

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 1.2em;"></div>		GRADE AB	AFSN/SSAN <div style="background-color: black; width: 100%; height: 1.2em;"></div>			
TYPE	PERSONAL APPEARANCE	X RECORD REVIEW				
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO					
	X					
MEMBERS SITTING <div style="background-color: black; width: 100%; height: 1.2em;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div> <div style="background-color: black; width: 100%; height: 1.2em;"></div>		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
						X
						X
						X
						X
ISSUES A95.00		INDEX NUMBER A67.30				
HEARING DATE 26 FEB 03		CASE NUMBER FD2002-0389				
		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				
		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 <div style="background-color: black; width: 100%; height: 1.2em;"></div>		SIGNATURE OF BOARD PRESIDENT <div style="background-color: black; width: 100%; height: 1.2em;"></div>				
INDORSEMENT		DATE: 26 FEB 03				
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

FD02-0389

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 to exercise this right.

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 the applicant submitted no issues contesting the equity or propriety of the discharge, and after a thorough review of the record, the Board was able to identify none that would justify a change of discharge.

ISSUE: The applicant submitted no issues and requested that the review be completed based on the available service record. The Board reviewed the entire record and found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The records indicated applicant received an Article 15 for failure to obey a lawful order and a Special Court Martial for larceny. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative/repetitive behavior. The Board concluded the disciplinary infractions were a significant departure from the conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge.

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 SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF 18 Oct 99 UP AFI 36-3208, para 5.52 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 11 Dec 69. Enlmt Age: 21 3/12. Disch Age: 29 10/12. Educ: HS DIPL. AFQT: N/A. A-90, E-48, G-36, M-75. PAFSC: 3A051 - Information Management Journeyman. DAS: 6 Aug 98.

b. Prior Sv: (1) AFRes 3 Apr 91 - 22 Jan 92 (9 Mos 20 Days) (Inactive).

(2) Enld as AIC 23 Jan 92 for 4 yrs. Ext: 8 Mar 95 for 23 Months. Svd: 3 Yrs 11 Mos 6 Days, all AMS. SRA - 23 May 94. EPRs: 5,5,3.

Article 15: 23 Dec 92, Langley AFB, VA - Article 134 & 121. You did, between on or about 15 Jun 92 and on or about 15 Sep 92, with intent to defraud, falsely pretend to the ----- Telephone Company, that you were authorized to use the telephone account of -----, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from the ----- Telephone Company, services of a value of \$107.55 to wit: long distance telephone service and fees. You did, between on or about 15 Jun 92 and on or about 15 Sep 92, wrongfully appropriate a video cassette recorder of a value of about \$250.00, the property of -----. Suspended reduction to the grade of AMN, forfeiture of \$100.00 pay per month for 2 months, and a reprimand. (No Appeal) (No mitigation)

3. **SERVICE UNDER REVIEW:**

a. Reenld as SRA 29 Dec 95 for 6 Yrs. Svd: 3 Yrs 9 Mos 20 Das, of which AMS is 3 Yrs 8 Mos 0 Das (Ex: 1 Month 20 Das lost time)

b. Grade Status: AB -26 Aug 99 (SPCM Order No. 4, 29 Sep 99)

c. Time Lost: 12 Aug 99 - 1 Oct 99 (1 Month 20 Days)

d. Art 15's: (1) 30 Dec 98, Osan AB, Korea - Article 92. You did, on divers occasions, between on or about 19 Oct 98 and or or about 17 Nov 98, fail to obey a lawful general regulation, to wit: paragraph 6.1.1, Air Force Instruction 33-129, dated 1 Jan 97, by wrongfully using

government provided computer hardware and/or software for other than official and authorized government business. Suspended reduction to the grade of A1C, and forfeiture of \$250.00 pay per month for 2 months. (No appeal) (No mitigation)

e. Additional: None.

f. CM: Special Court Martial Order No.4, 29 September 1999.

CHARGE 1: Article 121. Plea: Guilty. Finding: Guilty.

Specification: Did, at or near Osan Air Base, Republic of Korea, on or about 6 Oct 98, steal funds, military property, of a value of about \$2,100.00, the property of the United States.

CHARGE II: Article 81. Plea: Guilty. Finding: Guilty.

Specification 1: Did, at or near Osan Air Base, Republic of Korea, between on or about 1 Sep 98 and or or about 6 Oct 98, conspire with Staff Sergeant ----- to commit an offense under the Uniform Code of Military Justice, to wit: Larceny of funds, military property, of a value greater than \$100.00, the property of the United States, and in order to effect the object of the conspiracy the said Senior Airman ----- and the said Staff Sergeant -----, prepared paperwork for reimbursement of the cost of privately owned vehicle storage.

Specification 2: Did, at or near Osan Air Base, Republic of Korea, between on or about 1 Sep 98 and or or about 11 Dec 98, conspire with Senior Airman ----- to commit an offense under the Uniform Code of Military Justice, to wit: Larceny of funds, military property, of a value greater than \$100.00, the property of the United States, and in order to effect the object of the conspiracy the said Senior Airman ----- provided Senior Airman -----, name, social security number, and last duty station to Staff Sergeant -----, in order to claim for reimbursement of the cost of privately owned vehicle storage.

CHARGE III: Article 132. Plea: Guilty. Finding: Guilty.

Specification: Did at or near Osan Air Base, Republic of Korea, between 1 Sep 98 and on or about 6 Oct 98, by preparing privately owned vehicle storage paperwork for presentation for approval or payment to the said Senior Airman -----, make a claim against the United States in the amount of, approximately \$2,100.00 for privately owned vehicle storage, which claim was false and fraudulent in the amount of approximately \$2,100.00 in that no such payment was warranted and was then known by the said Senior

Airman -----, to be false and fraudulent. Approved Sentence:
Confinement for two months, forfeiture of \$639.00 pay per month
for three months, and reduction to the grade of AB.

g. Record of SV: 19 Apr 95 - 28 Feb 96 Eglin AFB 5 (CRO)
29 Feb 96 - 28 Feb 97 Eglin AFB 4 (Annual)
1 Mar 97 - 28 Feb 98 Eglin AFB 5 (Annual)
1 Mar 98 - 28 Jun 98 Eglin AFB 5 (CRO)
29 Jun 98 - 14 Jun 99 Osan AB 3 (CRO)

(Discharged from Seymour Johnson AFB)

h. Awards & Decs: AFAM, AFCEM, AFLSA, AFTR, AFOSTR W/1 DEV, NDSM, HSM,
NCOPMER, AFEM, AFOUA W/1 DEV, AFGCM W/1 DEV.

i. Stmt of Sv: TMS: (8) Yrs (4) Mos (26) Das
TAMS: (7) Yrs (7) Mos (6) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 23 Aug 02.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH
None.

16 Dec 02/cr



FD2002-0389

DEPARTMENT OF THE AIR FORCE

Headquarters, 51st Fighter Wing

UNIT 2067

APO AP 96278-2067

130 SEP 1999

MEMORANDUM FOR 51FW/CC

FROM: 51FW/JA

SUBJECT: Legal Review of Administrative Discharge—

1. On 28 September 1999, 51 MSS/CC, initiated discharge action against for Commission of Serious Offenses. We have reviewed the above-referenced action in accordance with AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.52. We find it legally sufficient.

2. Facts. The commander initiated discharge based on the following facts:

a. The respondent did, at or near Osan Air Base, Republic of Korea, on or about 6 October 1998, steal funds, military property, of a value of about \$2,100.00, the property of the United States.

b. The respondent did, at or near Osan Air Base, Republic of Korea, between on or about 1 September 1998 and on or about 11 December 1998, conspire with Staff Sergeant to commit an offense under the Uniform Code of Military Justice, to wit: larceny of funds, military property, of a value greater than \$100.00, the property of the United States, and in order to effect the object of the conspiracy AB and Staff Sergeant prepared paperwork for reimbursement of the cost of privately owned vehicle storage.

c. The respondent did, at or near Osan Air Base, Republic of Korea, between on or about 1 September 1998 and on or about 11 December 1998, conspire with Senior Airman to commit an offense under the Uniform Code of Military Justice, to wit: larceny of funds, military property, of a value greater than \$100.00, the property of the United States, and in order to effect the object of the conspiracy provided Senior Airman name, social security number, and last duty station to Staff Sergeant, in order to claim for reimbursement of the cost of privately owned vehicle storage.

d. The respondent did, at or near Osan Air Base, Republic of Korea, between on or about 1 September 1998 and on or about 6 October 1998, by preparing privately owned vehicle storage paperwork for presentation for approval or payment to AB make a claim against the United States in the amount of, approximately \$2,100.00 for privately owned vehicle storage, which claim was false and fraudulent in the amount of approximately \$2,100.00 in that no such payment was warranted and was then known by AB to be false and fraudulent.

3. Unit Recommendations. The 51 MSS/CC recommends that the respondent receive an Under Other Than Honorable Conditions (UOTHC) discharge, without suspension for probation and rehabilitation (P&R).

4. Member's Response. On 24 Sep 99, the respondent consulted counsel, waived his right to a discharge board and waived his right to submit statements. On 29 Sep 99, the respondent receipted for the Notification Memorandum.

5. Legal Analysis.

a. Background. The respondent pled and was subsequently found guilty at a Special Court-Martial on 12 Aug 99 for the offenses listed in paragraph 2 above. He was sentenced to a Bad-Conduct Discharge (BCD), reduction to AB, forfeiture of \$639.00 pay per month for 3 months, and 3 months confinement. However, upon submission of clemency matters you decided to not approve the BCD and instead administratively discharge him. On 24 Sep 99 pursuant to your decision, the respondent submitted a waiver of his rights to an administrative discharge board and to submit matters and accepting whatever discharge characterization deemed appropriate.

b. AFI 36-3208, Chapter 5, paragraph 5.52, authorizes separation for misconduct based on the commission of a serious offense if a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial. In this case the respondent's misconduct was so serious that it resulted in a Special Court-Martial. Additionally each of the four offenses listed in paragraph 2 authorizes a punitive discharge. Therefore, the basis for discharge in this case is established. IAW AFI 36-3208, paragraph 1.18.3, a UOTHC discharge is authorized when basing the reason for separation on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. Additionally paragraph 5.48.1 states that discharges for commission of a serious offense usually should be under other than honorable conditions. The respondent's misconduct in this case clearly is a significant departure from the conduct expected of airmen. Additionally, the judge sentenced him to a Bad-Conduct Discharge because his conduct was so egregious. Therefore a UOTHC is appropriate in this case. Given the nature of the misconduct, P&R is inappropriate in this case.

6. Options. As the Special Court-Martial Convening Authority, you have the option to:

a. Reject the respondent's unconditional waiver of a discharge board and order an administrative discharge board convened; or

b. Forward the package to 7 AF/CC recommending that he accept the respondent's unconditional waiver and discharge him with an Honorable, General or UOTHC discharge, with or without P&R.

7. Recommendation. We recommend you sign the letter at Tab 1 recommending to 7 AF/CC that the respondent be discharged with a UOTHC discharge without P&R.

A large, dark, irregular blacked-out area representing a redacted signature.

USAF

Staff Judge Advocate

Attachments:

1. Recommendation Memo
2. Case File



FD2002-0389

DEPARTMENT OF THE AIR FORCE

51st Mission Support Squadron

UNIT 2097

APO AP 96278-2097

28 SEP 1999

MEMORANDUM FOR AB [REDACTED]

FROM: CC

SUBJECT: Notification Letter - Board Hearing

1. I am recommending your discharge from the United States Air Force based upon Commission of Serious Offenses. The authority for this action is AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, paragraph 5.52. I have attached copies of the documents to be forwarded to the separation authority to support this recommendation.

2. My reasons for this discharge action are as follows:

a. You did, at or near Osan Air Base, Republic of Korea, on or about 6 October 1998, steal funds, military property, of a value of about \$2,100.00, the property of the United States. For this misconduct, you plead and were subsequently found guilty by a Special Court-Martial. The court sentenced you to a bad-conduct discharge, three months confinement, forfeiture of \$639.00 pay per month for three months, and reduction to AB (See Atch 1, AF Form 1359, Report of Result of Trial, dated 12 Aug 99). The Special-Court Martial Convening Authority subsequently decided to grant your request for clemency by disapproving the bad-conduct discharge and instead accepting your waiver of a discharge board for an involuntary separation with an Under Other Than Honorable Conditions (UOTHC) service characterization.

b. You did, at or near Osan Air Base, Republic of Korea, between on or about 1 September 1998 and on or about 11 December 1998, conspire with Staff Sergeant [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: larceny of funds, military property, of a value greater than \$100.00, the property of the United States, and in order to effect the object of the conspiracy you and Staff Sergeant [REDACTED] prepared paperwork for reimbursement of the cost of privately owned vehicle storage. For this misconduct, you plead and were subsequently found guilty by a Special Court-Martial. The court sentenced you to a bad-conduct discharge, three months confinement, forfeiture of \$639.00 pay per month for three months, and reduction to AB (See Atch 1, AF Form 1359, Report of Result of Trial, dated 12 Aug 99). The Special-Court Martial Convening Authority subsequently decided to grant your request for clemency by disapproving the bad-conduct discharge and instead accepting your waiver of a discharge board for an involuntary separation with an Under Other Than Honorable Conditions (UOTHC) service characterization.

c. You did, at or near Osan Air Base, Republic of Korea, between on or about 1 September 1998 and on or about 11 December 1998, conspire with Senior Airman [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: larceny of

funds, military property, of a value greater than \$100.00, the property of the United States, and in order to effect the object of the conspiracy you provided Senior Airman [REDACTED] name, social security number, and last duty station to Staff Sergeant [REDACTED] in order to claim for reimbursement of the cost of privately owned vehicle storage. For this misconduct, you plead and were subsequently found guilty by a Special Court-Martial. The court sentenced you to a bad-conduct discharge, three months confinement, forfeiture of \$639.00 pay per month for three months, and reduction to AB (See Atch 1, AF Form 1359, Report of Result of Trial, dated 12 Aug 99). The Special-Court Martial Convening Authority subsequently decided to grant your request for clemency by disapproving the bad-conduct discharge and instead accepting your waiver of a discharge board for an involuntary separation with an Under Other Than Honorable Conditions (UOTHC) service characterization.

d. You did, at or near Osan Air Base, Republic of Korea, between on or about 1 September 1998 and on or about 6 October 1998, by preparing privately owned vehicle storage paperwork for presentation for approval or payment to yourself, make a claim against the United States in the amount of approximately \$2,100.00, for privately owned vehicle storage, which claim was false and fraudulent in the amount of approximately \$2,100.00 in that no such payment was warranted and was then known by you to be false and fraudulent. For this misconduct, you plead and were subsequently found guilty by a Special Court-Martial. The court sentenced you to a bad-conduct discharge, three months confinement, forfeiture of \$639.00 pay per month for three months, and reduction to AB (See Atch 1, AF Form 1359, Report of Result of Trial, dated 12 Aug 99). The Special-Court Martial Convening Authority subsequently decided to grant your request for clemency by disapproving the bad-conduct discharge and instead accepting your waiver of a discharge board for an involuntary separation with an Under Other Than Honorable Conditions (UOTHC) service characterization.

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 not eligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces. Additionally, the Air Force may recoup any special pay, bonus, or education assistance funds that you have received.

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 on 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.

Special Court-Martial for larceny of \$2,100.00, conspiring to commit larceny on divers occasions, and making a false claim against the United States. Member was found guilty of all charges and specifications. Sentenced to a bad-conduct discharge, confinement for 3 months, reduction to AB and forfeiture of \$639.00 pay per month for 3 months.

j. Overall ratings on EPRs:

"3" 29 Jun 98 - 14 Jun 99	"5" 19 Apr 95 - 28 Feb 96
"5" 1 Mar 98 - 28 Jun 98	"3" 18 Aug 94 - 18 Apr 95
"5" 1 Mar 97 - 28 Feb 98	"5" 31 Dec 93 - 17 Aug 94
"4" 29 Feb 96 - 28 Feb 97	"5" 23 Jan 92 - 30 Dec 93

k. Favorable communications, citations, or awards:

Air Force Commendation Medal	Humanitarian Service Medal
Air Force Achievement Medal	A.F. OS Short Tour Service Ribbon
A.F. Outstanding Unit Award (1 OLC)	A.F. Longevity Service Award
Air Force Good Conduct Medal (1 OLC)	NCO PME Ribbon
National Defense Service Medal	Air Force Training Ribbon
Armed Forces Expeditionary Medal	

l. Derogatory data, other than action by courts-martial or under Article 15, UCMJ: None

m. Medical or other data meriting consideration: None

n. The member does not hold an appointment as a reserve commissioned or warrant officer.

3. Before recommending this discharge, I have considered the respondent's entire military record. His misconduct during this period was punished by an Article 15/Unfavorable Information File (UIF) and Special Court-Martial. Based upon the severe nature of his misconduct, I do not recommend probation and rehabilitation in accordance with AFI 36-3208, chapter 7.


, USAF
 Commander

Attachments:

1. Notification Memorandum w/Atchs
2. Airman's Acknowledgement
3. Airman's Statement
4. Medical Clearance Letter
5. EPRs
6. Other Documents