

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN				
		A1C					
TYPE	PERSONAL APPEARANCE		X RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	NO						
	X						
MEMBERS SITTING			VOTE OF THE BOARD				
			HON	GEN	UOTHC	OTHER	DENY
							X
							X
							X
							X
							X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD			
A93.17 A94.53		A66.00 A67.70		1	ORDER APPOINTING THE BOARD		
				2	APPLICATION FOR REVIEW OF DISCHARGE		
				3	LETTER OF NOTIFICATION		
HEARING DATE		CASE NUMBER		4	BRIEF OF PERSONNEL FILE		
3 JUN 03		FD2002-0365			COUNSEL'S RELEASE TO THE BOARD		
					ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
					TAPÉ RECORDING OF PERSONAL APPEARANCE HEARING		
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.							
REMARKS							
Case heard at Scott AFB, Illinois.							
Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.							
INDORSEMENT						DATE: 3 JUN 03	
TO:				FROM:			
SAF/MIBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742				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

FD2002-0365

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

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

FINDINGS: Upgrade of discharge to Honorable is denied.

The Board finds that neither the evidence of record or that provided by the applicant substantiates an inequity or impropriety that would justify upgrade of the discharge.

ISSUES: The applicant requested and received a discharge with an Under Other Than Honorable (UOTH) Discharge in lieu of Court Martial for Drug (Cocaine) Abuse/Use. The applicant requested that his discharge be upgraded, citing he "did the honorable thing and turned [himself] in to Social Actions at Wright-Patterson AFB for assistance in a drug problem [he] had." The applicant also cited the assistance he provided to the AFOSI and civilian police authorities into further investigation into the drug problem in the community, which resulted in the successful arrest of other drug abusers/users in the military and civilian communities. The DRB noted the applicant also has a record of minor disciplinary infractions, but opines it is the applicant's positive urinalysis for the metabolites of cocaine, which resulted in his discharge. The DRB noted no causal or mitigating issues, which would warrant a change in the reason and characterization of his military service.

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.

Attachment:
Examiner's Brief

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

(Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 23 Feb 90 UP AFR 39-10, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 8 Apr 65. Enlmt Age: 20 4/12. Disch Age: 24 10/12. Educ: HS DIPL. AFQT: N/A. A-56, E-62, G-70, M-56. PAFSC: 90650 - Medical Administration Specialist. DAS: 11 Jun 86.

b. Prior Sv: (1) AFRes 27 Aug 85 - 24 Feb 86 (5 months 29 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 25 Feb 86 for 4 yrs. Svd: 4 Yrs 0 Mos 0 Das, all AMS.

b. Grade Status: A1C - 29 Aug 89 (Article 15, 29 Aug 89)
SrA - 25 Feb 89
A1C - 25 Feb 87
Amn - 25 Aug 86

c. Time Lost: None.

d. Art 15's: (1) 29 Aug 89, Wright Patterson AFB, OH - Article 91. In that you, having received a lawful order from Sgt ----, a noncommissioned officer, then known by you to be a noncommissioned officer, not to go to the dining hall, an order which it was your duty to obey, did, on or about 4 Aug 89, willfully disobey the same. Article 86. Further, you, did, on or about 10 Aug 89, without authority, absent yourself from your place of duty at which you were supposed to be. Reduction to A1C. (No appeal) (No mitigation)

e. Additional: 10 AUG 89 - Positive for Commander directed urinalysis.
12 JUN 89 - Dishonored check.
18 MAY 89 - Dishonored check.
LOR, 18 MAY 89 - Failure to go.
VBC, 6 FEB 89 - Failure to obey an order from an NCO and leaving duty section with require work unaccomplished.

f. CM: None.

g. Record of SV: 25 Feb 86 - 24 Feb 87 Wright Patterson AFB 9 (Annual)
25 Feb 87 - 25 Feb 87 Wright Patterson AFB 9 (Annual)

25 Feb 88 - 25 Feb 87 Wright Patterson AFB 8 (Annual)

(Discharged from Wright Patterson AFB)

h. Awards & Decs: AFGCM, AFTR.

i. Stmt of Sv: TMS: (4) Yrs (5) Mos (28) Das
TAMS: (4) Yrs (0) Mos (0) Das**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 21 Aug 02.
(Change Discharge to Honorable)

Issue 1: Request discharge be upgraded to Honorable since I did the honorable thing and turned myself into Social Actions at Wright-Patterson AFB for assistance in a drug problem I had. I honorably (sic) assisted the AFOSI into further investigation into the drug problem in the community. I received an Air Force Good Conduct Medal and was very proud to serve my contry (sic). All I ask for is your consideration to upgrade discharge from other than honorable to Honorable.

ATCH

None.

02DEC02/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 2750TH AIR BASE WING (AFLC)
WRIGHT-PATTERSON AIR FORCE BASE, OHIO 45433-5000

REPLY TO
ATTN OF: JAM

15 February 1990

SUBJECT: Request for Discharge in Lieu of Court-Martial, A1C
FR285-74-8269

TO: CC

1. PRELIMINARY MATTERS: On 5 February 1990, Lt Col Medical Squadron Section Commander, USAF Medical Center, WPAFB, Ohio, preferred one charge against A1C for the wrongful use of cocaine at or near Wright-Patterson Air Force Base, Ohio, between 25 Oct 1989 and 1 Nov 1989, in violation of Article 112a of the UCMJ. Lt recommended trial by general court-martial. On 8 February 1990, A1C waived his right to an Article 32 investigation and submitted a request for discharge in lieu of court-martial pursuant to AFR 39-10, Chapter 4.

2. FACTS: The evidence supporting the charge consists of the results of a consent urinalysis taken on 1 November 1989; the results were positive for cocaine. In July 1989, A1C identified himself to Social Actions as a user of crack cocaine and went through a program of drug rehabilitation. He began working with the OSI in August 1989 as an informant. He worked with the OSI and the Springfield, Ohio, Police Department targeting crack dealers in Springfield. His efforts resulted in the arrest of two alleged dealers in October. On 12 October, these two people, who had been arrested subsequently, gave the OSI information that A1C had on several occasions smoked crack cocaine with them and, in fact, had smoked crack cocaine within the past seventy-two hours. Later, on 13 October 1989, A1C was interviewed by the OSI and advised of these allegations, and he denied them. Further, he signed an Air Force Form 1364 consenting to a urinalysis test. His unit did not arrange for his urinalysis until 1 November 1989; on that date, he submitted an urine sample for testing. That specimen was found to be positive for cocaine with a level of 17120 ng/ml.

3. UNIT COMMANDER'S RECOMMENDATION: The unit commander recommends approval of the request. As reasons, she states that approving the request for discharge would accomplish the same end result as a court-martial and would expedite the legal proceedings, that morale would not be adversely affected because of the characterization of the discharge, and that A1C would lose certain military benefits because of the characterization of the discharge.

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4. LEGAL SUFFICIENCY: The proposed action meets all the criteria of AFR 39-10, Chapter 4, and is legally sufficient. No errors or irregularities were noted.

5. LEGAL OPINION AS TO SERVICE CHARACTERIZATION: The factors that may be used for guidance in determining the character of discharge are set forth in AFR 39-10, paras 1-16, 1-17 and 1-18. However, para 4-2 states the service of airmen discharged under this provision will customarily be characterized as under other than honorable conditions. The unit commander recommends an under other than honorable conditions discharge if the request is approved.

6. DISCUSSION: The evidence supports the conclusion that A1C wrongfully used cocaine between 25 October 1989 and 1 November 1989. However, there was a delay between A1C voluntary consent to the urinalysis and the actual taking of the urine sample on 1 November 1989. Filling in this gap in time is somewhat confusing. Instead of following up on the urinalysis after obtaining the consent, the OSI case agent involved simply told [redacted] to return to his unit. The agent then notified the unit that [redacted] had consented to a urinalysis. The unit did not arrange for [redacted] to submit the specimen right away; instead, it was decided that, since [redacted] had already agreed with his commander to provide weekly specimens somehow as part of his rehabilitation, they would wait until it was time for him to submit a specimen under that arrangement. Even though [redacted] was providing weekly specimens, he apparently was no longer in the formal Social Actions rehabilitation program. Before submitting the sample in question, A1C [redacted] was given a letter directing him to report to the urinalysis lab for a commander-directed urinalysis.

If a urinalysis is provided as part of a formal Social Actions rehabilitation program, then the result cannot be used in a court-martial. The same is true for a commander-directed urinalysis. The evidence here is not clear; however, there are good arguments to be made that this urinalysis result would not be admissible in a trial. There is an argument that, since more than two weeks went by before he submitted the specimen, [redacted] could have believed that this urinalysis was part of his "rehabilitation agreement" with his commander and therefore protected in the same way as a urinalysis submitted as part of a formal rehabilitation program would be. Furthermore, there is an argument to be made that the consent was not truly voluntary; rather, it was an acquiescence to the perceived power of the OSI and the commander. I do not believe these problems would ultimately be dispositive to the case; however, I do believe the issues are serious enough to warrant avoiding the court-martial when we can achieve virtually the same result

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with this discharge. Also, has a 25 Feb 1989 DOS; if we hold him past his DOS for the court-martial (which we can do) and the court-martial charge is dismissed for whatever reason, then he would receive an honorable discharge. Furthermore, A1C did provide information and assistance to the OSI which led to the arrest of drug dealers in Springfield. Therefore, I recommend that you approve A1C request for discharge in lieu of court-martial and that his service be characterized as other than honorable.

7. OPTIONS: As the general court-martial convening authority you may:

a. Approve the request for discharge in lieu of trial by court-martial and direct an honorable, general or under other than honorable conditions discharge; or

b. Disapprove the request for discharge in lieu of trial by court-martial. The case could then proceed to trial by court-martial.

8. RECOMMENDATION: Approve the request for discharge in lieu of trial by court-martial and direct that A1C Crane be discharged with an under other than honorable conditions discharge.

Assistant Staff Judge Advocate

I concur.

Lieutenant Colonel, USAF
Staff Judge Advocate

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)			2. SSN		3. GRADE OR RANK A1C	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION USAF Medical Center Wright-Patterson AFB, Ohio					6. CURRENT SERVICE	
					a. INITIAL DATE 25 Feb 86	b. TERM 4 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED None		9. DATE(S) IMPOSED N/A	
a. BASIC \$925.50	b. SEA/FOREIGN DUTY -0-	c. TOTAL \$925.50				

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 112a

SPECIFICATION: In that AIRMAN FIRST CLASS United States Air Force Medical Center, Wright-Patterson Air Force Base, Ohio, did, at or near Wright-Patterson Air Force Base, Ohio, from on or about 25 October 1989 to on or about 1 November 1989, wrongfully use cocaine.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE Lt Col	c. ORGANIZATION OF ACCUSER USAF Medical Center
d. SIGNATURE OF ACCUSER	e. DATE 5 Feb 90	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 5th day of February, 19 90, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

Typed Name of Officer

Captain

2750 ABW/JA

Organization of Officer

Judge Advocate
*Official Capacity to Administer Oath
(See R.C.M. 307(b) - must be commissioned officer)*

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