

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████		GRADE SRA	AFSN/SSAN ████████████████			
TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW			
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	No					
	X					
MEMBER SITTING		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
						X
						X
						X
						X
						X
ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD				
A94.05	A61.00	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 DATE	CASE NUMBER					
07 Apr 2004	FD-2004-00002					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE						
<p>Case heard at Washington, D.C.</p> <p>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</p>						
INDORSEMENT					DATE: 4/7/2004	
TO:				FROM:		
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742				SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002		

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00002

GENERAL: The applicant appeals for upgrade of discharge to honorable, change the reason and authority for the discharge, and, to change the reenlistment code.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) 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, change of reason and authority for discharge, and change of reenlistment code are) denied.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received a General discharge because of a civilian conviction for robbery and assault. The DRB opined that this misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance reports, letters of recommendation and other accomplishments. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons which were the basis for this case. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366,) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant 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 SrA) (HGH SrA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 27 Jan 03. UP AFI 36-3208, para 5.51.1 (Civilian Conviction). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 2 Apr 76. Enlmt Age: 20 11/12. Disch Age: 26 9/12. Educ: HS DIPL. AFQT: N/A. A-71, E-74, G-55, M-69. PAFSC: 2A753 - Aircraft Structural Maintenance Journeyman. DAS: 8 Jan 00.

b. Prior Sv: (1) AFRes 21 Mar 97 - 6 May 97 (1 month 16 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 7 May 97 for 4 yrs. Extended 9 Jul 99 for 20 months. Svd: 5 Yrs 8 Mo 20 Das, of which AMS is 3 yrs 0 mos 1 day (excludes 2 yrs 8 mos 1 day lost time).

b. Grade Status: SrA - 7 May 00
A1C - 7 Sep 78
Amn - 7 Nov 97

c. Time Lost: 21 May 00 - 22 Jan 03 (2 yrs 8 mos 1 day).

d. Art 15's: None.

e. Additional: 23 OCT 00 - Civilian Conviction for robbery and assault.

f. CM: None.

g. Record of SV: 7 May 97 - 6 Jan 99 Eglin AFB 5 (Initial)
7 Jan 99 - 8 Aug 99 Eglin AFB 5 (CRO)

(Discharged from Arnold AFB)

h. Awards & Decs: AFAM, AFLSAR, AFTR, AFOUA W/1 BOLC, NDSM, AFGCM, AFOSLTR, MB.

i. Stmt of Sv: TMS: (3) Yrs (2) Mos (6) Das
TAMS: (3) Yrs (0) Mos (20) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 31 Dec 03.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

Issue 1: I want two things from an upgrade. 1. To be in the Reserve or Guard, and 2. To go to college and take care of my family. I served honorably with only awarded medals on my record. My commander wanted to give me an LOR and send me back to work. Jurisdiction wasn't released to the Air Force, so it wasn't his decision. Please review the statement from my coworkers, First Sergeant (sic), commander and shop chief. It's clear I was unjustly punished for this incident. I need to be eligible for me (sic) G.I. Bill, so I can prepare for my future and take care of my family at the same time. Thank you for your time and consideration (sic).

ATCH

1. Memorandum, 22 Mar 01.

20FEB04/ia

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES



01 NOV 2000

MEMORANDUM FOR SRA [REDACTED]

FROM: 18 MXS/CC

SUBJECT: Notification Memorandum - Board Hearing

1. I am recommending your discharge from the United States Air Force for a Civilian Conviction under the provisions of AFPD 36-32 and AFI 36-3208, paragraph 5.51.1. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My specific reasons for this action are: On or about 20 May 2000, you did, at or near Cow Mart, Goya Branch, Okinawa, Japan, steal several articles from the convenience store, worth a total of approximately 5,944 yen. Furthermore, in an effort to prevent the store clerk, [REDACTED] from catching you stealing, you struck him in the head with a soft drink bottle and attempted to strangled him. You then fled the convenience store with the stolen items, and were soon thereafter apprehended by the Okinawa Police. On 23 October 2000, you were found guilty by the Naha District Court of robbery and assault resulting in injury and were sentenced to four (4) years imprisonment with hard labor (Tab 1-1).

3. This action could result in your separation with an under other than honorable conditions (UOTHC) service characterization. I am recommending that you receive an under other than honorable conditions (UOTHC) service characterization. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, then you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces.

4. You have the right to:

a. Consult legal counsel.

b. Present your case to an administrative discharge board, subject to your availability. If you are unable to be present at the board hearing, it will be held in your absence.

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. Before making a decision to waive any of your rights, you must consult legal counsel.

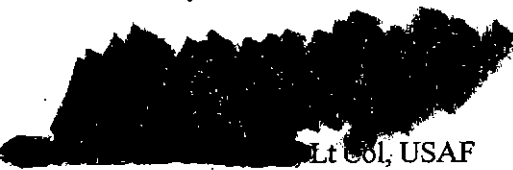
5. Military legal counsel, Captain [REDACTED] has been obtained to assist you. An appointment has been scheduled for you to consult with her on 2 November 2000 at 1000. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. 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 civilian counsel. Civilian counsel, if employed, must be readily available.

6. Confer with your counsel and, within 30 days, specify in a written reply, which of the above-referenced rights you choose to exercise. If you waive your right to a hearing before an administrative discharge board, then you may submit written statements on your own behalf. I will send the statements, the case file, and this recommendation to the discharge authority for consideration. If you do not respond within the aforementioned time period, a board hearing will be convened in absentia. Military legal counsel will be appointed to represent you before the board. In addition, if your discharge is approved, it may be executed without your presence. However, it will not be executed until you are released from confinement and returned to CONUS.

7. The Privacy Act Statement of 1974 covers any personal information you furnish in rebuttal. A copy of AFI 36-3208 is available at the Area Defense Counsel office.

8. The discharge board or the discharge authority will make the findings and recommendations required under 10 U.S.C. 2005(g).

9. Execute the attached acknowledgment and return it to me immediately.



Lt Col, USAF
Commander, 18th Maintenance Squadron

Attachments:

1. Translation of the Judgment; Japanese Version of the Judgment
2. Airman's Receipt of Notification Memorandum
3. Statement of Understanding Regarding Recoupment of Education Assistance, Special Pay, or Bonuses