

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE	AFSN/SSAN [REDACTED]
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TYPE	PERSONAL APPEARANCE	X	RECORD REVIEW
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NAME OF COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	
	X	

MEMBER NAME	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
		X			
		X			
		X			
		X			
		X			

ISSUES A01.39 A61.12	INDEX NUMBER A66.00	EXHIBITS SUBMITTED TO THE BOARD
		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 HEARING

HEARING DATE 25 Mar 2010	CASE NUMBER FD-2009-00004	
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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, 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.

INDORSEMENT		DATE: 3/25/2010
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 20762-7001

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2009-00004

GENERAL: The applicant appeals for upgrade of discharge to general.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined and requests that the review be completed based on the available service record.

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

FINDING: The Board grants the requested relief. The discharge is upgraded to general.

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

ISSUE:

Issue 1. Applicant contends his discharge was inequitable because his lawyer advised him incorrectly. The applicant was a traditional reservist who tested positive for the metabolite of cocaine during a random urinalysis conducted on a unit training assembly (UTA) weekend. The applicant denies that he used drugs and states his defense counsel did not use supporting documentation and witness statements he provided to her to help his case. However, a review of the file reveals that the applicant's defense counsel had provided the government notice that a witness would testify at the applicant's discharge board hearing that he had witnessed another individual put cocaine in the applicant's drink at a bar prior to the UTA weekend. Shortly thereafter, the applicant's defense counsel submitted an unconditional board waiver on behalf of the applicant stating that the proposed witness was unable/unwilling to testify at the board hearing and the applicant did not feel he could prevail based on his own testimony alone. Therefore, the DRB concluded that the applicant's defense counsel provided more than adequate assistance to the applicant and it was the applicant's witness who was unable/unwilling to testify on the applicant's behalf. The applicant made the decision to unconditionally waive his right to a board hearing. For these reasons, the DRB found no inequity or impropriety in the applicant's discharge based on this stated reason.

Issue 2. Though not raised by the applicant, the DRB discovered an impropriety in the applicant's discharge characterization. The applicant's defense counsel had raised the point that, under applicable Air Force regulations, the applicant could not be discharged with a UOTHC characterization for conduct committed while in a civilian capacity unless the government could show a direct effect on the applicant's duty performance. It appears from the record that the applicant was a traditional reservist who tested positive for cocaine while on a UTA weekend. There is no evidence to suggest that the applicant was on active duty at the time he actually used cocaine and there is no evidence raised that his use of cocaine directly affected his performance of duty. This issue is not even discussed in the accompanying legal review. Because there is no evidence to support the UOTHC characterization, the DRB voted to upgrade the applicant's discharge to general.

CONCLUSION: The Discharge Review Board concludes that the discharge was inconsistent with the procedural and substantive requirements of the discharge regulation and finds the applicant was not provided full administrative due process.

In view of the foregoing findings, the Board concludes that the overall quality of applicant's service is more accurately reflected by a discharge Under honorable Conditions (General).

Attachment:
Examiner's Brief