

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████		GRADE AB	AFSN/SSAN ██████████	(5)			
TYPE	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE	RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION					
YES	<input type="checkbox"/>	████████████████████					
No	<input checked="" type="checkbox"/>						
		ADDRESS AND OR ORGANIZATION OF COUNSEL ████████████████████					
<div style="border: 1px dashed black; height: 100px; width: 100%;"></div>		VOTE OF THE BOARD					
		HON	GEN	UOTHC	OTHER	DENY	
			X				
			X				
			X				
			X				
ISSUES A94.06 A92.22		INDEX NUMBER A68.00		EXHIBITS SUBMITTED TO THE BOARD			
				1	ORDER APPOINTING THE BOARD	2	APPLICATION FOR REVIEW OF DISCHARGE
				COUNSEL'S RELEASE TO THE BOARD			
				ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE			
				TAPE RECORDING OF PERSONAL APPEARANCE			
HEARING DATE 25 Mar 2004		CASE NUMBER FD-2003-00287					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE							
<p>Case heard at Washington, D.C.</p> <p>Advise applicant of the decision of the Board the right to and the right to submit an application to the AFBCMR.</p>							
INDORSEMENT				DATE: 4/14/2004			
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

FD-2003-00287

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

The applicant appeared before the Discharge Review Board (DRB) at Andrews AFB, Maryland on 25 March 2004 with legal representation by Mr. [REDACTED]

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: The discharge is upgraded to General. The reason for discharge and RE code remain unchanged.

The Board finds that neither the evidence of record or that provided by applicant substantiates an inequity or impropriety that would justify a change of discharge. However, as a matter of clemency, along with the applicant's significant positive post-service involvement in youth development, community service, and his noteworthy leadership accomplishments, the Board finds the member's Bad Conduct Discharge (BCD) should be upgraded to General, under Honorable conditions.

ISSUE: The applicant submitted a 13-page summary of his issues, which included his acceptance of full responsibility for his misconduct. Among the applicant's principal issues are, consideration should have been made by his commander for an administrative discharge for a Personality Disorder and the opinion his discharge was too harsh for the "true nature of the conduct." Additionally, the applicant opines his two previous periods of Honorable military service (U.S. Army Reserve and U.S. Air Force) and his post-service community involvement should be taken into consideration by the Board in upgrading his discharge. The applicant did not receive an administrative discharge, thus his contention of an inequity or impropriety is not applicable. The applicant received a Bad Conduct Discharge, a punitive discharge, as part of his sentence resulting from a Special Court-Martial conviction. Under the provisions of Section 1553, 10 USC, the only basis for a change of a Bad Conduct discharge is clemency. Aside from the applicant's documented previous periods of Honorable military service, the Board considered the applicant's above average duty performance during the two reporting periods predating his acts of misconduct, his extensive post-service activities, and the period of time that has transpired since his discharge, in granting an upgrade of discharge. However, the Board further opined the seriousness of the member's misconduct did not warrant a full upgrade to Honorable, as he desires.

CONCLUSIONS: The Discharge Review Board concluded that the applicant's punitive discharge by Special Court-Martial was appropriate under the facts and circumstances of his case. However, the Board finds a sufficient 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

[REDACTED]
 [REDACTED]
 (Former AB) (HGH SGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a BCD Disch fr USAF 25 May 93 UP SPCMO No.6 (Conviction by Court Martial). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 12 Jul 63. Enlmt Age: 17 8/12. Disch Age: 28 10/12. Educ: HS DIPL. AFQT: N/A. A-85, E-45, G-55, M-20. PAFSC: 73250 - Personnel Specialist. DAS: 28 Jul 87.

b. Prior Sv: (1) USAR 20 Mar 81 - 22 Apr 85. Svd: 4 yrs 1 month 2 days, of which AMS is 1 month 28 days.

(2) Enlisted USAF as Amn 23 Apr 85 for 4 yrs. Svd: 3 yrs 9 months 27 days, all AMS. Extended 5 May 87 for 15 months. A1C - 28 Feb 86. SrA-(APR Indicates): 23 Apr 87-22 Apr 88. Sgt-(APR Indicates): 23 Apr 88-1 Feb 89. APRs: 9,8,9,7.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as Sgt 21 Apr 89 for 4 yrs. Svd: 4 Yrs 1 Mo 4 Das, all AMS.

b. Grade Status: AB - 2 Jan 91 (SPCMO No.2, 2 Jan 91)
 A1C - 2 Oct 90 (Article 15, 2 Oct 90)

c. Time Lost: None.

d. Art 15's: (1) 2 Oct 90, Hahn AB, Germany - Article 107. Preliminary investigation reveals that you did, on or about 21 Sep 90, with intent to deceive, make to TSgt [REDACTED] an official statement, to wit: I have two appointments this morning, 0900 hours at the hospital, and 1000 hours with SMSgt [REDACTED] at the Wing building, which statement was totally false, and was then known by you to be so false. Article 92. Further investigation reveals that, you, who knew of your duties, on or about 21 September 90, were derelict in the performance of those duties in that you willfully falsified appointments and their scheduled times in order to be excused from working in your duty section, as it was your duty not to do. Reduction to A1C, forfeiture of \$100.00 pay per month for two months, 45 days restriction, and 45 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional: None.

f. CM: Special Court Martial No.2 - 2 Jan 91

CHARGE I: Article 109. Plea: Guilty. Finding: Guilty.

Specification: Did, at Buechenbeuren, Federal Republic of Germany, on or about 25 Jan 90, willfully and wrongfully damage by piercing with a corkscrew, Goodyear Eagle GT radial tire, the property of SrA [REDACTED] the amount of said damage being of some amount less than \$100.00.

CHARGE II: Article 80. Plea: Guilty. Finding: Guilty.

Specification 1: Did, at Buechenbeuren, Federal Republic of Germany, on or about 8 Sep 90, attempt to unlawfully enter the dwelling house of SrA [REDACTED] Plea: Guilty. Finding: Guilty.

Specification 2: Having received a lawful command from Major [REDACTED], his superior commissioned officer, then known by the said A1C [REDACTED] to be his superior commissioned officer, to not contact Mrs. [REDACTED] or words to that effect, did at Hahn AB, Germany, on or about 5 Nov 90, attempt to willfully disobey the same. Plea: Guilty. Finding: Guilty.

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

Specification 1: Did, at or near Hahn AB, Germany, between on or 4 Nov 89 and on or about 4 Nov 90, on divers occasions, wrongfully have sexual intercourse with [REDACTED], a woman not his wife. Plea: Guilty. Finding: Guilty.

Specification 2: Was, Buechenbeuren, Federal Republic of Germany, on or about 4 Nov 90, disorderly. Plea: Guilty. Finding: Guilty.

Specification 3: Did, at Hahn AB, Germany, on or about 19 Sep 90, in a Statement of Subject, wrongfully and unlawfully subscribe under lawful oath, a false statement in substance as follows: that the said A1C [REDACTED] was not at the apartment of SrA [REDACTED], which statement he did not then believe to be true. Plea: Guilty. Finding: Guilty.

Specification 4: Did, at Hahn AB, Germany, on or about 4 Nov 90, in a Statement of Subject, wrongfully and unlawfully subscribe under lawful oath, a false statement in substance as follows: that the said A1C [REDACTED] did not touch [REDACTED] on 4 Nov 90 and had not left the limits of Hahn AB since 2 Oct 90, which statement he did not then believe to be true. Plea: Guilty. Finding: Guilty.

Specification 5: Having been restricted to the limits of Hahn AB, Germany, by a person authorized to do so, did, at Hahn AB,

Germany, on or about 4 Nov 90, break said restriction. Plea: Guilty. Finding: Guilty.

CHARGE IV. Article 128. Plea: Guilty. Finding: Guilty.

Specification: Did, at Hahn AB, Germany, on or about 4 Nov 90, unlawfully grab the arm of [REDACTED] and pull her from the Enlisted Open Mess Kitchen, through the Ballroom, to outside the building and did later unlawfully pickup the said [REDACTED] and carry her across the Enlisted Open Mess Kitchen towards the rear exit. Plea: Guilty. Finding: Guilty.

CHARGE V. Article 111. Plea: Guilty. Finding: Guilty.

Specification: Did, between Buechenbeuren and Hahn AB, Germany, on or about 4 Nov 90, operate a vehicle, to wit: a 1985 Toyota Supra passenger car in a reckless manner by repeatedly cutting in front of a vehicle driven by [REDACTED] and then stopping horizontally across the road in front of a vehicle driven by [REDACTED]. Plea: Guilty. Finding: Guilty. Sentence adjudged on 20 Nov 90: Bad conduct discharge, reduction to the grade of E-1, confinement for 105 days and forfeiture of \$482.00 pay per month for 4 months.

g. Record of SV: 2 Feb 89 - 1 Feb 90 Hahn AB 2 (Annual)REF

(Discharged from McGuire AFB)

h. Awards & Decs: AFGCM W/1 OLC, NCOPMER, AFOSLTR, ASM, AFTR, AFLSAR.

i. Stmt of Sv: TMS: (12) Yrs (2) Mos (6) Das
TAMS: (8) Yrs (3) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 17 May 03.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues with attachments.

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