

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 | X | PERSONAL APPEARANCE | RECORD REVIEW |
|-----------------|----------|----------------------------|----------------------|

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|----------------|------------|-----------|--|--|
| COUNSEL | Yes | No | NAME OF COUNSEL AND OR ORGANIZATION _____ Esq. Waddington, Gonzalez & Myatt, LLC | ADDRESS AND OR ORGANIZATION OF COUNSEL 114 Pleasant Home Road, Suite B Augusta, GA 30907 |
| X | | | | |

| MEMBER SITTING | VOTE OF THE BOARD | | | | |
|----------------|-------------------|-----|------|-------|------|
| | HON | GEN | UOHC | OTHER | DENY |
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| ISSUES | A91.05 | INDEX NUMBER | A68.00 | 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 HE |

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| HEARING DATE | CASE NUMBER |
| 13 Jun 2007 | FD-2006-00399 |

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard in Washington, D.C. via video teleconference between Robins AFB, GA and Andrews AFB, MD.

Advise applicant of the decision of the Board 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: 6/14/2007 |
| 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-2006-00399

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

The applicant appeared and testified before the Discharge Review Board (Board), with his counsel Mr. J.L. M. of the law firm of W, G, and M, via video teleconference between Andrews AFB, MD and Robins AFB, GA on 13 Jun 2007. No witnesses testified on the applicant's behalf.

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 notes the applicant's case was submitted for review pursuant to the Board's clemency power, under the provisions of Section 1553, 10 USC. After a thorough review of the record and a lengthy presentation by the applicant and his counsel, the Board found no basis to justify a change of discharge. Although the Board was sympathetic to the past and ongoing mental health issues raised by the applicant and especially to the disabling physical injuries (and resulting paraplegia) suffered by the applicant due to a car wreck two years ago, the Board decided the punitive discharge from a Special Court-Martial was more than justified and insufficient additional information was offered or found to justify an upgrade to any type of administrative discharge, considering his entire record and the testimony at the hearing. The applicant's very short active duty service was significantly marred by a nonjudicial punishment action while still in firefighter technical school, eight letters of reprimand and a letter of counseling from command officials at his initial duty station, and a Special Court-Martial for fraudulent enlistment, numerous uses of two different illegal drugs, and for assaulting another Airman both by choking him and by pointing an unloaded weapon at him during a party at the applicant's own home.

The Board did not find a sufficient basis which would warrant changing the applicant's punitive discharge to an administrative discharge as an act of clemency.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of federal law and Air Force regulations, was within the discretion of the discharge authority, and that the applicant was provided full administrative and appellate due process.

The Discharge Review Board concluded that the applicant's punitive discharge by Special Court-Martial is 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 A1C)

1. MATTER UNDER REVIEW: Appl rec'd a BCD Disch fr USAF Lackland AFB, TX on 1 May 05 UP Special Court Martial Order #13, 4 Feb 05. Appeals for General Disch.

2. BACKGROUND:

a. DOB: 27 Mar 83. Enlmt Age: 19 4/12. Disch Age: 22 1/12. Educ: HS DIPL. AFQT: N/A. A-61, E-64, G-49, M-73. PAFSC: 3E731 - Fire Protection Apprentice. DAS: Unknown.

b. Prior Sv: (1) AFRes 08 Aug 02 - 16 Sep 02 (1 month 9 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 17 Sep 02 for 6 years. Svd: 01 Yrs 11 Mo 20 Das, of which AMS is 01 Yrs 02 Mos 15 Das (ex. 9 Mos 05 Das lost Time).

b. Grade Status: AB - 2 Dec 03 (SPCM, 2 Dec 03)
A1C - 1 Nov 02

c. Time Lost: 2 Dec 03 - 6 Sep 04 (9 Mos 5 Das)

d. Art 15's: (1) 13 Feb 03, Goodfellow AFB, TX - Article 134. You did, at or near San Angelo, Texas, on or about 25 Jan 03, wrongfully consume alcoholic beverages while underage, in violation of Texas Alcoholic beverage Code Annotated, Section 106.04, which conduct was to the prejudice of good order and discipline in the armed forces. Forfeiture of \$575.00 pay per month for 2 months. Thirty days correctional custody, suspended. (No appeal) (No mitigation)

e. Additional: None.

f. CM: Special Court Martial No.2 - 8 Jan 04.

CHARGE I: Article 83.

Specification: Did, within the Continental United States, on or about 7 Aug 02, by means of deliberate concealment of the fact that he had used Cocaine and OxyContin prior to his enlistment, procure himself to be enlisted as an airman basic in the United States Air Force, and did thereafter, at or near Lackland Air Force Base, Texas, at or near Goodfellow Air Force Base, Texas and at or near Elmendorf Air Force Base, Alaska, receive pay and allowances under the enlistment so procured. Plea: Guilty.

Finding: Guilty.

CHARGE II: Article 112a.

Specification 1: Did, at or near Anchorage, Alaska, on divers occasions between on or about 15 Apr 03 and on or about 31 May 03, wrongfully use OxyContin, a Schedule II controlled substance.

Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Anchorage, Alaska, on divers occasions between on or about 9 Jul 03 and on or about 12 Aug 03, wrongfully use marijuana. Plea: Guilty. Finding: Guilty.

CHARGE III: Article 128.

Specification 1: Did, at or near Anchorage, Alaska, on or about 26 Jul 03, assault Amn [redacted] by pointing an unloaded firearm at him. Plea: Guilty. Finding: Guilty.

Specification 2: Did, at or near Anchorage, Alaska, on or about 26 Jul 03, unlawfully choke Amn [redacted] around the neck with his hands. Plea: Guilty. Finding: Guilty. Sentence adjudged on 2 Dec 03: Bad Conduct Discharge, confinement for 11 months, forfeiture of \$767.00 pay per month or 11 months and reduction to airman basic.

g. Record of SV: None.

h. Awards & Decs: AFOUA, AFTR, NDSM.

i. Stmt of Sv: TMS: (01) Yrs (03) Mos (24) Das
TAMS: (01) Yrs (02) Mos (15) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 03 Oct 06.
(Change Discharge to General)

Issue 1: I was diagnosed and treated for Bi-Polar disorder at Elemendorf (sic) AFB AK. I feel that my Bi-Polar caused my Bad conduct and since I got this disorder in the military I feel it was a contributing factor and wish to have my discharge upgraded to general under honorable conditions.

ATCH

None.

31OCT06/day

DNA processing required. 10 U.S.C. § 1565

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS THIRD WING (PACAF)
ELMENDORF AIR FORCE BASE, ALASKA 99506-2850

Special Court-Martial Order
No. 2

8 January 2004

AIRMAN FIRST CLASS: _____, United States Air Force, 3rd Civil Engineer Squadron, was arraigned at Elmendorf Air Force Base, Alaska, on the following offenses at a court-martial convened by this headquarters.

CHARGE I: Article 83. Plea: G. Finding: G.

Specification: Did, within the Continental United States, on or about 7 August 2002, by means of deliberate concealment of the fact that he had used Cocaine and OxyContin prior to his enlistment, procure himself to be enlisted as an airman basic in the United States Air Force, and did thereafter, at or near Lackland Air Force Base, Texas, at or near Goodfellow Air Force Base, Texas and at or near Elmendorf Air Force Base, Alaska, receive pay and allowances under the enlistment so procured. Plea: G. Finding: G.

CHARGE II: Article 112a. Plea: G. Finding: G.

Specification 1: Did, at or near Anchorage, Alaska, on divers occasions between on or about 15 April 2003 and on or about 31 May 2003, wrongfully use OxyContin, a Schedule II controlled substance. Plea: G. Finding: G.

Specification 2: Did, at or near Anchorage, Alaska, on divers occasions between on or about 9 July 2003 and on or about 12 August 2003, wrongfully use marijuana. Plea: G. Finding: G.

CHARGE III: Article 128. Plea: G. Finding: G.

Specification 1: Did, at or near Anchorage, Alaska, on or about 26 July 2003, assault Airman _____ by pointing an unloaded firearm at him. Plea: G. Finding: G.

FILE
I ISAF MASTER PERSONNEL RCDS GF
INITIALS JB DATE 21 Jan 04
HQ USAF (AF/JAJM)
SPCMO No. 2

S30517

Specification 2: Did, at or near Anchorage, Alaska, on or about 26 July 2003, unlawfully choke Airman [redacted] around the neck with his hands. Plea: G. Finding: G.

SENTENCE

Sentence adjudged on 2 December 2003 by military judge: Bad conduct discharge, confinement for 11 months, forfeiture of \$767.00 pay per month for 11 months and reduction to airman basic.

ACTION

In the case of AIRMAN FIRST CLASS [redacted], United States Air Force, 3rd Civil Engineer Squadron, the sentence is approved and, except for the bad conduct discharge, will be executed. The Air Force Corrections System is designated for the purpose of confinement, and the confinement will be served therein or elsewhere as the Director, Air Force Corrections Division, may direct. Unless competent authority otherwise directs, upon completion of the sentence to confinement, AIRMAN BASIC [redacted] will be required, under Article 76a, UCMJ, to take leave pending completion of appellate review of the conviction.

[redacted]

Colonel, USAF
Commander

FOR THE COMMANDER

[redacted]

Staff Judge Advocate

CMORDC

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 11TH WING
BOLLING AIR FORCE BASE, DC 20032-0101

Special Court-Martial Order
No. 13

4 FEB 2005

In the special court-martial case of AIRMAN FIRST CLASS [redacted] United States Air Force, 3rd Civil Engineer Squadron, the sentence to a bad-conduct discharge, confinement for 11 months, forfeiture of \$767.00 pay per month for 11 months, and reduction to airman basic, as promulgated in Special Court-Martial Order No. 2, Headquarters Third Wing (PACAF), dated 8 January 2004, has been finally affirmed. Article 71(c) having been complied with, the bad-conduct discharge will be executed. The sentence was adjudged by military judge on 2 December 2003. (ACM S30517)

[redacted]
Commander

DISTRIBUTION:

- 1 - Airman Basic [redacted] (ACC)
- 1 - Colonel [redacted], Western Circuit Judiciary, 540 Airlift Drive, Suite B-123, Travis AFB CA 94535-2478 (MJ)
- 1 - Captain [redacted], 3 WG/JA, 8517 20th Street, Suite 330, Elmendorf AFB AK 99506 (TC)
- 1 - Captain [redacted] (Separated) (DC)
- 1 - 3 WG/CC, 11550 Heritage Circle, Suite 200, Elmendorf AFB AK 99506-2850
- 1 - 3 CES/CC, 6326 Arctic Warrior Drive, Elmendorf AFB AK 99506-3240
- 1 - 3 MSG/CC, 11550 Heritage Circle, Elmendorf AFB AK 99506-2830
- 1 - 11 AF/CC, 9480 Pease Avenue, Suite 101, Elmendorf AFB AK 99506-2100
- 1 - 3 WG/JA, 8517 20th Street, Suite 330, Elmendorf AFB AK 99506-2470
- 1 - 11 AF/JA, 10471 20th Street, Suite 262, Elmendorf AFB AK 99506-2250