

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> [REDACTED]	<b>GRADE</b> SRA	<b>AFSN/SSAN</b> [REDACTED]
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<b>TYPE</b>	<input checked="" type="checkbox"/>	<b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
<b>COUNSEL</b>		<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>No</b>	<b>GARY MYERS</b>	<b>78 CLARK MILL ROAD WEARE NH 03281</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>		

VOTE OF THE BOARD				
HON	GEN	UOTHC	OTHER	DENY
X*+				
X*+				
X*+				
X*+				
X*+				

<b>ISSUES</b> A94.56	<b>INDEX NUMBER</b> A94.07	<b>EXHIBITS SUBMITTED TO THE BOARD</b>		
		<b>1</b>	ORDER APPOINTING THE BOARD	
		<b>2</b>	APPLICATION FOR REVIEW OF DISCHARGE	
		<b>3</b>	LETTER OF NOTIFICATION	
		<b>4</b>	BRIEF OF PERSONNEL FILE	
			COUNSEL'S RELEASE TO THE BOARD	
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE	
			TAPE RECORDING OF PERSONAL APPEARANCE HEARING	

<b>HEARING DATE</b> 15 Dec 2009	<b>CASE NUMBER</b> FD-2008-00402	
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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.

Advise applicant of the decision of the Board.

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

<b>INDORSEMENT</b>	<b>DATE:</b> 1/19/2010
<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, 3RD FLOOR ANDREWS AFB, MD 20762-7001

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

**FD2008-00402**

**GENERAL:** The applicant appeals for upgrade of discharge to honorable, change of reenlistment code, and reason and authority.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) and elected to exercise his right.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Correspondence Letter

Exhibit 6: Letters of Appreciation

Exhibit 7: Utility Worker Union Card

Exhibit 8: Utility Worker Union Manual

Exhibit 9: Utility Worker Pay Scale

Exhibit 10: Certificate of Completion (Neighborhood Housing Services).

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

**FINDINGS:** The Board grants the requested relief.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by the applicant, the Board finds the applicant's characterization, reason and authority for discharge and reenlistment code inequitable.

**ISSUE:** The applicant contends that his command committed an error of law, procedure and discretion by granting his request for discharge in lieu of court-martial (Chapter 4), and thereafter requiring him to testify in another case under a grant of immunity. The applicant further contends that after his testimony, the applicant was tried by a summary court-martial for perjury and acquitted. The applicant argues that "at the moment the applicant was tried for perjury, the request for discharge in lieu of court-martial was either withdrawn by operation of law or breached as a matter of contract."

The Board found no merit in the argument that the applicant's testimony under immunity after his Chapter 4 request breached a contract between him and the Government. In the applicant's request for discharge in lieu of court-martial, the applicant acknowledged that he understood the elements of the offense with which he was charged and that he understood that if approved, his discharge may be "under other than honorable conditions and the possible consequences thereof." Furthermore, a submission of a Chapter 4 is not an admission of guilt, but a means by which a member may request to be administratively discharged in lieu of trial by court-martial. In addition, the applicant's command did not prefer charges against the accused for "use of ecstasy," but for perjury for his testimony during a companion case. The Board did not find merit in the applicant's argument that by being ordered to testify under a grant of immunity, his request for discharge in lieu of trial by court-martial was breached as a matter of contract.

The applicant also contends that he was never convicted of a crime; he served honorably, and has noteworthy post-service conduct. Therefore, as a matter of equity, his discharge under other than honorable conditions is not equitable.

The Board finds that relief is warranted based upon consideration of the evidence presented to the DRB as well as the applicant's service record. The Board noted that the applicant had served almost four years of a six year enlistment prior to his discharge.

On 4 April 2003, the applicant's commander preferred one charge and one specification against the applicant under Article 112a, UCMJ, for use of ecstasy on 25 May 2002. On 7 April 2003, the charge was referred to trial by special court-martial. On 9 April 2003, the applicant submitted a Chapter 4 request. On 25 April 2003, 48 FW/CC in a memorandum to 3 AF/CC, recommended that the Chapter 4 request be approved. 48 FW/CC noted that the Government's evidence against the applicant was the testimony of Airman F, who was "expected to testify that [the applicant] appeared to be under the effects of ecstasy." In a 23 January 2003 interview with the AFOSI, Airman F told the OSI that in May 2002, he, Airman M and the applicant were in a dorm room and Airman M told him that "they" had all used ecstasy. In addition, during the same interview, Airman F told the AFOSI that Airman L and the applicant both appeared to be very messed up in May 2002 while they were in the dorm room.

On 9 May 2003, 3 AF/CC approved the applicant's Chapter 4 request. Subsequently, on 12 May 2003, the applicant was ordered to testify under a grant of immunity at the court-martial of Airman L. During his testimony at Airman L's court-martial, the applicant testified that he had not used ecstasy on 25 May 2002 and that Airman M did not give him ecstasy on 25 May 2002. Based upon the alleged perjured testimony, on 23 May 2003, the applicant's commander preferred one charge and specification under Article 131, UCMJ, perjury, to trial by summary court-martial. On 2 June 2003, the applicant pled not guilty to the perjury charge and was found not guilty by the summary court-martial. The applicant was represented by the same defense counsel during his Chapter 4 request and the summary court-martial. On 9 September 2003, based upon his Chapter 4 request, the applicant was subsequently administratively separated from the Air Force with an under other than honorable conditions discharge.

During his testimony, the applicant stated that he did not use ecstasy in May 2002 or any other time in his life. The applicant's pre-enlistment paperwork indicates that he did not have pre-service drug use. The applicant asserted that he felt compelled to submit the Chapter 4 due to an issue he had with the anthrax vaccine. In late 2002, the applicant had declined to be inoculated with the anthrax vaccine in conjunction with a deployment to Oman. The applicant requested more information about the vaccine before being inoculated and he was subsequently removed from the deployment. The applicant stated he believed he could still face charges under Article 92, UCMJ for his failure to obey a lawful order in that he still had not received the anthrax vaccination—thus he believed that submitting the Chapter 4 was his best alternative. The applicant's testimony during the DRB was corroborated by a written statement from an active duty technical sergeant who was stationed with him as well as an e-mail the applicant provided, which refers to the appointment with a doctor who was going to meet with the applicant to answer his questions about the anthrax vaccine. The Board found that the applicant was truthful and sincere during his testimony. For all of the foregoing reasons, as a matter of equity, the Board finds that the applicant's discharge should be upgraded as requested.

#### CONCLUSIONS:

In view of the foregoing findings, the Board concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge, the reason for the discharge as Secretarial Authority and reenlistment code changed to 3K under the provisions of Title 10, USC 1553.