

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

| | | |
|--|---------------------|--------------------------------|
| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED] | GRADE SGT | AFSN/SSAN [REDACTED] |
|--|---------------------|--------------------------------|

| | | | |
|----------------|-------------------------------------|--|----------------------|
| TYPE UOTH | PERSONAL APPEARANCE | X | RECORD REVIEW |
| COUNSEL | NAME OF COUNSEL AND OR ORGANIZATION | ADDRESS AND OR ORGANIZATION OF COUNSEL | |
| YES | No | | |
| X | X | | |

| MEMBER SITTING | VOTE OF THE BOARD | | | | |
|----------------|-------------------|-----|-------|-------|------|
| | HON | GEN | UOTHC | OTHER | DENY |
| | | X | | | |
| | | X | | | |
| | | X | | | |
| | | X | | | |
| | | X | | | |

| | | | | |
|-------------------------|-------------------------------|--|-------------------------------------|--|
| ISSUES A94.06 | INDEX NUMBER A75.00 | 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 DATE 13 Dec 2004 | CASE NUMBER FD-2004-00277 | |
|------------------------------------|-------------------------------------|--|

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

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

| | |
|--|--|
| | |
|--|--|

| | | |
|--|---|-------------------------|
| INDORSEMENT | | DATE: 12/14/2004 |
| TO: SAF/MRBR 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, 3RD FLOOR ANDREWS AFB, MD 20762-7002 | |

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2004-00277

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

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: The Board grants partial relief. The discharge is upgraded to General. However, the reason and authority for discharge is denied.

ISSUE: Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for writing a bad check and had charges preferred against him for making a false official statement and for committing fraud. The applicant elected to receive a discharge in lieu of Court-Martial. The DRB did not condone the behavior of the applicant; however, the Board opined that, since the member served nine years and paid back the money in full, a UOTHC was too harsh and directs that the applicant's discharge be changed to a General 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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by a General discharge with no change in the reason and authority for the discharge, 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

[REDACTED]
(Former SGT) (HGH SGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr Griffis AFB, NY on 26 Aug 94 UP AFR 39-10, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 27 Dec 67. Enlmt Age: 17 1/12. Disch Age: 26 7/12. Educ: HS DIPL. AFQT: N/A. A-60, E-64, G-62, M-60. PAFSC: 2W151 - Aircraft Armament Systems Journeyman. DAS: 5 Aug 93.

b. Prior Sv: (1) AFRes 26 Feb 85 - 5 Aug 85 (5 months 11 days) (Inactive).

(2) Enlisted as AB 6 Aug 85 for 6 yrs. Svd: 5 yrs 3 months 12 days, all AMS. A1C - 19 Sep 85. SrA - 19 Jan 88. Sgt - 19 Jan 88. APRs: 8,8,8,9,9. EPRs: 4.

ART 15s: (1) 29 Dec 86, Edwards AFB, CA - Article 92. Preliminary investigation has disclosed that knowing of your duties, you, on or about 9 Dec 86, were derelict in the performance of those duties in that you willfully failed to keep a female from residing in your dormitory room, as it was your duty to do. Suspended reduction to Airman. Forfeiture of \$150.00 per month for two months. (Appeal/Denied) (No mitigation)

(2) 11 Apr 86, Edwards AFB, CA - Article 121. Preliminary investigation has disclosed that you did, on or about 1550 hours, 28 Mar 86, steal, by shoplifting, one pair of sunglasses, of a value of about \$7.50, the property of the Main Base Exchange, Army and Air Force Exchange Service. Suspended reduction to Airman. Forfeiture of \$100.00 per month for two months. (Appeal/Denied) (No mitigation)

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as Sgt 19 Nov 90 for 4 yrs. Svd: 3 Yrs 9 Mo 7 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: (1) 12 Dec 91, Eglin AFB, FL - Article 123a. You did, in Okaloosa County, Florida, on or about 8 Oct 91, with intent to deceive, wrongfully and unlawfully utter to Golden Nugget Oil, Check No. 0262 for the payment of money in the amount of \$16.73 dated 8 Oct 91, drawn upon

the Eglin Federal Credit Union, made payable to the order of Golden Nugget Oil, and signed [REDACTED] then knowing that you, the maker thereof, did not or would not have sufficient funds in or credit with said bank for payment of said check in full upon its presentation. Suspended reduction to Airman. Suspended forfeiture of \$233.00. Fourteen days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 01 Apr 90 - 31 Mar 91 Eglin AFB 4 (Annual)
 01 Apr 91 - 31 Mar 92 Eglin AFB 2 (Annual)REF
 01 Apr 92 - 25 Sep 92 Eglin AFB 3 (CRO)
 26 Sep 92 - 01 Jun 93 Eglin AFB 4 (CRO)
 02 Jun 93 - 23 Mar 94 Kunsan AB 1 (CRO)REF

h. Awards & Decs: AFOUA W/3 OLCS, AFGCM, NDSM, SWASM, AFOSSTR W/1 OLC, AFLSAR W/1 OLC, NCOPMER, SAEMR, AFTR.

i. Stmt of Sv: TMS: (9) Yrs (6) Mos (1) Das
 TAMS: (9) Yrs (0) Mos (21) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 15 Jul 04.

(Change Discharge to Honorable, and Change the Reason and Authority for Discharge.)

Issue 1: Served nine years and got Good Conduct Medal.

Issue 2: This incident was an accident overpayment and did not deserve any disciplinary action.

Issue 3: My final EPR was fraudulent. The final EPR score was not given by my supervisor, who had PCS'd (sic) a month earlier from Korea. It was only used to help my superiors to bolster a case to discharge me.

Issue 4: My supervisor never supervised me. He worked on a different shift than I and never gave me any feed back reports.

Issue 5: I was selected to compete for NCO of the Month, one month prior to this incident.

Issue 6: I repaid and overpaid the amount I had been overpaid in this incident.

Issue 7: At the time of my discharge there was less than two months left on my current enlistment before I would have discharged honorably.

Issue 8: I don't believe I should have gotten the discharge I received. The information used in the decision to give me this type of discharge was

FD2004-00277

grossly inaccurate. I was less than two months away from seperating (sic) under normal conditions, yet my superiors chose this action. It would be of great benefit to me if this situation were thoroughly investigated. Thank you.

ATCH

None.

24AUG04/ia

DEPARTMENT OF THE AIR FORCE
Pacific Air Forces

1 August 1994

MEMORANDUM FOR 8 FW/CC

FROM: 8 FW/JA

SUBJECT: Legal Review of Request for Discharge in Lieu of
Court-Martial: [REDACTED]

1. [REDACTED], 35 FS, has submitted a Request for Discharge in Lieu of Court-Martial under the provisions of AFR 39-10, Chapter 4. The commander has recommended approving the request and separating [REDACTED] with an Under Other Than Honorable Conditions discharge. I concur with the commander's recommendation.

2. The following charges were preferred against [REDACTED] on 3 June 1994, with a recommendation from the commander that they be referred to a Special Court-Martial:

- a. False Official Statement, in violation of Article 107; and
- b. Frauds Against the United States, in violation of Article 132.

The charges have not yet been referred to trial.

3. FACTS:

a. On 27 May 1993, [REDACTED] applied for a security clearance by completing a DD Form 398, "Personnel Security Questionnaire." After completing the form, he signed certifying that the entries made were true, complete and accurate. However, in the applicable section of the form, [REDACTED] did not disclose that he had 3 prior Article 15s; he only listed the two most recent ones. [REDACTED] also did not disclose any of his five traffic citations or his arrest for writing worthless checks in March 1992.

b. On 11 August 1993, after PCSing from Eglin AFB to Kunsan AB, [REDACTED] filed a DD form 1351-2, travel voucher. He wrote on the voucher that he relocated his dependents concurrently. This statement caused him to be paid allowances totalling \$1166.28 for dependent travel. However, as he knew at the time he filled out the voucher, his dependents did not relocate concurrently. His dependents already resided in California at the time he PCS'd.

4. DISCUSSION:

a. In order to court-martial [REDACTED], the government would have to pay to bring several witnesses from the United States. His estranged wife resides in California. Another witness to the fact that he traveled without dependents is stationed at Eglin AFB, Florida. Approving the Chapter 4 request would save the Air Force time and money.

b. We feel it is doubtful that a court-martial would adjudge a punitive discharge in this case. Although [REDACTED] has three prior Article 15's they are dated and are for relatively minor misconduct:

- 11 Apr 86: Stealing a pair of sunglasses (\$7.50)
- 29 Dec 86: Dereliction of duty for having a female in his dormitory room
- 12 Dec 91: Dishonorable Failure to maintain sufficient funds to pay a check to Golden Nugget Oil in the amount of \$16.73.

Additionally, [REDACTED] has paid back the money in full to finance. He made four payments before he submitted the Chapter 4 request and one payment after. If [REDACTED] does not receive a punitive discharge, the commander would have to initiate a discharge package after the court-martial in order to get [REDACTED] out of the Air Force. Under these circumstances the worst type of characterization [REDACTED] could receive would be a General (Under Honorable Conditions) discharge. If the Chapter 4 request is approved, [REDACTED] can receive an Under Other Than Honorable Conditions discharge. Such a characterization is warranted in this case due to the serious nature of [REDACTED] misconduct.

5. [REDACTED] has consulted with legal counsel and has presented matters in support of the request for discharge in lieu of court-martial.

a. [REDACTED] attached four DD Forms 1131, Cash Collection Vouchers, showing the following payments:

| <u>DATE</u> | <u>PAYMENT</u> | <u>BALANCE</u> |
|-------------|----------------|----------------|
| | | \$ 1166.28 |
| 7 Jul 94 | \$ 100.00 | \$ 1066.28 |
| 13 Jul 94 | \$ 600.00 | \$ 466.28 |
| 18 Jul 94 | \$ 100.00 | \$ 366.28 |
| 20 Jul 94 | \$ 320.00 | \$ 46.28 |

[REDACTED] paid the \$46.28 in cash to the finance office on 1 August 1994.

b. [REDACTED] also attached his request for release of his bonds, which he used to pay the debt.

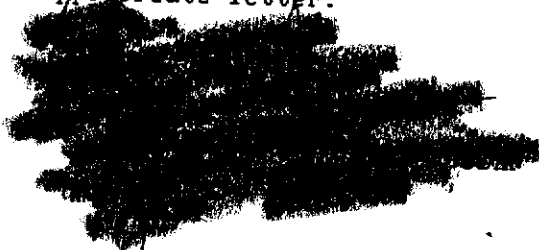
6. As the Special Court-Martial Convening Authority, you may:

a. Disapprove the Request for Discharge and refer the charges to trial;
or

b. Recommend approval of the Request for Discharge with an appropriate characterization and forward the file to 7 AF/CC for final action.

FD2004-00277

7. RECOMMENDATION: I recommend you sign the attached letter recommending approval of this request to 7 AF/CC. If you do not concur, please return this package and we will prepare the appropriate letter.



Attachments:

1. Proposed Ltr
2. 35 FS/CC Ltr dtd 28 Jul 94 w/atchs