

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN		
[REDACTED]		AB	[REDACTED]		
TYPE GEN	PERSONAL APPEARANCE		X RECORD REVIEW		
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION			
YES NO		ADDRESS AND OR ORGANIZATION OF COUNSEL			
X					
MEMBERS SITTING		VOTE OF THE BOARD			
		HON	GEN	UOTHC	OTHER
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
ISSUES A94.05, A92.37, A94.53		INDEX NUMBER A67.30		EXHIBITS SUBMITTED TO THE BOARD	
				1	ORDER APPOINTING THE BOARD
HEARING DATE 02-10-29		CASE NUMBER FD2002-0156		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	
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.					
REMARKS					
Case heard at 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.					
SIGNATURE OF RECORDER		SIGNATURE OF BOARD PRESIDENT			
[REDACTED]		[REDACTED]			
ENDORSEMENT		DATE: 02-10-29			
TO: SAF/MIBR 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, 3 RD FLOOR ANDREWS AFB, MD 20762-7002			

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0156

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

The applicant was offered a personal appearance before the Discharge Review Board but declined to exercise this right.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

The Board finds that neither the evidence of record or that provided by the applicant substantiates an impropriety or inequity that would justify an upgrade of the discharge to honorable.

Issues. Applicant was discharged for misconduct, commission of a serious offense. Member was tried at General Court Martial for writing 16 bad checks totaling \$8,930.00 to the 18th Services Squadron at Kadena AB, Japan. He pled guilty to and was found guilty of the charges. Applicant infers the discharge was inequitable because it was too harsh because it was so close to his normal expiration of term of service. Although not used as a basis for discharge, the record also reflects member was in two motor vehicle accidents, was driving recklessly with excessive speed on two occasions, left the scene of an accident, failed to maintain his motor vehicle insurance, had his driver's license suspended three times, and ultimately revoked for 6 months. Member also had an Enlisted Performance Report rated an overall referral "2" that referenced conduct prejudicial to good order and discipline, lack of personal and professional initiative, and a fitness test failure. The Board concluded member's misconduct that resulted in his court martial conviction was an extremely significant departure from conduct expected of all military members, and not compatible with Air Force standards. The Board could find no inequity or impropriety on which to suggest a basis to upgrade the discharge.

Applicant cited his desire to receive his G.I. Bill education benefits as justification for an upgrade. While the Board was sympathetic to the impact of the loss of these benefits on applicant, this is not a matter of equity or propriety that warrants an upgrade.

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 that 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, thus the applicant's discharge should not be changed.

Attachment:
Examiner's Brief

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

[REDACTED]
[REDACTED]
(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 02/03/05 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 79/11/21. Enlmt Age: 17 8/12. Disch Age: 22 3/12. Educ: HS DIPL. AFQT: N/A. A-79, E-65, G-57, M-46. PAFSC: 1C131 - Air Traffic Control Apprentice. DAS: 99/03/23.

b. Prior Sv: (1) AFRes 97/08/12 - 98/07/28 (11 Mos 17 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 98/07/29 for 4 yrs. Svd: 3 Yrs 7 Mo 7 Das, all AMS.

b. Grade Status: AB - 01/04/11 (GCMO #3, 01/10/19)
A1C - 99/11/29
AMN - 99/01/29

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: General Court Martial No.3 - 2001 October 19

CHARGE: Article 123a. Plea: Guilty. Finding: Guilty.

Specification: Did, at or near Kadena AB, Okinawa, Japan, on Divers occasions between on or about 10 Aug 00 and on or about 29 Sep 00, with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully draw upon ----- Credit Union and utter to 18th Services Squadron, sixteen drafts, of a total amount of \$8,930.00, then knowing that he did not or would not have sufficient funds in or credit with said credit union for the payment of said drafts in full upon their presentment. Sentence adjudged by military judge on 11 Apr 01: Confinement for 6 months, reduction to AB.

g. Record of SV: 98/07/29 - 00/03/28 Kadena AB 4 (Initial)
00/03/29 - 01/02/22 Kadena AB 2 (CRO) REF

(Discharged from Robins AFB)

h. Awards & Decs: AFTR, AFOSLTR, AFOUA.

i. Stmt of Sv: TMS: (4) Yrs (6) Mos (24) Das
TAMS: (3) Yrs (7) Mos (7) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/01.
(Change Discharge to Honorable)

Issue: My name is ----- . On April 11 2001 I was court-martialed at Kadena AB during a general court martial. I was court martialled for writing bad checks. As previously stated I know that this was and I should have never done this. During my court martial I was awarded 6 months confinement but no discharge. I was released from confinement on Sep 10 2001. At that time it was up in the air as to what would happen to me. So I did details and whatever else was told to me to the best of my abilities for the mission. I even worked six days a week my last 4 months there. Due to a mixup in paperwork at the time of release, I had to wait for my paperwork to be reprocessed. This took a little over 5 months. During this time no one ever said what was being planned for me. On the 14 of February 2002 I was told I was (sic) be discharge under honorable conditions. I asked to have my discharge be honorable since I was close to my ETS and I wanted my G.I. Bill. I am requesting my discharge be upgraded to honorable so that I can get my G.I. Bill. Thank you for your time.

ATCH

None

02/07/23/cr



DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

12 FEB 2002

MEMORANDUM FOR 18 WG/CC

FROM: 18 WG/JA

SUBJECT: Legal Review - Administrative Discharge - AB [REDACTED], FR [REDACTED]
18 OSS (PACAF), Kadena AB, Japan

1. BASIS: Lt Col [REDACTED], 18 OSS/CC, initiated this administrative discharge action against AB [REDACTED] for Commission of a Serious Offense - Other Serious Offenses. The authority for this recommendation is AFD 36-32 and AFI 36-3208, paragraph 5.52.3. The initiating commander has recommended an under honorable conditions (general) discharge without probation and rehabilitation.

2. GOVERNMENT'S EVIDENCE: On 9 Apr 01, AB [REDACTED] pled and was found guilty in a General Court-Martial by a judge alone, for making, drawing or uttering check, draft, or order without sufficient funds, in violation of Article 123a, UCMJ. The specifications and the sentence adjudged are briefly described as follows:

a. Between on or about 10 Aug 00 and on or about 29 Sep 00, on divers occasions, at or near Kadena Air Base, Okinawa, Japan, AB [REDACTED] did, with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully draw upon Pentagon Federal Credit Union and utter to 18th Services Squadron, sixteen drafts, of a total amount of about \$8,930.00, then knowing that he did not or would not have sufficient funds in or credit with said credit union for the payment of said drafts in full upon their presentment. As a result, on or about 11 Apr 01, AB [REDACTED] pled and was found guilty by a General Court-Martial. (Tab 1-1).

b. AB [REDACTED] sentence, adjudged by military judge alone on 11 Apr 01, was reduction from the grade of Airman First Class (E-3) to the grade of Airman Basic (E-1) and confinement for 6 months (Tab 1-1).

3. RESPONDENT'S EVIDENCE:

a. The respondent, a 21 year-old airman, originally enlisted on 29 Jul 98. His AQE scores are: A-79, E-65, G-57, and M-46. This airman has received two (2) Enlisted Performance Reports (EPRs). He received an overall rating of two (2) in his latest EPR dated 22 Feb 01. The airman is entitled to wear the medals, awards, and ribbons outlined in the commander's recommendation.

b. The respondent consulted military defense counsel and has elected to submit a statement in response to this discharge action (Tab 3). In his written statement, AB [REDACTED] requests that he not be discharged from the Air Force or if he is discharged, then he asks that he receive an honorable discharge. He states he is still very young and has used poor judgment in adapting to Air Force standards. He feels ashamed and apologizes for his actions. AB [REDACTED] also asserts that he has

become a much better person since serving time in confinement. If given another chance, he could prove himself to be a great asset to the Air Force.

4. ERRORS OR IRREGULARITIES: None.

5. DISCUSSION:

a. AFI 36-3208, paragraph 5.52.3, authorizes the involuntary separation of airmen who engage in a Commission of a Serious Offense – Other Serious Offenses if the Manual for Courts-Martial (MCM) authorizes a punitive discharge for the same or a closely related offense. AB [REDACTED] was found guilty by a General Court-Martial under Article 123a for intentionally writing worthless checks. A punitive discharge is authorized under the MCM for this offense. Therefore, discharge under this provision is lawful and warranted.

b. According to AFI 36-3208, paragraph 1.21.3, AB [REDACTED] cannot receive an under other than honorable conditions (UOTHC) characterization when the sole basis for discharge is a serious offense that resulted in a conviction by a court-martial that did not result in a punitive discharge *unless the UOTHC is approved by the Secretary of the Air Force*. However, AB [REDACTED] can receive a under honorable conditions (general) when significant negative aspects of an airman's conduct or performance of duty outweigh the positive aspects of his military record. AB [REDACTED], knowing that he lacked sufficient funds in his account, wrote \$8,930.00 in worthless checks. His conduct is equivalent to stealing. His serious misconduct overshadows any identifiable positive aspects of his military record. Accordingly, characterization of AB [REDACTED] service as under honorable conditions (general) is appropriate.

c. I concur with Lt Col [REDACTED] that probation and rehabilitation (P&R) is not appropriate for AB [REDACTED]. According to AFI 36-3208, paragraph 7.2.3, favorable consideration for P&R is premised on the member's potential for rehabilitation and further useful military service. AB [REDACTED] exhibits little potential for rehabilitation given the serious nature of his misconduct and his unacceptable duty performance (See Tab 6). His continued presence in the military would undermine unit cohesiveness and hinder mission accomplishment. Probation and rehabilitation is therefore not a reasonable option.

6. OPTIONS: As special court-martial convening authority, you may:

- a. Retain AB [REDACTED], if you consider discharge unwarranted;
- b. Recommend that 5 AF/CC direct an honorable discharge with or without probation and rehabilitation; or
- c. Direct an under honorable conditions (general) discharge with or without probation and rehabilitation.
- d. Direct reinitiation of the package if you believe an under other than honorable conditions service characterization based on misconduct is warranted.

7. RECOMMENDATION: I recommend that you direct an under honorable conditions (general) discharge without probation and rehabilitation by signing the attached memorandum.

[REDACTED]

[REDACTED] Capt, USAF
Assistant Staff Judge Advocate, 18th Wing

Attachment:
Case File

1st Ind, 18 WG/JA

MEMORANDUM FOR 18 WG/CC

13 FEB 2002

I concur/~~nonconcur~~ with this recommendation.

[REDACTED]

[REDACTED] Col, USAF
Staff Judge Advocate, 18th Wing

This legal opinion is a privileged document and is provided only for command use. It should not be released to the public in general or to the subject of this review in particular.

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

FEB 06 2002

MEMORANDUM FOR AB [REDACTED], FR [REDACTED]

FROM: 18 OSS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Commission of a Serious Offense – Other Serious Offenses. The authority for my recommendation is AFD 36-32 and AFI 36-3208, paragraph 5.52.3. I am recommending that your service be characterized as under honorable conditions (general). If your discharge is approved, then I am further recommending that you not receive probation and rehabilitation.

2. My specific reasons for this action are: Between on or about 10 Aug 00 and on or about 29 Sep 00, on divers occasions, at or near Kadena Air Base, Okinawa, Japan, you did, with intent to defraud and for the procurement of lawful currency, wrongfully and unlawfully draw upon Pentagon Federal Credit Union and utter to 18th Services Squadron, sixteen drafts, of a total amount of about \$8,930.00, then knowing that you did not or would not have sufficient funds in or credit with said credit union for the payment of said drafts in full upon their presentment. As a result, on or about 11 Apr 01, you plead and were found guilty by a General Court-Martial. Your sentence, adjudged by a military judge on 11 Apr 01, was confinement for 6 months and reduction from the grade of Airman First Class (E-3) to the grade of Airman Basic (E-1). Pursuant to Article 69 of the UCMJ, your record of trial was examined by Col [REDACTED], USAF, Director, USAF Judiciary, and it was determined that the findings and sentence have been found to be supported in law (Tab 1-1).

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 a 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, then you will be ineligible for reenlistment in the Air Force.

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 _____ at the Area Defense Counsel at Building 1460 on 7 FEB 02 at A.M. hours. You may consult civilian counsel at your own expense.

5. You have the right to submit statements in response to this action. Any statements that you want the separation authority to consider must reach me by 11 FEB 02 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, then 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 the Physical Examination Section, 18th Medical Group, Kadena AB, Japan at 0815 on 7 FEB 02 for the examination.

8. The Privacy Act Statement of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available for your use at the Area Defense Counsel's office.
9. Execute the attached acknowledgment and return it to me immediately.



Lt Col, USAF
Commander, 18th Operations Support Squadron

Attachments:

1. AF Form 1359; U.S. v. A1C  Memorandum, 24 Jan 02; General Court-Martial Order 
2. Statement of Understanding Regarding Recoupment of Education Assistance, Special Pay, or Bonuses
3. Airman's Receipt of Notification Memorandum