judge set a trial date of 15 September. The discharge is an expeditious way to conclude this matter and remove SSgt [redacted] from the squadron. Likewise, the discharge makes his departure from the unit a certainty. The result of the court is, of course, unpredictable.

c. Third, while SSgt [redacted] misconduct was serious, it was not aggravated. Had he been a senior airman, as opposed to a staff sergeant, the matter would likely have resulted in non-judicial punishment. There is no evidence that he used drugs on duty, used with other active duty members, or distributed drugs to anyone. Rather, this case involves two low-level marijuana usages. The lab report indicates the concentration of drugs in SSgt [redacted] system on both occasions was low, just above the DoD cutoff for drug testing.

d. Lastly, the UOTHC provides effective general deterrence against similar misconduct in the squadron. The fact that SSgt [redacted] is losing his Air Force career and leaving the service with a UOTHC characterization sends a message to others in the unit who contemplate using drugs, that drug abuse carries serious and long lasting negative repercussions.

6. **RECOMMENDATION:** Sign the proposed memorandum approving SSgt [redacted] request for discharge in lieu of court-martial.

[Redacted signature box]

Staff Judge Advocate