

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

TYPE GEN

X

PERSONAL APPEARANCE

RECORD REVIEW

YES

No

NAME OF COUNSEL AND OR ORGANIZATION

ADDRESS AND OR ORGANIZATION OF COUNSEL

X

MEMBER SITTING

HON

GEN

UOTHC

OTHER

DENY

X*+

X*+

X*+

X*+

X*+

ISSUES

A01.13
A93.17
A94.55

INDEX NUMBER

A66.00

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 HEARING

HEARING DATE

21 Jun 2012

CASE NUMBER

FD-2009-00730

Case heard in Washington, D.C.

Advise applicant of the decision of the Board 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.

*Narrative Reason

+RE Code

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-2009-00730

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

The applicant appeared and testified before the Discharge Review Board (DRB) without counsel at Andrews AFB on 21 Jun 2012. The following witness also testified on the applicant's behalf: Ms. Lattice Wilson, applicant's girlfriend.

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 change of reason and authority for discharge and, the change of reenlistment code.

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: Applicant received a General discharge for Misconduct – Drug Abuse

Applicant contends his discharge for drug abuse based on use of Spice was improper because no policy or law had been legally documented or established in the Uniformed Code of Military Justice (UCMJ). He contends use of this substance was legal at the time and he quit using it after the 13 April 2009 General Order prohibiting its use was issued. The record indicates Spice, Dream and Spike 99 were discovered during a dorm room inspection on 30 Mar 2009. Further investigation determined the substances belonged to the applicant, who admitted during the investigation that he was a frequent user of these herbs, rolling them into blunts and smoking them five to six times a week. Applicant contends he was misquoted in the investigative report which specifically states applicant described the difference between the three substances as "Dream would give him a better high than Spike 99 or Spice." Applicant received a Letter of Reprimand (LOR) for possession and misuse of the herbal incenses Dream, Spice, and Spike 99 for euphoric effects and was subsequently discharged. During his testimony before the Board, applicant stated that he was talking in generalities about the substances during the investigation and contends he never told the investigators he was using these products to get high. In his testimony, he described the effects of the products similar to smoking a Newport and described Spice as providing a longer "boost."

The fact Spice was not specifically listed as a prohibited substance until June 2010 does not exclude its use from being a basis for discharge per AFI 36-3208, paragraph 5.54, which states, "Drug abuse is incompatible with military service and airmen who abuse drugs one or more times are subject to discharge for misconduct." Paragraph 5.54.1 defines drug abuse broadly to include "illegal, wrongful, or improper use, possession, sale, transfer, or introduction onto a military installation of any drug." The term "drug" is also defined broadly to include not just illegal or controlled substances, but also "any intoxicating substance, other than alcohol, that is inhaled, injected, consumed, or introduced into the body in any manner for purposes of altering mood or function." The Board did not find the lack of a current general order specifically addressing Spice to automatically make the respondent's LOR and discharge based on drug abuse improper. Even without the presence of such a general order, a commander may reasonably find the evidence to support that an Airman's use of Spice was prejudicial to good order and discipline and punishable under Article 134, UCMJ or a dereliction of the Airman's duty to not use intoxicating substances for the purpose of altering mood or function. The Board found the statement in the investigation valid and determined his admission of frequent use for a "boost" meets the requirement for drug abuse and shows he was not a one-time experimental user.

After review of the record, the Board found the evidence to indicate that the applicant should have known and probably in fact did know that his use of Spice was wrongful or improper. In his almost three years of service, he should have been aware that the Air Force policy of zero tolerance to drug abuse would also prohibit use of Spice. 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.

Attachment:
Examiner's Brief