

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD								
NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)			GRADE		AFSN/SSAN			
			SRA					
TYPE UOTH	X	PERSONAL APPEARANCE			RECORD REVIEW			
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	OTHER	DENY
								X
								X
								X
								X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD				
A94.11 A92.21 A94.07 A92.01 A01.57 A93.07		A74.00		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				
HEARING DATE		CASE NUMBER						
13 Jun 2007		FD-2007-00113						
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. via video teleconferencing between Andrews AFB, MD and Robins AFB, GA.								
Advise applicant of the decision of the Board, and his right to submit an application to the AFBCMR								
Names and votes will be made available to the applicant at the applicant's request.								
INDORSEMENT				DATE: 6/15/2007				
TO:				FROM:				
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742				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-2007-00113**

**GENERAL:** The applicant appeals for upgrade of UOTHC discharge to honorable

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference between Andrews AFB, Maryland and Robins AFB, Georgia on 13 June 2007.

The following additional exhibits were submitted at the hearing:

Exhibit #5: Applicant letter

Exhibit #6: Character reference letters

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:**

Issue 1. Applicant contends that although a punitive discharge was authorized and he received a discharge in lieu of Court Martial, the discharge was inequitable because it was too harsh and didn't allow him the rehabilitation he deserved. The records indicated the applicant received two Article 15s for wrongful use of marijuana and sexually assaulting an Airman, one Letter of Reprimand for dereliction of duty, and one Memorandum for Record for testing positive for marijuana a second time. The Board concluded that the applicant's misconduct was so egregious that additional rehabilitation was not appropriate. 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.

Issue 2. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance reports. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

Issue 3. Applicant asks the board to consider upgrade based on his post-service activities. The DRB was pleased to see that the applicant was doing well, has a good job and is active in his church. However, the DRB determined that based on the documentation provided and the board hearing, they could find no inequity or impropriety in his discharge and as a result, the applicant's post service activities did not offset his current characterization of service.

Issue 4. Applicant opines that throughout his career, but specifically during his last reenlistment period, his chain of command's arbitrary and capricious actions contributed to his misconduct and his subsequent discharge and characterization of service. The DRB found no specific evidence to substantiate the applicant's claims. As such, they concluded the member's characterization of service was appropriate.

Issue 5: Applicant contends his family issues were not appropriately acknowledged and dealt with by his chain of command. Although the DRB was sympathetic to the member's family losses, they noted that the losses had taken place four years prior to the misconduct and the member had sought and received

counseling and depression medication from the base Mental Health Clinic. In addition, based on the documents provided, the board found no reason to believe that the chain of command had not provided counseling and/or support to the member after his family losses, however, they agreed it was conceivable after four years that the chain of command might have lost their willingness to provide the level of support the member felt he needed. Despite this, the board agreed that the member knew right from wrong and had other options available to him, (e.g., return to counseling with Mental Health, etc.), rather than choose to use his own "illegal" means to self-medicate/cope. The Board concluded the discharge was appropriate for the reasons which were the basis for this case.

Issue 6: Applicant states that he was "railroaded" and allegations against him, to include the Article 15 for assault, the dereliction of duty LOR, the violation of quarters, his invitations to smoke marijuana with subordinates and the second positive drug test were invalid or "lies". Based on the documentation provided, the DRB is unable to substantiate the applicant's claims; the board found the documentation to be creditable and the characterization of service 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 SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF Keesler AFB, MS on 12 Jan 01 UP AFI 36-3208, Chapter 4 (Triable by Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 18 Jan 55. Enlmt Age: 25 11/12. Disch Age: 45 11/12. Educ: HS DIPL. AFQT: N/A. A-46, E-26, G-41, M-43. PAFSC: 2T171 - Vehicle Operations Craftsman. DAS: 23 Aug 85.

b. Prior Sv: (1) AFRes 5 Jan 81 - 12 Mar 81 (2 mos 08 das) (Inactive).

(2) Enlisted as A1C 13 Mar 81 for 4 years. Extended 30 Apr 82 for 5 months. Extended 7 Mar 85 for 7 months. Reenlisted as SrA 30 Jun 86 for 4 years. Reenlisted as SrA 2 Apr 90 for 6 years. Svd: 14 Yrs 11 Mos 08 Das, all AMS. SrA: - Unknown. SSgt - 1 Aug 90. APRs: 8,7,9,8,8,7REF,9,9,9,9,9. EPRs: 4,4,4,4,4,4,5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 21 Feb 96 for 5 years. Svd: 04 Yrs 10 Mo 20 Das, all AMS.

b. Grade Status: SrA - 19 Jan 00 (Article 15, 19 Jan 00)

c. Time Lost: None.

d. Art 15's: (1) 19 Jan 00, Keesler AFB, MS - Article 112a. You did, within the Continental United States on or about 25 Oct 99, wrongfully use marijuana. Reduction to SrA and 45 days of extra duty. (Appeal/Denied) (No mitigation)

(2) 06 Jan 97, Keesler AFB, MS - Article 128. You did, on or about 29 Nov 96, assault SrA [ ] by forcefully grabbing her vaginal area. Suspended reduction to SrA. Suspended forfeiture of \$150.00 pay per month for two months. (No appeal) (No mitigation)

e. Additional: LOR, 24 APR 00 - Dereliction of duty.  
MFR, 02 NOV 99 - Positive Drug Urine Test Result.

f. CM: None.

g. Record of SV: 01 Apr 95 - 31 Mar 96 Keesler AFB 5 (Annual)

01 Apr 96 - 31 Mar 97	Keesler AFB	3	(Annual)REF
01 Apr 97 - 11 Sep 97	Keesler AFB	4	(CRO)
12 Sep 97 - 08 Apr 98	Keesler AFB	5	(CRO)
09 Apr 98 - 08 Apr 99	Keesler AFB	5	(Annual)

h. Awards & Decs: AAM, AFCEM W/1 DEV, AFLSA W/3 DEVS, AFTR, AFOSSTR, AFOSLTR, NDSM, SAEMR, NCOPMER W/1 DEV, AFOUA.

i. Stmt of Sv: TMS: (20) Yrs (00) Mos (08) Das  
TAMS: (19) Yrs (10) Mos (00) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Mar 07.  
(Change Discharge to Honorable.)

Issue 1: There was no reason for my discharge after serving 19 years and 10 month 2 month from my retirement. I did what legil (sic) told me to do, I was railroaded.

Issue 2: Request my records be reviewed because there was no rehab. I would think the airforce (sic) would make sure i (sic) was clean before they discharged me.

**ATCH**  
None.

3MAY07/day

HEADQUARTERS SECOND AIR FORCE (AFSC)

8 September 2000

## MEMORANDUM FOR CC

FROM: JA

SUBJECT: Legal Review Request for Discharge in Lieu of Trial by Court-Martial  
 Senior Airman: [REDACTED] 81 TRANS  
 Keesler AFB MS

1. **PURPOSE:** We have reviewed this request for discharge in lieu of trial by court-martial pursuant to the provisions of AFI 36-3208, Chapter 4. We find it legally sufficient and forward it to you for action as the General Court-Martial Convening Authority (GCMCA).

2. **BACKGROUND:** Between 11 September 1999 and 8 May 2000, the accused allegedly used marijuana as evidenced by two urine specimens which tested positive for the metabolite of marijuana. On 15 May 2000, the accused violated his doctor's order, which placed him on quarters, by playing softball. On 6 June 2000, 81 TRANS/CC preferred one specification each of wrongful use of marijuana and dereliction of duty. The 81 TRW/CC referred the case to a special court-martial on 14 July 2000. After consulting with his military defense counsel, the accused submitted a request for discharge in lieu of trial by court-martial on 6 August 2000. The 81 TRANS/CC, 81 TRW/JA, and 81 TRW/CC recommend you approve the request, characterize the accused's service as Under Other Than Honorable Conditions, and recommend denial of Lengthy Service Probation.

3. **FACTS ABOUT THE ACCUSED:**

a. Senior Airman [REDACTED] is 45 years old and is serving a five-year enlistment that began on 21 February 1996. He entered active duty on 13 March 1981. He has a disciplinary record which includes in this enlistment two prior Nonjudicial Punishment actions (one for marijuana use and one for assault) and a letter of reprimand (for supervisory dereliction). His awards and decorations include the Air Force Commendation Medal with 2 OLC, the Army Achievement Medal with 1 OLC, the National Defense Service Medal, the Air Force Overseas Long Tour Ribbon, the Air Force Overseas Short Tour Ribbon, the Air Force Longevity Service Award Ribbon with 3 OLC, the Air Force NCO Professional Military Education Ribbon, the Small Arms Expert Award Ribbon, and the Air Force Training Ribbon. He has the following overall ratings on his Enlisted Performance Reports (most recent first): 2, 5, 5, 5, 3, 5, 5, 4, 4, 5, 4, 4, 4, 9, 9, 9, 9, 8, 9, 7, and 8.

F-4

b. The accused consulted with an attorney prior to submitting his request. He indicated he understood that acceptance of his request could result in an Under Other Than Honorable Conditions Discharge, but requested an Under Honorable Conditions (General) Discharge. He also acknowledged the impact on his veteran's benefits and requested Lengthy Service Probation. His defense counsel submitted a memorandum on his behalf, urging acceptance of the request because of the difficulty in securing a conviction based on an uncorroborated positive urinalysis test result or, if conviction occurred, a meaningful sentence which would include a Bad Conduct Discharge. Defense Counsel also cited the loss of retirement pay and benefits as a result of acceptance of this request. Defense counsel finally requested a service characterization of Under Honorable Conditions (General) by claiming the accused had 18 years of otherwise untarnished service.

4. **ERRORS AND IRREGULARITIES:** The file contains no report of a physical examination showing the accused qualifies for worldwide duty. This error does not render the file legally insufficient or prejudice the substantive rights of the accused.

#### 5. **DISCUSSION:**

a. It is in the best interest of the Air Force to accept this offer because a conviction could be difficult to obtain in this case. Aside from the positive urinalysis test results and vague witness statements in which the accused said he intended to use marijuana, nothing else corroborates drug use by the accused. The government has also cited the low nanogram levels in the positive urinalysis specimen test result reports. Even if the government secures a conviction, the accused's record from his previous enlistment and close proximity to retirement eligibility could preclude a panel from imposing a sentence which includes a Bad Conduct Discharge. Maintenance of good order and discipline will not suffer by accepting the request because it assures the best means of separating the accused.

b. As for characterization, AFI 36-3208, paragraph 1.18, authorizes an Under Other Than Honorable Conditions Discharge where the accused's conduct constitutes a significant departure from Air Force standards. While the accused may have performed acceptably in his previous enlistments, his service in this enlistment does not support an Under Honorable Conditions (General) Discharge. He twice tested positive for marijuana. He assaulted an airman by grabbing her vaginal area. He was derelict in his duties as a supervisor by spending much of his time on-duty making and receiving personal calls, sleeping during his shift, leaving his post without authorization for hours at a time, and directing his subordinates to not report any incidents or misconduct occurring during his shift.

c. Because the accused has served over 18 years on active duty, he may request Lengthy Service Probation consideration under AFI 36-3208, paragraphs 4.8.2 and 6.35. Since the accused has requested such consideration, you must forward the request to the Secretary of the Air Force through AEIC/CV and the Air Force Personnel Center. The accused's conduct in this enlistment does not merit granting him Lengthy

Service Probation. During this enlistment, the accused's conduct deteriorated precipitously. He received separate Nonjudicial Punishment actions for assault and using marijuana. He received a reduction in grade for his second Nonjudicial Punishment action. He received a letter of reprimand for his dereliction of duty as the swing shift supervisor. He tested positive for marijuana a second time while awaiting an administrative discharge board hearing. His flagrant disregard for standards demonstrates he lacks amenability for rehabilitation.

6. **OPTIONS:** As the General Court-Martial Convening Authority, you may:

- a. Disapprove the request and direct that the matter proceed to trial.
- b. Approve the request, direct the accused's separation with an Honorable, Under Honorable Conditions (General), or Under Other Than Honorable Conditions service characterization, and forward the file with a recommendation either to grant or deny Lengthy Service Probation.

7. **RECOMMENDATION:** Approve the request, direct the accused's separation with an Under Other Than Honorable Conditions service characterization, and forward the file with a recommendation to deny Lengthy Service Probation.

Chief, Adverse Actions

I have reviewed this opinion and concur.

Acting Staff Judge Advocate





DEPARTMENT OF THE AIR FORCE  
AIR EDUCATION AND TRAINING COMMAND

MEMORANDUM FOR SI TRW/CC

13 0 AUG 2000

FROM: SI TRANS/CC

SUBJECT: Request for Discharge in Lieu of Court-Martial

Senior Airman: [REDACTED]

SI TRANS: Keeler AFB MS

1. Senior Airman: [REDACTED] has submitted a request for administrative discharge in lieu of trial by court-martial. I recommend his request be approved for the following reasons:

a. Senior Airman: [REDACTED] is charged with one specification of violation of Article 92, Uniform Code of Military Justice, dereliction of duty, and one specification of violation of Article 112a, Uniform Code of Military Justice, wrongful use of marijuana.

b. I have fully considered the surrounding circumstances of this case as well as Senior Airman: [REDACTED] record and length of service. In light of the severity of the alleged misconduct, his service record and the need to maintain good order and discipline, I feel that accepting his unconditional request for a discharge in lieu of court-martial is the correct course of action. Senior Airman: [REDACTED] misconduct was intolerable, but while the gravity and seriousness of the charge against Senior Airman: [REDACTED] warrants trial by court-martial, accepting this request is still in the interests of justice.

2. If you choose to recommend approving the request for discharge, I recommend Senior Airman: [REDACTED] be furnished an Under Other Than Honorable conditions discharge. No promises regarding a service characterization have been made to Senior Airman: [REDACTED]

3. Senior Airman: [REDACTED]

Is not under investigation.

Is not awaiting action under AFIs 36-2503 and 36-2902, or another section of AFI 36-4205.

Is not awaiting result of trial, although a trial date is scheduled for 5 Sep 00.

Is not absent without authority.

Is not absent in hands of civil authorities.

Has not been referred to a medical facility for examination.

Is not in default with respect to public property or public funds.

Has completed 16 or more years of active military service.

G-5

Is not accountable or responsible for public property or funds.  
Has not received special pay, bonuses, or education assistance.

4. There has not been a report of recent misconduct.

5. Court martial charges have been preferred. Attached are:  
Request for Discharge w/Atch  
Copy of DD Form 458, Charge Sheet  
Report of Investigation

6. Charges have been referred for trial.

7. At the time of the misconduct, Senior Airman [ ] did not have a mental disease or defect that caused him to lack the substantial capacity either to appreciate the criminality (wrongfulness) of the acts, or to conform to the law. Senior Airman [ ] presently has the capacity to understand the nature of the proceedings and to assist in the defense.

8. Senior Airman [ ] does not hold a Reserve of the Air Force appointment as a commissioned or warrant officer.

9. Information from the military record follows:

a. Date and term of enlistment and date this period of continuous active duty started: pay date, TAFMSD, and dates of prior service: 21 Feb 86, 4 years; 13 Mar 81 -- 20 Feb 96

b. Date of Birth: 18 Jan 55

c. Test Scores: ADM - 40, ELECT - 26, GEN - 41, MECH - 43

d. Formal training: Basic Military Training

e. Date assigned unit: 23 Aug 85

f. Current grade and effective date: Senior Airman, 10 Jan 00

g. Demotions: One

h. Time lost: None

i. Record of disciplinary actions: Article 15 - 30 Dec 96; Article 15 - 3 Jan 00

j. Overall rating on enlisted performance reports: Last three: (2000-2): 1999-5, 1998-5