

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN	
[REDACTED]		AB	[REDACTED]	
TYPE GEN	X PERSONAL APPEARANCE		RECORD REVIEW	
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL		
YES	NO			
	X			

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A94.07, A92.07, A01.15, A01.43, A92.19, A92.15, A92.25, A 92.37	INDEX NUMBER A67.30	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	
HEARING DATE 02-11-22	CASE NUMBER FD2002-0183		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 Dobbins ARB, GA.

Advise applicant of the decision of the Board.

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT
[REDACTED]	[REDACTED]

INDORSEMENT	DATE: 02-12-10
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 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel at Dobbins ARB, GA on November 22, 2002. The following witnesses also testified on the applicant's behalf: Ms. [REDACTED], a co-worker.

The attached brief contains the 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 inequity or impropriety that would justify a change of discharge.

The applicant's issues are listed in the attached brief.

Issues 1, 2, 5, 6, 7. These issues concern applicant's request for discharge in lieu of court martial, discharge in lieu of administrative discharge, and his application for retirement via AF Form 1160, and will be addressed together. Applicant contends discharge was improper because the Air Force did not follow its own regulations. He contends his retirement requests were not processed in a timely manner thus precluding his receipt of an honorable discharge, and that he did not receive proper notice of the convening authority's decision to deny retirement. The records indicated applicant was convicted at general court martial in Jun 93 pursuant to his guilty pleas on various specifications for offenses that occurred from Sep to Dec 91. Although sentenced to 4 years' confinement, a large fine, reduction from E-8 to E-1, and complete forfeitures while confined, only the reduction and confinement were approved. While no punitive discharge was sentenced, about 2 months after the sentence was approved, in Nov 93, applicant's commander began administrative discharge proceedings. Three months later, in Jan 94, applicant met an administrative discharge board that recommended he receive an Under Other Than Honorable Conditions (UOTHC) separation. During the period Jan 94 to Jul 95, applicant's requests for retirement in lieu of trial, in lieu of administrative separation, and for normal retirement were under review by various levels of the chain of command, up to the Secretary of the Air Force's designee, and the Air Force legal community. The lengthy processing time was due to the judicial appellate process, member's lengthy service in excess of 22 years, the fact that he was recommended for a UOTHC that required secretarial review and approval, and the legal intricacies and timing of the various actions against member and his requests. All of these factors required detailed and thorough reviews at each level. While this process appears time-consuming, it was deliberative and fair. During this lengthy process, the only authority to discharge or retire the member resided with the Secretary's designee, and all actions would have been held in abeyance pending that decision, which would thus finalize all such actions. Therefore, any retirement order issued by another agent or assistant during this period would have been without authority and in error, and rescinding such a baseless order was proper. When the Secretary's designee made the final decision to execute the recommended UOTHC discharge in an instrument dated 1 August 1995, member properly received the required notice of same.

Issues 3, 4, 16, 17. These issues concern the issuance of an administrative discharge after a court martial has failed to render a punitive discharge, and related matters, and will be addressed together. Applicant contends it was an abuse of authority for his commander to recommend discharge based on the same information for which he was court-martialed, behavior for which he was not given an opportunity to

member's senior grade, time in service, and abuse of his position. As a senior noncommissioned officer, his duties included leading by example and enforcing Air Force rules and regulations. Applicant betrayed the trust and confidence his supervisors had in him. The discharge was based on these factors and was therefore consistent with regulatory authority.

Issues 23 and 24. This input concerns applicant's post-service conduct and will be addressed together. Applicant notes he has been a good citizen whose rights have been restored by the Florida governor. He also contends he shouldn't have to continue suffering based on his past mistakes. The Discharge Review Board recognized applicant's good post-service record and citizenship. However, this evidence is not relevant to the period of service under review and therefore does not provide a basis for upgrade, and additionally, is insufficient to overcome the factors that were the basis for his discharge.

The Board found the characterization of the discharge received by the applicant was appropriate.

**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 the 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

FD2002-0183

 (Former AB) (HGH SMSGT) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a UOTH fr USAF 95/10/11 UP AFI 36-3209, para 5.52.3 (Misconduct - Other Serious Offenses). Appeals for HON Disch & Change Reason and Auth for Disch.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 97/10/21.

b. The AFDRB reviewed case on 98/06/16 (non-appearance w/counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 02/04/22. (Change Discharge to Hon & Change Reason and Auth for Disch)

ISSUES ATTACHED TO BRIEF.

Atch

Applicant's Issues with Multiple Attachments.

02/08/13/ai



Plea: Not Guilty. Finding: (Withdrawn after arraignment)  
Specification 2: Did, while on temporary duty, at or near King Abdul Aziz AB, Dhahran, Saudi Arabia, o/a 16 Dec 91 knowingly and wrongfully cause to be transported via the US Postal System, monetary instruments of more than ten thousand dollars (\$10,000) United States currency, at one time, to a place in the U.S. from a place outside the U.S. and the said Senior Master Sergeant did thereafter wrongfully fail to file a report containing the amount and kind of monetary instruments transported, in violation of U.S. Code, Title 31, section 5316.

Charge II: Article 92. Plea: Guilty Finding: Guilty.  
Specification 1: Did, while on temporary duty, a/n King Abdul Aziz Air Base, Dhahran, Saudi Arabia, on diverse occasions, between o/a 9 Nov 91 and on or about 20 Nov 91, violate GENERAL ORDER NO. GO-1, U.S. Central Command, para 2c, dated 30 Aug 90, by wrongfully consuming an alcoholic beverage, while serving in the U.S. Central Command Area of Responsibility.

Plea: Guilty. Finding: Guilty.  
Specification 2: Did, while on temporary duty, on divers occasions, between o/a 9 Nov 91 and o/a 20 Nov 91, violate GENERAL ORDER NO. GO-1, U.S. Central Command, para 2c, dated 30 Aug 90, by wrongfully transferring an alcoholic beverage, while serving in the U.S. Central Command Area of Responsibility.

Plea: Guilty. Finding: Guilty.  
Specification 3: Did, while on temporary duty, on divers occasions, between o/a 22 Sep 91 and o/a 5 Dec 91, violate GENERAL ORDER NO. GO-1, U.S. Central Command, para 2c, dated 30 Aug 90, by wrongfully selling an alcoholic beverage, while serving in the U.S. Central Command Area of Responsibility.

Charge III: Article 81. Plea: Guilty (except the words, "D-----" and except the words, "the said -----, : and substitute therefor the words, "others" and "others".  
Finding: Guilty.

Specification: Did, while on temporary duty, between o/a 1 Dec 91 and o/a 5 Dec 91, conspire with D----- to commit an offense under the UCMJ, to wit: violation of GENERAL ORDER NO. GO-1, U.S. Central Command, para 2c, dated 30 Aug 90, by wrongfully selling alcoholic beverages, while serving in the U.S. Central Command Area of Responsibility, and in order to effect the object of conspiracy the said Senior Master Sergeant did deliver to the said D----- alcoholic beverages.  
Sentence: adjudged on 16 Jun 93: Confinement for 4 years, forfeiture of all pay and allowances, reduction to Airman Basic and fine of \$75,000 and to be further confined until

the fine is paid, but not more than 2 years in addition to the 4 years also here in adjudged.

Action: Only so much of the sentence as provides for confinement for 4 years and reduction to Airman Basic is approved and will be executed.

f. Record of SV: none.

(Discharged from Kirtland AFB)

g. Awards & Decs: AFCM W/6 OLC, JSCM, JMSM, JMUA, AFOUA W/1 DEV, AFOEA, AFGCM 2/6 OLC, NDSM, SWASM W/2 OLC, AFSTR 2/3 DEV, AFOLTR, AFLSAR W/4 DEV, NCOPMER W/1 DEV, AFTR, VSM 2/1 OLC, RVCN.

h. Stmt of Sv: TMS: (21) Yrs (10) Mos (3) Das

TAMS: (21) Yrs (7) Mos (25) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 97/07/17.  
(Change Discharge to Honorable and Change Reason for Discharge)

ISSUES ATTACHED TO BRIEF

ATCHS

1. Applicant's Issues (10) (attached to Brief).
2. DD Form 214 (2 copies).
3. Performance Reports (25).
4. Four (4) Letters of Appreciation.
5. Two (2) Letters of Congratulations.
6. Letter of Commendation.
7. Letter of Congratulations.
8. Three (3) Honorable Discharges.
9. News Clipping.
10. Four (4) Training Certificates.
11. Air Force Commendation Medal.
12. Certificate of Appreciation.
13. Four (4) Training Certificates.
14. Air Force Commendation Medal.
15. Four (4) Training Certificates.
16. Citizenship Award.
17. Three (3) Certificates of Training.
18. Air Force Commendation Medal.
19. Certificate of Achievement.
20. Two (2) College Degrees.
21. Joint Services Commendation Medal.
22. Training Diploma.
23. Certificate of Appreciation.
24. Four (4) Certificates of Training.
25. Air Force Commendation Medal.
26. Spouse's Statement.
27. Ten (10) Character References.
28. Secretary of the Air Force Letter.

29. Military Retirement Action.
30. Abstract from AFI 36-3208.
31. Request for Upgrade in Discharge.
32. Military Retirement Action.
33. Special Order No. AC-001028, 93/10/23.
34. Special Order No. AC-001705, 93/11/02.
35. Notification Letter.
36. Special Order AF-1, 94/01/04.
37. Action Memorandum, 94/04/21. 38.
38. HQ AFMPC/DPMAR Letter, 93/12/08.
39. U.S.Representative Letter, 93/12/08.
40. Retirement Application, 95/06/16.
41. HQ AFMPC/DPPR Letter, 95/09/11.
42. SAFPC Letter, 95/12/11.

97/10/21/ia





DEPARTMENT OF THE AIR FORCE  
56TH MISSION SUPPORT SQUADRON (ACC)  
MACDILL AIR FORCE BASE, FLORIDA

FROM: CC

SUBJ: Notification Letter - Board Hearing

TO: AB [REDACTED]

1. I am recommending your discharge from the United States Air Force for A Pattern of Misconduct-Discreditable Involvement With Military or Civil Authorities and Commission of a Serious Offense-Other Serious Offenses, according to AFR 39-10, Chapter 5, Section H, under the provision of paragraphs 5-47a and 5-49c. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

a. You did, while on temporary duty, at or near King Abdul Aziz Air Base, Dhahran, Saudi Arabia, on divers occasions, between on or about 22 Sep 91 and or about 5 Dec 91, knowingly cause to be delivered by United States mail certain nonmailable items, to wit: spiritous, vinous, malted, fermented, or other intoxicating liquors, in violation of the United States Code Title 18 section 1716(f), as evidenced by GCM Order No. 76 dated 1 Sep 93.

b. You did, while on temporary duty, at or near King Abdul Aziz Air Base, Dhahran, Saudi Arabia, on divers occasions, between on or about 9 Nov 91 and or about 20 Nov 91, violate GENERAL ORDER NO. GO-1, United States Central Command, paragraph 2c, dated 30 Aug 90, by wrongfully consuming an alcoholic beverage, while serving in the United States Central Command Area of Responsibility, as evidenced by GCM Order No. 76 dated 1 Sep 93.

c. You did, while on temporary duty, at or near King Abdul Aziz Air Base, Dhahran, Saudi Arabia, on divers occasions, between on or about 9 Nov 91 and or about 20 Nov 91, violate GENERAL ORDER NO. GO-1, United States Central Command, paragraph 2c, dated 30 Aug 90, by wrongfully transferring an alcoholic beverage, while serving in the United States Central Command Area of Responsibility, as evidenced by GCM Order No. 76 dated 1 Sep 93.

d. You did, while on temporary duty, at or near King Abdul Aziz Air Base, Dhahran, Saudi Arabia, on divers occasions, between on or about 22 Sep 91 and or about 5 Dec 91, violate GENERAL ORDER NO. GO-1, United States Central Command, paragraph 2c, dated 30 Aug 90, by wrongfully selling an alcoholic beverage, while serving in the United States Central Command Area of Responsibility, as evidenced by GCM Order No. 76 dated 1 Sep 93.

*Global Power for America*



e. You did, while on temporary duty, at or near King Abdul Aziz Air Base, Dhahran, Saudi Arabia, between on or about 1 Dec 91 and or about 5 Dec 91, conspire with others to commit an offense under the Uniform Code of Military Justice, to wit: violation of GENERAL ORDER NO. GO-1, United States Central Command, paragraph 2c, dated 30 Aug 90, by wrongfully selling alcoholic beverages, while serving in the United States Central Command Area of Responsibility, and in order to effect the object of conspiracy you delivered to the said others alcoholic beverages, as evidenced by GCM Order No. 76 dated 1 Sep 93.

3. This action could result in your separation with an Under Other Than Honorable Conditions discharge. I am recommending that you receive an under other than honorable conditions discharge. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You were scheduled for a medical examination and did in fact attend that scheduled physical at the 56th Medical Group, MacDill AFB, FL at 0700 hours on 20 Oct 93.

6. Military legal counsel, [REDACTED] has been obtained to assist you. Contact [REDACTED] MacDill AFB, FL, 830-4455, to assist you in contacting [REDACTED]. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFR 111-1. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of the civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your

right to a hearing before an administrative discharge board, you may submit written statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

8. Since you have the service necessary for retirement (20 years active service creditable for retirement), you may apply for retirement; however, the convening authority may decide to complete the discharge processing action before referral to Office of the Secretary of the Air Force.

a. The application must:

(1) Be prepared and submitted according to AFR 35-7.

(2) Request that retirement be effective the 1st day of the 2d month following the current month.

b. Submission of the application for retirement will not cancel the proposed discharge action. Discharge processing may be suspended, pending a decision on the retirement application.

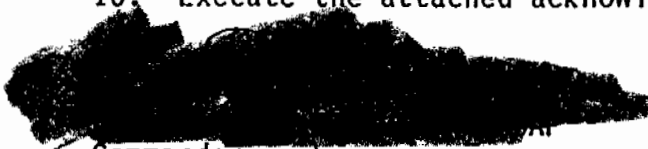
c. If the application for retirement in lieu of further processing is:

(1) Approved, discharge processing will be discontinued.

(2) Disapproved, the discharge action will be processed to completion. If discharge is approved, the case file and the retirement application will be forwarded to HQ AFMPC/DPMARS2, Randolph AFB TX 78150-6001, for further processing.

9. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 2. A copy of AFR 39-10 is available for your use in the orderly room.

10. Execute the attached acknowledgement and return it to me immediately.



Commander

2 Atch

- 1. Airman's Rcpt of Notification Ltr
- 2. GCM Order No. 76 dtd 1 Sep 93 w/atc

FROM: [REDACTED]

01 Apr 2002

TO: SAF/MIBR  
550 C St West Ste 40  
Randolph AFB, TX 78150-4742

FOR: Discharge Review Board

Dear DRB:

The following issues are the reasons I believe my discharge should be upgraded to Honorable, while at the same time, the reason for my discharge should be changed to convenience of the government. If you disagree, please explain in detail why you disagree. The presumption of regularity that might normally permit you to assume that the service in characterizing my service as less than Honorable does not apply to my case because of the evidence I am submitting. Any one of these issues taken alone is a sufficient reason to change my discharge to "Honorable."

- 1. My discharge was improper because my Commander/Staff Judge Advocate did not follow the regulation:** On 04 Jan 93, I applied for retirement in lieu of court-martial under the provision of Air Force Regulation (AFR) 35-7, table 2-2, rule 15, which I was told it was disapproved. According to AFR 35-7/AFI 36-3203, table 2-2, rule 15, Military Personnel Flight (MPF) suspends processing of the application until sentenced. Once sentenced, AF Form 1160 is processed under rule 16 as applicable. The convening authority made his decision on 01 Sep 93. At that time MPF should have forwarded the AF Form 1160 with a copy of the Staff Judge Advocate review and accompanying documents through the MAJCOM for SAF decision. The application was not processed according to the above instruction. This alone would have given me an "Honorable Discharge" because I would have retired.
- 2. When I applied for retirement in lieu of court-martial, I should have been given a written copy of the disapproval/suspension:** [REDACTED] Chief, Personnel Relocations stated in her 26 Oct 93 letter that the convening authority (9AF/CC) wrote a letter dated 11 Mar 93. I never received or signed a copy of that letter. As a matter of fact, I asked for a copy under the Freedom of Information Act and personnel officials could not find a copy. IAW Regulation dictates that I should have been given the disapproval/suspension in writing. At this time, I do not know what the letter said because it should have given me instructions on what to do after the court-martial.
- 3. My commander abused her authority when she decided to discharge me and give me an undesirable discharge:** After my court-martial in which I

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didn't receive a punitive discharge, the Staff Judge Advocate along with the local newspaper, local television news, base paper, and the Air Force Times all stated that I would retire after serving my sentence since I didn't get a discharge from the court.

4. **My discharge was based on the same charges that I was court-martial and punished for:** I was given a sentence in which I served, but the commander used the same charges (per notification letter – board hearing) to discharge me even though I applied for retirement and it was approved.
5. **After the AF Form 1160, dated 04 Jan 93 was not processed per AFR 35-7, table 2-2, rule 16, I applied again for retirement:** On 14 Oct 93, from the advice of the retirement section (MacDill AFB, FL), I reapplied for retirement again with 01 Aug 94 as the effective date of retirement. The retirement section put in the remarks section that I was serving a court-martial sentence and that I was retirement eligible. Also, the application was cleared for entry into APDS. I received Special Order No. AC001028, dated 23 Oct 93 as an approved retirement by order of the Secretary of The Air Force.
6. **On 02 Nov 93, the same day I received the notification of a board hearing I received Special Order No. AC-001705, rescission, with remarks, "Erroneous Approval":** Erroneous means error/mistake. When I asked under the Freedom of Information Act (FOIA) what the error was, I was given a letter stating that the approving authority "didn't have authority". When I further asked who was the approving authority and who was in this important position without the proper authority, I was told the Secretary of the Air Force (SECAF). Through delegated approval authority, SECAF has delegated most retirement actions to the Secretary of the Air Force Personnel Council (SAFPC), who has further delegated certain retirement actions to special assistants at the Air Force Personnel Center. Although Air Force Personnel Center was unable to identify the actual assistant who approved the retirement, they assured me that a duly appointed Special Assistant to the Director, SAFPC, approved it. I should have retired which would have given me an "Honorable Discharge".
7. **AFI 36-3203, para 2.14 Rescinding and Amending orders:** A fully executed order, (like I had) if regular and valid, "is final". It may only be revoked, rescinded, or amended if there is fraud, manifest error, mathematical error, mistake of law, or substantial new evidence. Surely my retirement orders did not meet any of the above provisions. The Secretary of The Air Force, who is the final authority to approve retirement applications, executed this order.
8. **During the board hearing the legal advisor refused or improperly denied me to present character evidence:** Starting on page 33 of the transcript, the legal advisor repeatedly and arbitrarily denied the admission of or required the

redaction of several of my character statements claiming that their statements or portions thereof were not relevant. He even went further to state that he would not allow live witnesses to testify to the redacted information. AFR 11-31, para 3 (a), the general rule is that all matters that are relevant and material to an issue or inquiry are admissible. Surely my character statements were relevant.

9. **During the board hearing the legal advisor allowed the government to present 30 pages of transcript before the members of another person's court-martial:** The letter of notification lists the charges that I was convicted of, not Airman [redacted]. Nowhere in the charges is there a conspiracy with Airman [redacted] or anyone else to receive alcohol. This transcript details the events of another person's crimes and it also discusses matters that were not in the notification letter. Due process mandates that information of this nature should not have been allowed. In fact, at the time of this person's court-martial, I had been given immunity by both 9AF/CC Lieutenant General [redacted] and 45 SPW/CC Brigadier General Robert Dickman. Under the immunity, my testimony and statements, as well as information directly or indirectly derived there from "may not" be used against me in a later criminal or administrative discharge proceeding. The legal advisor allowed the transcript anyway.

10. **During the board hearing the legal advisor allowed a document purporting to my last Enlisted Performance Report, which is unsigned by the rater:** This document is signed by the additional rater who does not concur with the rater (who ever that may be). In accordance with AFR 11-31, para (a) (4), hearsay documents are admissible into evidence if there are adequate safeguards for the truth. Regarding this document there are no safeguards for the truth. This document was not in compliance with Air Force Regulations and also it was incomplete.

11. **During the board hearing the legal advisor inappropriately denied my counsel challenge of a board member who was the rater of another board member:** On page 72 of the transcript the legal advisor denied me the opportunity to challenge the board president, who was the commander of another board member. AFR 39-3, page 17, specifically requires as part of the proceedings that the legal advisor ask, "does any member of the board write or endorse the effectiveness or performance report of any other member of the board?" On pages 57-58, the members did say there was not a problem, but that is not their call. Having a panel consisting of mainly commanders is one thing, but to have a panel of commanders and their troops and have this sanctioned by the legal advisor is more than an appearance of unfairness, it is unfair. It is the legal advisor's sworn obligation to ensure a fair hearing. He failed to do so.

- 12. During the board hearing the legal advisor improperly denied my request for a special instruction involving pretrial agreements:** On page 114 of the transcript the legal advisor denied my request (Board Exhibit III), thereby preventing the board from knowing what a pretrial agreement is. More importantly, this ruling prevented the panel from knowing what role the pretrial agreement had in this case, even though he previously allowed the government to open the door in it's presentation of evidence and indicated the existence of a pretrial agreement. The legal advisor's "excuse" for denying the request was that he wasn't comfortable with it, and that it constituted relitigating the court martial. Nowhere in the transcript had my counsel or I attempted to relitigate the court-martial. My request was simply for a clarification to the members of what did happen at the court-martial. This instruction is factual in nature and should have been given to the board.
- 13. During the board hearing the legal advisor improperly granted the government's special instruction on punishment:** Board exhibit XII is the special instruction offered by the government. The instruction should not have been allowed because contextually, the instruction was inappropriate. The instruction states that an Administrative Discharge Action is not a punishment. Clearly, in light of all the facts and circumstances in the case, that is a question for the board to answer. Giving that instruction unequivocally invades the province of the board. The legal advisor giving this instruction is tantamount to his making a decision on a matter before the panel. That is not his function.
- 14. At the beginning of the board hearing, the Assistant Recorder opening and closing statements:** Starting on page 75 of the transcript, last paragraph, the assistant recorder stated that I sent a box home to my wife containing 43,450 in cold hard cash and some 2,500 in jewelry that was seized by United States Custom inspectors. As a matter of fact, my plea was not guilty and the Government withdrew that specification after arraignment. On page 116 the legal advisor asked me if I mailed the package and I stated no. On page 125, third paragraph, in the recorder closing statement he stated the same untrue statement again. These types of untrue statements surely falls under "slander", which is an oral untrue statement.
- 15. The Air Force Personnel Council (AFPC) knew I was suppose to retire:** A year and a half after the discharge board, AFPC wrote my counsel a letter stating a potential issue of 10 USC 8964, advancement on the retirement list. With this letter, AFPC wanted me to waive whatever putative rights I have to be advanced on the retirement list as an inducement to gain retirement. I didn't waive any right because I should have retired without waiving my rights for advancement on the retirement list. If I had waived my rights, I would be retired today with an "Honorable Discharge".

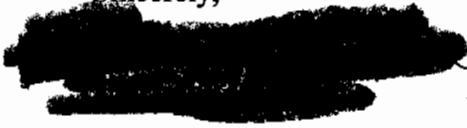
16. **Limitations on Service Characterization:** AFR 39-10, paragraph 1-21 states that if the separation authority directs the issuance of an under other than honorable condition discharge in a case, the instrument that directs the discharge must state "the other circumstances of the airman's military record warranting such a service characterization". Also, an airman may not be discharged under other than honorable conditions if the sole basis for discharge is a serious offense that resulted in conviction by a court-martial that did not impose a punitive discharge.
17. **Preprocessing Rehabilitation:** AFR 39-10, paragraph 5-2, Airman should, as a rule, be given an opportunity to overcome their deficiencies before discharge action starts. Airmen must be counseled formally concerning their deficiencies and given an opportunity to overcome them before a commander recommends discharge for "a pattern of misconduct. I was not counseled or given the opportunity to overcome my deficiencies.
18. **I received awards and decorations:** In twenty years, I received six Air Force Commendation Medals, one Joint Service Commendation Medal, Air Force Good Conduct Medal with six (6) oak leaf clusters, National Defense Service Medal with one (1) oak leaf cluster, Southwest Asia Service Medal with two (2) oak leaf clusters, Vietnam Service Medal with one (1) oak leaf cluster, Republic of Vietnam Campaign Medal and numerous certificates of appreciation.
19. **I had combat service:** I served in (Southeast Asia) Vietnam and (Southwest Asia) the Persian Gulf.
20. **My record of promotion showed I was a good service member:** I was promoted ahead of my peers to achieve the rank of Senior Master Sergeant (E-8) at seventeen years.
21. **I had prior Honorable Discharges:** I was Honorably discharged approximately five times to include one in November 1991. At that time, I had already completed over twenty years of Honorable military service.
22. **My record of NJPs/Article 15, indicates no prior offenses:** Besides this one mistake in my military career, my record shows no other offenses.
23. **I have been a good citizen since my discharge:** The Governor has restored my rights as a citizen of Florida.
24. **I shouldn't have to keep suffering for one mistake:** I have been unable to obtain a higher paying job because on of my discharge. I went back to school and completed my BA degree. I work for State Farm Insurance but I cannot get promoted because I need a license. I cannot get a state license because I need an Honorable Discharge. I have a family that I am trying to take care of



1 2 2002 0/0

and with the cost of everything getting higher and higher, I need to be making more. With this upgrade to Honorable, I believe I can continue to be a productive citizen in this fast moving society.

Sincerely,

A large, solid black rectangular redaction covers the signature area of the letter.