

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> ████████████████████	<b>GRADE</b> A1C	<b>AFSN/SSAN</b> ████████████████
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<b>TYPE</b>	<input checked="" type="checkbox"/> <b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
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<b>COUNSEL</b>	<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>No</b>	
	<input checked="" type="checkbox"/>	

<b>MEMBER SITTING</b>	<b>VOTE OF THE BOARD</b>				
	HON	GEN	UOHC	OTHER	DENY
████████████████████		X			
████████████████████		X			
████████████████████		X			
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<b>ISSUES</b> A01.40; A92.36, A94.06; A93.02	<b>INDEX NUMBER</b> A70.00	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
		<b>1</b> ORDER APPOINTING THE BOARD
		<b>2</b> APPLICATION FOR REVIEW OF DISCHARGE
		<b>3</b> LETTER OF NOTIFICATION
		<b>4</b> BRIEF OF PERSONNEL FILE
		COUNSEL'S RELEASE TO THE BOARD
<b>HEARING DATE</b> 24 Oct 2003	<b>CASE NUMBER</b> FD2003-00029	ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
		TAPE RECORDING OF PERSONAL APPEARANCE

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Albany, New York.

Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.

<b>SIGNATURE OF RECORDER</b> ████████████████████	<b>SIGNATURE OF BOARD PRESIDENT</b> ████████████████████
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**INDORSEMENT** **DATE: 10/24/2003**

<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

**FD2003-00029**

**GENERAL:** The applicant appeals for upgrade of discharge to honorable and to change his reenlistment code.

The applicant appeared before the Board without counsel at Albany, New York, on 24 Oct 03. The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions.

Exhibit 6: Undated character letter from [REDACTED], Hyatt Regency Buffalo, NY

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

**FINDINGS:** Upgrade of discharge to under honorable conditions (general) is granted.

The Board finds that although upgrade of the characterization of the discharge to honorable is not warranted by the evidence, upgrade to a general discharge is warranted. Upgrade of the reenlistment code is not warranted.

**ISSUES:**

The applicant contends it was unfair to discharge him under other than honorable conditions (UOTHC) because he was a model airman during his first 26 months of service. He believes he was misrepresented by his military defense counsel and was never given any other option than to request discharge in lieu of court-martial. He stated that he was immature at the time of the misconduct and that he has learned from his mistakes. The applicant was separated UOTHC in lieu of court-martial on charges of conspiracy to commit wrongful appropriation of a government vehicle and wrongful appropriation of a government vehicle following a unit Christmas party. The respondent and another airman wrongfully took a government vehicle and damaged the mirror and smoke stack on the vehicle. The respondent was intoxicated at the time of the offense. Although the Board believes the respondent was culpable in his actions, it did not believe that his misconduct warranted discharge UOTHC. The Board agreed with the applicant that the characterization was too harsh and that the case did not warrant trial by court-martial. The Board did not, however, conclude that the applicant's counsel misrepresented him. There was nothing in the record to support that assertion. The Board also concluded that the applicant's misconduct did not warrant an honorable discharge or a change in reenlistment code.

**CONCLUSIONS:** The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation, was within the discretion of the discharge authority, and the applicant was provided full administrative due process.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an under honorable conditions (general). The applicant's characterization of discharge should be changed to under honorable conditions (general) under the provisions of Title 10, USC 1553.

Attachment:

Examiner's Brief

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

(Former A1C) (HGH A1C)

**1. MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 14 Apr 95 UP AFR 39-10, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for General Disch.

**2. BACKGROUND:**

a. DOB: 20 Sep 73. Enlmt Age: 18 6/12. Disch Age: 21 6/12. Educ: HS DIPL. AFQT: N/A. A-83, E-31, G-53, M-30. PAFSC: 3P031 - Security Apprentice. DAS: 21 Jan 94.

b. Prior Sv: (1) AFRes 26 Mar 92 - 2 Aug 92 (4 months 7 days) (Inactive).

**3. SERVICE UNDER REVIEW:**

a. Enlisted as AB 3 Aug 92 for 4 yrs. Svd: 2 Yrs 8 Mo 12 Das, all AMS.

b. Grade Status: A1C - 3 Dec 93  
AMN - 3 Feb 93

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 21 DEC 94 - Assaulting another military member.

f. CM: None.

g. Record of SV: 3 Aug 92 - 01 Jun 94 Kunsan AB 5 (Initial)  
2 Jun 94 - 26 Feb 95 Kunsan AB 3 (CRO)

(Discharged from Griffis AFB)

h. Awards & Decs: AFTR, AFOUA, NDSM, AFOSSTR W/1 DEV, AFAM.

i. Stmt of Sv: TMS: (3) Yrs (0) Mos (8) Das  
TAMS: (2) Yrs (8) Mos (12) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 25 Dec 02.  
(Change Discharge to General)

Issue 1: ,My discharge seems unfair do to the fact that the first 26 months of service I was a model airmen (sic). My last two months of service is when I was disciplined for my actions. The first incident occured (sic) off base when another airmen(sic) assaulted a fellow airmen (sic) with a cane. I unfortunately (sic) struck the airmen (sic) in retailiation for striking my flight member.

Issue 2: Second incident occurred (sic) three weeks later, I was attending a flight Christmas party and my going away party. When the party ended a bunch of us decided to continue drinking at the NCO Club. When our flight driver decided to use a duece and a half to go to the NCO Club, I accompanied him in the passenger seat, while he drove. While we went to the NCO Club the driving airmen (sic) damaged the smoke stack and damaged the side mirror. This last incident was the cause the Base Commander decided to pursue a Court Martial hearing. My appointed attorney advised me to plea bargain. He thought my best course of action was to be discharged in lieu of Court Martial Under Other Than Honorable Conditions. Looking back I feel I was misrepresented. Reflecting back I understand my actions were detrimental (sic) to our mission at hand, which was securing an Air Force installation. I hope you could find it in your heart to grant me a second chance. Possibly to help secure our freedoms and combat what stands in our way.

I am also three credits shy of earning my Bachelor's Degree from -----  
College.

**ATCH**

1. Real Estate License.
2. College Degree.

18MAR03/ia

PD 2003-0001

AIR FORCE DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS SEVENTH (PACAF)  
APO AP 96278-2047

22 Feb 95

MEMORANDUM FOR CC

FROM: JA (Major [REDACTED])

SUBJECT: Legal Opinion - Request for Discharge in Lieu of Court-Martial, A1C [REDACTED]

1. A1C [REDACTED] is presently facing court-martial charges for conspiracy to commit wrongful appropriation in violation of Art 81, UCMJ, and wrongful appropriation in violation of Art 121, UCMJ. Specifically, he allegedly agreed with another airman to take a government vehicle belonging to the 8th Security Police Squadron, and then took the vehicle and drove it around Kunsan AB, Korea. The other airman eventually lost control of the vehicle and it collided with a tree on the base golf course. On 10 Feb 95, the commander for the 8th Fighter Wing preferred charges against the accused. You later referred the charges to a special court-martial on 17 Feb 95. The accused has now requested discharge in lieu of trial by court-martial under Chapter 4 of AFR 39-10. The 8 FW/CC recommends approval. I concur. The file is legally sufficient.
2. Procedural History. On 10 Feb 95, the 8 FW/CC preferred the charges and specifications against the accused. On 16 Feb 95, the accused requested discharge in lieu of trial by court-martial. On 18 Feb 95, the 8 FW/CC forwarded the request to you recommending approval. As the General Court Martial Convening Authority, you take final action on the case.
3. Discussion.
  - a. The accused is alleged to have conspired to take a government vehicle with another airman. The two then took the vehicle and went driving around Kunsan Air Base. The vehicle collided with a tree and was damaged. Although a debt against the accused has not yet been determined, he has tendered a money order to cover at least half the repairs to the vehicle. He has also agreed to testify against the other airman. His testimony will enable the 8 FW/CC to prefer an additional charge of drunk driving against the other airman. The allegations against the accused are sufficiently serious to warrant trial by court-martial, and conviction on all charges is very likely. The question is whether the interests of the government and the victims with respect to the allegations can be adequately vindicated only in a trial by court-martial. I believe a discharge in lieu of court-martial in this case will adequately serve the interests of the government. The accused has now made restitution for his responsibility in the damage to the government vehicle. The other airman, it seems, is the more culpable of the two, and the accused's promised testimony will help build the government's case against him. Therefore, under these circumstances, the

Interests of the Air Force will be served by the accused's timely separation, and it is not necessary to subject him to a court-martial conviction.

b. The 8 FW/CC recommends approval of the discharge because the accused has offered restitution, and he was the less culpable of the two individuals. The 8 FW/CC feels the nature of the accused's offenses warrant an under other than honorable conditions (UOTHC) discharge.

4. Options. As the General Court-Martial Convening Authority, you may approve the request or deny it. If you approve the request, then you must also:

- a. Determine the type of discharge the accused will receive; and
- b. Give the reason for characterization of service, but only if:

(1) You direct a discharge more favorable than UOTHC; or

(2) You direct a discharge less favorable than that recommended by the commander.

5. RECOMMENDATION: That you approve the request for discharge in lieu of trial by court-martial, and that you discharge the accused with an under other than honorable conditions discharge.

 Colonel, USAF

Staff Judge Advocate