

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)				GRADE		AFSN/SSAN		
TYPE UOTHC		PERSONAL APPEARANCE		X		RECORD REVIEW		
YES		No		ADDRESS AND OR ORGANIZATION OF COUNSEL				
X								
MEMBER SITTING								
				HON	GEN	UOTHC	OTHER	DENY
								X
								X
								X
								X
ISSUES A01.25 A85.01 A94.05		INDEX NUMBER A66.00		<div style="background-color: black; color: white; padding: 2px;">EXHIBITS</div> <div style="border: 1px solid black; padding: 2px;">1 ORDER APPOINTING THE BOARD</div> <div style="border: 1px solid black; padding: 2px;">2 APPLICATION FOR REVIEW OF DISCHARGE</div> <div style="border: 1px solid black; padding: 2px;">3 LETTER OF NOTIFICATION</div> <div style="border: 1px solid black; padding: 2px;">4 BRIEF OF PERSONNEL FILE</div> <div style="border: 1px solid black; padding: 2px;">COUNSEL'S RELEASE TO THE BOARD</div> <div style="border: 1px solid black; padding: 2px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</div> <div style="border: 1px solid black; padding: 2px;">TAPE RECORDING OF PERSONAL APPEARANCE HEARING</div>				
HEARING DATE 17 Aug 2012		CASE NUMBER FD-2010-00007						
THIS FORM IS TO BE COMPLETED BY THE DISCHARGE REVIEW BOARD AND IS NOT TO BE USED FOR DISCHARGE REVIEW BOARD DECISIONS OR FOR FILE								
<p>Case heard in Washington, D.C.</p> <p>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.</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p>								
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-2010-00007

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.

ISSUE: Applicant received an Under Other Than Honorable Conditions (UOTHC) discharge for Misconduct – Drug Abuse.

Issue 1 - Applicant contends his discharge was improper because it was based on hearsay evidence without any physical evidence of his guilt. The record indicates that the applicant was discharged for Misconduct—Drug Abuse. The record indicates there were multiple witnesses to applicant's distributing, possessing and using marijuana and the applicant was preferred with drug-related charges and specifications. The record indicates applicant signed a pre-trial agreement on 18 May 2009 in which he waived his right to a board hearing in exchange for the court dropping the charges and specifications. The applicant was given an Article 15 and presented his case to his commander, subsequently being administratively discharged. The DRB opined the applicant was given due process and found insufficient mitigation or extenuation to upgrade the discharge. 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 almost nine years of service was unaware of the Air Force policy of zero tolerance to drug use. The Board concluded the applicant's misconduct was a significant departure from conduct expected of all military members, especially those with the experience and rank of the applicant. A discharge is upgraded only if the applicant and the Board can establish that an inequity or impropriety took place at the time of discharge. After a thorough review of the record, the Board found no evidence to justify an upgrade of the discharge.

Issue 2 – Although not explicitly stated, applicant contends his discharge was too harsh and as a result, he is having difficulty finding employment. He contends his discharge should be upgraded to honorable based on his other acts of merit during his career. 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. The Board was sympathetic to the impact the characterization of his discharge was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

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