

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Staff Sergeant MICHAEL J. HENDRICKSON**  
**United States Air Force**

**ACM S30653**

**27 April 2006**

Sentence adjudged 3 June 2004 by SPCM convened at Lackland Air Force Base, Texas. Military Judge: Dixie A. Morrow (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 3 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major James M. Winner, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, Major Matthew S. Ward, and Captain Nicole P. Wishart.

Before

**BROWN, MOODY, and FINCHER**  
Appellate Military Judges

**PER CURIAM:**

The appellant was convicted, in accordance with his pleas, of absence without authority from his unit, willful dereliction of duty, and wrongful use of cocaine, in violation of Articles 86, 92, and 112a, UCMJ, 10 U.S.C. §§ 886, 892, 912a. A military judge sitting as a special court-martial sentenced the appellant to a bad-conduct discharge, confinement for 3 months, forfeiture of \$795.00 pay per month for 3 months, and reduction to E-1. The convening authority approved the sentence except for the forfeiture of pay.

The appellant asserts that the evidence is legally and factually insufficient to sustain his conviction for willful dereliction of duty. Finding no error we affirm.

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, (1979); *United States v. Quintanilla*, 56 M.J. 37, 82 (C.A.A.F. 2001); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). The test for factual sufficiency is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are ourselves convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325.

In determining whether a guilty plea is provident, the test is whether there is a "substantial basis in law and fact for questioning the guilty plea." *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, the military judge must elicit "factual circumstances as revealed by the accused himself [that] objectively support that plea[.]" *Jordan*, 57 M.J. at 238 (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996).

The appellant's testimony during the *Care*<sup>1</sup> inquiry and the stipulation of fact entered into between the parties, objectively support the appellant's acknowledgement at trial that he was willfully derelict in the performance of his duties when he used his Government Travel Card for other than official business. We conclude there is more than sufficient evidence in the record of trial to support the court-martial's finding of guilty of willful dereliction of duty.<sup>2</sup> We are also convinced of the appellant's guilt beyond a reasonable doubt. See *Turner*, 25 M.J. at 324-25; Article 66(c), UCMJ, 10 U.S.C. § 866(c). Moreover, we conclude there is *no basis* to disturb the appellant's plea and hold his plea was provident.

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<sup>1</sup> *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

<sup>2</sup> The appellant's reliance upon *United States v. Walters*, 58 M.J. 391 (C.A.A.F. 2003), and *United States v. Scheurer*, 62 M.J. 100 (C.A.A.F. 2005), to argue that this Charge and Specification should be dismissed because of legal and factual insufficiency, is misplaced and therefore without merit. Unlike the appellants in *Walters* and *Scheurer*, the appellant in this case was charged with, pled guilty to, and was found guilty of, one instance of willful dereliction of duty. He was not charged with dereliction of duty on divers occasions.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

Judge FINCHER participated in this opinion prior to his reassignment.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator