

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> ██████████		<b>GRADE</b> SRA	<b>AFSN/SSAN</b> ██████████			
<b>TYPE GEN</b>	<b>PERSONAL APPEARANCE</b>	<b>X</b>	<b>RECORD REVIEW</b>			
<b>NAME OF COUNSEL AND OR ORGANIZATION</b>		<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>				
<b>YES</b>	<b>No</b>					
	<b>X</b>					
<b>MEMBER SITTING</b> <div style="border: 1px dashed black; height: 100px; width: 100%;"></div>		<b>VOICE OF THE BOARD</b>				
		<b>HON</b>	<b>GEN</b>	<b>UOTHC</b>	<b>OTHER</b>	<b>DENY</b>
						<b>X</b>
						<b>X</b>
						<b>X</b>
						<b>X</b>
<b>ISSUES</b> A92.21	<b>INDEX NUMBER</b> A75.00	<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			
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE			
			TAPE RECORDING OF PERSONAL APPEARANCE			
<b>HEARING DATE</b> 03 Dec 2004	<b>CASE NUMBER</b> FD-2004-00285					
<small>APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE</small>						

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.

<div style="border: 1px dashed black; height: 80px; width: 100%;"></div>	<p align="right"><b>DATE: 12/3/2004</b></p>
<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

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD-2004-00285

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

The applicant was offered a personal appearance before the Discharge Review Board 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 is denied.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an inequity or impropriety that would justify a change of discharge.

Issues. Applicant was discharged pursuant to his request to be discharged in lieu of trial by court martial. Member was charged with wrongfully displaying, receiving, or storing pornographic images on his government computer on divers occasions, and with wrongfully or knowingly possessing, receiving, or displaying child pornography to the discredit of the armed forces. Although the chain of command recommended an Under Other Than Honorable Conditions (UOTHC) discharge, and member acknowledged in his request to be discharged that he would likely receive a UOTHC, the convening authority expressly determined that member's service would be more appropriately characterized as under honorable conditions (general) after reviewing all of the evidence and character statements submitted, and determining the child pornography charge would be dismissed. Applicant now comes noting his post-service accomplishments and that he is "not a bad person." The Board concluded member's misconduct was a particularly serious failure to meet Air Force standards and an extremely significant departure from conduct expected of all military members. His misconduct was sufficient reason for receiving a general discharge. The Board further notes that applicant voluntarily submitted his request for discharge in lieu of trial by court martial, thus not attempting to establish his innocence or present any extenuating or mitigating factors. In doing so he acknowledged that under these circumstances his characterization of service could be deemed UOTHC in accordance with discharge regulations, wherein airmen so discharged usually do have their service characterized as UOTHC. The Board found no wrongful action by the Air Force, and could find no inequity or impropriety on which to base an upgrade to the 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

FD2004-00285

[REDACTED]  
(Former SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Mt Home AFB, ID on 12 Dec 03 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 29 Mar 79. Enlmt Age: 18 4/12. Disch Age: 24 8/12. Educ: HS DIPL. AFQT: N/A. A-67, E-66, G-52, M-56. PAFSC: 2A353B - Tactical Aircraft Maintenance Apprentice. DAS: 26 Jun 02.

b. Prior Sv: (1) AFRes 25 Aug 97 - 28 Dec 97 (4 months 4 days) (Inactive).

(2) Enlisted as AB 29 Dec 97 for 4 yrs. Svd: 3 yrs 0 months 18 days, all AMS. AMN - 29 Jun 98. A1C - 29 Apr 99. SrA - 29 Dec 00. EPRs: 5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 16 Jan 01 for 6 yrs. Svd: 2 Yrs 10 Mo 26 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: (1) 21 Apr 01, Hill AFB, UT - Article 92. You, having knowledge of a lawful order issued by [REDACTED] on or about 15 Jan 01, to go to the housing office and set up a pre-inspection appointment, an order which it was your duty to obey, did, fail to obey the same by wrongfully failing to make the said appointment. Suspended reduction to A1C, and 30 days extra duty. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 4 Jan 01 - 3 Jan 02 Hill AFB 3 (Annual)  
4 Jan 02 - 3 Jan 03 Kunsan AB 4 (Annual)

h. Awards & Decs: AFEM, AFTR, AFLSAR, NDSM, SAEMR, AFOUA, AFGCM, AFOSSTR.

i. Stmt of Sv: TMS: (6) Yrs (3) Mos (18) Das  
TAMS: (5) Yrs (11) Mos (14) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 29 Jan 04.  
(Change Discharge to Honorable)

Issue 1: I am writing this letter in regards to changing my discharge from general under honorable, to honorable. I joined the Air Force in Dec. of 1997 and was released in Dec. of 2003. Since my discharge, I have currently finished my first semester at the local college earning a 4.0 grade point average and a place on the president's list. Also, I have retained custody of my son, [REDACTED] and am currently the only role model in his life.

The reason that you are reading this letter right now is to show that I am not a bad person. I was released from the Air Force before the end of my second enlistment, but it has only made me stronger. The reason for discharge was also weak. Please, take your time in reviewing the information that I am sending you. Please don't disregard the letters, or the other information in this package. Thank you very much for your time.

**ATCH**

1. Personal Data Sheet.
2. Six Character References.
3. Newsletter Article.
4. Letter of Congratulation.
5. Divorce Decree.
6. DD Form 214.

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DEPARTMENT OF THE AIR FORCE  
PACIFIC AIR FORCES

FD 2004-00285

MEMORANDUM FOR 8 FW/CC

28 OCT 2003

FROM: 8 FW/JA

SUBJECT: Legal Review of Request for Discharge in Lieu of Trial by Court-Martial,  
[REDACTED], Kunsan AB, Republic of Korea

1. SUMMARY: On 10 October 2003, [REDACTED], Commander, 8th Maintenance Operations Squadron, preferred two charges against [REDACTED] for a violation of Article 92 UCMJ, for wrongfully displaying, storing, and or receiving pornographic images via his government computer, and a violation of Article 134, for wrongfully possessing or receiving or displaying visual depictions of a minor engaging in sexually explicit conduct. On 15 October 2003, [REDACTED] submitted a request that he be discharged from the Air Force in lieu of trial by courts-martial through his defense counsel. [REDACTED] recommends this request be approved, and that if it is approved, that the subject receive an Under Other Than Honorable Conditions (UOTHC) discharge (Tab 2). Charges have not been referred in this case. I recommend that you forward the request to the 7 AF/CC for approval.

2. BASIS FOR ACTION:

a. Facts: Between 14 October 2002 and 13 February 2003, [REDACTED] wrongfully viewed pornographic images on his government computer and he viewed one depiction of a minor engaging in sexually explicit conduct. On 10 October 2003, the 8 MXO/CC preferred court-martial charges against [REDACTED] for one specification of violation of Article 92 for violating a lawful general regulation, and one specification of violation of Article 134 for possessing or receiving or displaying child pornography.

b. The subject's commander has recommended acceptance of the Chapter 4 request.

3. PERSONAL DATA: [REDACTED] is 24 years old. His present term of enlistment began 16 Jan 01, for six years. His TAFMSD is 29 Dec 97. The accused has received four Enlisted Performance Reports (EPR) with ratings from most recent of (5) 4 Jan 02- 3 Jan 03, (3) 4 Jan 01- 3 Jan 02, (4) 4 Jan 00- 3 Jan 01, (5) 29 Dec 97- 3 Jan 00. He is entitled to wear the Air Force Outstanding Unit Award, Air Force Good Conduct Medal, National Defense Service Medal, Armed Forces Expeditionary Medal, Air Force Longevity Service Award, Small Arms Expert Marksmanship Ribbon, and the Air Force Training Ribbon

4. SUMMARY OF MATTERS SUBMITTED BY SUBJECT: The subject was counseled on his request by his defense counsel, [REDACTED], (Tab 3). He did submit matters with his request; he acknowledges that his request could deny him benefits. Through his defense counsel he states that he believes a UOTHC discharge will appropriately punish his crime while allowing him to avoid a federal conviction.

## 5. DISCUSSION:

a. **SEPARATION AUTHORITY:** Pursuant to AFI 36-3208, par. 4.4.2.1, where, as in the case herein, the Article 32 Investigation has not convened and thereby has not been forwarded to the General Courts-Martial Convening Authority (GCM), you must either disapprove the request and return it to the unit commander; or forward the request for discharge, with your recommendation for approval to the GCM. The approval authority for this request is 7 AF/CC, who must personally act on all requests.

### b. IS COURTS-MARTIAL APPROPRIATE?

(1) Discharge in lieu of trial by court-martial should be reserved for deserving cases.

Normally, a request for discharge is favorably considered when the victim(s) would suffer additional trauma from trial, witnesses are uncooperative, there are evidentiary problems, it would be in the best interest of the Air Force, or the misconduct, though significant may not warrant or require application of the UCMJ to meet the needs of good order and discipline. In this case, a UOTHC discharge will serve the needs of both the Air Force and the member.

(2) There is no victim or evidentiary issues in this case. However, the government will save substantial costs in witness travel by accepting the discharge request as many of the witnesses are no longer stationed on the Korean Peninsula. Another factor supporting acceptance is that only one of the images is confirmed child pornography. This leads me to believe that confinement, if adjudged, would be minimal. Without the one image this case may have been handled through non-judicial punishment. Because the image of child pornography is present, discharge from the Air Force is appropriate even if confinement were not adjudged. A UOTHC discharge is comparable to a punitive discharge in its effect on the offender. By accepting this request, the government will save time and money, while the offender will receive appropriate punishment; therefore accepting the Chapter 4 request is in the best interest of the Air Force.

c. **CHARACTERIZATION:** If the Chapter 4 request is accepted, the subject should receive a UOTHC discharge. His behavior is a significant departure from that expected of airman.

6. **ERRORS AND IRREGULARITIES:** None noted.

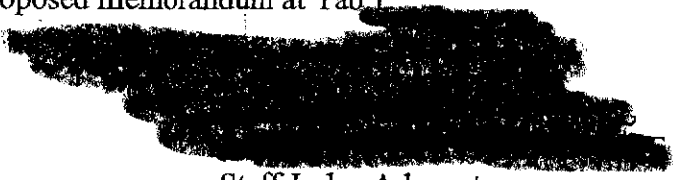
7. **OPTIONS:** You have the following options:

a. Disapprove the request and return it to the unit commander; or

b. Recommend approval of the request to 7 AF/CC, with a UOTHC service characterization. If you believe another characterization is appropriate, you must provide rationale.

FD 2004-00285

8. RECOMMENDATION: Forward the request for discharge in lieu of courts-martial to the general courts-martial convening authority, 7 AF/CC, with your recommendation that it be approved, by signing the proposed memorandum at Tab 1



Staff Judge Advocate

Attachments:

1. 8 MXO/CC Recommendation Letter w/ attachments
2. Chapter 4 request, 15 October 2003 w/ attachments