

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE CAPT	AFSN/SSAN [REDACTED]
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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	ATTN: QUEEN BAKER 1608 K STREET NW WASHINGTON DC 20006
X		

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOHC	OTHER	DENY
					X*
					X*
					X*
					X*
					X*

ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD														
A01.13 A02.17 A92.21 A01.17 A01.31 A01.39 A01.21 A01.23 A94.05	A66.00	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>1</td><td>ORDER APPOINTING THE BOARD</td></tr> <tr><td>2</td><td>APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td>3</td><td>LETTER OF NOTIFICATION</td></tr> <tr><td>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 HEARING</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 HEARING
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HEARING DATE	CASE NUMBER	
04 Feb 2011	FD-2009-00061	

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.

*Reason and Authority

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2009-00061

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

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 denies the upgrade of the discharge and change of reason and authority for discharge.

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.

ISSUES:

Issue 1. Applicant contends his discharge was improper due to violation of his Fourth Amendment Rights whereas The Office of Special Investigations (OSI) performed an illegal search and seizure; investigation documents were falsified; failure to stop questioning after repeated attempts requested by applicant; failure to adhere to applicant's request to speak with his commander; his Area Defense Counsel was inadequate; failure to clarify OSI's processes and procedures; .

Issue 2: Applicant contends his discharge was improper due to failure to submit proper documents to the Secretary of the Air Force; prejudicial information was provided to the Secretary of the Air Force Personnel Council (SAFPC); failure to provide copies of Disposition Report to applicant, failure to correct administrative errors within the Report of Investigation (ROI); use of illegal evidence; and failure to complete his case in an understandable format.

Issue 3: Applicant contends his discharge was improper due to inadequate Area Defense Counsel

Issue 4: 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, letters of recommendation and other accomplishments. 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 5: The DRB was pleased to see the applicant was doing well. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

Issue 6: Although not explicitly stated, applicant contends his discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for using marijuana. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded that the negative aspects of the applicant's service outweighed the positive contributions he made in his Air Force career. The characterization of the discharge received by the applicant was found to be appropriate.

CONCLUSION: 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 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 and determines the discharge should remain unchanged.

Attachment:
Examiner's Brief

**APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL
FROM THE ARMED FORCES OF THE UNITED STATES**

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0004), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual.

ROUTINE USE(S): None.

DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.

1. APPLICANT DATA (The person whose discharge is to be reviewed). PLEASE PRINT OR TYPE INFORMATION.

<input type="checkbox"/> ARMY <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> NAVY <input checked="" type="checkbox"/> AIR FORCE <input type="checkbox"/> COAST GUARD	c. GRADE/RANK AT DISCHARGE O-3E / CAPTAIN
--	--

2. DISCHARGE CHARACTERIZATION RECEIVED (X one)

<input type="checkbox"/> HONORABLE	<input checked="" type="checkbox"/> CHANGE TO HONORABLE
<input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS	<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS
<input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS	<input type="checkbox"/> CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)
<input type="checkbox"/> BAD CONDUCT (Special court-martial only)	<input checked="" type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION TO:
<input type="checkbox"/> UNCHARACTERIZED	Voluntary / Force
<input type="checkbox"/> OTHER (Explain)	

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION

435 Services / Ramstein / Germany

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 14. See instructions on Page 3.)

1. My discharge was improper because my 4th Amendment Rights of Illegal Search and Seizure was violated. 2. My discharge was improper because my 4th Amendment rights when the OSI Special Agents failed to stop the questioning at any time after numerous times of me asking. 3. My discharge was improper because there was failure to provide the secretary of Air Force with pertinent documents relating to the facts of how and why Special Agent Scott Lowry demanded and took my personal property. 4. My discharge was improper because failure to provide me with a copy of the Deposition.

7. (X if applicable) AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.

8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: (Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)

1. Report of Investigation File No # 515-C-112 ACI-291 300 602 709 04 (ROI)

2. AF IMT Form 1102 Statement of Suspect/Witness/Complainant

3. Case File Documentation 1-b, AF Form 1102 Statement of Suspect/Witness/Complainant
a. Section 3 Line 1b
b. Page 2 Lines 19-22

9. TYPE OF REVIEW REQUESTED (X one)

CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR (counsel/representative) WILL NOT APPEAR BEFORE THE BOARD.

I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.

I AND/OR (counsel/representative) WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO (enter city and state) (NOTE: The Navy Discharge Review Board does not have a traveling panel.)

10. a. COUNSEL/REPRESENTATIVE (If any) NAME (Last, First, Middle Initial) AND ADDRESS (See Item 10 of the instructions about counsel/representative.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

d. FAX NUMBER (Include Area Code)

11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name (print) and relationship by marking a box below.

SPOUSE WIDOW WIDOWER NEXT OF KIN LEGAL REPRESENTATIVE OTHER (Specify)

12. a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE (Forward notification of any change in address.)

b. TELEPHONE NUMBER (Include Area Code)

c. E-MAIL

d. FAX NUMBER (Include Area Code)

13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. (U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

a. SIGNATURE (Print name above)

b. DATE SIGNED - REQUIRED (YYYYMMDD)

2009 01 31

CASE NUMBER (Do not write in this space.)

FD-2009-000 61

3 Feb 09

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)
 Report from the Article 32 Hearing that would have afforded me the opportunity to decide if a Board of Investigation would have been better. 5. My discharge was improper because there was a failure to correct administrative errors written in the Report of Investigation signed by Mr. Stephen Paas. 6. My discharge was improper because per the UCMJ Article 31 regulation of an Article 32 Hearing, there was a failure to provide the accused with a copy of the investigative report (Deposition Report) and associated evidence. And within 5 days of receipt, the accused may submit objections or comments regarding the report to the commander who directed the investigation. 7. My discharge was improper because the OSI Special Agents failed to comply with my request for my commander and to assist on the Air Force IMT Form 3985 the pertinent detail that I was asking him. 8. My discharge was improper because the 435 ABW/JAM failed to ensure that the discovery procedures were appropriately followed and met. 9. My discharge was improper because the Defense Counsel, Michael D. Carson failed to fully represent my case after discovering my constitutional rights were violated. 10. My discharge was improper because the Presiding Officer of the Article 32 Hearing failed to disregard providing the Chain of Command evidence discovered in the Hearing. 11. My discharge was improper because there was a failure to clarify OSI requested for a written statement and clearly determine that my Rights of Advancement were read. (See Attachments for remaining listed issues.) (12-19)

15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)
 4. Memorandum For AFOSI (Det 515), 14 Jul 06, No # 1, Lines 4 and 5.
 5. Memorandum From 435 SUS/CC, Paragraph 2a, Line 4, 20 NOV 06
 6. Memorandum From 435 ABW/JA, 20 NOV 06
 a. Paragraph 2a, Line 4
 b. Report of Investigation, Narrative Interview, 2-3, Line 13
 c. Paragraph 3a (Discussions)
 1. "NO Errors"
 d. ROI
 a. Section 2-5, Page 5
 7. Case File Documentation 1-4; Page 1 (Interview Notes), Subject; Line 16
 8. Case File Documentation 1-3, Page 1 (Interview Record), AF IMT 3985, Section 3, "Pertinent Details and Specific Requests"

Attachments
 9-20 attached

16. REMARKS (If applicable)
 For each one of my supporting documents, I included information to explain why my discharge was improper. Each one attached with my applications.
 Finally, support document NO # 21 of the ROI, 2-3 lines one and two states that "after rights, advancement SUBJECT had no knowledge of how THC was present in his system," members of the board, there was never a signed sworn statement. This is falsified information because my rights were not read.
 See "Final Remarks" attachment

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

<p>ARMY</p> <p>Army Review Boards Agency Support Division, St. Louis 9700 Page Avenue St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)</p>	<p>NAVY AND MARINE CORPS</p> <p>Naval Council of Personnel Boards 720 Kennon Street, S.E. Room 309 (NDRB) Washington Navy Yard, DC 20374-5023</p>
<p>AIR FORCE</p> <p>Air Force Review Boards Agency SAF/MRBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742</p>	<p>COAST GUARD</p> <p>U.S. Coast Guard Commandant (G-WPM) 2100 Second Street, S.W. Room 5500 Washington, DC 20593</p>

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

AFDRB BRIEF					
			DOCKET # FD2009-00061		COMPONENT: USAF
TYPE OF DISCHARGE: GENERAL	DISCHARGE FROM: RAMSTEIN AB, GE		DISCHARGE DATE: 21 SEP 07	APPEALS FOR: HON DISCH & NARRATIVE REASON	
DOB/ ENLMT AGE : 14 AUG 66 24 11/12	DISCH AGE: 41 1/12	FORMER: CAPT	HGH: CAPT	B. CURRENT DOR: 2 MAR 05	C. TIME LOST: NONE
AFSC: 34M3 - SERVICES OFFICER 13M3 - AIRFIELD OPERATIONS		DE P DT: 4 JUL 91		ASVAB SCORES: A: N/A E: N/A G: N/A M: N/A	
D. ART 15: ART 15: 1	D. LOR, LOA, RIC, LOC: NONE	E. SPCM / GCM: NONE		ADDITIONAL: (IE. CIVIL CONV, CDC) NONE	
F. RECORD OF SERVICE (EPR/ OPR, PAST TO PRESENT) :					
22 MAY 02 - 22 JAN 03 GRANDFORKS MS (CRO)					
23 JAN 03 - 22 JAN 04 RAMSTEIN AB MS (ANNUAL)					
3 SEP 04 - 12 JAN 03 ALI AL SALEM AB (AF FORM 77)					
23 JAN 05 - 22 JAN 06 RAMSTEIN AB MS (ANNUAL)					
23 JAN 07 - 19 SEP 07 RAMSTEIN AB MS (CRO)					
G. AWARDS & DECS: AFCM, AFAM w/4OLC, AFOUA w/3OLC, AFGCM w/3OLC, NDSM w/1SS, GWOTEM, GWOTSM, AFOSSTR, AFLS w/1OLC, USAF NCOPMEGR					
EAD: 31 JUL 91		DAS: UNKNOWN		H. TMS: UNKNOWN	
				TAMS: 16 YRS, 1 MOS, 21 DAS	
APPLN (DD FORM 293) DTD: 31 JAN 09		DT/ INITIALS: 10AUG09/JLL		NPA: YES	
				PA: NO	
RECORDS :	MPR:	ARMS: X	STR: X	ISSUES: YES	ATTACHMENTS: YES
AUTH FOR DISCHARGE :					
AFI 36-3207, PARA 2.30, AFI 36-3206, PARA 3.6.3 & SECRETARY OF THE AIR FORCE ORDER 240.8 (MISCONDUCT)					
ART 15; SPMC; GCM; ADDITIONAL:					
ART 15: 30 SEP 06 - (ART 112A) USED MARIJUANA.					
EXAMINER'S NOTE:					
NOTES:					

**APPLICATION FOR THE REVIEW OF DISCHARGE OR DISMISSAL
FROM THE ARMED FORCES OF THE UNITED STATES**

(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

Form Approved
OMB No. 0704-0004
Expires Aug 31, 2006

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[REDACTED]		D-3E / CAPTAIN		

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b. Page 2, Lines 19-22

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a. DATE SIGNED - REQUIRED (YYYYMMDD)

2009 01 31

b. CASE NUMBER (Do not write in this space.)

FD-2009-000 61

3Feb09

14. CONTINUATION OF ITEM 6, ISSUES (If applicable)

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15. CONTINUATION OF ITEM 8, SUPPORTING DOCUMENTS (If applicable)

4. Memorandum For AFOSI (Det 515), 14 Jul 06, No # 1, Lines 4 and 5.

5. Memorandum From 435 SUS/CC, Paragraph 2a, Line 4, 20 NOV 06

6. Memorandum From 435 ABW/JA, 20 NOV 06

a. Paragraph 2a, Line 4

b. Report of Investigation, Narrative Interview, 2-3, Line 13

c. Paragraph 3a (Discussions)

1. "NO Errors"

d. ROI

a. Section 2-5, Page 5

7. Case File Documentation 1-4; Page 1 (Interview notes), Subject; Line 16

8. Case File Documentation 1-3, Page 1 (Interview Record), AF IMT 3985, Section 3, "Pertinent details and specific requests"

Attachments
9-20 attached

16. REMARKS (If applicable)

For each one of my supporting documents, I included information to explain why my discharge was improper. Each one attached with my applications.

Finally, support document NO# 21 of the ROI, 2-3 lines one and two states that "after rights advisement SUBJECT had no knowledge of how TIC was present in his system," members of the board, there was never a signed sworn statement. This is falsified information because my rights were not read.

See "Final Remarks" attachment

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW.

ARMY

Army Review Boards Agency
Support Division, St. Louis
9700 Page Avenue
St. Louis, MO 63132-5200
(See <http://arba.army.pentagon.mil>)

NAVY AND MARINE CORPS

Naval Council of Personnel Boards
720 Kennon Street, S.E.
Room 309 (NDRB)
Washington Navy Yard, DC 20374-5023

AIR FORCE

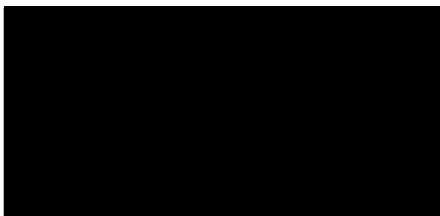
Air Force Review Boards Agency
SAF/MRBR
550-C Street West, Suite 40
Randolph AFB TX 78150-4742

COAST GUARD

U.S. Coast Guard
Commandant (G-WPM)
2100 Second Street, S.W. Room 5500
Washington, DC 20593

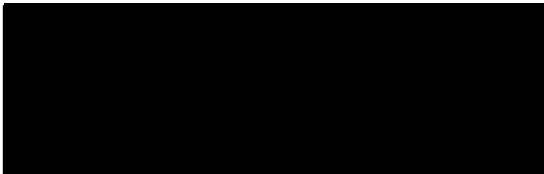
ISSUES: Why an upgrade or change is requested and justification for the request: (DD Forms 293)

12. My discharge was improper because the 435 ABW/JA Office misinformed the discharge Chain of Command with an incomplete Report of Investigation Report.
13. My discharge was improper because the Memorandums and ROI did not state how the torn statement was confiscated.
14. My discharge was improper because written Air Force Instruction of the 36-3206 had erroneous paragraph instructions written in a Memorandum identifying my case for homosexual behaviors.
15. My discharge was improper because there was a failure to determine if discharge proceedings was the right course of action based upon one single allegation.
16. My discharge was improper because of failure to complete me case in an understandable format.
17. My discharge was improper because of failure to characterize me against my entire Service as an Enlisted Non-Commissioned and Commissioned Officer.
18. My discharge was improper and inequitable because of a FALSIFIED Report of Investigation.



In Support (Continue) of this application, the following attached documents are submitted as evidence:

9. Show Cause Retention Package
10. Memorandum For 3 AF/CC, 18 Dec 06, No# 4 (Law and Policy), Line 3-5
11. Paragraph 3.3.3.2
12. Memorandum From HQ AFPC/DPPRS [REDACTED] Lines 11-13 (28 Mar 07)
13. Memorandum For Secretary of Air Force/MRPB, Page 2, paragraph 3, Lines 21-23 (16 Aug 07)
14. Officer Performance Report, 23 Jan 07 to 19 Sep 07
15. Email, 04 Jan 09
16. Email, 12 Jan 09
17. Case File Documentation 1-4 (Interview Note), Subject, Page 2
- 18/19. B [REDACTED] Thank you Letter/ Department of VA Picture ID
20. Falsified Information, ROI, Section 2-3, Lines 1-8
21. Master Military Personnel Record





DEPARTMENT OF THE AIR FORCE
HEADQUARTERS THIRD AIR FORCE (USAFE)

19 DEC 2006

MEMORANDUM FOR [REDACTED]

FROM: 3 AF/CC [REDACTED]

SUBJECT: Notification of Show Cause Action Initiated Under AFI 36-3206, Chapter 3, Paragraph 3.6.3

1. I am initiating action against you under AFI 36-3206, chapter 3, paragraph 3.6.3, that requires you to show cause for retention on active duty.
2. I am taking this action because you used marijuana between on or about 7 February 2006 and on or about 8 March 2006. The least favorable characterization of discharge that the Secretary of the Air Force may approve in this case is under other than honorable conditions (UOTHC). Attached is a copy of the documentary evidence supporting this action.
3. Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of the notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will indicate the date and time that you declined to acknowledge receiving it and it will be included as a part of your case file.
4. Familiarize yourself with AFI 36-3206, particularly the rights that you have. If you do not apply for retirement or request a resignation in lieu of further administrative action, a board (BOI) will convene as provided in Chapter 6 or Chapter 7. [REDACTED] Building 539, Ramstein AB, to discuss the procedures involved and your rights and options. If you decline counsel, contact [REDACTED] Building 2106, for counseling about your rights and options.
5. If you elect to present matters to a BOI, the standard of proof used by the board to make findings is a preponderance of evidence. You may present evidence and argument to rebut the reason set forth in this notification memorandum or any additional reason or information developed during the BOI proceedings. You also may present other pertinent evidence.
6. Within 10 calendar days after you receive this notification memorandum, you must respond by indorsement to me. If I do not receive the indorsement within the allotted time I will proceed with further action under AFI 36-3206. Include in your indorsement:
 - a. Any statement you wish to submit on your own behalf and/or any additional evidence that you wish me to consider. If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time to me. If you do

not submit statements or evidence; your failure will constitute a waiver of your right to do so and I will refer your case to the BOI.

b. A statement that [redacted] whether ADC counseled you and that you fully understand your rights and options in this action. If you declined counsel, so state and indicate that [redacted] [redacted] counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of education assistance, special pay, or bonuses received if you haven't completed the period of active duty you agreed to serve:

- (1) Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.
- (2) Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.
- (3) Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.
- (4) The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the retirement application or the resignation.

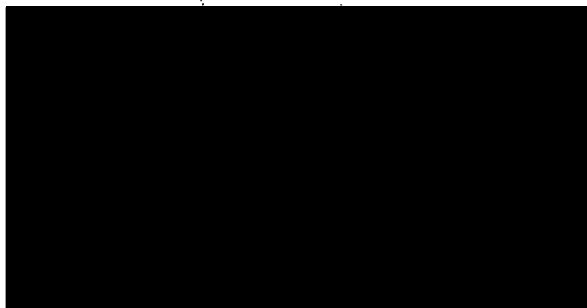
e. A statement that the area defense counsel or the chief, Military Personnel Flight, explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information.

7. In response to this notification memorandum, you may, within 10 calendar days: tender your resignation under AFI 36-3207, chapter 2, section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive an under other than honorable conditions (UOTHC) discharge unless the Secretary of the Air Force determines that you should receive a discharge under honorable conditions (general) or an honorable discharge. If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon as possible but no later than 20 calendar days after the date that the MPF receives separation instructions.

8. No action is required under AFI 31-501, *Personnel Security Management Program*.

9. You may request excess leave if the Air Force doesn't require your further participation in processing your case.



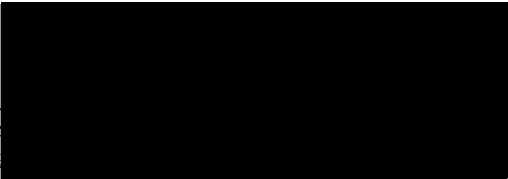
Attachments:

1. AF Form 3070
2. OSI Report of Investigation
3. AFI 36-3206
4. AFI 36-3207



MEMORANDUM FOR SCA

I acknowledge receiving the Notification of Show Cause Action memorandum from 3 AF/CC dated 19 December 2006 with 4 attachments at 1530 on 5 SA 2007.





DEPARTMENT OF THE AIR FORCE
HEADQUARTERS THIRD AIR FORCE (USAFE)

08 FEB 2007

MEMORANDUM FOR 3 AF/CC

FROM: 3 AF/JA

SUBJECT: Legal Review, Conditional Board Waiver - [REDACTED]
435 SVS, Ramstein AB, Germany

1. On 19 Dec 06, you, as the Show-Cause Authority (SCA) initiated a discharge proceeding against [REDACTED] under the provisions of AFI 36-3206, Chapter 3, paragraph 3.6.3. The same day [REDACTED] acknowledged receipt of the Notification to Show Cause. On 16 Jan 07, [REDACTED] submitted a conditional waiver of board hearing IAW AFI 36-3207, *Separating Commissioned Officers*, Paragraph 2.30. [REDACTED] offers to waive his right to a BOI, conditioned on the Secretary of the Air Force approving no less than an under honorable conditions (general) characterization of discharge.

2. BACKGROUND.

a. [REDACTED] a non-probationary, regular officer. His total active federal military service date is 31 Jul 91. His total active commissioned service date is 2 Mar 01. He does not have an active-duty service commitment resulting from government educational assistance. [REDACTED] assigned as the Combat Support Operations Officer, 435th Services Squadron, Ramstein Air Base, Germany. [REDACTED] as prior enlisted and commissioned on 02 Mar 01.

b. On 28 Mar 06, the 435th Medical Group Demand Reduction Program Manager notified AFOSI that [REDACTED] had tested positive for Tetrahydrocannabinol (THC), or marijuana, at a level of 214 nanograms per milliliter (ng/mL) during a random urinalysis conducted on 8 Mar 06. The DoD cutoff is 15 ng/mL. AFOSI advised [REDACTED] of his rights and left him alone to write a statement. [REDACTED] wrote a statement, then tore it up and wrote another statement denying knowledge of how the drug might have gotten into his system. AFOSI retrieved the torn up statement and sent it to the United States Army Criminal Investigation Laboratory (USACIL) for reconstruction. USACIL was able to reconstruct the statement with only a few words illegible. In the reconstructed statement [REDACTED] used marijuana while on leave in Atlanta from 21 Feb - 1 Mar 06. [REDACTED] received punishment under Article 15, UCMJ, for a violation of Article 112a, wrongful use of a controlled substance.

c. On 16 Jan 07, [REDACTED] submitted his conditional waiver statement. In this statement he states he is willing to waive his right to a board hearing in return for no less than an under honorable conditions (general) discharge. [REDACTED] submitted a statement and several attachments for your review. In his packet [REDACTED] requests to be retained on active duty or if he is not to be retained, he requests to be discharged with an honorable service characterization.

3. ANALYSIS.

a. Pursuant to AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, paragraph 3.6.3 provides that officers may be discharged for illegal drug use. In drug or alcohol abuse cases, the SCA may consider all relevant and admissible evidence on the issue of retention or discharge. If you recommend acceptance of the conditional waiver, the discharge characterization may be honorable or under honorable conditions (general). According to AFI 36-3207, paragraph 1.7.2, the SAF may direct an under honorable conditions (general) discharge if the military record is not sufficiently meritorious to warrant an honorable discharge but doesn't warrant a discharge under other than honorable conditions.

reco [REDACTED]
 conditional waiver and discharge with an under honorable conditions (general) characterization. [REDACTED]
 [REDACTED] 435 ABW/CC, concurs with the recommendation [REDACTED]
 tested positive for marijuana at more than 14 times the DoD cutoff, wrote a statement admitting to drug use, tore that statement up, then wrote another statement swearing he had no knowledge as to how the drug could have gotten into his system, shows a lack of integrity that does not merit an honorable discharge characterization. There is sufficient evidence to support the allegation that [REDACTED] used illegal drugs and that he should be discharged with an under honorable conditions (general) discharge.

4. OPTIONS. Under AFI 36-3207, paragraph 2.31., you have two options:

a. Reject the conditional waiver and tell [REDACTED] that either he submit an unconditional waiver or a board hearing will be scheduled; [REDACTED]

b. Recommend acceptance of the conditional waiver and forward to USAFE/CC.

5. RECOMMENDATION. Forward the case to HQ AFPC/DPPRS with a recommendation that [REDACTED] be discharged with an under honorable conditions (general) discharge characterization. If you agree, sign the proposed memorandum at Attachment 1.

[REDACTED]

Attachments:

1. Proposed Action Memorandum
2. Conditional Waiver Request, dated: 16 Jan 07, 2 pgs
3. 435 SVS/CC Conditional Waiver Recommendation Memorandum, dated: 30 Jan 07
4. Capt Sims Response Package
5. Discharge Package