

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

A1C

AFSN/SSAN

TYPE UOTH

PERSONAL APPEARANCE

X

RECORD REVIEW

COUNSEL

NAME OF COUNSEL AND OR ORGANIZATION

ADDRESS AND OR ORGANIZATION OF COUNSEL

YES No

X

MEMBER SITTING

VOTE OF THE BOARD

HON	GEN	UOTHC	OTHER	DENY
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X*

X*

X*

X*

X*

ISSUES A94.07

INDEX NUMBER A74.00

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 |

HEARING DATE

22 Aug 2006

CASE NUMBER

FD-2005-00365

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

Case heard in Washington, D.C.

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

Names and votes will be made available to the applicant at the applicant's request.

*Reason and Authority

SIGNATURE OF RECORDER

SIGNATURE OF BOARD PRESIDENT

INDORSEMENT

DATE: 8/24/2006

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

GENERAL: The applicant appeals for upgrade of discharge to general and to change the reason and authority for the discharge.

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 reason and authority for discharge are denied.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety that would justify a change of discharge.

ISSUE:

Although not explicitly stated, applicant contends discharge was inequitable because it was too harsh. He contends that if he had taken his case to court, he would have been found innocent and received a general discharge. The records indicated his commander preferred one charge with one specification of wrongful distribution of ecstasy against the applicant. The applicant submitted a request for discharge in lieu of trial by court martial. The records indicated the applicant was fully aware of the consequences of his request for discharge and the actions that would be taken by his commander. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

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

(Former A1C) (HGH A1C)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF Seymour-Johnson AFB, NC on 16 Aug 05 UP AFI 36-3208, Chapter 4 (Triable by Court Martial). Appeals for General and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 26 Mar 85. Enlmt Age: 18 0/12. Disch Age: 20 4/12. Educ: HS DIPL. AFQT: N/A. A-74, E-76, G-66, M-56. PAFSC: 2A333A - F-15 Tactical Aircraft Maintenance Apprentice. DAS: 5 Apr 04.

b. Prior Sv: (1) AFRes 14 Apr 03 - 11 Aug 03 (4 months) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 12 Aug 03 for 6 yrs. Svd: 02 Yrs 00 Mo 05 Das, all AMS.

b. Grade Status: A1C - 3 Oct 03

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR/UIF/CR, 18 APR 05 - Unknown (Missing from file).

f. CM: None.

g. Record of SV: 12 Aug 03 - 11 Apr 05 Seymour-Johnson AFB 3 (Initial)REF

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

i. Stmt of Sv: TMS: (02) Yrs (04) Mos (03) Das
TAMS: (02) Yrs (00) Mos (05) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 13 Sep 05.

(Change Discharge to General, and Change the Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

14FEB06/ia

Attachment

September 13, 2005

To Whom It May Concern:

My discharge was inequitable because taking my case to court would have proven my innocence and a discharge of **General Under Honorable** would have been granted.

At the time of filing my Chapter 4 request I was very eager to get out of the military after 8 months of depression, emotional distress, suicide watch*, harassment at work from fellow enlistees resulting from my flight line suspension, and persistent suspicion from the legal department and OSI that resulted in further complications in my case.

OSI failed to follow proper procedure on several accounts where in other cases they would normally comply. These failures to comply have been outlined in my Article 32 hearing in June 2005. OSI also failed to take my fingerprints after several personal requests in attempt to prove a negative match on the bag in which the substance was contained. This alone, along with our several witnesses of whose name and contact information can be gladly provided by my attorney,** would have proven my innocence and I could have returned to work.

Articles that didn't belong to me, along with photos sent from old civilian friends in California, old personal letters, along with suggested acne remedies from GNC were taken as circumstantial evidence that still failed to significantly support the allegation.

While I was being as cooperative as possible to make this a very easy case OSI's unprofessional persistence that thrived off the their trust in this distasteful civilian with several legal issues of her own,** further complicated my case and put me at risk of going to jail for over a year. This was a risk my attorney did not want me to take despite my eagerness to do so. He along with my First Sergeant, MSgt [REDACTED] advised me to file for Chapter 4 despite the fact Seymour Johnson doesn't grant them with cases such as mine...but they did because they had no evidence and this case was a waste of government time and money. I shouldn't have to suffer the lifelong consequence. I don't feel this request is too much to ask.

Thank you for considering and discussing my request for my **Under Other Than Honorable Conditions** discharge to be upgraded to **General Under Honorable Conditions** discharge.

* Lifeskills visitation w/ Major [REDACTED] weekly to bi-weekly to help deal with emotional stress and to prevent suicide. (SJAFB, NC)

**Witness contact information along w/ several of [REDACTED] charges can be obtained by consulting my attorney, [REDACTED] Capt, USAF (MacDill AFB Defense Attorney) or by reviewing Wayne County Records.



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS NINTH AIR FORCE (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

8 AUG 2005

MEMORANDUM FOR 9 AF/CC

FROM: 9 AF/JA

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial—AIC: [redacted]
4th Aircraft Maintenance Squadron, Seymour Johnson AFB NC

1. Purpose: For 9 AF/CC decision on approval or disapproval of request for discharge in lieu of trial by court-martial (Chapter 4 request) in the case of *U.S. v AIC*: [redacted]; 4 AMXS/CC and 4 FW/CC both recommend approval of this request. I concur.

2. Background:

a. On 13 May 05, 4 AMXS/CC, preferred one charge with one specification of wrongful distribution of ecstasy against the accused, in violation of Article 112a, UCMJ. On 18 Jul 05, the accused submitted a request for discharge in lieu of trial by court-martial under AFI 36-3208, Chapter 4. He did not submit matters for consideration. Both 4 AMXS/CC and 4 FW/CC recommend the accused's request for discharge in lieu of trial by court-martial be approved and that he receive an Under Other Than Honorable Conditions (UOTHC) discharge.

b. On 21 Dec 04, an OSI confidential source provided \$50.00 to the accused in exchange for two round white pills wrapped in plastic. The pills were field tested and the presence of methylenedioxyamphetamine (MDMA), commonly known as ecstasy, was detected. On 14 Feb 05, OSI investigators advised the accused of his Article 31 rights. The accused requested legal counsel and the interview was terminated. Charges were preferred by 4 AMXS/CC on 13 May 05. On 1 Jun 05, an Article 32 investigation was held and the investigating officer (IO) recommended against proceeding to trial. The case has not yet been referred.

3. Discussion: As noted by the IO, the testimony of Ms. [redacted] the confidential source, is the government's primary evidence in this case. Despite repeated attempts to have her testify during the Article 32 hearing and arrangements for her to testify telephonically, Ms. [redacted] has not testified. The only statement she provided thus far is a sworn statement to OSI more than 25 days after the date of the uncontrolled buy. In addition to her unavailability, the IO had concerns with her credibility based on a potential financial motive to fabricate her statement to OSI and alleged credit card larcenies against her. During a consensual search of the accused's vehicle and dorm room, the OSI found items that are commonly used to enhance the ecstasy experience (e.g., Vick's Vapor Rub, dust masks, and chemical lights); however, such circumstantial evidence is unlikely to sustain a conviction for distribution of ecstasy. Based on the unavailability of Ms. [redacted] and her credibility, 4 AMXS/CC recommends acceptance of the accused's request for discharge in lieu of trial by court-martial.

4. Errors and Irregularities:

a. The accused's request for discharge in lieu of trial by court-martial failed to list the specific evidence against that the accused received. It was also not endorsed by the accused's Area Defense Counsel (ADC) as required by AFI 36-3208, Chapter 4, Figure 4.1. The request has since been amended and signed by the ADC, thereby correcting this deficiency, and is attached to this legal review.

b. The 4 AMXS/CC Memo, 27 Jul 05, para 9k, failed to note that the accused has received the Global War on Terror Service Medal. This is a minor administrative error.

c. No other administrative errors were noted in the case file which would adversely affect the legal sufficiency of this action.

5. Service Characterization: Service characterization in administrative discharge proceedings applies to the current enlistment. Under AFI 36-3208, paragraph 1.18.3, a UOTHC discharge is warranted when a member is responsible for one or more acts or omissions that constitute a significant departure from the conduct expected of airmen. Under AFI 36-3208, paragraph 1.18.2, separation with an under honorable conditions (General) discharge is warranted when the airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's record. No facts or circumstances have been presented in this case that would warrant the accused receiving any discharge more favorable than Under Other Than Honorable Conditions.

6. Legal Sufficiency: This case is legally sufficient and in substantial procedural compliance with the provisions of AFI 36-3208, Chapter 4. No errors prejudicial to the accused are present. No promises concerning service characterization were made to the accused, and he submitted his written request after receiving the benefit of defense counsel's advice.

7. Options: As the separation authority in this matter, you have the following options:

a. Disapprove the request for discharge and direct the case proceed to trial.

b. Approve the request for discharge and direct the accused be separated with an Honorable, General, or UOTHC discharge. Airmen discharged in lieu of trial by court-martial are not eligible for probation and rehabilitation.

8. Recommendation: I recommend you approve the request for discharge in lieu of trial by court-martial, and separate the accused with a UOTHC discharge, but withhold execution of the discharge until he is medically cleared to be administratively discharged.

[Redacted Signature Box]

Staff Judge Advocate

Attachment:
Request for Discharge, 4 Aug 05



DEPARTMENT OF THE AIR FORCE
4th Fighter Wing/JA (ACC)
1540 Goodson Street Suite 100
Seymour Johnson Air Force Base NC 27531-2427

29 July 2005

MEMORANDUM FOR 4 FW/CC

FROM: 4 FW/JA: [REDACTED]

SUBJECT: Legal Review of Request for Discharge in Lieu of Trial by Court-Martial by
AIC: [REDACTED] 4th Aircraft Maintenance Squadron.

1. On 18 July 2005, AIC: [REDACTED] submitted a request for discharge in lieu of trial by court-martial pursuant to AFI 36-3208, Chapter 4. On 27 July 2005, Lt Col Scott E. Walchli, 4 AMXS/CC, recommended approving AIC: [REDACTED] request for an Under Other than Honorable Conditions Discharge (LOTHC).
2. **BACKGROUND:** AIC: [REDACTED] is alleged of wrongful distribution of a controlled substance (ecstasy) in violation of Article 112a of the Uniform Code of Military Justice. On 21 Dec 04, an OSI Confidential Source (CS) allegedly provided \$50.00 to AIC: [REDACTED] in exchange for two round white pills wrapped in plastic. The pills were field tested and the presence of Methylenedioxymethamphetamine (MDMA), commonly known as ecstasy, was detected. On 14 Feb 05, OSI investigators advised AIC: [REDACTED] of his Article 31 rights. AIC Smith requested legal counsel and the interview was terminated. Charges were preferred by 4 AMXS/CC on 13 May 05. On 1 June 2005 an Article 32 investigation was held and the investigating officer (IO) recommended against proceeding to trial. The case has not yet been referred to court martial. On 18 July 2005, AIC: [REDACTED] requested discharge in lieu of trial by court-martial.
3. **DISCUSSION:** As noted by the IO, the testimony of Ms: [REDACTED] the confidential source in this case, is the government's primary evidence in this case. Despite repeated invitations to testify during the Article 32 hearing and arrangements to have her testify telephonically, however, Ms: [REDACTED] would not testify. The only statement from [REDACTED] has provided thus far is an unsworn statement to OSI more than 25 days after the date of the uncontrolled buy. In addition to Ms: [REDACTED] unavailability, the IO had concerns with Ms: [REDACTED] credibility based on a potential financial motive to fabricate her statement to OSI and alleged credit card larcenies against her. During a consensual search of AIC: [REDACTED] vehicle and dorm room, the OSI did find items that are commonly used to enhance the ecstasy experience (e.g., Vick's Vapor Rub, dust masks, and chemical lights); however, such circumstantial evidence is unlikely to sustain a conviction for distribution of ecstasy. Based on the unavailability and potential credibility issues with Ms: [REDACTED] s commander recommended acceptance of AIC: [REDACTED] request for discharge in lieu of court-martial.

4. **OPTIONS:** As the Special Court-Martial Convening Authority, you have the following two options in this case with respect to A1C [redacted] Chapter 4 request:

a. Send it to the General Court-Martial Convening Authority, 9 AF/CC, with a recommendation for approval; or

b. Disapprove the request for discharge in lieu of trial by special court-martial.

5. **RECOMMENDATION:** That you approve A1C [redacted] request for discharge in lieu of trial by court-martial with an Under Other than Honorable Conditions characterization.

[redacted]

Staff Judge Advocate

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [Redacted]		2. SSN [Redacted]	3. GRADE OR RANK Airman First Class	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 4th Aircraft Maintenance Squadron (ACC) Seymour Johnson AFB NC			6. CURRENT SERVICE	
			a. INITIAL DATE 12-Aug-03	b. TERM 6 years
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	None	
\$1,456.20	\$0.00	\$1,456.20	9. DATE(S) IMPOSED	

II. CHARGES AND SPECIFICATIONS

10. CHARGE: Violation of the UCMJ, Article 112a

Specification: In that AIRMAN FIRST CLASS [Redacted] United States Air Force, 4th Aircraft Maintenance Squadron, Seymour Johnson Air Force Base, North Carolina, did, at or near Goldsboro, North Carolina, on or about 21 December 2004, wrongfully distribute some amount of Methylenedioxyamphetamine, a schedule I controlled substance.

III. REFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [Redacted]	b. GRADE Lt Col	c. ORGANIZATION OF ACCUSER 4th Aircraft Maintenance Squadron
d. SIGNATURE OF ACCUSER [Redacted]	e. DATE 13-May-05	

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oath in cases of this character, personally appeared the above named accuser this 13 day of May, 2005, 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.

[Redacted]
Typed Name of Officer

Captain

[Redacted]
Signature

4th Fighter Wing
Organization of Officer

Assistant Staff Judge Advocate
Official Capacity to Administer Oath
(See R.C.M. 307(b)(1) - must be commissioned officer)

12. On 13 May, 2005 the accused was informed of the charges against him/her and of the names(s) of the accuser(s) known to me (See R.C.M. 308(a)). (See R.C.M. 302 if notification cannot be made.)

Type Name of Immediate Commander: Lieutenant Colonel

Organization of Immediate Commander: 4th Aircraft Maintenance Squadron

Signature: [Signature]

IV. RECEIPT BY SUMMARY COURT MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1710 hours, 13 May, 2005 at 4th Fighter Wing
Designation of Command or

Seymour Johnson Air Force Base, North Carolina
Office Exercising Summary Court-Martial Jurisdiction (See R.C.M. 423)

Type Name of Officer: Lieutenant Colonel

Grade: Lieutenant Colonel

Signature: [Signature]

ICR/ICR: COMMANDER

Staff Judge Advocate
Official Capacity of Officer Signing

V. REFERRAL, SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
Referred for trial to the _____ court-martial board convened by _____		
_____ 20____, subject to the following instructions: _____		
By _____ of _____ <small>Command or Order</small>		
Typed Name of Office		Official Capacity of Office Signing
Grade		
Signature		

15. On _____, 20____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel: _____

Grade or Rank of Trial Counsel: _____

Signature: _____

FOOTNOTES: 1 - When an appropriate command is designated, inapplicable words are stricken.
 2 - See R.C.M. 601(e) concerning instructions. If none, so state.