

**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> <b>SSGT</b>	<b>AFSN/SSAN</b> <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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<b>TYPE GEN</b>	<b>X</b>	<b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
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<b>COUNSEL</b>	<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>AMERICAN LEGION</b>	<b>1608 K ST NW WASHINGTON DC 20006</b>
<b>X</b>		

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

<b>ISSUES</b>	<b>INDEX NUMBER</b>	<b>EXHIBITS SUBMITTED TO THE BOARD</b>														
A01.13 A92.35 A02.17 A01.39 A94.05 A02.21 A92.39	A66.00	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="width:5%; text-align: center;"><b>1</b></td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td style="text-align: center;"><b>2</b></td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="text-align: center;"><b>3</b></td><td>LETTER OF NOTIFICATION</td></tr> <tr><td style="text-align: center;"><b>4</b></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>	<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
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<b>HEARING DATE</b>	<b>CASE NUMBER</b>
03 Apr 2007	FD-2006-00194

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 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.

X = Upgrade, Change Reason for Discharge and Change Reenlistment Code

<b>INDORSEMENT</b>	<b>DATE: 4/10/2007</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**

CASE NUMBER

**FD-2006-00194**

**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 appeared and testified before the Discharge Review Board (DRB) with counsel, at Andrews AFB, Maryland, on 03 April 2007.

The following additional exhibits were submitted at the hearing:

Exhibit 5: American Legion Statement

Exhibit 6: Character Letter from SSgt: [REDACTED]

Exhibit 7: Pennsylvania Driving Record

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

**FINDINGS:** Upgrade of discharge, change of reason and authority for discharge and change of reenlistment are 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:** The applicant submitted the following issues:

Issue 1: The applicant contends that the discharge was improper because it was based on only two offenses of Driving Under the Influence (DUI) for which he received a Letter of Counseling and a Letter of Reprimand for DUI. However, the record reveals that the applicant tested positive in a command-directed urinalysis for cocaine. Although the results of the urinalysis cannot be used for characterization of the discharge, it is properly used as a basis. The Board concluded that the significant negative aspects of the conduct outweighed the positive aspects of his military record. The Board found the characterization for the discharge, reason for discharge, and reenlistment code received by the applicant to be appropriate.

Issue 2 and 3: The applicant contends the discharge was improper because his right to due process was violated because his commander recommended an honorable discharge and that recommendation was not presented to the administrative discharge board; and that he was convicted outside the due process when the commander decided "that he (applicant) could no longer serve in the unit."

The Board found no basis for impropriety in these issues. The record indicates that the applicant requested a conditional waiver to his administrative board based on the applicant's commander recommendation for an Honorable characterization. The Staff Judge Advocate (SJA) recommended disapproval and the waiver was indeed denied by the Wing Commander. While the government was restricted by regulation from providing evidence of the commander's recommendation to the board, this fact could have been provided by the defense calling the commander as a witness before the board. As to the applicant's contention that he was convicted outside the due process--the commander's decision, "that he could no longer serve in the unit" is a standard procedure in a case like this and not a predetermination of guilt. The commander is charged with weighing the potential safety risks to the applicant and others in his unit against the member's desires and then acting as he/she deems necessary when deciding whether or not the member will be allowed to continue in his/her primary duties. The Board found the characterization for discharge, reason for discharge and the reenlistment code received by the applicant to be appropriate.

Issue 4: The applicant contends the discharge was improper because the command relied on the testimony of a questionable witness and used that testimony at the board without the witnessing appearing before the board. The applicant also contends that her testimony was hearsay and it was not investigated for validity prior to his being drug tested. In the applicant's opinion, the witness' accusations were made as a "vendetta" of a former girlfriend upset by recent breakup and that he was set up. Due to the lack of any compelling evidence supporting this supposition, the Board concluded that a presumption of regularity was appropriate. The Board further concluded that the characterization of the discharge, the reason for the discharge, and the reenlistment code identified were appropriate.

Issue 5 and 8: The applicant contends he was sacrificed to "send a message". He contends that the commander's recommendation for an Honorable was circumvented by the SJA's recommendation to disapprove the waiver request in order to "send a message." The Board found no evidence of impropriety regarding the issues submitted. The Board opined that the SJA's intent was to prevent the wing commander sending the wrong message, i.e., that an individual convicted of two DUIs could still receive an Honorable discharge. The Board concluded the misconduct of the applicant appropriately characterized his term of service and the reason for the discharge and reenlistment code were also appropriate.

Issue 6 and 7: The applicant contends that his legal counsel was inadequate and that he was not given adequate time to adjust to the actions and accusations against him. He also contends that his commander and counsel misled him when they advised him he would receive an Honorable discharge. In addition, the applicant contends that he should have had access to counsel prior to drug testing.

The Board found no evidence of impropriety with these issues. The applicant had the right to refuse his counsel's advice and if he felt his counsel inadequate, had the opportunity to find another. The applicant's submission for a conditional waiver to his discharge board was an option he chose to pursue knowing that if denied, he would still face a discharge board and that he could receive a General discharge. In a command-directed urinalysis an individual does not have right to counsel prior to testing; because of this, the results of the testing cannot be used in criminal proceedings or nonjudicial punishment and cannot be used for characterization in the discharge process. The Board concluded that the characterization, reason for the discharge and reenlistment code were appropriate for the reasons which were the basis for this case.

Issue 9, 10, and 11: The applicant states that he is a mature person and continues to be a dedicated, hard-working family man and a patriotic citizen who desires to resume service to his country. He is experiencing limited opportunities for employment due to his discharge and believes his service deserves an honorable recognition characteristic of his performance as documented in his case file. The Board was sympathetic to the impact of the discharge characterization on the applicant, but it is not a matter of inequity or impropriety which would warrant an upgrade, or change to the reason for the discharge or 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.

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, reason for discharge and reenlistment code should not be changed.

Attachment:  
Examiner's Brief

DEPARTMENT OF THE AIR FORCE  
AIR FORCE DISCHARGE REVIEW BOARD  
ANDREWS AFB, MD

(Former SSgt) (HGH SSgt)

MISSING DISCHARGE DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF McGuire AFB, NJ on 28 Feb 06 UP AFI 36-3208, para 5.54 (Misconduct - Drug Abuse). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 22 Feb 81. Enlmt Age: 19 11/12. Disch Age: 25 0/12. Educ: HS DIPL. AFQT: N/A. A-49, E-44, G-53, M-46. PAFSC: 3P051 - Security Forces Journeyman. DAS: 15 Oct 03.

b. Prior Sv: (1) AFRes 15 Feb 01 - 26 Feb 01 (12 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 27 Feb 01 for 6 yrs. Svd: 05 Yrs 00 Mo 02 Das, all AMS.

b. Grade Status: SSgt - 01 Jun 05  
SrA - 13 Apr 03  
A1C - 13 Apr 01

c. Time Lost: None.

d. Art 15's: None.

e. Additional: Unknown.

f. CM: None.

g. Record of SV: 27 Feb 01 - 15 Oct 02 McGuire AFB 5 (HAF Dir)  
16 Oct 02 - 15 Oct 03 McGuire AFB 5 (Annual)  
16 Oct 03 - 15 Oct 04 McGuire AFB 5 (Annual)  
16 Oct 04 - 15 Oct 05 McGuire AFB 3 (Annual)

h. Awards & Decs: AFTR, NDSM, KDSM, AFOSSTR, SAEMR, AFLSAR, GWOTSM, NCOPMER, AFOUA W/2 OLCS.

i. Stmt of Sv: TMS: (05) Yrs (00) Mos (14) Das  
TAMS: (05) Yrs (00) Mos (02) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 12 May 06.  
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Applicant's Issues.
2. DD Form 214.

12JUL06/ia

Issues needing to be considered. On or about June 2005 I was called back from leave to support a mission. When I returned I was called in for a surprise urinalysis, due to an ex-girlfriend calling in and making allegations. I tested positive with a very small amount of a controlled substance. I went in front of an administrative discharge board well knowing I could receive other than honorable conditions discharge and testified under oath I did not willfully or knowingly ingest a controlled substance. The governments' main witness was not forced to testify and did not even show up to testify. The government had no witnesses and I had several character witnesses. A few days before my board, my lawyer asked my commander if he was willing to separate me with an honorable discharge and he agreed. This was not brought up to the board members due to a regulation restricting it. If the board members would have known that my commander a Lt. Col in the United States Air Force wanted to give an honorable discharge things may have been different. Further more the governments basis was focused on two traffic violations than the positive UA.



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I received no punishment for the first traffic violation because I was regarded as an outstanding soldier. The second violation I received a (LOR) Letter of Reprimand and sought a lot of professional counseling from the clinic. But I still did not receive any article 15's or career ending punishment due to my hard work ethic and the fact I sought professional help. In five years of active duty service I was never late for work, always showed up with a pressed uniform and polished boots and never turned down a deployment. I feel a soldier should be looked at by the type of performance that was conducted the entire time of their career not by two mistakes made by a young man. The controlled substance found in my system was such a small amount it could have and was slipped into my drink at a social party a few days before being called back from leave. Please take the time to consider the other issues that were somewhat overlooked by the board members.





DEPARTMENT OF THE AIR FORCE  
305TH AIR MOBILITY WING (AMC)

FD2006-00194

19 JAN 06

MEMORANDUM FOR 305 AMW/CC

FROM: 305 AW/JA

SUBJECT: Legal Review of Offer of Conditional Waiver of Administrative Discharge Board –  
SSgt: [REDACTED] 305 SFS

1. You convened an administrative discharge board on 18 November 2005 in the subject case. The legal advisor set the board date for 18 January 2006 and then delayed it until 19 January 2006 due a family emergency. Last night, the Respondent's Counsel in the subject case faxed a Request for a Conditional Waiver of the board (Atch 1) to our office. We promptly conveyed it to 305 SFS/CC, Lt Col: [REDACTED] who responded this morning (Atch 2) recommending approval. I have reviewed the package for legal sufficiency and compliance with AFI 36-3208 and recommend that you reject the conditional waiver. If you concur, I have attached an action memorandum for your signature. (Atch 3) Should you desire to support approval of the conditional waiver, I will prepare a forwarding memorandum for your signature to route up to 18<sup>th</sup> AF/CC for final action.

2. **BACKGROUND:** SSgt: [REDACTED] faces discharge for having two DWI's (one off base and one on Ft Dix) and for drug abuse (proven by a command-directed positive UA for cocaine which cannot be considered in determining characterization of service).

3. **COMMANDER'S RECOMMENDATION:** Lt Col: [REDACTED] recommends accepting the conditional waiver due to his desire to guarantee that the member is separated, the impact on his unit if the member is retained through the end of his enlistment, and in recognition of the fact that SSgt: [REDACTED] has a wealth of support within the unit for his duty performance and contributions to the mission throughout this enlistment. All of these factors combine to convince Lt Col: [REDACTED] that SSgt: [REDACTED] generally has met Air Force standards of conduct; that his service is otherwise so meritorious that any other characterization is inappropriate; and that no significant negative aspects of his misconduct outweigh the positive contributions he has made since 2001.

3. **DISCUSSION:** Although there are no guarantees that the board will discharge SSgt: [REDACTED] I do not believe recommending approval of an honorable discharge for two DWI's is the right message to send, even considering the needs of the unit and SSgt: [REDACTED] record of performance.

4. **RECOMMENDATION:** I have reviewed the package for legal sufficiency and compliance with AFI 36-3208 and recommend that you reject the conditional waiver.

[REDACTED]  
Staff Judge Advocate



FD2006-00194

3 Attachments:

1. [redacted] Cond Wvr
2. 305 SFS/CC response
3. Action Memo

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18 Jan 06

MEMORANDUM FOR LT COL SCOTT ULRICH

FROM: SSgt [REDACTED]

SUBJECT: Discharge Under AFI 36-3208, (Conditional Waiver Statement)

I have been notified that you are recommending me for discharge a Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline and Misconduct: Drug Abuse under AFPD 36-32 and AFI 36-3208, paragraphs 5.50.2 and 5.54, and of the specific basis of the proposed discharge. I know that I am entitled to request or waive, in writing, the following rights:

To present my case before an administrative discharge board.

To be represented by military counsel.

To submit statements in my own behalf to be considered by the administrative discharge board and separation authority.

Military counsel has been made available to me. I have been notified of my right to employ civilian counsel, if I so desire.

I hereby offer a conditional waiver of the rights associated with an administrative discharge board hearing. This waiver is contingent on my receipt of no less than an Honorable characterization of discharge, if the recommendation for my discharge is approved. I understand that if the convening authority or the separation authority reject this waiver the processing of my case will continue according to AFI 36-3208.

If this discharge is approved, I understand I am not entitled to lengthy service probation consideration as described in Section 6F, Chapter 6.

I have voluntarily signed this statement and retained a copy of it.

[REDACTED]



DEPARTMENT OF THE AIR FORCE  
305TH AIR MOBILITY WING  
MCGUIRE AFB, NEW JERSEY 08641

PD2006-00194

21 NOV 05

MEMORANDUM FOR STAFF SERGEANT: [REDACTED]  
305th Security Forces Squadron

FROM: 305 AMW/JA

SUBJECT: Administrative Discharge Under AFI 36-3208

1. An Administrative Discharge Board appointed by Special Order AE-3, Headquarters 305<sup>th</sup> Air Mobility Wing, dated 18 November 2005, will convene on 30 November 2005, at 0800 hours at McGuire Air Force Base, New Jersey, to receive evidence and make findings and recommendations whether to retain you in the Air Force. Attached is a copy of this order.
2. Your rights as a respondent are specified in AFI 36-3208. You may request the presence of any witness whose testimony you believe to be pertinent to your case, specifying the type of information each witness can provide. The board will invite witnesses as authorized by the legal advisor.
3. If you request witnesses, arrangements will be made for military witnesses to be present (or invitational travel orders issued to civilian witnesses who are not Federal employees). Approval of such requests is contingent upon the following:
  - a. The request is made with enough time to make travel arrangements, and
  - b. The witnesses, in the opinion of the legal advisor, can present relevant and material evidence.
4. I have attached a list of witnesses, their organization, and station (if civilian, the address), expected to be called to appear before the board. The list is subject to revision, and I will provide notice to your counsel of any changes.
5. You may be represented by either a detailed military lawyer or a military lawyer of your choosing, if reasonably available. Civilian counsel may represent you at your own expense.
6. You may also request that a postponement for convening the board if you need more time to prepare your case. If the request is approved, a new date will be set for the hearing. However, if you do not request a later date and you do not appear on the date specified for the hearing, the board will consider your case on the complete file in your absence.
7. Within five (5) calendar days after you receive this notification memorandum, you must acknowledge receipt, including in your memorandum of acknowledgment the following:
  - a. Date and time you received this memorandum.

b. Name and addresses of any witnesses you want to appear before the board, giving a concise summary of the type of information each witness can provide.

c. If you would like to postpone the board, a statement that substantiates your request and the additional time (not to exceed 10 calendar days) that you are requesting.

d. A statement that you do/do not intend to appear before the board.

7. Address all correspondence to 305 AMW/JA, 2901 Falcon Lane, McGuire AFB, New Jersey, 08641-5002, Attn: Capt: [redacted]

[Redacted signature box]

Recorder

Attachments:

Special Order Appointing Board

List of Witnesses

1<sup>st</sup> Ind, SSgt: [redacted]

TO: 305 AMW/JA

1. I acknowledge receipt of the Administrative Discharge Under AFI 36-3208 Memorandum, dated 21 Nov 05, at 1452 hours on 21 NOVEMBER 2005.

2. A list of witnesses I want to appear before the Board will be/will not be attached.

3. I do/do not intend to appear at the Administrative Discharge Board Hearing.

[Redacted signature box]

Respondent