

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

TYPE UOTH		PERSONAL APPEARANCE	X	RECORD REVIEW
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		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 A94.05	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 26 Jul 2005	CASE NUMBER FD-2005-00048
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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.

Names and votes will be made available to the applicant at the applicant's request.

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INDORSEMENT		DATE: 7/27/2005
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-2005-00048

GENERAL: The applicant appeals for upgrade of discharge to general.

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 is denied.

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

ISSUE: Applicant does not contest his discharge. He states that he was told that if he kept out of financial or any trouble for six months then he could apply for a discharge upgrade. The records indicated the applicant asked for and received an Under Other Than Honorable Conditions (UOTHC) Discharge in lieu of court-martial action. The Board concluded the 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. It appears the applicant was told his discharge would automatically be upgraded in six months. The DRB noted the issue was common, the result of miscommunication. While a discharge may be upgraded after six months, the upgrade is by no means automatic. A discharge is upgraded only if the applicant and the DRB can establish an inequity or impropriety took place at the time of discharge. In this case, none was found, so the Board denied the appeal.

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

(Former SRA) (HGH SRA)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr Davis-Monthan AFB, AZ on 9 Jun 04 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Trial by Court-Martial. Appeals for General Discharge.

2. **BACKGROUND:**

a. DOB: 26 Jun 79. Enlmt Age: 21 1/12. Disch Age: 24 11/12. Educ: HS DIPL. AFQT: N/A. A-44, E-49, G-41, M-41. PAFSC: 9A000 - Enlisted Airmen Awaiting Retraining - Disqualified for Reasons Beyond Control. DAS: 16 Apr 01.

b. Prior Sv: (1) AFRes 11 Aug 00 - 11 Oct 00 (2 months 1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 12 Oct 00 for 6 years. Svd: 03 Yrs 07 Mo 29 Das, all AMS.

b. Grade Status: SrA - 24 Mar 03
A1C - 24 Nov 00

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, UNK DATE - Abusing the use of his Government Travel Card. EXAMINER NOTE: LOR reference in legal review.

f. CM: None.

g. Record of SV: 12 Oct 00 - 12 Jun 02 Davis-Monthan AFB 5 (Initial)
13 Jun 02 - 12 Jun 03 Davis-Monthan AFB 4 (Annual)

h. Awards & Decs: AFTR, NDSM

i. Stmt of Sv: TMS: (03) Yrs (09) Mos (29) Das
TAMS: (03) Yrs (07) Mos (28) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 16 Feb 05.
(Change Discharge to General)

Issue 1: At the time of my discharge, air Force personel (sic) told me as long as I kept out of Finanicel (Sic) or any trouble for 6 months tha I could apply for a discharge upgrade. I have been out of trouble for more than 9

months.

ATCH

1. DD Form 214

6MAR05/day



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 355TH WING (ACC)
DAVIS-MONTHAN AIR FORCE BASE, ARIZONA

MEMORANDUM FOR 355 WG/CC

MAR 05 2004

FROM: 355 WG/JA

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial,
U.S. v. SrA [REDACTED], 355 AMXS

1. On 24 Feb 04, SrA [REDACTED] submitted a request for discharge in lieu of trial by court-martial pursuant to AFI 36-3208, Chapter 4. On 3 Mar 04, [REDACTED] commander, Lt Col [REDACTED] recommended approval of the request, and I concur.
2. BACKGROUND: On 9 Feb 04, Lt Col [REDACTED] preferred five charges against SrA [REDACTED]. Specifically, the first charge and its four specifications involve willful dereliction of duty in violation of Article 92 of the Uniform Code of Military Justice (UCMJ). The charge and its specifications involve alleged Government Travel Card (GTC) abuses and dereliction of duty for conduct while SrA [REDACTED] was on convalescent leave and on a medical profile. The second charge and its three specifications involve making false official statements in violation of Article 107, UCMJ. The false official statements involve SrA [REDACTED] stating he lost his GTC, he did not make certain charges to the account, and he was not working a second job while on convalescent leave. The third charge involves larceny of video games from the Base Exchange in violation of Article 121 of the UCMJ. The fourth charge is for writing a check with non-sufficient funds to cover the check in violation of Article 123a, UCMJ. Finally, the fifth charge involves writing a check and dishonorably failing to maintain sufficient funds in violation of Article 134, UCMJ.
3. Additionally, SrA [REDACTED] has a medical discharge with 30% disability pending. Although not a determinative factor, I should note that an Under Other Than Honorable Conditions (UOTHC) discharge would be processed concurrently with his medical discharge. The Secretary of the Air Force Personnel Council (SAFPC) acts on behalf of the SAF and makes the final disposition. It is possible that SAFPC could accept the medical discharge *vice* the UOTHC characterization.
4. Despite this possibility, I recommend accepting the Chapter 4 request for the following reasons:
 - a. SrA [REDACTED] received a LOR for the most serious of charges, the GTC abuses. Since that time, he has not further abused his privileges—implying an LOR, an administrative tool, corrected his behavior;
 - b. His supervisor, SSgt [REDACTED], told him it was permissible to use his GTC for personal use, provided that he paid the bills;

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- c. Many of the charges and specifications stem from the poor financial management of a young Airman with a wife and two children;
- d. Some of the charges were made in Oxford, Mississippi, his wife's hometown, while he was deployed to Incirlik, Turkey;
- e. SrA [REDACTED] made false official statements about his activities while on quarters and convalescent leave to cover up off-duty employment—a means of income to presumably get him out of his financial woes; not an excuse but it appears he is being charged for financial derelictions and being charged for activities surrounding his efforts to get out of his financial woes;
- f. Furthermore, because SrA [REDACTED] Art. 31(b) rights were not given, the admissibility of these statements may be in jeopardy at his court-martial;
- g. SrA [REDACTED] GTC account has since been paid in full;
- h. As of 3 Mar 04, the Bank of America has not furnished information subpoenaed by our office necessary for a court-martial; the information would serve as the primary evidence regarding SrA [REDACTED] use of his personal checks to cover his GTC bills; and
- i. There is a likelihood that SrA [REDACTED] would not be sentenced to a bad conduct discharge, which would result in his medical discharge being granted; approving this request preserves a better chance of SrA [REDACTED] receiving a stained service characterization.

5. **OPTIONS:** You may approve or disapprove this request. If you approve the request, you must also recommend an appropriate service characterization and forward the package to 12 AF/CC for General Court-Martial Convening Authority final action. Customarily, discharge under AFI 36-3208, Chapter 4, is characterized as Under Other than Honorable Conditions. An UOTHC discharge is appropriate when it is determined that an Airman has committed "one or more acts or omissions that constitute a significant departure from the conduct expected of airmen." The offenses committed by SrA [REDACTED] certainly meet the criteria. Undoubtedly, making false official statements, abusing GTC privileges, stealing from the Base Exchange, and writing bad checks is incompatible with military service. Therefore, if you consider approving the request, the accused's discharge should be characterized as UOTHC. If you disapprove this request, you would return the file to SrA [REDACTED] commander, and our office would proceed with a trial.

6. **RECOMMENDATION:** Although the charges are serious enough to proceed to a special court-martial and sufficient evidence exists to prove much of the case, for the reasons set forth in this review, I recommend you forward SrA [REDACTED] request to 12 AF/CC recommending approval of the Chapter 4 with an UOTHC characterization. If you have any questions, please call my POC, Capt [REDACTED] or myself at 8-5242.

[REDACTED]
[REDACTED] JR., Lt Col, USAF
Staff Judge Advocate

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) ██████████			2. SSN ██████████	3. GRADE OR RANK Senior Airman	4. PAY GRADE E-4
5. UNIT OR ORGANIZATION 355th AMXS (ACC) Davis-Monthan AFB, AZ				6. CURRENT SERVICE	
				a. INITIAL DATE 12-Oct-00	b. TERM 6
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None	9. DATE(S) IMPOSED	
a. BASIC \$1,726.80	b. SEA/FOREIGN DUTY \$0.00	c. TOTAL \$1,726.80			

II. CHARGES AND SPECIFICATIONS

10. CHARGE I: Violation of the UCMJ, Article 92

Specification 1: In that SENIOR AIRMAN ██████████ United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, who knew of his duties at or near Tucson, Arizona, on divers occasions, between on or about 3 December 2002 and on or about 28 April 2003, was derelict in the performance of those duties in that he willfully failed to refrain from using his Bank of America Government Travel Card for personal use, as it was his duty to do.

Specification 2: In that SENIOR AIRMAN ██████████ United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, who knew of his duties at or near Tucson, Arizona, between on or about 28 April 2003 and on or about 2 December 2003, was derelict in the performance of those duties in that he willfully failed to make payments on his Bank of America Government Travel Card, as it was his duty to do.

Specification 3: In that SENIOR AIRMAN ██████████ United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, who knew of his duties at or near Tucson, Arizona, on divers occasions, between on or about 28 August 2003 and on or about 10 October 2003, was derelict in the performance of those duties in that he willfully failed to refrain from working a second job while on convalescent leave, as it was his duty to do.

Specification 4: In that SENIOR AIRMAN ██████████ United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, who knew of his duties at or near Tucson, Arizona, between on or about 1 December 2003 and on or about 15 January 2004, was derelict in the performance of those duties in that he willfully failed to refrain from obeying the restrictions stated in his physical profile, as it was his duty to do.

CHARGE II: Violation of the UCMJ, Article 107

Specification 1: In that SENIOR AIRMAN ██████████ United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, did, at or near Tucson, Arizona, on or about 5 April 2003, with intent to deceive, make to

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) ██████████	b. GRADE	c. ORGANIZATION OF ACCUSER
d. SIGNATURE OF ACCUSER		e. DATE 09-Feb-04

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 09 day of February, 2004, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Typed Name of Officer

Organization of Officer

Grade

Official Capacity to Administer Oath
(See R.C.M. 307(b)(1) - must be commissioned officer)

Signature

12. On 09 February, 20 04, the accused was informed of the charges against him/her and of the names(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)

[REDACTED]
Type Name of Immediate Commander

Lieutenant Colonel
Grade

[REDACTED]
Signature

355th AMXS
Organization of Immediate Commander

IV. RECEIPT BY SUMMARY COURT MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at _____ hours, _____, 20 _____, at _____
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ _____

[REDACTED]
Type Name of Officer

[REDACTED]
Official Capacity of Officer Signing

[REDACTED]
Grade

[REDACTED]
Signature

V. REFERRAL SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
Referred for trial to the _____ court-martial board convened by _____		
_____, _____, 20 _____, subject to the following instructions: ² _____		
By _____ of _____ <i>Command or Order</i>		
<u>[REDACTED]</u> <i>Typed Name of Office</i>	<u>[REDACTED]</u> <i>Official Capacity of Office Signing</i>	
<u>[REDACTED]</u> <i>Grade</i>		
<u>[REDACTED]</u> <i>Signature</i>		

15. On _____, 20 _____, I (caused to be) served a copy hereof on (each of) the above named accused.

[REDACTED]
Typed Name of Trial Counsel

[REDACTED]
Grade or Rank of Trial Counsel

[REDACTED]
Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
 2 - See R.C.M. 601(e) concerning instructions. If none, so state.

CHARGE SHEET

(Continuation)

1. NAME OF ACCUSED (Last, First, MI)

2. SSN

CHARGES AND SPECIFICATIONS

Bank of America, an official statement, to wit: that the accused lost his Government Travel Card, which statement was totally false, and was then known by the said accused to be so false.

Specification 2: In that SENIOR AIRMAN [REDACTED] United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, did, at or near Tucson, Arizona, between on or about 3 April 2003 and on or about 5 April 2003, with intent to deceive, make charges to the said accused Government Travel Card and report to Bank of America that the charges were not his, which statement was totally false, and was then known by the said accused to be so false.

Specification 3: In that SENIOR AIRMAN [REDACTED] United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, did, at or near Tucson, Arizona, on or about 10 December 2003, with intent to deceive, make to Master Sergeant [REDACTED], an official statement, to wit: that the accused did not have another job while on convalescent leave, which statement was totally false, and was then known by the said accused to be so false.

CHARGE III: Violation of the UCMJ, Article 121

Specification: In that SENIOR AIRMAN [REDACTED] United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, did, at or near Davis-Monthan AFB, Arizona, on or about 5 December 2003, steal six Playstation II games of a value of about \$285.00, the property of the Army Air Force Exchange Services (AAFES) Main Exchange.

CHARGE IV: Violation of the UCMJ, Article 123a

Specification: In that SENIOR AIRMAN [REDACTED] United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, did, at or near Tucson, Arizona, between on or about 27 May 2003 and on or about 14 July 2003, with intent to deceive and for the payment of a past due obligation, to wit: for the purpose of making a payment to Bank of America Government Travel Card, did wrongfully and unlawfully make to Bank of America Government Travel Card, a certain check for the payment of money upon Bank of America, in the words and figures as follows, to wit: check #562, in the amount of \$800, then knowing that he, the maker thereof, did not or would not have sufficient funds in or credit with such bank for the payment of the said check in full upon its presentment.

CHARGE V: Violation of the UCMJ, Article 134

Specification: In that SENIOR AIRMAN [REDACTED] United States Air Force, 355th Aircraft Maintenance Squadron, Davis-Monthan AFB, Arizona, did, at or near Tucson, Arizona, between on or about 28 April 2003 and on or about 22 May 2003, make and utter to Bank of America Government Travel Card, a certain check, in words and figures, to wit: check #415, in the amount of \$1,300 in payment of a debt, and did thereafter dishonorably fail to maintain sufficient funds in full upon its presentment for payment.