

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 A1C	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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TYPE GEN	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	UOHC	OTHER	DENY
	X*+				
	X*+				
	X*+				
	X*+				
	X*+				

ISSUES A94.06	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD														
		<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:5%; text-align: center;">1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td style="text-align: center;">2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="text-align: center;">3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td style="text-align: center;">4</td><td>BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td>COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td>ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td>TAPE RECORDING OF PERSONAL APPEARANCE HE</td></tr> </table>	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 HE
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HEARING DATE 25 Jan 2007	CASE NUMBER FD-2006-00144
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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 in 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 RE CODE
 + CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY

INDORSEMENT	DATE: 2/9/2007
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

FD-2006-00144

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

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: The Board grants the requested relief.

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, reason and authority for discharge, and reenlistment code are inequitable.

ISSUE:

Member received a general discharge for alleged drug abuse. Applicant infers his discharge was too harsh because he was not guilty of the alleged offenses. After a thorough and complete consideration of the information submitted by the applicant and information contained in the record, the Board concluded there was sufficient mitigation and extenuation to substantiate upgrade of the discharge, to the change the reason for discharge, and the reenlistment code.

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 an Honorable discharge, and the reason for the discharge is more accurately described as Secretarial Authority. The applicant's characterization and reason for discharge should be changed to Honorable and Secretarial Authority 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 A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Cannon AFB, NM on 12 Feb 04 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for an Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 10 Apr 81. Enlmt Age: 20 4/12. Disch Age: 22 10/12. Educ: HS DIPL. AFQT: N/A. A-67, E-57, G-64, M-76. PAFSC: 1C151 - Air Traffic Control Journeyman. DAS: 28 Apr 02.

b. Prior Sv: (1) AFRes 7 Sep 01 - 26 Sep 01 (20 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 27 Sep 01 for 4 yrs. Svd: 02 Yrs 04 Mo 16 Das, all AMS.

b. Grade Status: A1C - 27 Jan 03
Amn - 27 Mar 02

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 12 JAN 04 - Wrongfully used marijuana.

f. CM: None.

g. Record of SV: 27 Sep 01 - 27 May 03 Cannon AFB 4 (Initial)

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (02) Yrs (05) Mos (06) Das
TAMS: (02) Yrs (04) Mos (16) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 05 Apr 06.

(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Police Record Check.
3. DD Form 214.
4. Enlisted Performance Report.
5. Letter of Reprimand.
6. Notification of Suspension of Access.
7. ATCS Certification Suspension.
8. Response to Letter of Reprimand.
9. Notification Memorandum.
10. Written Presentation to Discharge.

17MAY06/ia

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

FROM: [REDACTED]

SUBJECT: Upgrade / change request.

My discharge was inequitable because it was based on one isolated incident in 29 months of service with no other adverse action. Not only was this one incident, but an accusation, with no supporting facts. When I asked my command to produce this information which I have been wrongfully accused of, their response was "Its an on going investigation only at time of a court martial will this evidence be brought fourth." I told my legal repetition that's fine I know I'm innocent and if they want to press UCMJ charges then I will answer to the courts. After that response I was offered a special court - martial, which according to my attorney is a board of commanders, not a jury of my peers. My attorney advice was simple, Your commander intends to have you discharged who's side do you think they'll be on a Lt. Col going up for his full bird or an A1C who's just getting started, and if you are found guilty your looking at possible jail time and dishonorable discharge. The only other evidence that I think could have persuaded the commander's mind is a previous civilian misdemeanor charge of possession properly listed on my enlistment documents, which in no way should effect the judgment of issuing a discharge. Why, for one in legal terms its called double jeopardy, and secondly- yes, in my past I have made stupid decision, but I have answered to the courts and paid my debt to society. I know I was wrong then and I am truly sorry, I was once a young and naive child. The Air Force has molded me into a young and strong-minded man, and with this discharge I was never able to complete my dream of leading others to a career of victory. I feel I cannot move on in my life until this void is fulfilled, I tend to do this by enlisting in another Armed Service, but I cannot because of my reentry code currently 2B. This code needs to be changed to a 1 and an upgrade of my discharge to honorable. As far as evidence on my part it's hard to produce unless I knew more of the accusation. Where I stand is simple I was accused and investigated, I voluntary produce a urinalysis, which can up negative for all drug types, and subjected my property to search, I was never allowed to see the report of investigation, but I know nothing was found. I also intended to take all of my information to the inspectors general office, but due to the time frame of when this first started with an issue of an LOR on 12 January to the date of discharge 14th of February I scheduled an appointment with the inspector after the discharge, and I was told that since I was no longer military, they could do nothing, I had to address my congressman. I have forwarded copies of all information I received upon discharge (see attachments). Please consider this information when reviewing my discharge. Finally I would like to thank you for taking the time to review my request for the following changes: a discharge upgrade to honorable conditions, the separation code, narrative reason for separation and mainly the reentry code change to 1 to allow another service the discretion of admittance .

[Redacted]

PO 2006-00144

2 April 2006
Page 2 of 2

Respectfully submitted,

[Redacted Signature]

Attachments:

- DD214, EPR, LOR, notification of suspension access,
- ATCS certification suspension, response to letter of reprimand,
- Members drug history, notification memorandum, written presentation to discharge.

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

FROM: [REDACTED]

SUBJECT: Statement of situation occurred.

I [REDACTED], honestly declare that: My discharge from the Air Force was unjustly executed, in no way am I guilty of drug use. The situation occurred as follows: Approximately two weeks after I came back from Christmas leave my first sergeant escorted me to OSI offices; he said they wanted to ask me some questions. Upon arrival I was figure printed and placed in a holding cell. Two investigators asked me numerous questions, which I answered honestly. Finally I was told I was being investigated for drug use. At this time I requested legal representation, all questions were stopped, the investigators asked if I would consent to a urinalysis and property search, I consented without legal representation. Immediately OSI placed in cuffs and read me my rights, and escorted to the hospital for urinalysis. After that I took them to my apartment off base and allowed them to search my property and vehicle, all without legal representation. I was then released. A couple days later I was ordered to report to the commander's office, upon arrival I was issued a Letter of Reprimand for, "In mid-October 2003 you wrongfully used marijuana at or near Clovis, New Mexico. According to section 3 of my LOR, I am required to receive and sign the LOR if I wish to respond. " Your written acknowledgment of receipt and signature are MANADORTORY." Before I signed the LOR, I consulted my attorney, she advised me that the USAF was not bringing judicial punishment, my LOR was considered non-judicial punishment, and therefore she could not legally petition for me. She instructed on how to respond to the LOR, which I did. In my response I denied the charges and cited my three urinalysis test which all returned negative. Along with a submitting a rebuttal to my LOR, I requested via my attorney the OSI report of investigation. I was denied the report because it was an ongoing investigation and only at the time of a court martial would I get to see this "so called evidence" against me. My attorney, Capt [REDACTED] communicated with me that Lt. Col [REDACTED] intended to discharge me with an LOR; I repeatedly denied the charge to the LOR. Signing an LOR is not an admission of guilt, as cited on the second page above my signature it is an acknowledgment that I received the letter. My LOR response also included extensive referral to my test results from my urinalysis. My entire tests were negative for any and all drug use. I contacted the drug testing office in Texas they told me that if someone had used marijuana their drug testing would show any use in the past 45 days. According to my urinalysis I had testing before and after the accused date with no laps of 45 days. This was also included in my LOR response. I also wrote that this was a violation of my rights. In return thru my attorney I was offered a special court martial. My attorney's advice was simple. The way Commander [REDACTED] was going about this discharge is not normal, he is using so-called back doors around this discharge. She told me my commander's intent was to discharge me anyway he can. She advised me of what

[Redacted]

FD 2006-00144

14 April 2006
Attachment B
Page 2 of 2

a special court martial is-which is a jury of commanders, and not my peers. She to me I ran a huge and very likely risk of being discharged under a character of dishonorable with possible judicial punishment. In this special court martial, which rule of law would be used? The rule of science where repeated negative test results, were already ignored. My attorney advised me this would probably be a fair and equitable hearing. She advised me to decline the special court martial. I declined the special court martial, if my commander's intent was to discharge me on an LOR, I wasn't going to risk a court martial or be put in a situation where I had no control. I intended to take all of my information to the base inspectors general's office, but due to some unforeseen emergency dental repair (root canal) I was unable to make the appointment. I went to the inspector's office after my date of discharge; they turned me away because I was no longer a military member. I was referred to contact my congressmen in Florida, for a possible congressional hearing. Since this discharge I was told I had to wait 1-year before I could petition for and upgrade.

Respectfully submitted,



[Redacted signature area]

FD 2006-00144

18 April 2006

MEMORAMAND: FOR ALL REVIEWING AUTHORIES.

FROM: [redacted]

SUBJECT: Statement of misdemeanor charge.

I [redacted] do honestly declare that on the 19th of November 1999, I was charged with possession of 20 grams or less of cannabis. On the night in question, my friend [redacted] and I were going to a party; we were driving in my vehicle thru St. Cloud, Florida. I was pulled over by officer [redacted] for a broken taillight. My friend had some marijuana that was placed under the seat. Due to my suspicious activity the officer asked me to step out of the car, he asked if he could search my vehicle and if I had and illegal drugs in the car. I told the officer that yes there was some marijuana in the car under the seat. My vehicle was searched and the cannabis was retrieved, the passenger and myself were cited for possession of marijuana. On February 8, 2000 I was summoned to appear in court to answer for my actions, on the night in question. Due to the fact that I had no prior charges I was accepted into the county diversion program-, which is a first time offenders program. The program consisted of consecutive drug testing and community service and monthly visits to a probation office. I completed all the program requirements. All my urinalysis tested negative. I completed 100 hours of community service at the Orlando YMCA. I paid a total of 427.00 for probation cost and drug testing. Since this night in question I have not used or had any illegal drug in my possession. I sincerely apologize for my actions. One thing I have learned from this is that use of drugs has no place in my life

Respectfully submitted, [signature]

[redacted signature box]



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 27th FIGHTER WING (ACC)
CANNON AIR FORCE BASE NEW MEXICO

FD 2006-00144

23 Jan 04

MEMORANDUM FOR A1C [REDACTED], 27 OSS

FROM: 27 OSS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for drug abuse. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reason for this action is:

a. In mid-October 2003, you wrongfully used marijuana at or near Clovis, New Mexico, as evidenced by a Letter of Reprimand (LOR), dated 12 Jan 04. In your response to the LOR, you denied the allegation and maintained you were not being given enough information about the allegation to properly respond to it. Based on your LOR response, the legal office contacted your defense counsel and offered to have the allegation evaluated through a special court-martial, with the attendant rules of evidence and burden of proof. On 22 Jan 04, through your defense counsel, you declined this offer. I am therefore proceeding based on the information from the OSI investigation and recommending your separation from the Air Force. (Atch a)

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, bonuses, 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. An appointment will be made for you to consult with your military legal counsel. You may consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within **3 duty days** from today unless you request and receive an extension for good cause shown. I will send them to the separation authority.

6. If you fail to consult counsel or to submit statements on your own behalf, your failure will constitute a waiver of your right to do so.

7. You will complete a medical examination at the 27th Medical Group on 29 Jan 04 at 1000 hours.

8. 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 in your unit orderly room, or you may download a copy from <http://afpubs.hq.af.mil/>.

A
[Redacted signature box]

Commander, 27 OSS

Attachment:

- a. Letter of Reprimand, dated 12 Jan 04, w/response