

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

AB

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

A94.11
A94.39
A94.05

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

CASE NUMBER

24 Feb 2011

FD-2009-00104

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.

TE: 3/2/2011

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

FD-2009-00104

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.

FINDING: The Board denies the upgrade of the 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 discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15, a Letter of Reprimand, and a Letter of Counseling for misconduct. His infractions included dereliction of duty, a dress and appearance violation, and use of marijuana. Applicant stated he did not have a positive drug test, and was not "convicted" of drug abuse. The record indicated that applicant's drug abuse was identified during the course of an Air Force Office of Special Investigations (AFOSI) investigation in which three eye witnesses to his drug abuse gave statements against him. After review of the record, the Board found no evidence to indicate that the applicant did not know right from wrong or that in his time in 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.

Issue 2. Applicant states that his unit commander did not allow him to consult an attorney before he (applicant) was permanently decertified, presumably from Security Forces duties and / or the Personnel Reliability Program (PRP) (applicant does not specify what he was decertified from). There is no evidence however that applicant was not allowed to consult an attorney relative to receipt of his Article 15, or the processing of the discharge action. Evidence is to the contrary that he did consult an attorney at the time of his Article 15 and was given the opportunity to consult an attorney during his discharge processing. Therefore, no impropriety was found in the processing of the discharge, and the characterization of applicant's service was deemed to be appropriate due to his misconduct.

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
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.

a. BRANCH OF SERVICE (X one) ☒ ARMY ☐ MARINE CORPS ☐ NAVY ☐ AIR FORCE ☐ COAST GUARD

c. GRADE/RANK AT DISCHARGE

E-1 / Airman

NAME OF NEXT OF KIN OR PERSON NAMED IN ITEM 11 (Forward)

(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)

20070817

3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION

31 Security Force Aviation AFB

HONORABLE

☒ GENERAL/UNDER HONORABLE CONDITIONS

☐ UNDER OTHER THAN HONORABLE CONDITIONS

BAD CONDUCT (Special court-martial only)

UNCHARACTERIZED

OTHER (Explain)

5. BOARD ACTION REQUESTED (X one)

☒ CHANGE TO HONORABLE

☐ CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS

☐ CHANGE TO UNCHARACTERIZED (Not applicable for Air Force)

☐ CHANGE NARRATIVE REASON FOR SEPARATION:

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

I was only accused for alleged drug use, and never convicted. I have drug test from the military to prove I never tested positive for any drug.

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.)

DoD Drug Testing Portal (multiple test)

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 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, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

CASE NUMBER
(Do not write in this space.)

b. DATE SIGNED - REQUIRED (YYYYMMDD)

20090119

FD-2009-00104

PREVIOUS EDITION IS OBSOLETE.

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

AFDRB BRIEF							
				DOCKET # FD2009-00104		COMPONENT: USAF	
TYPE OF DISCHARGE: GENERAL		DISCHARGE FROM: LACKLAND AFB, TX		DISCHARGE DATE: 17 AUG 07		APPEALS FOR: HON DISCH	
DOB/ENLMT AGE: 15 MAR 83 22 6/12		DISCH AGE: 24 5/12		FORMER: AB	HGH: A1C	B. CURRENT DOR: 14 JUN 07	
		C. TIME LOST: NONE					
AFSC: 3P031 – SECURITY FORCES APPRENTICE				DEP DT: 12 OCT 05		ASVAB SCORES: UNKNOWN	
D. ART 15: ART 15: 1		D. LOR, LOA, RIC, LOC: LOR: 1 / LOC: 1		E. SPCM / GCM: NONE		ADDITIONAL: (IE. CIVIL CONV, CDC) NONE	
F. RECORD OF SERVICE (EPR/OPR, PAST TO PRESENT): NONE							
G. AWARDS & DECS: GWTSM, AFTR, NDSM, AFLTR, SFB							
EAD: 18 APR 06		DAS: UNKNOWN		H. TMS: 1 YRS, 10 MOS, 5 DAS		TAMS: 1 YRS, 4 MOS, 0 DAS	
APPLN (DD FORM 293) DTD: 19 JAN 09		DT/INITIALS: 31 AUG 09/ VML		NPA: YES		PA: NO	
RECORDS:		MPR:		ARMS: X		STR:	
				ISSUES: YES		ATTACHMENTS: YES	
AUTH FOR DISCHARGE: AFI 36-3208, PARA 5.54 (MISCONDUCT: DRUG ABUSE)							
ART 15; SPCM; GCM; ADDITIONAL: <div style="margin-left: 40px;"> LOR : 6 MAY 07 – MADE UNAUTHORIZED RADIO TRANSMISSIONS IN A SECURITY VEHICLE. ART 15 : 14 JUN 07 – (ART 1121) USED MARIJUANA. LOC : 3 DEC 04 – REPORTED TO DUTY UNSHAVEN. </div>							
EXAMINER'S NOTE: STR UNAVAILABLE PER VA. MISSING LEGAL BRIEF.							
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
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.

ARMY ☐ MARINE CORPS ☐ NAVY ☐ AIR FORCE ☒ COAST GUARD ☐

c. GRADE/RANK AT DISCHARGE

E-1 / Airman

NAME OF APPLICANT OR 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)

20070817

3. UNIT AND LOCATION AT DISCHARGE
OR SEPARATION

31 Security Force Aviation AFB

4. DISCHARGE CHARACTERIZATION RECEIVED

HONORABLE

☒ GENERAL/UNDER HONORABLE CONDITIONS

UNDER OTHER THAN HONORABLE CONDITIONS

BAD CONDUCT (Special court-martial only)

UNCHARACTERIZED

OTHER (Explain)

☒ CHANGE TO HONORABLE

CHANGE TO GENERAL/UNDER
HONORABLE CONDITIONS

CHANGE TO UNCHARACTERIZED
(Not applicable for Air Force)

CHANGE NARRATIVE REASON FOR
SEPARATION:

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

I was only accused for alleged drug use, and never convicted. I have drug test from the military to prove I never tested positive for any drug.

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.)

DoD Drug Testing Portal (multiple test)

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 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 494, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

CASE NUMBER
(Do not write in this space.)

b. DATE SIGNED - REQUIRED
(YYYYMMDD)

20090119

FD-2009-0004

PREVIOUS EDITION IS OBSOLETE.

about 1615

On 1 June 2007, I [redacted] was brought
into the commanders office [redacted] said I have
to sign the permanent decertification paper. [redacted]
also stated that it was not self incriminating, and told
me if that I would not be self incriminating myself
by signing it. [redacted] also said that if I did not
sign it I would be disobeying [redacted] and then
"really be in big trouble". [redacted] and then
were present during the meeting [redacted] did not
allow me to talk to an attorney or paralegal and stated
I could talk to ADL after signing the paper. [redacted]
told me I had no choice, I had to sign the
paper now. [redacted] also stated the reasons for
the permanent decertification were his reasons, and not
from me.

FD 2009-00104

DEPARTMENT OF THE AIR FORCE
31ST FIGHTER WING (USAF)

MEMORANDUM FOR [REDACTED]

FROM: 31 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Misconduct: Drug Abuse. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.54. If my recommendation is approved, your service will be characterized as an Under Honorable Conditions (General) discharge. I am recommending that your service be characterized as an Under Honorable Conditions (General) discharge.

2. My reason for this action is:

a. Between on or about 15 Feb 2007 and 3 May 2007, you wrongfully used marijuana, a Schedule I controlled substance. For this incident, you received an Article 15, dated 14 Jun 2007, with a punishment of reduction to the grade of Airman Basic, with a new date of rank of 14 Jun 2007, and forfeiture of \$600.00 pay per month for 2 months, suspended through 13 Dec 2007. This action was also used to create your Unfavorable Information File (UIF).

b. I also considered the following derogatory information in accordance with paragraph 1.20 of AFI 36-3208. Although this information is not a part of the basis of this discharge action, I have considered it in determining my recommendation for your service characterization:

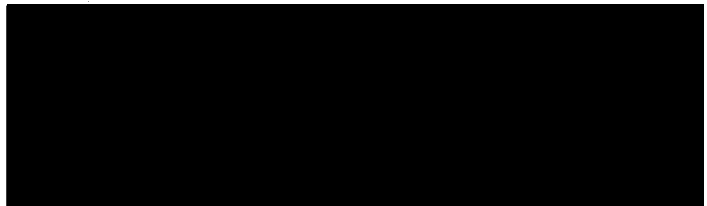
(1) On or about 6 May 2007, you were derelict in the performance of your duties and violated a lawful order by making unauthorized transmissions from the radio of a security forces vehicle. For this incident, you received a Letter of Reprimand (LOR), dated 6 May 2007.

(2) On or about 29 June 2007, you disobeyed a lawful order by reporting for duty unshaven. For this incident, you received a Letter of Counseling (LOC), dated 29 Jun 2007.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or higher authority will decide whether you will be discharged or retained in the United States 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. The separation authority will make the findings and recommendations required under 10 U.S.C. Section 2005(g).

FD 2009-00104

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] Building 224 on Aviano AB, via telephone to Al Udeid, extension 437-6300, on 24 July, at 1530 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 by 27 July 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 have been scheduled for a medical examination. You must report to Family Practice Clinic, Area One Hospital on 24 July, at 1315 hours for the examination.
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 at the Office of the Area Defense Counsel or the Unit Orderly Room.
9. Execute the attached acknowledgment and return it to me immediately.



Attachments:

1. Supporting Documents
 - a. AF Form 1137/Article 15 dated 14 Jun 2007
 - b. LOR dated 6 May 2007
 - c. LOC dated 29 Jun 2007
2. Receipt of Notification Memorandum