

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 98-01796.

COUNSEL: NONE

HEARING DESIRED: NO

NOV 27 1998

APPLICANT REQUESTS THAT:

His general (under honorable conditions) discharge be upgraded to honorable.

APPLICANT CONTENDS THAT:

██████ was found guilty for possession of a controlled substance. Since his discharge it has been difficult to find a decent job. ██████ states ██████ has had no trouble with the law since being discharged from the Air Force. ██████ has been a good citizen, has a good work record, and has been going to church for 15 years.

In support of the appeal, applicant submits a personal statement, Terrant County criminal record, and other documentation.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the Brief prepared by the Examiner from the Air Force Discharge Review Board (AFDRB). Accordingly, there is no need to recite these facts in this Record of Proceedings.

AIR FORCE EVALUATION:

Applicant's request for an upgrade of discharge was denied by the AFDRB on 2 May 1979 (Exhibit C).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant has provided post-service documentation which is attached at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
 2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
 3. We find no impropriety in the characterization of applicant's discharge. It appears that responsible officials applied appropriate standards in effecting the separation, and we do not find persuasive evidence that pertinent regulations were violated or that applicant was not afforded all the rights to which entitled at the time of discharge. We conclude, therefore, that the discharge proceedings were proper and characterization of the discharge was appropriate to the existing circumstances.
 4. We also find insufficient evidence to warrant a recommendation that the discharge be upgraded on the basis of clemency. We have considered applicant's overall quality of service, the events which precipitated the discharge, and available evidence related to post-service activities and accomplishments. On balance, we do not believe that clemency is warranted.
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THE BOARD DETERMINES THAT:

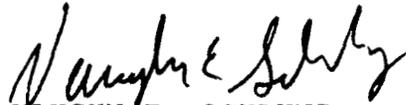
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 29 October 1998, under the provisions of AFI 36-2603:

Mr. Vaughn E. Schlunz, Panel Chair
Mr. Loren S. Perlstein, Member
Mr. Terry A. Yonkers, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 4 July 1998, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. AFDRB Brief, dated 2 May 1979, w/atchs.
- Exhibit D. Letter, Applicant, undated, w/atchs.
- Exhibit E. Letter, Applicant, undated, w/atchs.


VAUGHN E. SCHLUNZ
Panel Chair

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF APPLICANT <i>(Last, First, Middle Initial)</i>		GRADE	AFSN	SSAN
TYPE OF CASE	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	NAME OF COUNSEL		ADDRESS AND/OR ORGANIZATION OF COUNSEL
PERSONAL APPEARANCE	<input checked="" type="checkbox"/>	COUNSEL		
MEMBERS SITTING		VOTE	DENY	TYPE OF DISCHARGE RECEIVED
			<input checked="" type="checkbox"/>	HONORABLE
			<input checked="" type="checkbox"/>	GENERAL
			<input checked="" type="checkbox"/>	OTHER THAN HONORABLE CONDITIONS
			<input checked="" type="checkbox"/>	BAD CONDUCT
				APPEALS FOR
			<input checked="" type="checkbox"/>	HONORABLE
			<input checked="" type="checkbox"/>	GENERAL
			<input checked="" type="checkbox"/>	EXHIBITS SUBMITTED TO BOARD
CONTENTIONS		INDEX NUMBER		1 ORDER APPOINTING BOARD
				2 APPLICATION FOR REVIEW OF DISCHARGE
				3 NOTIFICATION LETTER
				4 BRIEF OF PERSONNEL FILE
				5 WAIVER
				PRELIMINARY OFFER/REPLY

Applicants reasons/contentions and the Board's decisional rationale are discussed on the attached AFHQ Form O-454.

CONCLUSIONS

THE AIR FORCE DISCHARGE REVIEW BOARD CONCLUDED THAT:

<input checked="" type="checkbox"/> THE DISCHARGE SHOULD NOT BE CHANGED	THE APPLICANT SHOULD RECEIVE <i>(Type of Discharge)</i>
	UNDER THE PROVISIONS OF

REMARKS

Case was heard at Washington, DC; Advise applicant of the right to submit an application to SAF/MICB.

SIGNATURE OF APPLICANT <i>(Blacked out)</i> Colonel, USAF	SIGNATURE OF BOARD <i>(Blacked out)</i>
INDORSEMENT	
TO: AFMPC/DPMDOAI Randolph AFB, Texas 78148	DATE 2 May 79
FROM: Secretary of the Air Force Personnel Council Air Force Discharge Review Board Washington, D.C. 20330	

ADVISE THE APPLICANT, NEXT OF KIN, LEGAL GUARDIAN, OR OTHER OF THE BOARD'S DECISION. SEE REMARKS SECTION FOR ADDITIONAL INSTRUCTIONS.

NAME AND ADDRESS OF PERSON TO BE NOTIFIED <i>(If other than indicated on application)</i>	DATE OF HEARING	CASE NUMBER
	19 Mar 79	<i>(Blacked out)</i>

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

GENERAL: The applicant appeals for upgrade of discharge to Honorable. The applicant's statement is contained in the attached brief.

The applicant was offered a personal appearance before the Discharge Review Board, with counsel, but **did** not respond to a letter sent to the latest known address. On 19 March 1979, American Red Cross representative, his authorized counsel, requested that case be submitted to the Discharge Review Board on the record.

FINDINGS: The attached brief contains the pertinent data on the applicant and the factors leading to the discharge,

The applicant was provided full administrative due process and after thorough legal review, the discharge authority ordered a General Discharge.

The applicant's contentions are addressed as follows: Applicant was in the process of being administratively separated with an Honorable Discharge for apathy and defective attitude based on his disciplinary record and duty performance. He received punishment under Article 15 on two occasions and a letter of reprimand for failure to go on two occasions. When he was convicted by the civil court on the marijuana charge, his case was returned to his commander, who then initiated separation based on his civil conviction. Applicant makes no claim of injustice or impropriety. He cites his desire to enlist in another branch of the military service.

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 sound discretion of the discharge authority. The Board further concludes that the applicant's discharge should not be changed.

REASONS: Applicant's conviction in a civil court for possessing a quantity of marijuana and also for supplying marijuana to another person is clear and sufficient basis for his discharge under current policies and regulations just as it was at the time of his discharge. The nature of this misconduct, added to his previous disciplinary problems, so markedly detracts from the character of his overall duty performance that a General Discharge is proper.

1 Attachment
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
WASHINGTON, D. C.

Former

1. **MATTER UNDER REVIEW:** Appl recd a Gen Disch fr USAF 10 Jul 76. UP Ch 2 Sec C AFM 39-12 (Conviction by civil court - possession/supplying marijuana). Appeals for Hon Disch - Enl in US Navy.
2. **BACKGROUND :**
 - a. DOB: 17 Mar 55. Enlmt age: 18 2/12 yrs. Disch age: 21 4/12 yrs. Education: 2 yrs HS. AFQT: 513. AQE: M15, A30, G40, E45. AFSC: 81150 Secty Specl
3. **SERVICE UNDER REVIEW:**
 - a. Enl as AB 30 May 73, for 4 yrs. Served 3 yrs, 1 mo, 11 days. O/S: 1 yr, 3 mos, 10 days (England)
 - b. Grade Status: AMN 30 Sep 73
A1C 30 Nov 74
 - c. Art 15:
 - (1) F E Warren AFB, 3 May 74: On 11 Apr 74, wrongfully transfer to another individual the registration number plate for wrongful display upon a vehicle. (Mitigation not submitted). Forf \$75. (Not appealed).
 - (2) Englan , 23 Jan 76: On 16 Jan 76, being posted as a sentinel - found sleeping upon post, (Oral mitigation). Reduced to AMN (Suspended until 25 Jul 76), Forf \$90. (Not appealed) .
 - d. Record of Service:

30 May 73 -	1 Dec 74	F E Warren AFB	Block 7
2 Dec 74 -	1 Dec 75	England	Block 6

Dischd- fr McGuire AFB, NJ .
 - e. Awards: NSM

4. FACTS LEADING UP TO DISCHARGE:

a. On 3 Jun 76, Comdr recommended airman be dischd **UP Ch 2 Sec C AFM 39-12**.
Reasons: Disch for misconduct because of civil court disposition. 17 May 76
convicted in Mildenhall Magistrates Court for possession of a quantity of
Cannabis Resin w/o being duly authorized on 16 Jan 76 and Supplying a
controlled drug (Cannabis Resin) w/o being duly authorized on 16 Jan 76.
Fined a total of **H200** and ordered to pay a **b15** advocate's fee. Recommend
Gen Disch.

Trial Observer's Report.

Court Order

Art 15 case file.

Ltr of Reprimand , 9 Dec 74: Failed to repair 22 Oct 74 and 14 Nov 74.

b. On 9 Jun 76, airman signed waiver of board hearing.

4 Stmts (Chaplain/NCOIC Drug-alcohol Abuse Control/Operations Superintendent :

Stmnt of Airman (Atchd to Examiner's Brief)

c. Legal Review, [REDACTED] 9 Jun 76: (Resume of Facts)
Prior to civil conviction airman had been approved for disch Sec A
AFM 39-12 for apathy and defective attitude. Because of this conviction his
case was returned to the Comdr to determine if other action was more
appropriate. The Comdr determined that action under Sec C was more
appropriate and the Sec A action was withdrawn. Cites Art 15 actions.
Although the airman states in his waiver stmnt that he is not submitting
stmnts in his own behalf there are several stmnts atchd which were originally
atchd to the Sec A disch action. The stmnts indicate that the raters feel
that airman had potential to remain in the service. However, it should
be pointed out that they were all written before his arrest and conviction
on the drug offenses by the British authorities. Legally sufficient.
Recommendation: Gen Disch and that P/R not be offered.

d. On 3 Jul 76, Hq USAFE directed Gen Disch Ch 2 Sec C AFM 39-12. P/R not
appropriate.

5. BASIS ,ADVANCED FOR REVIEW: (Appln DD Form 293, dtd 15 Aug '78) :

Request Hon Disch, Change Reenl Code. At the time of disch I was told I would be
able to have my disch upgraded when I got out. I wanted to make a career out
of the military. If there would be any way possible I would like to enl in the
Navy.

Brief completed 20 Sep 78 rc

STATEMENT

I do request that I be allowed to remain in the United States Air Force and my reasons are as follow:

a. I come from a good family and my parents have always tried to raise me to the best of their abilities and I would not want to hurt them in any way. My father served four years in the Marines and he received an honorable discharge. Because of this background, I decided to join the service. I have always felt that one should serve and respect his country. Especially an American. Nobody forced me to serve. I joined on my own initiative.

b. When I joined, my recruiter told me that I could come in the Air Force and work in the electrical career field but after only two weeks of basic training I met my first disappointment when I was told that I was to be a security policeman. This also disappointed my father because he wanted me to learn a trade. But we both decided that the best thing for me to do was to stick it out and do the best that I could. I have always respected the law and I felt that this would be a good chance for me to learn about the law and my rights as a citizen in general.

c. I have been in the Air Force for 2 years and 10 months. Since being in the service I have been stationed at [redacted] and here at [redacted] when I got to my first base it took me a while to get used to all the regulations. I never argued and I always did what I was told. The only reason I have ever gotten in any trouble is because I am too kind-hearted and absent minded at times. The first incident that occurred was that I let a "friend" borrow my back license plate. I let him borrow the plate so that he could bring his car on base and fix it because he wanted to go home the next week. I told him to bring me back the plate after he fixed his car that day. As it turned out, I didn't see him again for two weeks and the next thing that happened was law enforcement caught him and I received nonjudicial punishment. The price I paid for helping a "friend" was a \$75.00 fine.

d. The second incident I was involved in at my first duty station was being accused of having something to do with marijuana. I had loaned my car to another "friend," [redacted], while I went home on leave. While I was gone he took my car to go see his girlfriend. When I returned he told me that he had gone to see her and that they had smoked some marijuana in my car. About a week after my return from leave I was stopped at the main gate for a vehicle search and they found the marijuana seeds. I sought legal counsel and after my lawyer explained my case to my commander the charges were dropped and that was all that was ever said. I did have to work details for awhile but I was told when I went back to work that everything would be erased from my records. I was really surprised when Major [redacted] brought this subject up again in this discharge action.

e. As I stated previously, I never really wanted to be in the Security Police field and I have tried several times to get out. The first time I tried I was in Tech School and my commander there said I had to be in the field for 13 months first. Before leaving F.E. Warren I went to the CBPC and applied again but I was told I could start my cross-training when I arrived over here. When I arrived, I told my orderly room that I had my time in to cross-train and I asked them if they would help me go through the procedures. I then found out that I couldn't cross-train until I had ten months on the base. At the time it made me mad. I went to (Sgt. _____) and said some things thinking that he could help me. All I did was mess things up. I didn't act at all in an educated manner because the impression I left him with was that of a person with an attitude problem. It didn't help my record at all and I didn't leave a very good first impression.

f. When I first got here I was running a couple of miles a day, swimming just about a half mile every week day and playing tennis. I was also trying to keep up with my junior college studies as much as possible by reading a lot but I started to slow down about the end of November 1975. I was on the boxing team for two months but I had to quit because I couldn't go to practice because of a hamstring problem. I also took an air conditioner class before that and had some classes a week for three hours a class.

g. In regards to my APO I don't understand all the facts but I do not think that my supervisor's review reflected my performance. I have always taken my job seriously, have always looked sharp for work and have never been late here at F.E. Warren. I do believe that I have been judged wrongly. The only thing that could have given my supervisor a wrong impression is that I have always had a sense of humor and I do believe he could have been misled by that. I have always been able to get along with everyone.

h. The night I got caught falling asleep on post was pure ignorance on my part. I had gone without sleep that day because I had gotten off at 0700 hours and went to fix my car and be with my fiancée because the next day she was going into the hospital. I should state that she is still in the hospital and has been there for over a month. I figured I could go without sleep on my swing shift that day but I ended up blacking out. I had walked my perimeter three times. It was about the end of the shift when I fell asleep.

i. I am confused about why I am being discharged because only three months ago my commander, _____, had asked me if I wanted to reenlist. After this happened he told me I was going to be staying in if it were up to him and that he was going to help me out as much as he could. He was very understanding and it made me feel good. Now I am totally confused. The Drug Rehabilitation Board added to my confusion as to how the Air Force works. The people I saw said that they would try to help me. But when my back was turned they decided that I was going to start smoking again. Believe me when I say that, the night that I got caught, I learned my lesson, and that's a fact. I haven't associated with anyone that has anything to do with

drugs and I do not intend or desire to. I told them the people that I knew who used drugs and were dealing in drugs because I felt that they were hurting people's lives and futures. I believe that this is a true sign of rehabilitation. I have learned my lesson. I know I was in the wrong for even getting involved but it was something I guess I just fell into and I can't explain how I did it because I don't even know. But I do know that I have been punished for my mistake and I am asking for a chance to prove myself again.

j. My financial status now is the worst that it can be. My payments for my car are 120.00 a month to the credit union, 240.00 a month for life insurance, 120.00 a month to pay off cooking ware, and I owe my best friend 200.00. Besides these, I still have car insurance and road tax. All of these bills come to about 320 a month. If I am discharged it would be like putting me in jail. I can't claim bankruptcy. That would ruin my credit reference for life. I sure don't need this.

Before all this happened, I was planning on getting married. We had the money all right but we had additional corrections to make in the partnership. I was love sick and I would hate to have to hurt her and if I would have to leave it would hurt the both of us. Furthermore, I don't want to get married my father said I had to leave the Air Force because I got into trouble with drugs. My life and my future mean more to me than I can express. I don't like to be in jail or to have to serve to you that I can be a productive member in the military force of the United States Air Force.