

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 96-02123

COUNSEL: None

JUN 12 1998

HEARING DESIRED: No

APPLICANT REQUESTS THAT:

His bad conduct discharge be upgraded to general (under honorable conditions).

APPLICANT CONTENDS THAT:

He served honorably for over 3 years. He received the Good Conduct Medal (GCM) and the Air Force Achievement Medal (AFAM), along with other awards. He took pride in doing his job for the Air Force. Then he made a stupid mistake and believes that he has paid for it. The nine months he served in jail should be enough punishment. The bad conduct discharge is a life sentence and is much too harsh. A civilian court would probably have given him probation. He was wrong and admits that he was but a life sentence is just too severe. His heart and spirit were broken. He will never do anything like that again.

He has provided nine character references to show the Board that he has always tried to live his life right and that he has no flaws since his discharge. He has done community work, including talks to young people about his mistake and the price you have to pay.

The applicant's submission, which includes character references from two clergymen, a city mayor, a county sheriff, a chief of police, two bank presidents, and two life-long friends, is at Exhibit A.

STATEMENT OF FACTS:

The applicant enlisted in the Regular Air Force on 22 September 1983 and reenlisted on 30 April 1987. Prior to the events under review, he was progressively promoted to the grade of senior airman (E-4), effective and with a date of rank of 22 January 1986 and was appointed a noncommissioned officer in the grade of sergeant (E-4) on 1 January 1987. He received 5 Airman Performance Reports (APRs) for the periods ending 31 March 1984, 31 March 1985, 31 March 1986, 25 October 1986, and 24 September 1987, in which the evaluations of his performance were 8, 9, 9, 9, and 4, respectively.

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On 7 August 1987, the applicant received a Letter of Reprimand for writing 4 bad checks totaling \$884.13 and failing to make the appropriate restitution after being counseled to do so.

As a result of an investigation by the AFOSI, on 26 August 1987, court-martial charges were preferred against the applicant. Two specifications of violations of Article 112a of the Uniform Code of Military Justice (UCMJ) were alleged. Specifically, it was alleged that the applicant wrongfully used cocaine on divers occasions between about 1 January 1986 and 31 December 1986 and that he had, on divers occasions, wrongfully used cocaine between about 1 January 1987 and 30 June 1987. The case was referred for trial by general court-martial. The general court-martial was convened on 24 September 1987. The applicant pled guilty to both the charge and specifications. He was found guilty and sentenced to be discharged with a bad conduct discharge, to be confined for 18 months, to forfeit all pay and allowances, and to be reduced in grade to airman basic.

In a legal review of the court-martial record, a staff judge advocate noted that the maximum sentence allowed for the offense was a 'dishonorable discharge, confinement for 10 years, total forfeitures, reduction to airman basic, and a fine. This officer found that the file was legally sufficient and indicated that neither the applicant nor defense counsel had submitted any allegations of error for consideration. As to clemency, it was stated that the applicant had submitted numerous testimonies by coworkers and supervisors concerning his excellent duty performance and his good professional and personal qualities. Among the documents included with the applicant's request for clemency was a statement by the applicant's defense counsel indicating that the applicant had extensively given his cooperation with the government during its investigations, had testified for the government at the general court-martial of another airman, and had identified to the AFOSI 12 other military members who had previously been involved in the use of cocaine. Counsel cited the above, and the applicant's prior excellent record, to support the request for a reduction to the adjudged sentence and entry into a rehabilitation program. Based on this submission, the Staff Judge Advocate recommended that the general court-martial authority approve a sentence which provided for a bad conduct discharge, confinement for 14 months, forfeiture of \$438 per month for 14 months and reduction in grade to airman basic. On 18 December 1987, the general court-martial approving authority approved only so much of the adjudged sentence which provided for a bad conduct discharge, 14 months of confinement, reduction to airman basic, and forfeiture of \$438 per month for 14 months. With the exception of the discharge, the approved sentence was ordered into execution and the Correction Facility at Lowry AFB was designated as the place of confinement.

On 23 February 1988, the Air Force Court of Military Review found the approved findings of guilty and the sentence to be correct in law and fact and, on the basis of the entire record, affirmed the

same. The applicant was advised of this fact and of his right to petition the United States Court of Military Appeals for a Grant of Review.

On 1 June 1988, the Air Force Clemency and Parole Board considered and approved parole for the applicant, effective as soon as possible, contingent upon his participation in a community-based substance abuse program with mandatory urinalysis screening as directed by his designated parole officer. The board considered and denied clemency.

On 16 July 1988, orders were published directing the applicant's discharge, as adjudged and approved, into execution. On 29 August 1988, the applicant was discharged with a bad conduct discharge based on his court-martial conviction. He was credited with 7 years, 7 months and 10 days of active duty service. The period 24 September 1987 through 29 August 1988 was considered time lost due to confinement. A reenlistment eligibility (RE) code of 2M was assigned. His record indicates he was entitled to, among other things, the Air Force Overseas Service Long Term Ribbon, the AFAM, the AFGCM, and the Air Force Outstanding Unit Award.

AIR FORCE EVALUATION:

The Military Justice Division, AFLSA/JAJM, reviewed this application and recommended denial. After summarizing the facts concerning the applicant's trial and conviction by general court-martial, the applicant's assertions, and the evidence provided in support of the appeal, JAJM opined that while the applicant's reputation within his community and his civic commitments are laudable, there is nothing in the available records that makes upgrading his discharge appropriate. The applicant's actions while on active duty facilitated the use of dangerous, illegal drugs in the military community and his actions were totally inappropriate for a person of his rank and station in the Air Force. The applicant was well aware of the Air Force policy concerning dangerous drugs before he partook of the illegal substances. In JAJM's opinion, there are no facts or circumstances that mitigate his conduct and a bad conduct discharge remains the appropriate characterization of his military service. JAJM concluded that administrative relief is not possible and there are no legal errors requiring corrective action (see Exhibit C).

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the advisory opinion was forwarded to the applicant on 16 December 1996 for review and comment. As of this date, no response has been received by this office.

Pursuant to the Board's request, the applicant provided additional information concerning his employment and two additional supportive statements (see Exhibit F).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After reviewing all the evidence presented, we are not persuaded that action to upgrade the applicant's discharge based on clemency is appropriate. The applicant's discharge had its basis in his trial and conviction by a duly constituted military court. We believe it is significant that a substantially harsher punishment was authorized under the UCMJ for the offenses of which the applicant stood convicted. While the evidence provided indicates that the applicant has made a successful post-service adjustment, and notwithstanding his otherwise good service record, in view of the extreme seriousness of the misconduct he committed (i.e., the use and distribution to others of an illegal substance), we do not believe a sufficiently lengthy period of time has elapsed since the applicant's discharge and the completion of his probationary period to warrant the exercise of clemency at the present time.

THE BOARD DETERMINES THAT:

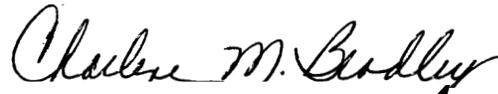
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 27 January 1998 and 19 May 1998, under the provisions of AFI 36-2603:

Ms. Charlene M. Bradley, Panel Chair
Mr. Richard A. Peterson, Member
Mr. Henry Romo Jr., Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 6 August 1996, with attachments
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFLSA/JAJM, dated 20 November 1996.
- Exhibit D. Letter, SAF/MIBR, dated 16 December 1996.
- Exhibit E. Letter, AFBCMR, dated 23 February 1998.
- Exhibit F. Applicant's Statement, undated, with attachments.


CHARLENE M. BRADLEY
Panel Chair 4