

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE SSGT	AFSN/SSAN [REDACTED]
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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 A94.01 A94.07 A94.05	INDEX NUMBER A75.00	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="padding: 5px;">EXHIBITS SUBMITTED TO THE BOARD</th> </tr> </thead> <tbody> <tr><td style="width:5%; padding: 5px;">1</td><td style="padding: 5px;">ORDER APPOINTING THE BOARD</td></tr> <tr><td style="padding: 5px;">2</td><td style="padding: 5px;">APPLICATION FOR REVIEW OF DISCHARGE</td></tr> <tr><td style="padding: 5px;">3</td><td style="padding: 5px;">LETTER OF NOTIFICATION</td></tr> <tr><td style="padding: 5px;">4</td><td style="padding: 5px;">BRIEF OF PERSONNEL FILE</td></tr> <tr><td></td><td style="padding: 5px;">COUNSEL'S RELEASE TO THE BOARD</td></tr> <tr><td></td><td style="padding: 5px;">ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE</td></tr> <tr><td></td><td style="padding: 5px;">TAPE RECORDING OF PERSONAL APPEARANCE</td></tr> </tbody> </table>	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
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HEARING DATE 06 Apr 2005	CASE NUMBER FD-2004-00444	
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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: 4/6/2005
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-2004-00444

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

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.

ISSUES:

Issues 1 & 3. Applicant contends discharge was inequitable because it was too harsh and based on one isolated incident. The records indicated the applicant accepted a Chapter 4 discharge in lieu of court-martial. Member was going to be court-martialed for unauthorized sale of military property. The applicant was a member of law enforcement and is held to a higher standard. The Board concluded the misconduct was a significant departure from conduct expected of all military members--especially law enforcement. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. 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. The DRB also recognized the fact that the applicant had served 11 years total service before the discharge was initiated, but concluded the applicant's misconduct outweighed the positive aspects of his time in the Air Force. 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.

Issue 4. The applicant contends his counsel was ineffective. This issue is without merit. The records reflect member consulted counsel and requested discharge in lieu of trial by court-martial.

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 SSGT) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr Hill AFB, UT on 14 Nov 90 UP AFR 39-10, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 29 Aug 55. Enlmt Age: 22 5/12. Disch Age: 35 2/12. Educ: HS DIPL. AFQT: N/A. A-58, E-41, G-61, M-47. PAFSC: 8115A - Law Enforcement Specialist. DAS: 20 Jun 90.

b. Prior Sv: (1) AFRes 10 Feb 78 - 5 Oct 78 (7 months 26 days) (Inactive).

(2) Enlisted as AB 6 Oct 78 for 6 yrs. Svd: 8 yrs 8 months 19 days, all AMS. AMN - 22 Nov 78. A1C - 22 May 79. SrA - 1 Feb 81. Sgt - 1 Feb 82. SSgt - 1 May 83. APRs: 8, 9,9,9,9,9,9,9.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 26 Jun 87 for 5 yrs. Svd: 3 Yrs 4 Mo 19 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 10 Feb 87 - 31 Aug 87 Hill AFB 9 (Annual)
01 Sep 87 - 31 Aug 88 RAF Upper Heyford 9 (Annual)
01 Sep 88 - 31 Aug 89 RAF Upper Heyford 9 (Annual)
01 Sep 89 - 18 May 90 RAF Upper Heyford 3 (CRO)

h. Awards & Decs: AFCM, AFOUA W/2 OLCS, AFGCM W/2 OLCS, HSM, AFOSSTR W/1 OLC, AFOSLTR, AFLSAR W/2 OLCS, NCOPMER, SAEMR W/1 OLC, AFTR.

i. Stmt of Sv: TMS: (12) Yrs (9) Mos (5) Das
TAMS: (12) Yrs (1) Mos (9) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 21 Oct 04.
(Change Discharge to Honorable)

FD2004-00444

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

17DEC04/ia

-- ISSUES --

I was charged with wrongfully selling Government property (one Kevlar helmet and one Kevlar vest). I accepted a discharge in lieu of court martial. I believe the character of my discharge was inequitable because:

Issue 1: One isolated incident should not outweigh twelve years of exemplary service. I was chosen for security details for Presidents Reagan and George H.W. Bush and Secretaries of State James Baker and George Schultz. I was awarded the Air Force Commendation and Achievement Medals. My record contains not so much as an unfavorable command letter. My evaluations were uniformly outstanding.

Issue 2: The character of my discharge was unduly severe because it was awarded during the pendency of a large-scale investigation into the illegal sale of F-16 engines, also at Hill AFB. I was treated as if I were a part of that investigation. In actuality my case had nothing whatsoever to do with the investigation, but the investigation created a climate of heightened prosecutorial activity and public scrutiny at Hill. At any other AFB I believe my conduct would have resulted, at most, in non-judicial proceedings.

Issue 3: The character of my discharge was unduly harsh given the relatively minor nature of the offense.

Issue 4: My counsel ineffectively assisted me by failing to apprise me of the weaknesses in the Government's case. Counsel also did not point out a significant mitigating fact: I had attempted to surrender the equipment in question to proper authority, but they refused to accept it.

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [REDACTED]		2. SSN [REDACTED]	3. GRADE OR RANK SSgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION 2849th Air Base Group, Hill AFB, Utah (AFLC)			6. CURRENT SERVICE	
			a. INITIAL DATE 26 Jun 87	b. TERM 5 Yrs
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	9. DATE(S) IMPOSED	
\$1,366.80	None	\$1,366.80	None	

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 81

SPECIFICATION: In that Staff Sergeant [REDACTED] United States Air Force, 2849th Air Base Group, did, at Hill Air Force Base, on or about 11 September 1987, conspire with [REDACTED] to commit an offense under the Uniform Code of Military Justice, to wit: the unauthorized sale of military property, of the United States, of an aggregate value of about \$1,263,18, and in order to effect the object of the conspiracy the said [REDACTED] did, at Roy, Utah, on or about 11 September 1987, without proper authority, sell to Marv's Gold and Pawn, four pair of flyer's summer coveralls, two green plastic canteens, one pasgt helmet, one camouflage helmet cover, one body armor vest, one extreme cold weather jacket, one magnetic compass, two wet weather parkas, one pair of tropical combat spike resistant boots, one extreme cold weather type F1B trousers, one general purpose rigid case first aid kit, one individual first aid kit, one barracks bag, two cold weather coat liners, two desert night camouflage parkas, two desert night camouflage trousers, one winter B-9B flyer's helmet, one cold weather field coat, one pair woodland camouflage trousers, two pair of desert camouflage trousers, one woodland camouflage combat coat, two desert camouflage coats, one revolver ammunition case, two 30-round small ammunition cases, one small carrying pouch marked 7.62mm, one insect repellent type IIA, one flyer's kit bag, two extreme cold weather hoods with synthetic fur, one pair extreme cold weather boots, one pair bootliners, one bayonet, one lefthand hip holster, one waterproof clothing bag, one pair of black leather boots, one

III. PREFERRAL

1a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE 2Lt	c. ORGANIZATION OF ACCUSER 2849th Air Base Group (AFLC)
SIGNATURE OF ACCUSER [REDACTED]		e. DATE 2 JULY 90

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 2nd day of July, 1990, 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

Captain

Grade

Signature

Ogden Air Logistics Center (AFLC)

Organization of Officer

Judge Advocate

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

FD2004-00444

12. On 2 JULY, 19 90, the accused was informed of the charges against him/her and of the name(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]
Typed Name of Immediate Commander
2nd LIEUTENANT, USAF
[Redacted]
Signature

2849 ABG
Organization of Immediate Commander

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1700 hours, 3 July 19 90 at Hill AFB, Utah
Designation of Command or
Commander, 2849th Air Base Group (AFLC)
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

[Redacted]
Typed Name of Officer
Colonel, USAF
[Redacted]
Signature

FOR THE ¹ COMMANDER
Staff Judge Advocate
Ogden Air Logistics Center (AFLC)
Official Capacity of Officer Signing

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY
Ogden Air Logistics Center (AFLC) b. PLACE
Hill Air Force Base, Utah c. DATE
21 September 1990

Referred for trial to the general court-martial convened by special order A-2520

21 September 19 90, subject to the following instructions: ² none

By [Redacted] order of Commander, Ogden Air Logistics Center (AFLC)
Command or Order Staff Judge Advocate
[Redacted] Ogden Air Logistics Center (AFLC)
Typed Name of Officer Hill AFB, Utah
Official Capacity of Officer Signing

Colonel, USAF
Grade
[Redacted]
Signature

15. On 24 September, 19 90, I (caused to be) served a copy hereof on [Redacted] the above named accused.

[Redacted] Assistant Captain
Typed Name of Trial Counsel 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.

mesh net survival vest, one tropical combat camouflage hat, one desert camouflage hat, one black leather shoulder holster, one extreme cold weather cap, two man's wool blue berets, one man's blue wool beret, one pair of double bow lock handcuffs, one revolver ammunition case, one woodland camouflage combat cap, two individual equipment nylon belts, one muzzle, one GT/PARA helmet headband, one dog leash holder, one dog muzzle, one 22 inch choke chain, one camouflage helmet cover, one pocket radio case, one pair of wool glove inserts, two pan mess kits, two individual equipment belt suspenders, two green plastic collapsible canteens, one pair of sun, wind and dust goggles, one type I duffle bag, one brown leather tool belt, one OD green canteen case, and one black leather holster, of an aggregate value of about \$1, 263.18, military property of the United States.

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [REDACTED]		2. SSN [REDACTED]	3. GRADE OR RANK SSgt	4. PAY GRADE E-5
5. UNIT OR ORGANIZATION 2849th Air Base Group, Hill AFB, Utah (AFLC)			6. CURRENT SERVICE	
			a. INITIAL DATE 26 Jun 87	b. TERM 5 Yrs
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED None	9. DATE(S) IMPOSED None	
a. BASIC \$1,366.80	b. SEA/FOREIGN DUTY None			

II. CHARGES AND SPECIFICATIONS

10. ~~CHARGE~~ VIOLATION OF THE UCMJ, ARTICLE 108
 ADDITIONAL CHARGE:
 SPECIFICATION: In that Staff Sergeant [REDACTED] United States Air Force, 2849th Air Base Group, did, at Hill Air Force Base, Utah, on or about 11 September 1987, without proper authority, sell to Marv's Gold and Pawn, four pair of flyer's summer coveralls, two green plastic canteens, one pasgt helmet, one camouflage helmet cover, one body armor vest, one extreme cold weather jacket, one magnetic compass, two wet weather parkas, one pair of tropical combat spike resistant boots, one extreme cold weather type F1B trousers, one general purpose rigid case first aid kit, one individual first aid kit, one barracks bag, two cold weather coat liners, two desert night camouflage parkas, two desert night camouflage trousers, one winter B-9B flyer's helmet, one cold weather field coat, one pair woodland camouflage trousers, two pair of desert camouflage trousers, one woodland camouflage combat coat, two desert camouflage coats, one revolver ammunition case, two 30-round small ammunition cases, one small carrying pouch marked 7.62mm, one insect repellent type IIa, one flyer's kit bag, two extreme cold weather hoods with synthetic fur, one pair extreme cold weather boots, one pair bootliners, one bayonet, one lefthand hip holster, one waterproof clothing bag, one pair of black leather boots, one

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE 2Lt	c. ORGANIZATION OF ACCUSER 2849th Air Base Group (AFLC)
d. SIGNATURE [REDACTED]		e. DATE 19 Sep 90

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 19th day of September, 19 90, 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.

[REDACTED]

 Typed Name of Officer

Ogden Air Logistics Center (AFLC)

 Organization of Officer

Captain

 Grade

Judge Advocate

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

[REDACTED]

 Signature

12.

On 19 September, 19 90, the accused was informed of the charges against him/her and of the name(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]
Typed Name of Immediate Commander

2849th Air Base Group (AFLC)
Organization of Immediate Commander

2nd Lieutenant USAF
Grade

[Redacted]
Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1500 hours, 19 SEPTEMBER 90 at Hill Air Force Base, Utah
Designation of Command or

Commander, 2849th Air Base Group (AFLC)
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE COMMANDER
Staff Judge Advocate
Ogden Air Logistics Center (AFLC)
Official Capacity of Officer Signing

[Redacted]
Typed Name of Officer

Colonel, USAF
Grade

[Redacted]
Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY <u>Ogden Air Logistics Center (AFLC)</u>	b. PLACE <u>Hill Air Force Base, Utah</u>	c. DATE <u>21 September 1990</u>
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Referred for trial to the general court-martial convened by special order A-2520

21 September 19 90, subject to the following instructions:² To be tried with the original charge dated 2 July 1990.

By order of Commander, Ogden Air Logistics Center (AFLC)
Command or Order Staff Judge Advocate
Ogden Air Logistics Center (AFLC)
Hill AFB, Utah

[Redacted]
Typed Name of Officer

Colonel, USAF
Grade

[Redacted]
Signature

Official Capacity of Officer Signing

15.

On 24 September, 19 90, I (caused to be) served a copy hereof on (each of) the above named accused.

[Redacted]
Typed Name of Trial Counsel Assistant

Captain
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.

FD2004-08444

CONTINUATION OF AF FORM 458, CHARGE SHEET, SSGT [REDACTED] PREFERRED,
19 SEPTEMBER 1990: (ADDITIONAL CHARGE)

mesh net survival vest, one tropical combat camouflage hat, one desert camouflage hat, one black leather shoulder holster, one extreme cold weather cap, two man's wool blue berets, one man's blue wool beret, one pair of double bow lock handcuffs, one revolver ammunition case, one woodland camouflage combat cap, two individual equipment nylon belts, one muzzle, one GT/PARA helmet headband, one dog leash holder, one dog muzzle, one 22 inch choke chain, one camouflage helmet cover, one pocket radio case, one pair of wool glove inserts, two pan mess kits, two individual equipment belt suspenders, two green plastic collapsible canteens, one pair of sun, wind and dust goggles, one type I duffle bag, one brown leather tool belt, one OD green canteen case, and one black leather holster, of an aggregate value of about \$1, 263.18, military property of the United States.