

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

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**UNITED STATES**

**v.**

**Technical Sergeant JOSETTA J. RODRIGUEZ**  
**United States Air Force**

**ACM S30697**

**24 February 2006**

Sentence adjudged 16 April 2004 by SPCM convened at McConnell Air Force Base, Kansas. Military Judge: James L. Flanary.

Approved sentence: Bad-conduct discharge, confinement for 45 days, and reduction to E-1.

Appellate Counsel for Appellant: Lieutenant Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Andrew S. Williams, Major Sandra K. Whittington, and Major Karen L. Hecker.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Jin-Hwa L. Frazier.

Before

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

**PER CURIAM:**

We have examined the record of trial, the assignment of error, and the government's reply thereto. We conclude the military judge did not abuse his discretion in refusing to permit the defense counsel to question the government's expert witness about a false positive test result at the Brooks Air Force Base (AFB) Laboratory, which occurred more than three years prior to the appellant's urine being tested.<sup>1</sup> *See United States v. Israel*, 60 M.J. 485, 488 (C.A.A.F. 2005) (citing *United States v. Shaffer*, 46 M.J. 94, 98 (C.A.A.F. 1997)); *United States v. McElhaney*, 54 M.J. 120, 129-30 (C.A.A.F. 2000).

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<sup>1</sup> The military judge did allow the government's expert witness to testify about several problems at the Brooks AFB Laboratory including problems that occurred during 2003, the same year when the appellant's sample was tested.

Assuming arguendo the military judge abused his discretion, we are convinced the error was harmless beyond a reasonable doubt under *all* the facts and circumstances of this case.<sup>2</sup> See *Israel*, 60 M.J. at 491 (citing *United States v. Bahr*, 33 M.J. 228, 231 (C.M.A. 1991)). Therefore, we conclude the 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, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE  
Clerk of Court

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<sup>2</sup> The appellant testified and denied she knowingly used cocaine during the charged time period. However, the prosecution's cross-examination of the appellant was effective in calling into question her credibility and believability.