

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

AMN

TYPE GEN

PERSONAL APPEARANCE

X

RECORD REVIEW

COUNSEL

NAME OF COUNSEL AND OR ORGANIZATION

ADDRESS AND OR ORGANIZATION OF COUNSEL

YES

No

X

VOTE OF THE BOARD

HON

GEN

UOTHC

OTHER

DENY

X

X

X

X

X

ISSUES

A94.53

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

09 Sep 2010

CASE NUMBER

FD-2009-00088

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.

NT

DATE: 11/1/2010

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-2009-00088

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

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.

FINDINGS: The Board denies the upgrade of the discharge.

The Board finds the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was unable to identify any that would justify a change of discharge.

ISSUES:

Issue 1. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

Issue 2. The record indicates that the applicant was discharged for Misconduct—Drug Abuse. He received an Article 15 for wrongful use of marijuana. The record shows that the applicant tested positive during a random drug urinalysis. He was later investigated during an OSI investigation and admitted to smoking marijuana. After a review of the record, the Board found no evidence to indicate that the applicant did not know right from wrong or that in his four years of service was unaware of the Air Force policy of zero tolerance to drug use. The Board found the negative aspects of the willful misconduct outweighed the positive aspects of the applicant's performance and concluded that the discharge was 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 the applicant 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
FROM THE ARMED FORCES OF THE UNITED STATES**
(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

OMB No. 0704-0004
OMB approval expires
Oct 31, 2009

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 the Department of Defense, Executive Services Directorate (0704-0004). 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 ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.**

PRIVACY ACT STATEMENT

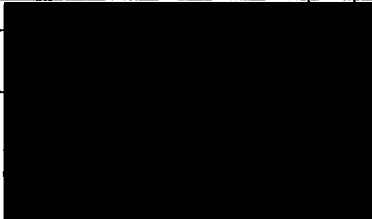
AUTHORITY: 10 U.S.C. 1553; E.O. 9397.

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 E-2				
	d. NAME OF APPLICANT OR PERSON NAMED IN ITEM 11 (Forward)				
	f. TELEPHONE NUMBER g. E-MAIL ADDRESS h. FAX NUMBER				

2. DATE OF DISCHARGE OR SEPARATION
(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)

20030529

4. DISCHARGE CHARACTERIZATION RECEIVED (one)

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

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION

78FS SHAW AFB, SC

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 13. See instructions on Page 3.)

I WOULD LIKE TO USE MY GI BILL BENEFITS.

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 14. If military documents or medical records are relevant to your case, please send copies.)

9. TYPE OF REVIEW REQUESTED (X one)

<input checked="" type="checkbox"/> 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.
<input type="checkbox"/> 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.
<input type="checkbox"/> 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 travelling 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 12.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. 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) I certify that I am not currently imprisoned, or have been imprisoned not more than 5 years, or both.)

CASE NUMBER
(Do not write in this space.)

b. DATE SIGNED - REQUIRED
(YYYYMMDD)

20090128

FD2009-00088

THIS EDITION IS OBSOLETE.

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

AFDRB BRIEF					
				DOCKET # FD2009-00088	COMPONENT: USAF
TYPE OF DISCHARGE: GENERAL	DISCHARGE FROM: SHAW AFB, SC	DISCHARGE DATE: 29 MAY 03		APPEALS FOR: HONORABLE DISCH	
DOB/ ENLMT AGE : 10 AUG 81 17	DISCH AGE: 21	FORMER: AMN	HGH: SRA	B. CURRENT DOR: 15 APR 03	C. TIME LOST: NONE
AFSC: 2A353B - TACTICAL AIRCRAFT MAINTENANCE		DEP DT: 4 FEB 99		ASVAB SCORES: A: 74 E: 72 G: 82 M: 58	
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) : 30 JUN 99 – 15 JAN 01 SHAW AFB 5 (DBH) 15 JAN 01 – 15 JAN 02 SHAW AFB 3 (ANNUAL) REFERRAL 16 JAN 02 – 15 JAN 03 SHAW AFB 5 (ANNUAL)					
G. AWARDS & DECS: AFTR, NDSM, AFEM, AFOUA, JMUA, AFGCM					
EAD: 30 JUN 99		DAS: 26 DEC 02		H. TMS: 4 YRS, 3 MOS, 25 DAS	
TAMS: 3 YRS, 10 MOS, 30 DAS					
APPLN (DD FORM 293) DTD: 28 JAN 09		DT/ INITIALS: 20OCT09/JL		NPA: YES	
PA: NO					
RECORDS :	MPR: X	ARMS:	STR: X	ISSUES: YES	ATTACHMENTS: NO
AUTH FOR DISCHARGE : AFI 36-3208, PARA 5.54 (MISCONDUCT: DRUG ABUSE)					
ART 15; SPMC; GCM; ADDITIONAL: ART 15: 15 APR 03 - (ART 112A) USED MARIJUANA.					
EXAMINER'S NOTE:					
NOTES:					

**APPLICATION FOR THE REVIEW OF DISCHARGE
FROM THE ARMED FORCES OF THE UNITED STATES**
(Please read instructions on Pages 3 and 4 BEFORE completing this application.)

OMB No. 0704-0004
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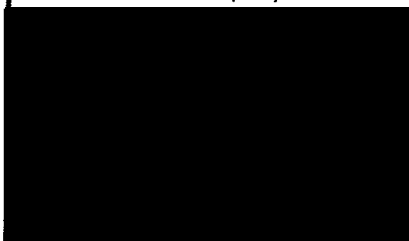
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	c. GRADE/RANK AT DISCHARGE E-2	
	NAME OF PERSON NAMED IN ITEM 11 (Forward)	

2. DATE OF DISCHARGE OR SEPARATION (YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149) 20030529	4. DISCHARGE CHARACTERIZATION RECEIVED (X one) <input type="checkbox"/> HONORABLE <input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS <input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS <input type="checkbox"/> BAD CONDUCT (Special court-martial only) <input type="checkbox"/> UNCHARACTERIZED <input type="checkbox"/> OTHER (Explain)	5. BOARD ACTION REQUESTED (X one) <input checked="" type="checkbox"/> CHANGE TO HONORABLE
		<input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS <input type="checkbox"/> CHANGE TO UNCHARACTERIZED (Not applicable for Air Force) <input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION:
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION 78FS SHAW AFB, SC		

6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST (Continue in Item 13. See instructions on Page 3.)
I WOULD LIKE TO USE MY GI BILL BENEFITS.

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CASE NUMBER
(Do not write in this space.)

b. DATE SIGNED - REQUIRED
(YYYYMMDD)

20090128

FD2009-60088

THIS EDITION IS OBSOLETE.



DEPARTMENT OF THE AIR FORCE

20th FIGHTER WING (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

30 APR 2003

MEMORANDUM FOR [REDACTED]

20 AMXS

FROM: 20 AMXS/CC

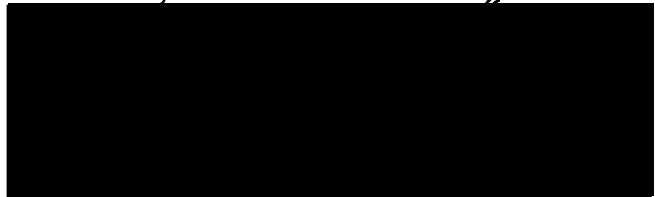
SUBJECT: Notification Memorandum

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 discharge will be characterized as Honorable or Under Honorable Conditions (General). I am recommending that your service be characterized as General.
2. My reason for this action is that at or near Shaw AFB South Carolina, between on or about 1 Mar 03 or about 24 Mar 03, you wrongfully used marijuana.
3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising special court-martial 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, bonus, 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. I have made an appointment for you to consult [REDACTED] Area Defense Counsel, 895-9530, on 30 Apr 03, at 1330 hours. You may consult civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within three days after receipt of the notification memorandum, 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 in your own behalf, your failure will constitute a waiver of your right to do so.
7. You are scheduled for your final out-processing medical examination on 1 ^{NC} ~~Apr~~ ^{MAY} 03 at 1300 hours. You will report to Primary Care, located in the Shaw AFB Hospital, at the time prescribed. This appointment is mandatory. If you must reschedule, contact your unit First Sergeant to reschedule the appointment for you. This examination must be carried out within 48 hours of the original appointment if the date must be rescheduled.

Global Power For America

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 the orderly room.

9. Execute the attached acknowledgment, and return it to me immediately.



Attachments:

1. AF Form 3070, 15 Apr 03 (Tab 4)
2. LOC, 3 Apr 03 (Tab 4a)
3. MFR, 2 Apr 03 (Tab 4a)
4. MFR, 3 July 02 (Tab 4a)
5. LOR, 17 Jan 02, (Tab 4a)
6. LOR, 19 Nov 01 (Tab 4a)
7. AF Form 3070, 9 Mar 01 (4a)
8. Respondent's Receipt of Notification (Tab 5)



DEPARTMENT OF THE AIR FORCE
20th FIGHTER WING (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

9 May 03

MEMORANDUM FOR CC

FROM: JA

SUBJECT: Legal Review of Proposed Discharge [REDACTED]
20th Aircraft Maintenance Squadron

1. **FINDING OF LEGAL SUFFICIENCY.** I reviewed the administrative discharge case file regarding [REDACTED] the proposed discharge is supported by a preponderance of the evidence. There are no errors that prejudice a substantial right of the Respondent. The file is legally sufficient contingent upon [REDACTED] completing his separation physical.
2. **BASIS FOR DISCHARGE.** [REDACTED] 20 AMXS/CC initiated discharge and recommends that [REDACTED] be discharged from the Air Force under AFI 36-3208, paragraph 5.54, for drug abuse. The basis for [REDACTED] proposed discharge is that between on or about 1 Mar 03 and on or about 24 Mar 03 he wrongfully used marijuana.
3. **SERVICE HISTORY.** [REDACTED] has been in the Air Force for three years and five months. He has three enlisted performance reports with overall ratings of 5,3, and 5.
4. **RESPONDENT'S CASE.** [REDACTED] submissions are included at Tab 7. He states that he knows that he is entitled to submit statements in his behalf, however, he has waived his rights to submit a personal statement.
5. **DISCUSSION.** During a random drug demand reduction [REDACTED] tested positive for marijuana. During a resulting OSI interview, [REDACTED] verbally admitted to using marijuana with other military members. Commanders may recommend waivers in drug abuse cases. [REDACTED] as not made such a recommendation in this case. In making this determination, pursuant to AFI 36-3208, paragraph 6.60, a commander considers the totality of the circumstances, of which the retention criteria of paragraph 5.55.2 are only a part. [REDACTED] that these circumstances include the sensitive nature of the position and the trust that has been lost.
6. **CHARACTERIZATION OF SERVICE.** A discharge characterized as Honorable, Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC) can be approved in this case. [REDACTED] recommended that [REDACTED] service be characterized as General. A General discharge is appropriate if an airman's service has been honest and faithful but significant negative aspects of the airman's conduct or performance outweigh positive aspects of the airman's military record. The criminal use of marijuana and associated violation of trust constitute significant negative aspects that outweigh the positive aspects of [REDACTED]

[REDACTED] In addition, his previous serious misconduct includes larceny, underage drinking, and misuse of his government travel card. I concur with [REDACTED] that a General discharge appropriately characterize [REDACTED]

7. **PROBATION AND REHABILITATION (P&R).** Because the respondent's reason for being discharged is drug abuse, he is ineligible for P&R under AFI 36-3208, paragraph 7.2.6.

8. **OPTIONS.** As the Special Court-Martial Convening Authority in this case, you have the following options:

- a. Disapprove the discharge action and retain the Respondent;
- b. Send the discharge package to the general court-martial convening authority with a recommendation that he separate the Respondent with an Honorable discharge;
- c. Approve the discharge action and separate the Respondent with a General discharge; or
- d. Send the package back to the unit with a recommendation that the commander reinitiate the package with a recommendation for an Under Other Than Honorable Conditions discharge.

9. **RECOMMENDATION.** For the reasons set forth above, I recommend the Respondent be discharged from the United States Air Force for drug abuse under the provisions of AFI 36-3208, paragraph 5.54, with a General discharge.

Attachment:
Case file

