

<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 		NAME OF COUNSEL AND OR ORGANIZATION 	<input checked="" type="checkbox"/> RECORD REVIEW ADDRESS AND OR ORGANIZATION OF COUNSEL 				
MEMBERS SITTING 			SON 	GEN 	UOTBC 	OTHER 	DENY 
[REDACTED] 							X
[REDACTED] 							X
[REDACTED] 							X
[REDACTED] 							X
[REDACTED] 							X
ISSUES A92.01, A92.15, A94.05 		INDEX NUMBER A67.10 	<input checked="" type="checkbox"/> 1 ORDER APPOINTING THE BOARD <input type="checkbox"/> 2 APPLICATION FOR REVIEW OF DISCHARGE <input type="checkbox"/> 3 LETTER OF NOTIFICATION <input type="checkbox"/> 4 BRIEF OF PERSONNEL FILE COUNSEL'S RELEASE TO THE BOARD ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE TAPERECORDING OF PERSONAL APPEARANCE HEARING 				
HEARING DATE 01 03 13 		CASE NUMBER FD01-00046 					

**REMARKS**

Case heard at Washington, DC.

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.

SIGNATURE OF RECORDER 		SIGNATURE OF BOARD PRESIDENT 	
TO: SAF/MIBR 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, 3 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002 	

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

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined to exercise this right.

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

**FINDINGS:** Upgrade of discharge is denied.

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

The applicant's issues are listed in the attached brief.

Issue 1. Applicant contends discharge was inequitable because it was too harsh—that he researched the repercussions of the Anthrax vaccine and found there were no studies performed to ascertain whether the vaccine has any effects on fertility. The records indicated the applicant received two Article 15s and a Vacation of Suspended Non-Judicial Punishment for failing to obey two separate lawful orders by wrongfully refusing to receive the Anthrax vaccination. Anthrax is as deadly **as** the Ebola virus. It is 99% lethal to unvaccinated persons. Biological warfare is a grave and real threat to the **U.S.** Armed Forces. The practical means of surviving is pre-exposure vaccination. The anthrax vaccination has been a FDA licensed product since 1970. Its safety and efficiency was affirmed by a FDA Advisory Panel. The DoD Anthrax Policy, while the applicant was in the service, was ordered by the SECDEF on December 15, 1997. The vaccine is currently in limited supply, but is still required for personnel subject to deploying to high risk areas. The Board concluded the misconduct was a significant departure from conduct expected of all military members. Military members are called to obey those orders that have a valid military purpose. A member's personal opinion or conclusion is not a proper basis on which to justify disobedience or questioning the morality or wisdom of a Department of Defense directive. **A contention** that someone can avoid a military readiness obligation due to personal beliefs has no place in a military organization grounded in good order and discipline. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 2. Applicant states that his discharge did not take into account the good things he did while in the service. The DRB took note of the applicant's duty performance as documented by his performance report and other information contained in the records. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was **appropriate** for the reasons which were the basis for this case.

**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 AB)

**1. MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 99/04/23 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

**2. BACKGROUND:**

a. DOB: 73/10/09. Enlmt Age: 22 10/12. Disch Age: 25 6/12. Educ: HS DIPL. AFQT: N/A. A-74, E-52, G-57, M-88. PAFSC: 2S031 - Supply Management Apprentice. DAS: 97/06/14.

b. Prior Sv: AFRes 96/08/15 - 97/02/18 (6months 4 days) (Inactive).

**3. SERVICE UNDER REVIEW:**

a. Enld as AB 97/02/19 for 4 yrs. Svd: 2 Yrs 2 Mo 5 Das, all AMS.

b. Grade Status: AB - 99/03/04 (Article 15, Vacation, 99/03/24)  
AMN - 99/03/04 (Article 15, 99/03/04)  
A1C - 98/06/19  
AMN - (EPR Indicates): 97/02/19-98/10/18

c. Time Lost\*: none.

d. Art 15's: (1) 99/04/02, Ellsworth AFB, SD - Article 92. You, having knowledge of a lawful order issued by Major -----, to wit: an order to report to the Immunization Clinic to receive an Anthrax vaccination on 23 March 99, an order which it was your duty to obey, did, o/a 23 Mar 99, fail to obey the same by wrongfully refusing to receive the Anthrax vaccination. Reprimand, and 10 days extra duty. (Appeal/Denied) (No mitigation)

(2) 99/03/24, Vacation, Ellsworth AFB, SD - Article 92. You, having knowledge of a lawful order issued by Major -----, to wit: an order to report to the Immunization Clinic to receive an Anthrax vaccination on 23 Mar 99, an order which it was your duty to obey, did, o/a 23 Mar 99 fail to obey the same by wrongfully refusing to receive the Anthrax vaccination. Rdn to AB. (No appeal) (No mitigation)

(3) 99/03/04, Ellsworth AFB, SD - Article 92. You, having knowledge of a lawful order issued by Major -----, to wit: Order to take Anthrax Vaccination, dated 17 Feb 99, an order which it was your duty to obey, did, o/a 17 Feb

99, fail to obey the same by wrongfully refusing to receive the Anthrax vaccination. Rdn to Amn, Rdn to AB (susp till 28 Aug 99). (No appeal) (No mitigation)

e, Addition l: none.

f. CM: none.

g. Record of SV: 97/02/19 98/10/18 Ellsworth AFB 5 (Initial)  
(Discharged from Ellsworth AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (2) Yrs (8) Mos (9) Das  
TAMS: (2) Yrs (2) Mos (5) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 01/01/09.  
(Change Discharge to Honorable)

Issue 1: I was discharged under honorable conditions because I refused to take the anthrax vaccine. I did research on the repercussions of the vaccine and found there to have been "no studies performed to ascertain whether the anthrax vaccine absorbed has carcinogenic action, or any effect (sic) on fertility." It is my intention to father more children and was alarmed by the possible adverse reactions. It is my understanding that the vaccine is now optional to servicemen. I was a very good airmen, always had a clean record. I do not feel I should be punished for this moral/decision which may have affected the rest of my life.

ATCH

1. DD Form 214.
2. Two Letters of Recommendation
3. Anthrax Information.

01/02/13/ia



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 28<sup>TH</sup> BOMB WING (ACC)  
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

16 Apr 99

MEMORANDUM FOR 28 BW/CC

FROM: 28 BW/JA

SUBJECT: Legal Review - Notification Discharge: [REDACTED]

1. I reviewed the attached administrative discharge package of [REDACTED] FR2 14-23-6189, 28<sup>th</sup> Supply Squadron, and find it legally sufficient to support discharge. It also supports the 28 SUPS/CC's recommendation to separate Respondent with an under honorable conditions (general) discharge without Probation and Rehabilitation (P & R).

2. On 8 Apr 99, 28 SUPS/CC initiated this separation action pursuant to AFI 36-3208, paragraph 5.49, for misconduct involving minor disciplinary infractions (TAB D). On 13 Apr 99, Respondent consulted legal counsel and submitted statements on his own behalf (TAB H).

3. The reasons for the proposed discharge action are the following:

a. Respondent, having knowledge of a lawful order issued by [REDACTED] to wit: Order to Take Anthrax Vaccination, dated 17 Feb 99, an order which it was his duty to obey, did, at or near Ellsworth Air Force Base, South Dakota, on or about 17 Feb 99, fail to obey the Same by wrongfully refusing to receive the Anthrax vaccination. For this Respondent was punished under Article 15 of the Uniform Code of Military Justice (UCMJ) on 4 Mar 99. Respondent was reduced to the grade of airman and received a suspended reduction to the grade of airman basic.

b. Respondent, having knowledge of a lawful order issued by [REDACTED] to wit: an order to report to the Immunization Clinic to receive an Anthrax Vaccination, on 23 Mar 99, an order which it was his duty to obey, did, at or near Ellsworth Air Force Base, South Dakota, on or about 23 Mar 99, fail to obey the same by wrongfully refusing to receive the Anthrax vaccination. For this the suspension of Respondent's Article 15 punishment was vacated on 24 Mar 99, thereby reducing him to the grade of airman basic. Respondent was also punished under Article 15 of the UCMJ on 2 Apr 99. Respondent was reprimanded and he received 10 days extra duty.

4. This case was properly processed under AFI 36-3208, paragraph 5.49, for misconduct involving minor disciplinary infractions. The aforementioned facts in this case meet the criteria for discharge under this paragraph. The Anthrax vaccine is necessary for all personnel subject to Air Expeditionary Forces' deployment, such as Respondent. Personnel who refuse the vaccine degrade the good order and discipline of their unit, and endanger fellow troops' lives in a wartime environment. Respondent has repeatedly refused to receive his Anthrax vaccination despite being briefed by the Medical staff as to the safety and necessity of the vaccine. There is sufficient evidence to support a discharge for misconduct involving minor disciplinary infractions and I concur with the 28 SUPS/CC's recommendation for discharge.

5. Respondent's service should not be characterized as honorable. After considering all the facts in this case, the negative aspects of Respondent's conduct outweigh the positive aspects of his military record, thereby warranting an under honorable conditions (general) discharge. Respondent's performance has not "been so meritorious that any other characterization would be clearly inappropriate" as required by AFI 36-3208, paragraph 5.48.4, for an honorable discharge. After considering all of the circumstances, I concur with the commander's determination that an under honorable conditions (general) discharge is appropriate.

6. As the separation authority, you must consider P & R. However, P & R is not appropriate in this case. Respondent has been given several chances to improve his behavior and to conform to military standards. These efforts at rehabilitation have not been effective. Respondent has not shown any willingness to be rehabilitated. Furthermore, Respondent has not requested P & R in this case, nor has he offered any evidence in support of P & R. Retaining Respondent in a probationary status would degrade the good order and discipline of the unit.

7. As the Special Court-Martial Convening Authority, you may:

- a. Direct that Respondent be retained;
- b. Direct that Respondent be separated with an under honorable conditions (general) discharge, with or without P & R;
- c. Direct that the case be heard by a discharge board if you believe Respondent should be discharged with an under other than honorable conditions (UOTHC) discharge; or
- d. Refer the case to 8AF/CC, if you believe Respondent should be separated with an honorable discharge, with or without P & R.

#### RECOMMENDATION

8. Separate  under AFI 36-3208, paragraph 5.49, with an under honorable conditions (general) discharge, without P & R.

  
Staff Judge Advocate

Attachment:  
Case File



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 28TH LOGISTICS GROUP (ACC)  
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

FD01-00046

MEMORANDUM FOR [REDACTED]

08 APR 1999

FROM: 28 SUPS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct involving minor disciplinary infractions. The authority for this action is AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reasons for your discharge action are the following:

a. You, having knowledge of a lawful order issued by [REDACTED] to wit: Order to Take Anthrax Vaccination, dated 17 Feb 99, an order which it was your duty to obey, did, at or near Ellsworth Air Force Base, South Dakota, on or about 17 Feb 99, fail to obey the same by wrongfully refusing to receive the Anthrax vaccination. For this you were punished under Article 15 of the Uniform Code of Military Justice (UCMJ) on 4 Mar 99. You were reduced to the grade of airman and you received a suspended reduction to the grade of airman basic.

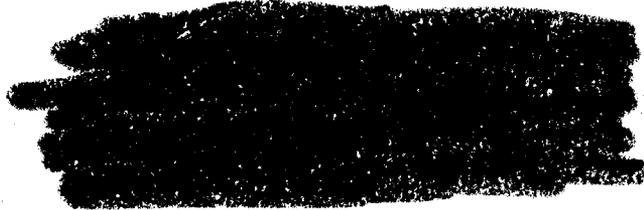
b. You, having knowledge of a lawful order issued by [REDACTED] to wit: an order to report to the Immunization Clinic to receive an Anthrax Vaccination, on 23 Mar 99, an order which it was your duty to obey, did, at or near Ellsworth Air Force Base, South Dakota, on or about 23 Mar 99, fail to obey the same by wrongfully refusing to receive the Anthrax vaccination. For this the suspension of your Article 15 punishment was vacated on 24 Mar 99, thereby reducing you to the grade of airman basic. You were also punished under Article 15 of the UCMJ on 2 Apr 99. You were reprimanded and you received 10 days extra duty.

3. This action could result in your separation with an under honorable conditions (general) discharge. I am recommending that your service be characterized as under honorable conditions (general). The commander exercising special court-martial jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed services.

4. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [REDACTED] Area Defense Counsel, 5-2158, 1000 Ellsworth Street, Suite 1700 on 13 APR at 0900 hours. You may consult civilian counsel at your own expense.

*Global Power for America*

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me by 13 Apr 1440, unless you request and receive an extension for good cause shown. I will send them to the separation authority.
6. If you fail to consult counsel or to submit matters in your own behalf, your failure will constitute a waiver of your right to do so.
7. You have been scheduled for a medical examination. You must report to the Physical Exams Section of the Base Hospital at 0730 hours on 09 Apr for the examination. This is a mandatory appointment and you must be in uniform.
8. Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. A copy of AFI 36-3208 is available for your use in your orderly room.
9. Execute the attached acknowledgment and return it to me immediately.



Attachments:

1. Supporting documents
  - a. Art 15 - 4 Mar 99
  - b. Vacation action - 24 Mar 99
  - c. Art 15 - 2 Apr 99
2. Airman's Acknowledgment