

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████ | GRADE AB | AFSN/SSAN ████████████████ |
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| TYPE BCD | PERSONAL APPEARANCE | X RECORD REVIEW | | | | |
| NAME OF COUNSEL AND OR ORGANIZATION | ADDRESS AND OR ORGANIZATION OF COUNSEL | | | | | |
| <table border="1"> <tr> <td>YES</td> <td>NO</td> </tr> <tr> <td></td> <td align="center">X</td> </tr> </table> | YES | NO | | X | | |
| YES | NO | | | | | |
| | X | | | | | |

| MEMBERS SITTING | TITLE OF THE BOARD | | | | |
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| ISSUES A91.05 | INDEX NUMBER A91.00 | EXHIBITS SUBMITTED TO THE BOARD | |
| | | 1 | ORDER APPOINTING THE BOARD |
| | | 2 | APPLICATION FOR REVIEW OF DISCHARGE |
| | | 3 | LETTER OF NOTIFICATION |
| HEARING DATE 03-05-07 | CASE NUMBER FD2002-0475 | 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 |

IF THE ISSUE AND THE BOARD'S PERSONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD PERSONAL RATIONALE

REMARKS

* Change Reason for discharge to Commission of a Serious Offense

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.

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| SIGNATURE OF RECORDER ████████████████████ | SIGNATURE OF BOARD PRESIDENT ████████████████████ |
| INDORSEMENT | DATE: 03-05-07 |

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| TO: SAF/MIBR 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, 3 RD FLOOR ANDREWS AFB, MD 20762-7002 |
|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0475

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 the applicant provides a sufficient basis in clemency for a change of discharge.

Issue. The applicant did not receive an administrative discharge. He received a Bad Conduct Discharge, a punitive discharge, as part of his sentence resulting from a Special Court Martial conviction. Under the provisions of Title 10, U.S.C., Section 1553, the only basis for change of a Bad Conduct Discharge, is clemency. The applicant submitted insufficient evidence to warrant clemency and none was evident in the record.

CONCLUSIONS: The Discharge Review Board concludes that the applicant's punitive discharge by Special Court Martial was appropriate under the facts and circumstances of this case and there is insufficient basis as an act of clemency for change of discharge.

Attachment:

Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

(Former AB) (HGH SRA)

1. MATTER UNDER REVIEW: Appl rec'd a BCD Disch fr USAF 29 Jan 97 UP Special Court Martial Order No. 4 (Conviction by Court Martial). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 1 Dec 70. Enlmt Age: 19 2/12. Disch Age: 26 1/12. Educ: HS DIPL. AFQT: N/A. A-60, E-53, G-44, M-65. PAFSC: 2T451 - General Purpose Vehicle Maintenance Journeyman. DAS: Unknown.

b. Prior Sv: (1) AFRes 12 Feb 90 - 19 Jun 90 (4 Mqs 8 Days) (Inactive).

(2) Enld as AB 20 Jun 90 for 4 yrs. Svd: 3 Yrs 6 Mos 21 Das, all AMS. AMN - 20 Dec 90. A1C - 20 Oct 91. SRA - 20 Jun 93. EPRs: 3,5,5.

3. SERVICE UNDER REVIEW:

a. Reenld as SRA 10 Jan 94 for 4 yrs. Svd: 3 Yrs 0 Mo 20 Das, of which AMS is 2 Yrs 11 Mos 1 Das (ex: 1 Month 19 Days lost time)

b. Grade Status: AB - 11 Jul 96 (SPCMO No 4, 5 Jun 96)

c. Time Lost: 8 May 96 - 25 Jun 96 (49 days)

d. Art 15's: None.

e. Additional: Unknown.

f. CM: Special Court Martial Order No. 4, 5 June 1996.

CHARGE 1: Article 134. Plea: Guilty. Finding: Guilty.

Specification 1: On or about 9 Oct 95, unlawfully carry on or about his person a concealed weapon, to wit: a .380 caliber Davis Industries pistol.

Specification 2: On or about 9 Oct 95, through negligence, discharge a .380 caliber Davis Industries pistol in the parking lot area of Club Fairchild, while legally intoxicated, resulting in a leg wound to ----- . Sentence adjudged on 7 May 1996: Bad conduct discharge, reduction to AB, and confinement for 60 days.

g. Record of SV: 30 Nov 93 - 29 Mar 94 MacDill AFB 5 (CRO)
30 Mar 94 - 21 Feb 95 Camp Humphreys AIN 5 (CRO)
22 Feb 95 - 21 Feb 96 Fairchild AFB 5 (Annual)

(Discharged from Fairchild AFB)

h. Awards & Decs: AFCEM, AFAM W/1 DEV, AFGCM W/1 DEV, NDSM, AFOSTR, AFLSAR, AFTR.

i. Stmt of Sv: TMS: (6) Yrs (9) Mos (29) Das
TAMS: (6) Yrs (5) Mos (21) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 28 Oct 02.
(Change Discharge to Honorable)

Issues: I started my Air Force 20 June 1990 & after my appellate review my DOS was 29 Jan 1997. From the date I entered active duty up until (sic) my unfortunate incident (sic). I've never had an infraction against the law neither civilian (sic) nor military. I served my country with Pride, Integrity, & Honor in the Air Force even until (sic) this day I still salute the American Flag & Honor what it stands for & pay homage (sic) to those who have given their lives for my country's (sic) sake. Even after I had been incarcerated my commander Lt Col ----- paid me a visit (sic). He asked if I have considered the return to duty program. It gave me comfort in knowing my commander a Lt Col whom I looked up to & admired as a military leader saw through (sic) my Air Force records that I exemplified Air Force standards therefore my supporting documentation will be my military records. It was also recommended by the Military Judge that presided (sic) over the case whom also saw through my military records that a Bad Conduct discharge was too severe & recommended clemency as stated in document attached. After reviewing my records I pray that your decision will be to upgrade my discharge to honorable.

Finally I would like to say I loved every moment in the Air Force & often times dreamed of returning. I still remember in basic training when they would ask "Whats an Air Force trainee" & we would say in a loud voice. Highly dedicated, steadily (sic) motivated, rumping stumping Air Force recruit Sir. I meant those words then & I still live by them now. Thank you.

ATCH

1. USAF Court of Criminal Appeals Document.

7Feb03/cr

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92ND AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE, WASHINGTON 99011

Special Court-Martial Order
No. 4

5 June 1996

[REDACTED], United States Air Force, 92nd Transportation Squadron, was arraigned at Fairchild Air Force Base, Washington, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 134. Plea: G. Finding: G.

Specification 1: On or about 9 October 1995, unlawfully carry on or about his person a concealed weapon, to wit: a .380 caliber Davis Industries pistol. Plea: G. Finding: G.

Specification 2: On or about 9 October 1995, through negligence, discharge a .380 caliber Davis Industries pistol in the parking lot area of Club Fairchild, while legally intoxicated, resulting in a leg wound to [REDACTED]. Plea: G. Finding: G.

Specification 3: On or about 9 October 1995, was drunk and disorderly, which conduct was to the prejudice of good order and discipline in the armed forces. Plea: NG. (Withdrawn subsequent to arraignment).

CHARGE II: Article 92. Plea. NG. (Withdrawn subsequent to arraignment).

Specification: On or about 9 October 1995, violate a lawful general regulation, to wit: paragraph 5.17.3, Air Force Instruction 31-209, Air Mobility Command Supplement 1, dated 19 June 1995, by wrongfully carrying a loaded firearm in the glove box of his vehicle while at Fairchild Air Force Base, Washington. Plea: NG. (Withdrawn subsequent to arraignment).

- 1 - 92 ARW/CC, Fairchild AFB WA 99011-5000
- 1 - 92 ARW/JA, Fairchild AFB WA 99011-5000
- 10 - AFLSA/JAJM, 172 Luke Ave, Ste 343, Bolling AFB DC 20332-5113
- 1 - HQ 15 AF/CC, 540 Airlift Drive, Bldg 381, Travis AFB CA 94353-2406
- 1 - HQ 15 AF/JA, 540 Airlift Drive, Bldg 381, Travis AFB CA 94535-2406
- 1 - HQ LG/CC, Fairchild AFB, WA 99011-9558
- 1 - 92 TRNS/CC, Fairchild AFB WA 99011-9558
- 2 - 92 CPTS/ACF, Fairchild AFB WA 99011-9558
- 4 - 92 MSS/DPMPE, Fairchild AFB WA 99011-9558
- 1 - 11 WG/JAJR, 20 MacDill Blvd, Room 207, Bolling AFB DC 20332-0110
- 1 - DFAS-DE/FJPC, 6760 E. Irvington Place, Bldg 444, Denver CO 80279-3000
- 1 - DFAS-DE/FYDEB, 6760 E. Irvington Place, Bldg 408, Denver CO 80279-7000
- 1 - HQ AFMPC/DPMDOM1, 550 C Street West, Suite 21, Randolph AFB TX 78150-4723
- 1 - AF Security Clearance Office, 497 IG/INSB, 229 Brookley Avenue, Room 200, Bolling AFB DC 20332-7040
- 1 - HQ AMC/JA, 402 Scott Drive, Room 132, Scott AFB IL 62225-5305



DEPARTMENT OF THE AIR FORCE *FD2002-0475*
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

11081

MEMORANDUM FOR [REDACTED]
2808 S. ASSEMBLY #10
SPOKANE WA 99204

06 FEB. 1997

FROM: AFLSA/JAJM
112 Luke Avenue Room 343
Bolling AFB DC 20332-8000

SUBJECT: [REDACTED] ACM S29213

The United States Air Force Court of Criminal Appeals (AFCCA) affirmed the findings of guilty and the sentence as set forth in the attached decision. The Judge Advocate General will not certify legal issues to the United States Court of Appeals for the Armed Forces nor remit or suspend any part of the sentence. (Articles 67(a)(2) and 74(a), UCMJ).

Please sign the attached receipt and forward it to: AFLSA/JAJM, 112 Luke Avenue, Room 343, Bolling AFB DC 20332-8000.

If you have any questions, you should contact your appellate defense counsel located at AFLSA/JAJA, telephone (202) 767-1562 (DSN 297-1562). You have the right to petition the United States Court of Appeals for the Armed Forces (USCA) within 60 days of the postmarked date of this letter. Attached are an instruction sheet as well as petition forms for grant of review. Please mail these forms directly to: United States Court of Appeals for the Armed Forces, 450 E Street NW, Washington DC 20442-0001.

FOR THE JUDGE ADVOCATE GENERAL

[REDACTED]

[REDACTED]

Associate Chief, Military Justice Division
Office of The Judge Advocate General

- Attachments:
1. AFCCA Decision
 2. Instruction Sheet
 3. Petition Forms
 4. Receipt

cc:
15 AF/JA

Cc: Fairchild

*Rec'd
2/11/97*

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

[REDACTED]
United States Air Force

ACM S29213

29 January 1997

Sentence adjudged 7 May 1996 by SPCM convened at Fairchild Air Force Base, Washington. Military Judge: [REDACTED] (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 60 days, and reduction to E-1.

Appellate Counsel for Appellant: [REDACTED]

Appellate Counsel for the United States: [REDACTED] and Lieutenant Colonel [REDACTED]

Before

[REDACTED]
Appellate Military Judges

PER CURIAM:

Appellant was convicted by a military judge sitting as a special court-martial of unlawfully carrying a concealed weapon, and, while intoxicated, negligently discharging a weapon and thereby wounding Airman First Class [REDACTED]'s leg in violation of Article 134, UCMJ; 10 U.S.C. § 934 (1994). He pleaded guilty to both specifications and the charge. His approved sentence is a bad-conduct discharge, confinement for 60 days and reduction to E-1. He asserts that his sentence to a bad conduct discharge is inappropriate. We disagree and affirm.

On 9 October 1995, Appellant and his fiancée (now wife) [REDACTED] went dancing and dining at the Club Fairchild on Fairchild, AFB. Appellant's blood alcohol level was .15 at the time of the incident. Upon leaving the club with his fiancée they got into his car. While rummaging around in the glove compartment, his pistol fell to the

into his car. While rummaging around in the glove compartment, his pistol fell to the floor. Understandably, this upset his fiancée. Appellant tried to remove the clip and accidentally fired the gun. The bullet wounded his left index finger and lodged in his fiancée's left leg. The pistol had been loaded with three rounds of ball ammo and three rounds of hollow point ammo. [REDACTED] required surgery and could face long term neurological effects. Her injury caused her to be placed on a medical profile and it prevented her from performing her normal duties.

Appellant argues that the sentence is inappropriately severe in view of his military record, including two overseas deployments, his lack of prior misconduct, and a recommendation by the military judge that the convening authority suspend the bad-conduct discharge. While these considerations might warrant clemency, we nonetheless are persuaded that under these circumstances, the sentence cannot be deemed inappropriate. [REDACTED]

[REDACTED] Appellant knowingly transported a loaded weapon onto an Air Force installation. His manipulation of this dangerous weapon while intoxicated jeopardized the lives of anyone in proximity to the vehicle, potentially permanently disabled his fiancée, and necessitated her assignment to other duties.

Having examined the record of trial, the assignment of error, and the government's response thereto, we have concluded that the findings and sentence are correct in law and fact, the sentence is appropriate, and that no error prejudicial to the appellant's substantial rights was committed. Accordingly, the findings of guilty and the sentence are

AFFIRMED



OFFICIAL

[REDACTED]

Staff Sergeant, USAF
Chief Court Administrator