

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; height: 15px; width: 100%;"></div>		GRADE AB	AFSN/SSAN <div style="background-color: black; height: 15px; width: 100%;"></div>																
TYPE GEN	PERSONAL APPEARANCE	<input checked="" type="checkbox"/>	RECORD REVIEW																
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%; text-align: center;">COUNSEL</td> <td style="width: 90%;">NAME OF COUNSEL AND OR ORGANIZATION</td> </tr> <tr> <td style="text-align: center;">YES</td> <td style="text-align: center;">No</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> </table>		COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	YES	No	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ADDRESS AND OR ORGANIZATION OF COUNSEL											
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HEARING DATE 21 Jul 2005	CASE NUMBER FD-2004-00465																		
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE 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 a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p>																			
INDORSEMENT		DATE: 7/21/2005																	
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-2004-00465

GENERAL: The applicant appeals for upgrade of discharge to general and to change the reenlistment code.

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 and change of reenlistment code are 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: Applicant contends discharge was inequitable because it was too harsh in that his actions do not reflect a criminal mindset but poor financial management and problem solving skills. The records indicated the applicant received a Special Court Martial for using another person's credit card. He also received a General Court Martial for stealing military property on two separate occasions. The applicant did not receive an administrative discharge, thus his contention of inequity is not applicable. The applicant received a Bad Conduct Discharge, a punitive discharge, as part of his sentence resulting from his court martial conviction. Under the provision of Section 1553, 10 USC, the only basis for change of a Bad Conduct discharge is clemency. The applicant presented evidence which the DRB opined did not warrant granting clemency.

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

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

1. **MATTER UNDER REVIEW:** Appl rec'd a BCD Disch fr Lackland AFB, TX on 18 May 00 UP Special Court Martial Order No.4 (Conviction by Court Martial). Appeals for General Discharge, and to Change the RE Code.

2. **BACKGROUND:**

a. DOB: 31 Jan 79. Enlmt Age: 17 9/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A. A-95, E-93, G-88, M-84. PAFSC: 3P031 - Security Forces Apprentice. DAS: 26 Jan 98.

b. Prior Sv: (1) AFRes 25 Nov 96 - 5 Aug 97 (8 months 10 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 6 Aug 97 for 4 yrs. Svd: 2 Yrs 9 Mo 12 Das, of which AMS is 2 yrs 1 month 2 days (excludes 8 months 11 days lost time).

b. Grade Status: AB - 26 Aug 98 (SPCMO No.1, 26 Aug 98)
Amn - 6 Feb 98

c. Time Lost: 21 Jul 98 through 1 Apr 99 (8 months 11 days).

d. Art 15's: None.

e. Additional: None.

f. CM: (1) Special Court Martial Order No.1 - 26 Aug 98

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

Specification 1: Did, at or near Kirtland AFB, New Mexico on or about 10 May 98, with intent to defraud, falsely pretend to Bonzi Software that he was authorized to use [REDACTED] American Express Card, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from Bonzi Software services, of a value of about \$29.95, to wit: voice electronic mail services. Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Kirtland AFB, on or about 18 May 98, with intent to defraud, falsely pretend to Unfaithful.com that he was authorized to use [REDACTED] American Express Card, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from Unfaithful.com services, of a value of about \$29.95, to wit:

internet entertainment services. Plea: Guilty. Finding: Guilty.

CHARGE II: Article 121. Plea: Guilty. Finding: Guilty.

Specification 1: Did, at or near Kirtland AFB, on divers occasions between on or about 15 May 98 and on or about 18 May 98, steal approximately a total of \$924.75 cash, the property of [REDACTED]. Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Kirtland AFB, between on or about 10 May 98 and on or about 20 May 98, wrongfully appropriate a Government issued American Express Credit Card, of some value, the property of [REDACTED]. Plea: Guilty. Finding: Guilty.

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

Specification: Did, at or near Kirtland AFB, on divers occasions on or about 20 May 98, attempt to steal approximately \$300.00 cash, the property of [REDACTED]. Plea: Guilty. Finding: Guilty. Sentence adjudged on 20 Jul 1998: Bad conduct discharge, confinement for 5 months, forfeiture of \$600.00 pay per month for 5 months, and reduction to AB.

(2) General Court Martial Order No.1 - 4 Jan 99

CHARGE: Article 121. Plea: Guilty. Finding: Guilty.

Specification 1: Did, at or near Kirtland AFB, New Mexico, on or about 30 Jun 98, steal a Motorola Saber Radio, military property, of a value of more than \$100.00, property of the USAF. Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Kirtland AFB, New Mexico, between on or about 2 Jul 98 and on or about 15 Jul 98, steal various items of military property, of an aggregate value of more than \$100.00, property of the USAF. Plea: Guilty. Finding: Guilty. Sentence adjudged on 16 Nov 98: Bad conduct discharge (suspended by Hq 11 WG/CC, GCMO#133, 23 May 00), confinement for 14 months, forfeiture of all pay and allowances.

g. Record of SV: Unknown.

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (2) Yrs (9) Mos (14) Das
TAMS: (2) Yrs (1) Mos (2) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 11 Oct 04.
(Change Discharge to General, and Change the RE Code)

Issue 1: The discharge is inequitable because it was based on a series of

events that reflect not a criminal mindset but poor financial management and problem solving skills. These are things that can be helped with counseling and other professional assistance. I understand the need for punishment, bur (sic) I do not feel that a Bad Conduct Discharge was necessary. I feel that the reentry code on my DD 214 that says that it would be possible to reenlist with approval from the Bureau Of Personnel (as I was informed by a Navy Reserve recruiter).

ATCH

None.

3MAR05/ia