

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 SRA	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE UOTH	PERSONAL APPEARANCE	X	RECORD REVIEW
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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	OTIER	DENY
<div style="border: 1px dashed black; width: 100%; height: 100%;"></div>					X
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ISSUES	A93.23	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	CASE NUMBER
10 Aug 2006	FD-2005-00466

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard in 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.

SIGNATURE OF RECORDER <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	SIGNATURE OF BOARD PRESIDENT <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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INDORSEMENT		DATE: 8/11/2006
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-2005-00466

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 contends his discharge was inequitable because he has a mental disorder which was undiagnosed while he was on active duty but subsequently diagnosed after his discharge. He further contends his inappropriate behavior was a result of his undiagnosed mental disorder. The records indicated the applicant requested discharge in lieu of Court Martial. The applicant tested positive for marijuana use during a random urinalysis drug test. The DRB opined that although applicant contends he has a mental disorder and the lack of documentation provided in his application, it did not impair his ability to know right from wrong or ability to choose the right. 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 SRA) (HGH SGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF Charleston AFB, SC on 6 Feb 91 UP AFR 39-10, Chapter 4, para 4-11 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 20 Oct 61. Enlmt Age: 21 0/12. Disch Age: 29 3/12. Educ: HS DIPL. AFQT: N/A. A-47, E-41, G-50, M-63. PAFSC: 90250 - Medical Service Specialist. DAS: 28 Oct 87.

b. Prior Sv: (1) Enlisted USAFRes as A1C 20 Oct 82 for 6 yrs. Svd: 1 yr 1 month 15 days, of which AMS is 9 months 1 day.

(2) Reenlisted USAF as Amn 6 Dec 83 for 4 yrs. Reenlisted 8 Jul 87 for 4 yrs. Svd: 5 yrs 10 months 13 days, all AMS. A1C - 6 Jun 84. SrA - 6 Nov 86. Sgt-(APR Indicates): 30 Sep 87-29 Sep 88. APRs: 9,7,9,9,8,8.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as Sgt 20 Oct 89 for 4 yrs. Svd: 01 Yrs 03 Mo 16 Das, all AMS.

b. Grade Status: SrA - 6 Nov 86 (AF Form 418, Vacation of NCO Status).

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 21 Mar 89 - 20 Mar 90 Rhein-Main AB 4 (Annual)

h. Awards & Decs: AFOUA W/1 DEV, AFGCM, AFLSAR, SAEMR, AFOSLTR.

i. Stmt of Sv: TMS: (08) Yrs (03) Mos (17) Das
TAMS: (07) Yrs (11) Mos (02) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 15 Nov 05.
(Change Discharge to Honorable)

Issue 1: Mental Disorder undiagnosed while on active duty, but subsequently diagnosed after service caused my inappropriate behavior. I will provide M.D.

statement separately.

ATCH

1. DD Form 214.

20JAN06/ia

FD 2005-00466



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS SEVENTEENTH AIR FORCE (USAF)
APO NEW YORK 09136-5002



REPLY TO
ATTN OF:

JAD (Maj [redacted])

21 DEC 1990

SUBJECT:

Request for Discharge in Lieu of Court-Martial, SrA [redacted]
[redacted], USAF Clinic, Rhein-Main AB, Germany

TO: CC

1. This file is before you because AFR 39-10, para 4-11, requires your action on requests for discharge in lieu of court-martial.

2. FACTS:

a. On 17 October 1990, as part of a random inspection for drugs, the respondent provided a urine sample which tested positive for a metabolite of THC, the psychoactive ingredient of marijuana. He was interviewed by the AFOSI on 7 November 1990, and provided a written statement wherein he related two instances during the mid-September to early October 1990 timeframe, where he become intoxicated at parties and may have smoked hashish. The closest he comes to a full confession is where he states: "... I took a few puffs not fully knowing that they possibly had hashish in them." On 7 November 1990, he agreed to provide another urine sample which also revealed the presence of THC metabolites.

b. On 7 Dec 90, the Rhein-Main Clinic commander preferred a single specification alleging use of marijuana on divers occasions, a violation of Article 112a of the UCMJ. On 10 Dec 90, the respondent submitted a request for discharge in lieu of court-martial. After consideration of his duty performance, military record, and the offense charged, both his immediate commander, on 11 Dec 90, and 435 TAW/CC, on 13 Dec 90, recommended acceptance of the request.

3. MATTERS SUBMITTED BY THE RESPONDENT: He has submitted only the request.

4. APPLICABLE LAW:

a. Airmen may request discharge in lieu of trial by court-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized (AFR 39-10, para 4-1). A punitive discharge may be adjudged upon any conviction under Article 123a, UCMJ.

b. Characterization of service is determined solely by the respondent's military record in the current enlistment. A UOTHC discharge is customary when the basis for the discharge is in lieu of trial by court-martial (AFR 39-10, para 4-2). A general discharge is warranted when significant negative aspects of the respondent's conduct outweigh positive aspects of his military record (AFR 39-10, para 1-18b). An honorable discharge is only authorized if

the respondent's service record is so meritorious no other characterization is appropriate (AFR 39-10, para 4-2b (2)).

c. Individuals discharged in lieu of trial by court-martial are not eligible for suspension of their discharges for probation and rehabilitation (AFR 39-10, para 7-2).

5. ERRORS AND IRREGULARITIES: None which prejudice the accused or impact on the decision in this case.

6. LEGAL ANALYSIS: Acceptance of this waiver is consistent with the maintenance of good order and discipline. The case file establishes the charge; the prospects of an acquittal at trial are extremely remote. However, the prospects for an inappropriately light sentence at trial appear to be too great. A sentence that included no confinement and no punitive discharge is a very real possibility, one that would send entirely the wrong message. SRA Ramos was an NCO at the time of he smoked hashish and deserves the worst service characterization reasonably available. We can best ensure this through acceptance of his request for discharge and the characterization of his service as under other than honorable conditions.

7. OPTIONS: You may:

a. Accept the request and approve either an honorable, general, or under other than honorable conditions discharge.

b. Reject the request.

c. Direct that the respondent be retained in the USAF.

8. RECOMMENDATION: Accept the request for discharge in lieu of trial by signing Atch 1, discharging the respondent with a UOTHC.

Staff Judge Advocate

2 Atchs

1. Action
2. Case File

cc: 435 TAW/JA w/o Atchs

FD 2005-00466



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 435TH TACTICAL AIRLIFT WING (MAC)
APO NEW YORK 09097-5000



18 DEC 1990

REPLY TO
ATTN OF: CC

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial, SrA [redacted]
[redacted], USAF Clinic, Rhein-Main AB, GE

TO: 17 AF/CC

After careful consideration of the immediate commander's recommendation and rationale, I recommend acceptance of SrA [redacted] request of 10 December 1990 for discharge in lieu of trial by court-martial. SrA [redacted] has served the Air Force satisfactorily for over seven years prior to his positive urinalysis. As an NCO at the time of the offense, however, SrA [redacted] clearly failed to maintain Air Force standards by engaging in drug abuse. His discharge for this breach of discipline is clearly warranted. Further, in light of the serious nature of the charged misconduct, I recommend a discharge under other than honorable conditions.

[redacted signature box]
Commander

FD 7005-00466

REPLY TO
ATTN OF: 435 TAW/JA (Maj [redacted])

11 December 1990

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial, SrA [redacted]
[redacted], USAF Clinic, Rhein-Main AB, GE

TO: 435 TAW/CC

1. On 7 December 1990, one charge involving one specification of wrongful use of a controlled substance (violation of Art 112a, UCMJ) was preferred against Sgt [redacted]. (Note: his NCO status has been vacated and he will be referred to hereafter as SrA [redacted]). The Specification alleges that on more than one occasion between 17 September 1990 and 7 November 1990, he wrongfully used marijuana, in the Federal Republic of Germany. This charge has not yet been referred to trial. On 10 December 1990, SrA Ramos submitted a request for discharge in lieu of trial by court-martial under the provisions of AFR 39-10, Chapter 4.

2. BACKGROUND:

a. On 17 October 1990, the accused submitted a urinalysis sample pursuant to random inspection testing. The sample was tested by the US Army Forensic Toxicology Drug Testing Laboratory (USAFTDTL) at Wiesbaden Air Base on 30 and 31 October 1990 and was determined to contain THC metabolite, indicating the presence of marijuana. On 7 November 1990, the accused was interviewed by the OSI after rights advisement and provided a written statement. He stated that in mid-September he went to a party with a German friend and became very intoxicated. He said his German friend told him that he had gone into a room where people were smoking hashish and the friend assumed the accused also smoked. The accused stated that he did not remember if he smoked hashish or not due to his level of intoxication. He also stated that he attended a second party with this same German friend about 2 to 2 1/2 weeks later. The accused said that 'funny smelling' cigarettes were present. He said a cigarette was passed to him and he took a few puffs 'not fully knowing that they possibly had hashish in them.' He again described his condition as 'very, very intoxicated.' On 7 November 1990, the accused consensually submitted another urine sample after questioning by the OSI. Verbal confirmation was received from the USAFTDTL that this sample was also positive for THC.

b. SrA [redacted] is 29 years old and has slightly over seven years in the Air Force. He has had one performance report close out in the current enlistment, an overall 4 which reflects excellent duty performance. His commander describes him as one of top shift leaders in the Acute Care clinic. Performance reports in prior enlistments have overall ratings of 8, 8, 9, 9, 7, 9. We have verified through AFMPC that he has had no previous disciplinary actions during his career.

3. DISCUSSION: SrA [redacted] commander has recommended approval of the request for discharge after balancing the member's overall record with this misconduct. The commander notes that SrA [redacted] has had peaks and valleys in his performance during his time in the Air Force. He also points out, however, that SrA Ramos has had a history of emotional problems requiring some mental health counseling. He has also had a divorce and his daughter lives with her

mother in the United States. As the commander recognizes, it is possible in this case that a court-martial may not result in a bad conduct discharge. A court may look sympathetically on the accused because of his past difficulties. Further, the accused's statement to the OSI suggests a potential defense that the accused's use of marijuana was unknowing. The likelihood of this defense being successful is questionable in light of the second consensual urinalysis being positive, however, it still exists (especially if the accused claims to have a drinking problem). Use of marijuana by an NCO is serious and cannot be tolerated within the military community. Acceptance of the request for discharge would ensure that SrA [] departs the Air Force and that his service is characterized appropriately. A UOTHC discharge would send a clear signal to others in SrA [] unit.

4. CHARACTERIZATION OF SERVICE: Normally discharges in lieu of trial by court-martial result in an under other than honorable conditions (UOTHC) discharge (AFR 39-10, para 4-2). This is also the characterization recommended by the squadron commander. Such characterization is appropriate when the conduct of the airman concerned represents a significant departure from that expected of an airman. In light of the seriousness of SrA Ramos' offense, such a characterization would be appropriate in this case should you elect to recommend acceptance of the request for discharge.

5. ERRORS AND IRREGULARITIES: There are no errors or irregularities in the case file prejudicial to the accused. I note that the charge sheet contains an error with respect to the current enlistment date. This date should be 20 October 1989. Further, the charge sheet reflects that SrA Ramos is a Sergeant. His NCO status was vacated on 20 November 1990. Both irregularities can be remedied at trial, if trial results.

6. ACTIONS WHICH MAY BE TAKEN: As the special court martial convening authority, you have the following options:

a. Disapprove this request for discharge and allow trial by court-martial to proceed.

b. Forward the case file to 17 AF/CC with a recommendation that the request for discharge be approved and that the respondent receive an honorable, general, or UOTHC discharge.

7. RECOMMENDATION: I recommend that you forward the request for discharge in lieu of court-martial to 17 AF/CC with a recommendation that an under other than honorable conditions discharge be approved.

[]
Staff Judge Advocate

Atch
USAF Clinic/CC Ltr,
w/Atch