

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	<b>GRADE</b> A1C	<b>AFSN/SSAN</b> <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
--	---------------------	--

<b>TYPE</b>	<b>GEN</b>	<b>PERSONAL APPEARANCE</b>	<b>X</b>	<b>RECORD REVIEW</b>
<b>COUNSEL</b>		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	No			
	<b>X</b>			

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

<b>ISSUES</b>	<b>A66.00</b>	<b>INDEX NUMBER</b>	<b>A03.02</b>	<b>EXHIBITS SUBMITTED TO THE BOARD</b>	
				<b>1</b>	ORDER APPOINTING THE BOARD
				<b>2</b>	APPLICATION FOR REVIEW OF DISCHARGE
				<b>3</b>	LETTER OF NOTIFICATION
				<b>4</b>	BRIEF OF PERSONNEL FILE
				COUNSEL'S RELEASE TO THE BOARD	
				ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE	
				TAPE RECORDING OF PERSONAL APPEARANCE HE	

<b>HEARING DATE</b>	<b>CASE NUMBER</b>	
<b>14 Nov 2006</b>	<b>FD-2006-00337</b>	

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

\* No change to RE CODE

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.

<b>INDORSEMENT</b>		<b>DATE: 11/16/2006</b>
<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> 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

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

While the applicant had requested and scheduled a personal appearance via Video Teleconference (VTC) from Travis AFB, California in front of the Discharge Review Board (DRB), without counsel, sitting at Andrews AFB, Maryland on 14 November 2006, the applicant did not remain in contact with the Board and did not show up at the time set for her VTC, so, by her absence, declined to exercise her right to appear. The case was heard on 14 November 2006 as a non-personal appearance case. No additional exhibits were submitted at the hearing.

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

**FINDINGS:** The Board finds the applicant submitted issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board agreed, for different reasons than those proffered by the applicant, that her request for an upgrade of discharge was justified.

The Board finds that the evidence of record substantiates an impropriety that justifies a change of discharge.

The Board grants the requested relief. The discharge is upgraded to honorable. Additionally, the reason and authority for discharge is changed to Expiration of Term of Service, AFI 36-3208, para. 2.2, but change of reenlistment code is denied.

**ISSUE:**

The Board found that the reason for discharge, the decision to discharge, and the characterization of discharge were all appropriately dealt with by command. However, a lack of attention to the applicant's pending ETS by all command and support staff involved in this matter led to the expiration of her ETS prior to final action by the separation authority on the involuntary discharge. Paragraph 2.1, AFI 36-3208 conveys an absolute right to discharge of an airman upon completion of their enlistment, absent certain exceptions not applicable to the applicant's case. Paragraph 2.8 of the same instruction prohibits retaining "airmen beyond ETS involuntarily for completion of involuntary discharge processing." A thorough review of the applicant's file reveals no authority to retain her beyond her ETS merely to be involuntarily separated. The applicant's four-year enlistment expired at 2359:59 hours on 27 May 2006; but the separation authority did not act on the involuntary discharge action until 30 May 2006 (and she was not actually separated until 2 June 2006).

Additionally, paragraph 2.8 of the enlisted discharge instruction placed an affirmative duty on command to:

- 1) give the Airman a chance to voluntarily extend the enlistment for the time needed to complete the case;
  - 2) tell the Airman that if separation takes place on ETS while the involuntary discharge is pending, the Airman will not be eligible to reenlist;
  - 3) allow the Airman time to consult military legal counsel before deciding whether to extend the enlistment;
- and,
- 4) separate on ETS, every Airman who declines to extend.

Command's inexplicable failure to comply with para. 2.8 directly led to and compounded the prejudicial error of keeping the applicant on active duty to complete involuntary discharge processing. Since separation on ETS would have resulted in an honorable characterization, yet she received a general (under honorable

conditions) discharge, such dereliction and noncompliance with Air Force instructions constitutes prejudicial error, *i.e.*, caused the Board to have substantial doubt that the discharge would have remained the same if the error had not been made. Since she should have been discharged upon ETS, the reason and authority for discharge must be changed to reflect that the reason for discharge was ETS instead of misconduct or drug abuse and that the authority was para. 2.2 instead of 5.54.

**CONCLUSIONS:** The Discharge Review Board concludes that the applicant's discharge was not consistent with the procedural and substantive requirements of the discharge regulation and that the discharge authority abused his discretion by denying the applicant full administrative due process.

In view of the foregoing findings the Board further concludes that there exists a legal basis for upgrade of discharge, thus the applicant's discharge should be changed.

The applicant's discharge characterization should be changed to Honorable and the reason and authority changed to Expiration of Term of Service under AFI 36-3208, para. 2.2 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 USAF Elmendorf AFB, AK on 2 Jun 06 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 23 Jan 83. Enlmt Age: 19 0/12. Disch Age: 23 4/12. Educ: HS DIPL. AFQT: N/A. A-71, E-68, G-53, M-42. PAFSC: 3P051 - Security Forces Journeyman. DAS: 3 Nov 02.

b. Prior Sv: (1) AFRes 21 Feb 02 - 27 May 02 (3 months 7 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 28 May 02 for 4 yrs. Svd: 04 Yrs 00 Mo 06 Das, all AMS.

b. Grade Status: A1C - 29 Mar 06 (Article 15, 29 Mar 06)  
SrA - 28 May 05  
A1C - 28 Sep 03  
Amn - 28 Nov 02

c. Time Lost: None.

d. Art 15's: (1) 29 Mar 06, Elmendorf AFB, AK - Article 112a. You, did, between on or about 24 Jan 06 and on or about 21 Feb 06, wrongfully use marijuana. Reduction to Airman (below A1C suspended). Forfeiture of \$846.00 pay per month for 2 months. (Appeal/Denied) (No mitigation)

(2) 20 Sep 04, Elmendorf AFB, AK - Article 92. You, who knew of your duties, on or about 28 Aug 04, were derelict in the performance of those duties in that you willfully failed to check the identification of the individual in a vehicle at your assigned entry control point, as it was your duty to do. Suspended reduction to Airman. Reprimand. (No appeal) (No mitigation)

e. Additional: LOR, 11 JUL 05 - Failure to go.  
LOA, 26 MAY 05 - Financial irresponsibility.  
LOC, 08 MAY 05 - Failure to follow instructions.  
LOR, 19 NOV 04 - Late for work.

f. CM: None.

g. Record of SV: 28 May 02 - 27 Jan 04 Elmendorf AFB 5 (Initial)

28 Jan 04 - 27 Jan 05 Elmendorf AFB 4 (Annual)REF  
28 Jan 05 - 27 Jan 06 Elmendorf AFB 3 (Annual)REF  
28 Jan 06 - 15 Apr 06 Elmendorf AFB 1 (Cmdr Dir)REF

h. Awards & Decs: NDSM, AFTR, AFLSAR, AFOUA W/VALOR W/2 DEVS, AFOSLTR, GWOTEM, GWOTSM.

i. Stmt of Sv: TMS: (04) Yrs (03) Mos (12) Das  
TAMS: (04) Yrs (00) Mos (06) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 24 Aug 06.  
(Change Discharge to Honorable)

Innocent. GI Bill. Injustice.

ATCH  
None.

02OCT06/ia



DEPARTMENT OF THE AIR FORCE  
PACIFIC AIR FORCES

FD 2006-80337

MAY 11 2006

MEMORANDUM FOR A1C

FROM: 3 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for drug abuse, specifically, marijuana. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as honorable, general or under other than honorable conditions (UOTHC). I am recommending your service be characterized as general.

2. My reasons for this action are:

a. Between 24 Jan 06 and 21 Feb 06, you wrongfully used marijuana. For this offense you received an Article 15, dated 29 Mar 06. The punishment consisted of a reduction to the grade of airman, with the reduction below airman first class suspended, and forfeiture of \$846.00 pay per month for 2 months.

3. Though not used as a basis for this discharge action, the following will be forwarded to the separation authority for review in consideration of your service characterization:

a. On 28 Aug 04, you failed to check the identification of an individual in a vehicle at the assigned entry control point. For this offense, you received an Article 15, dated 20 Sep 04. The punishment consisted of a reduction to the grade of airman suspended and a reprimand.

b. On 19 Dec 04, you failed to report for duty at the scheduled time. For this offense, you received a Letter of Reprimand, dated 19 Nov 04.

c. On 5 May 05, you failed to provide the flight chief with documentation from a physician excusing you from physical training. You also failed to show at the time and place prescribed for physical training. For these offenses, you received a Letter of Counseling, dated 8 May 05.

d. An investigation revealed that between Mar 05 and May 05, you failed to pay your debts. For this offense, you received a Letter of Admonishment, dated 26 May 05.

e. On 5 Jul 05, you failed to report for mandatory training. For this offense, you received a Letter of Reprimand, dated 11 Jul 05.

4. 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 are 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.

6. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult Capt. [redacted]; 552-3887, at Bldg 10480, Room 330 at 1000 on 12 May 06. You may consult civilian counsel at your own expense.

7. 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 duty days after the date of this letter unless you request and receive an extension for good cause shown. I will forward any statements you provide to the separation authority.

8. 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.

9. You have been scheduled for medical examinations. You must report, with your medical records, to the 3rd Medical Operations Squadron, Bldg 5595, at 1340 on 16 May 06 for your first exam, at which time you will be notified of the time for your second exam. Bring with you the Medical Assessment Letter (DD Form 2697). You are to refrain from alcohol for 72 hours, and refrain from the use of tobacco products for 6 hours, prior to examination. Bring eyeglasses (and contact solution if using contacts) if applicable. You must be in uniform for these examinations.

10. You have also been scheduled for a TMO Household Goods Shipment preprocessing briefing. You must report to Bldg 8517 (People Center), Room 247 at 1000 on 11 May 06. You must be in uniform for all appointments.

11. 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 your Squadron Orderly Room.

[Redacted Signature Box]  
Commander

Attachments:

- 1. AF Form 3070 (Article 15), dtd 29 Mar 06
- 2. AF Form 3070 (Article 15), dtd 20 Sep 04
- 3. Letter of Reprimand, dated 19 Nov 04
- 4. Letter of Counseling, dated 8 May 05
- 5. Letter of Admonition, dated 26 May 05
- 6. Letter of Reprimand, dated 11 Jul 05