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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00353

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 received an Under Other Than Honorable Conditions discharge for Misconduct – Drug Abuse. Applicant contends his discharge was improper because there was a failure by the discharge authority to properly review his record prior to separation; there was a mistake by the discharge authority in determining his length of service; and the erroneous ingestion of medication which led to a positive reading for methamphetamine. After a detailed review of the records, the Board opined that applicant's contentions were without merit. The Board further 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 TSGT) (HGH TSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Little Rock AFB, AR on 15 Nov 02 UP AFI 36-3209, para 3.21.3.2 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 11 Aug 61. Enlmt Age: 21 10/12. Disch Age: 41 3/12. Educ: HS DIPL. AFQT: N/A. A-40, E-92, G-90, M-99. PAFSC: 2A571 - Aerospace Maintenance Technician. DAS: 8 May 95.

b. Prior Sv: (1) USAR 07 Jul 83 - 01 Nov 83 (3 months 25 days) (Inactive).

(2) Enlisted US Army 02 Nov 83 for 4 yrs. Svd: 3 yrs 5 months 29 days, all AMS. SP4(E4)-2 Nov 85.

(3) USAR 01 May 87 - 05 Feb 88 (9 months 4 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted ANGUS as Sgt 6 Feb 88 for 3 yrs. Svd: 14 Yrs 9 Mo 10 Das, of which AMS is 14 yrs 3 months 15 days.

b. Grade Status: TSgt - 1 May 97
SSgt - (ANG PR Indicates): 01 Aug 89-31 Jul 90

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

f. Record of SV: (Examiner's Note: ANGUS Performance Ratings: U-Unsatisfactory S-Satisfactory E-Excellent).

01 Aug 88 - 31 Jul 89	Little Rock AFB	E	(Annual)
01 Aug 89 - 31 Jul 90	Little Rock AFB	E	(Annual)
01 Aug 90 - 31 Jul 91	Little Rock AFB	E	(Annual)
01 Aug 91 - 31 Jul 92	Little Rock AFB	E	(Annual)
01 Aug 92 - 31 Jul 93	Little Rock AFB	S	(Annual)
01 Aug 93 - 31 Jul 94	Little Rock AFB	S	(Annual)
01 Aug 94 - 31 Jul 95	Little Rock AFB	E	(Annual)
01 Aug 95 - 31 Jul 96	Little Rock AFB	E	(Annual)

01 Aug 96 - 31 Jul 97	Little Rock AFB	E	(Annual)
01 Aug 97 - 31 Jul 98	Little Rock AFB	E	(Annual)
01 Aug 98 - 31 Jul 99	Little Rock AFB	E	(Annual)
01 Aug 99 - 31 Jul 00	Little Rock AFB	E	(Annual)
01 Aug 00 - 31 Jul 01	Little Rock AFB	E	(Annual)

h. Awards & Decs: AFLSAR W/2 Devs, ARMY SVC RBN, GCMDL ARMY w/1 Dev, AFTR, NDSM, AR SVC RBN, AFAM, AFOUA W/2 Devs.

i. Stmt of Sv: TMS: (19) Yrs (04) Mos (09) Das
TAMS: (17) Yrs (09) Mos (14) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 04 Aug 05.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues With 20 Exhibits.

17OCT05/ia

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9. (Cont) I believe the record to be in error or unjust in the following particulars:

- a. There was a failure by the discharge authority to properly review the record in this case prior to separating.
- b. There was a mistake made by the discharge authority in determining my time of service, even though this was brought to their attention, and a failure to forward the record for review prior to separation.
- c. There was an erroneous ingestion of medication which led to a positive reading for methamphetamine and which does not support finding of misconduct.

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10. (Cont) In support of this application I submit as evidence the following:

- d. Prior to separation I requested the Adjutant General review the record for two reasons.
 1. On November 8, 2002 a letter was sent to the discharge authority requesting the full review of the record prior to further action. (1) Two reasons were set forth in the letter requesting this review. The first was my status as a lengthy service airmen having passed 18 years of service credible toward retirement. Several military regulations which cover this proceeding require review by the Personnel Council prior to separation. (2) My records clearly show that my time in service adjusted far exceeds 18 years. (3) I believe this review is required by Air Force regulation and law and should not have required a prompting or a request from me.
 2. The other main aspect of the request to the TAG prior to discharge was my discovery of the mistaken and completely accidental ingestion of Adderall, a medication which was prescribed to a child who was in the foster care of my wife and I. A letter from my wife detailing how she thinks this happened was enclosed. A copy of the letter is attached as an exhibit. (4)

The letter was forwarded in time for a review of these matters prior to any action being taken. A copy was submitted to the SJA. Discharge was ordered without a review of either of these questions. The most information we got was a letter dated June 18, 2003 from TAG stating he had not seen the letter because he had been out of town and anyway he had delegated the authority to review the information. (5) There is no explanation from the SJA. It was erroneous and unjust to separate me for the reasons stated.

As is apparent from the information submitted to TAG, I believe that I ingested Adderall, a prescription medication containing an amphetamine, that was prescribed for a child in the foster care of my wife and I. Information regarding this medication is attached as an exhibit. (7)

As I testified in my hearing, my only explanation for a positive reading would have been having obtained something contaminated. At the time of the test I had recently quit taking a substance called Ephedra. I found out that Ephedra acted similar to amphetamine as an appetite suppressant. It also had sometimes been found to have been contaminated with amphetamine when not properly regulated. I am attaching exhibits regarding some of the risks of Ephedra and some of its similar behavior as Exhibits (8 and 9). The Ephedra that I purchased, however, had been bought at a nutritional supplement store licensed and operated by the Exchange on the Little Rock Air Force Base. By the time my test came back as positive, I had disposed of the bottle the substance came in and there was, unfortunately, no way to test these results. Until my discharge hearing, I was convinced that I had somehow ingested contaminated Ephedra. At my discharge hearing a doctor from the Brooks Lab testified that the test was consistent with use of amphetamine. Excerpts from his testimony are attached as an Exhibit (10). The puzzling thing to me and the important facts for purposes of this appeal is that the doctor stated that the test results indicated an amount of amphetamine which was consistent with the manufactured substance.

At the time I faced a discharge hearing I took several prescription medications. These include the following medications and purpose for which taken:

- A. Atelas-blood pressure
- B. Atenolol-blood pressure
- C. Flexaril-muscle cramps
- D. Zyban-stop smoking
- E. Glucosamine Chondriotin-joint pain
- F. Multiple vitamin zinc potassium-muscle cramps.

Generally my practice would be to keep my medications in a particular drawer out of the reach of children in the house. When I got up in the morning I would take one from the respective bottle, take the medication and prepare for the workday. Subsequent to the discharge hearing I began to question what could possibly have happened. In discussions with my wife, [redacted] we determined that we had some Adderall, a medication being taken by a foster child in our care. My wife believes she inadvertently placed this in the same drawer with my medication on the day we had to return the little girl to social services because her behavioral problems had turned out to be much more severe then we were able to deal with. Having thought through this, Kathy prepared the letter dated October 29, 2002, which was presented to the TAG and was not reviewed prior to action being taken. A copy of the letter is attached as an Exhibit (11). When it became apparent to me that it was the Adderall that had led to my positive uranalysis test, I consulted with counsel about whether or not we could retest my urine sample for this

substance. This led to correspondence with the Brooks Lab and a request to preserve the sample while we located the facility that would be able to perform the test we were looking for. Copies of the correspondence to the Brooks Lab are attached as an Exhibit. (12) As you review this correspondence you can tell that at some point it appeared the Brooks Lab had either destroyed or misplaced the sample after having informed us it would be retained. Eventually arrangements were made to send a sample to the NMI Testing laboratory. They returned a testing result negative for amphetamine. A copy of their test results is attached as an exhibit (13). This led to us forwarding the results back to Brooks Lab to see what the possible explanation might be. Understand that I fully expected the laboratory results to have been positive for prescription Adderall. A copy of the information forwarding the results to the Brooks Lab is attached as an exhibit. (14) When the lab received the results, they retested my sample and it again came back positive for Amphetamine. A copy of their confirming letter is attached as an Exhibit. (15)

My attorney forwarded this information back to NMI and asked what sort of explanation there could be. As the Board may imagine, at this time I was quite confused. The eventual explanation turned out to be in the nature of a math error. What had happened is that NMI had diluted the sample for testing purposes and the particular technician had neglected to put the multiplier back in, leading to a result well below standard. NMI, upon reviewing the Brooks results and their procedures, confirmed that there was evidence of a prescription medication and that the test was consistent with that. There response is attached as an exhibit (16).

I go through this lengthy explanation about the medication for several reasons. One of the reasons is to point out that it took some time to locate a testing facility; there was some confusion about retention of the sample at the appropriate laboratory; and there were additional tests and retests required by the conflicting results. At the time of my hearing I could not have presented the evidence regarding the Adderall because it was not known to me. When I did discover the possible ingestion of the Adderall, my efforts to bring this to the attention of the discharge authority were ignored. His letter indicates he had delegated authority, but I was never advised of this by either his office or by the SJA. Consequently I find myself appealing to this Board. At this point it was unjust not to consider this information at all during the time closest to the events. It was unjust to characterize my service as other than honorable based on this incident. It was unjust not to request a review of my time in the service as a factor in determining whether or not I should be separated.

3. Relief Requested. I'm requesting as relief that I be considered as a lengthy service airman and that my case be sent to the Personnel Review Council as

should have been done before instituting this action; that the PRC now review this matter and that I be reinstated either in a probationary status or in a full time status. I also suggest that the characterization of my discharge should be upgraded to that of honorable conditions.



**ARKANSAS AIR NATIONAL GUARD
HEADQUARTERS
LITTLE ROCK AIR FORCE BASE, ARKANSAS**

03 November 2002

MEMORANDUM FOR HQ AR ANG/CC

FROM: HQ AR ANG/JA
102 Vandenberg Blvd., Ste. 115B
Little Rock AFB AR 72099-4802

SUBJECT: Legal Review of Record of Board Proceedings of Administrative Discharge of TSgt [REDACTED] 189 AGS

1. Legal Sufficiency: I have reviewed the Record of Board Proceedings re: TSgt [REDACTED] in accordance with AFI 36-3209, para. 4.19 and find it legally sufficient.
2. Procedural History: On 25 July, 2002, Lt Col [REDACTED], 189 MXS/CC initiated action under AFI 36-3209 to involuntarily separate TSgt [REDACTED] for Drug Abuse. TSgt [REDACTED] was properly notified of his rights, consulted counsel, and requested an administrative discharge board. The Government and the respondent presented evidence to a board of officers on 5 October 2002.
3. Basis for Action: The basis for the action in this case is AFI 36-3209, para. 3.21.3.2, Drug Abuse. Specifically, on or about 8 May 2002 TSgt [REDACTED] provided a urine sample which tested positive for the presence of amphetamine metabolite. The commander recommended characterization of discharge as Under Other Than Honorable Conditions.
4. Sufficiency:
 - a. For the Government: The respondent's urine had the presence of the amphetamine metabolite at levels above the DOD cutoff.
 - b. For the Respondent: The respondent testified that he was taking an over-the-counter supplement, "Stacker - 3", to lose weight and that he had not knowingly taken amphetamine.
5. Findings and Recommendations: The board found the respondent did abuse drugs and recommended that the respondent be discharged from the Air National Guard and as a Reserve of the Air Force with his service characterized as Under Other Than Honorable Conditions. The findings and recommendations of the Board are supported by the evidence.

6. Errors or Irregularities: There are no errors or irregularities that would affect the legal sufficiency of the proceedings.

7. Commander's Action: According to ARPC/DPPRA the respondent had not completed 18 years of service creditable toward retired pay at the time the discharge action was initiated. As discharge authority you have the following option:

(a) Approve the Board's recommendation and direct its execution;

(b) Approve the Board's recommendation for discharge but approve a better type of characterization of service;

(c) Approve the Board's recommendation for discharge, with or without approving a better characterization of service, but direct the discharge be suspended to afford the respondent probation and rehabilitation;

(d) Disapprove the Board's recommendation and retain the respondent.

8. Recommendation: HQ AR ANG/CC direct the respondent be discharged from the Air National Guard and as a Reserve of the Air Force Under Other Than Honorable Conditions.

Staff Judge Advocate