

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN		
██████████		AIC	██████████		
TYPE	<input checked="" type="checkbox"/> PERSONAL APPEARANCE		RECORD REVIEW		
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	NO	██████████		DAV	
X					
MEMBERS SITTING		NOTE OF THE BOARD			
		HON	GEN	UOHC	OTHER
COL JOSEPH M. MARCHINO II			X		
COL GREGORY T. REHE		X* +			
LT COL KEVIN D. BARON			X		
LT COL FELIX A. LOSCO			X		
LT COL THOMAS E. HAMMEN		X* +			
ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD			
A94.06	A70.00	1	ORDER APPOINTING THE BOARD		
		2	APPLICATION FOR REVIEW OF DISCHARGE		
		3	LETTER OF NOTIFICATION		
HEARING DATE	CASE NUMBER	4	BRIEF OF PERSONNEL FILE		
26 SEP 02	FD2001-0553		COUNSEL'S RELEASE TO THE BOARD		
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
			TAPE RECORDING OF PERSONAL APPEARANCE HEARING		
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE					
REMARKS					
Case heard at Washington, D.C.					
Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.					
SIGNATURE OF RECORDER		SIGNATURE OF BOARD PRESIDENT			

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD01-0553

GENERAL: The applicant appeals for upgrade of discharge to Honorable, to change the reason for the discharge, and to change his reenlistment code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, MD on September 26, 2002.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions.

Exhibit 6 through 26: Character Letters, Achievement awards and Certificates.

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

FINDINGS: Upgrade of discharge to Honorable is denied. However, the Board grants an upgrade of discharge to General. Change of Reason and Re Code is denied.

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

ISSUE: The applicant contends his discharge was inequitable because it was too harsh. The records indicated the applicant was discharged with an Under Other Than Honorable Discharge in Lieu of a Court Martial for wrongfully and fraudulently obtaining telephone services on a government telephone line. The Board concluded the misconduct was a significant departure from conduct expected of all military members. While the DRB did not condone the applicant's misconduct, they did feel it would have been more equitable to give him a General discharge.

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.

However, in view of the foregoing findings the Board also concludes that the overall quality of the applicant's service is more accurately reflected by a General discharge. Therefore, the applicant's characterization for discharge should be changed to General.

Attachment:
Examiner's Brief

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

[REDACTED]
[REDACTED]
(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch. fr USAF 89/12/14 UP AFR 39-10, para 4-12a (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge, to Change RE Code, and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 69/05/14. Enlmt Age: 17 9/12. Disch Age: 20 7/12. Educ: HS DIPL. AFQT: N/A. A-Unknown, E-Unknown, G-Unknown, M-Unknown. PAFSC: 27650 - Aerospace Control & Warning Systems Operator. DAS: (APR Indicates): 87/08/04-88/08/03.

b. Prior Sv: (1) AFRes 87/02/20 - 87/08/03 (5 months 14 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 87/08/04 for 4 yrs. Svd: 02 Yrs 04 Mo 11 Das, all AMS.

b. Grade Status: A1C - 88/12/04
AMN-(APR Indicates): 87/08/04-88/08/03

c. Time Lost: none.

d. Art 15's: none.

e. Additional: none.

f. CM: none.

g. Record of SV: 87/08/04 - 88/05/03 Tyndall AFB 9 (Annual)
88/08/04 - 89/08/03 Tyndall AFB 4 (Annual)

(Discharged from Tyndall AFB)

h. Awards & Decs: AFTR.

trouble over large phone bills (of which all have been paid). I was told by some communications guys that if I used the dorm phone for long distance it was equal to the watts lines that the military used all the time to make free or low charge phone calls. I didn't know any different being young and dumb (or naive) at the time. I began using the phone for calling my girlfriend (who is now my wife) and we would talk for long periods of time.

As you can guess, we ran up large bills on the military dorm phone, I was in a lot of trouble, and very scared. I had gotten the word from another communications guy (who was more honest than the others) who told me they were looking for the people who ran up the phone bill for that dorm. Well, at that point I turned myself in not really understanding what I had done, since I thought that it was supposed to be free (if I had known the truth, or been less naive I would not have done such a thing). I am not a criminal, I have never been arrested, never been in any trouble & I don't drink or smoke or drugs of any kind.

I am self employed and have been since 1995, I have built two internet companies and we are a full communications company, we provide wireless phones as an ---- agent, we provide a wide range of computer services such as dialup internet access and wireless broadband, I am a certified computer repair technician (among other things). I also have a wonderful little boy named Johnathan who is 6 years old, who has given me new hope in life and made me a better person than I ever thought I could be.

What I am asking for, is for someone to please consider helping me get my discharge upgraded to general or honorable so I can have more opportunities and possibly serve my country again in some way and hopefully make up for any wrong doing I may have inadvertently done.

ATCH

1. Applicant's Issues.

02/03/28/ia



FD 2001-0553

DEPARTMENT OF THE AIR FORCE

HEADQUARTERS FIRST AIR FORCE (TAC)
LANGLEY AIR FORCE BASE VA 23665-5009

REPLY TO
ATTN OF: JA

5 December 1989

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial - [REDACTED]
[REDACTED]

TO: CC

1. I have reviewed the attached case file concerning a request for discharge in lieu of court-martial submitted by [REDACTED], Tyndall AFB, FL. The case file is legally sufficient and complies with the requirements of AFR 39-10, Chapter 4.

2. On 20 November 1989, the commander of the 325th Technical Training Squadron, [REDACTED] preferred a charge under the Uniform Code of Military Justice (UCMJ) against [REDACTED]. The charge alleges a violation of Article 134, UCMJ, in that [REDACTED] wrongfully and fraudulently obtained telephone services on a government telephone line of a value of more than \$100 during the period from 1 September through 1 November 1989.

3. On 25 October 1989, [REDACTED] provided a statement to the Office of Special Investigations (OSI) after proper advisement of his rights under Article 31 of the Uniform Code of Military Justice. [REDACTED] confessed to receiving collect calls from his girl friend on the government phone located in his dormitory. These calls occurred from September through November 1989 and amounted to more than 65 calls costing in excess of seven hundred dollars. Records from the local telephone company confirm the calls.

4. Both the accused's commander and the commander, USAF ADWC, have recommended approval of the request for discharge. They both recommend the issuance of an under other than honorable conditions discharge. They base these recommendations upon the fact that [REDACTED] has no history of prior misconduct and that he has made full restitution to the telephone company.


5. In accordance with AFR 39-10, Chapter 4, paragraph 4-11, you must personally take action on the request for discharge in lieu of court-martial. If you approve the request, you must also determine the type of discharge to be issued. If you disapprove the request, you may take action to refer the case to trial by court-martial.

PD 2001-0553

court-martial. I recommend you take action to approve the request for discharge. I further recommend the issuance of an under other than honorable conditions discharge.


 Colonel, USAF
Staff Judge Advocate

1 Atch

Case file - 

PD 2001-0553

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [REDACTED]		2. SSN [REDACTED]	3. GRADE OR RANK AIC	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 3625th Technical Training Squadron Tyndall Air Force Base, Florida 32403-5815			6. CURRENT SERVICE	
			a. INITIAL DATE 4 Aug 87	b. TERM 4
7. PAY PER MONTH		8. NATURE OF RESTRAINT OF ACCUSED		9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
\$858.90	None	\$858.90	None N/A	

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 134

SPECIFICATION: In that AIRMAN FIRST CLASS [REDACTED], United States Air Force, 3625th Technical Training Squadron, Tyndall Air Force Base, Florida, did at Tyndall Air Force Base, Florida, on one or more occasions from on or about 1 September 1989 to on or about 1 November 1989, with intent to defraud, falsely pretend to telephone operators that he was entitled to accept collect telephone calls on a government telephone line, then knowing that the pretenses were false, and by means thereof did wrongfully obtain from St Joseph Telephone Company services, of a value of more than \$100.00, to wit: personal long-distance telephone calls at telephone number [REDACTED] located in the dayroom of Building #1152.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE [REDACTED]	c. ORGANIZATION OF ACCUSER 3625th Technical Training Squadron
d. SIGNATURE OF ACCUSER [REDACTED]		e. DATE 30 Nov 89

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 20th day of November, 19 89, 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.

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0016

GENERAL: The applicant appeals for upgrade of his discharge from general to honorable and changing his reenlistment code to one which permits him to re-enter the military.

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

FINDINGS: The Board grants the requested relief.

Issue: The applicant was discharged with an under honorable conditions (general) discharge for a pattern of misconduct, conduct prejudicial to good order and discipline, on May 4, 1999. Before being separated, the respondent's superiors imposed three reprimands and three formal counselings. He also received an Enlisted Performance report with an overall rating of 3. While the Board believed the incidents described in the counselings and reprimands occurred, the Board did not believe that these incidents were serious enough to support a basis for separation. In particular, the Board noted the supervisor who administered two of the counselings the respondent received described them as "minor" and indicated that the applicant was "one of his best troops." Similarly, the Board noted the respondent was both counseled and reprimanded for being tardy on four occasions over a two and one-half year period. While the Board does not condone the applicant's misconduct, the Board did not find them to be especially egregious. The Board also considered the reprimands the respondent received for being late in paying two creditors. In each case, the Board observed the respondent was in active contact with the creditors and neither debt was more than thirty days overdue. Under these circumstances, the Board also believed this misconduct was relatively minor. The final reprimand considered by the Board involved the respondent's breach of dormitory rules by housing a dog in his room. While the Board does not condone the rules violation, the applicant's misconduct was mitigated by the fact he was endeavoring to find a home for the animal in order to save it from being euthanized. Lastly, the Board noted the contradiction between how the respondent's commander described his potential for further service to the wing commander and how he described it in a memo he gave the respondent to use in applying for civilian employment. While the former indicated the respondent's prospects for completing a probationary period were non-existent, the latter praised the respondent's ability to learn from mistakes, get along with others, and included the commander's assurance the respondent would be a success in whatever he chose to do. The Board concluded this was an impropriety which adversely effected the applicant. Based upon the foregoing, the Board concluded there were inequities and improprieties in this case which requires a change in his service characterization and reenlistment code.

The Board also reviewed and considered the applicant's entire service record before making a decision.

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

[REDACTED]
(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 99/05/04 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 77/06/02. Enlmt Age: 19 0/12. Disch Age: 17 11/12. Educ:HS DIPL. AFQT: N/A. A-68, E-46, G-32, M-46. PAFSC: 2A651A - Aerospace Propulsion Journeyman. DAS: 97/03/23.

b. Prior Sv: (1) AFRes 96/06/21 - 96/09/24 (3 months 4 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 96/09/25 for 4 yrs. Svd: 02 Yrs 07 Mo 10 Das, all AMS.

b. Grade Status: A1C - 98/01/25.
AMN - (EPR Indicates): 96/09/25-98/05/24.

c. Time Lost: none.

d. Art 15's: none.

e. Additional: LOR, 19 APR 99 - Failure to go.
RIC, 12 MAR 99 - Failure to go.
LOR, 16 NOV 98 - Failure to obey a lawful order.
LOR, 19 AUG 98 - Failure to pay just debt.
RIC, 09 JUL 98 - Dereliction of duty.
RIC, 23 JUN 98 - Dereliction of duty.

f. CM: none.

g. Record of SV: 96/09/25 - 98/05/24 Cannon AFB 3 (Initial)

(Discharged from Cannon AFB)

Issue 1: I am writing you to ask for an upgrade of my discharge, from "general under honorable conditions" to "honorable."

My reasoning is that when I was discharged I was just starting to turn my life around and straighten up the poor attitude I had while I served in the Air Force. I respectfully asked for an honorable discharge or be placed upon the probation and rehabilitation program, which was denied. When I was faced with the possibility of being discharged I realized how much I wanted to continue serving the military, and I wanted to rectify the mistakes I had committed and become a "model Airman". At the time of my discharge, I had changed my life dramatically by joining a church in which I continue to be a faithful member of.

I have also been enrolled in college since my discharge and my g.p.a is steadily on the rise. I wish to pursue my degree in either business or criminal justice.

My wife is currently pregnant with our first child due in June and I will be the sole support for my family. Having my discharge upgraded would greatly enhance my opportunity for employment and receiving my G.I. Bill, which I paid for, would greatly enhance our financial means for education.

I am deeply sorry for the actions, which led to my discharge, as I have shown in my behavior after I was released from active duty. I am considering re-joining the military if eligible.

I love the United States of America and am very grateful to have this opportunity to submit this package to this board and thank you for your time and consideration.

ATCH

1. Four Letters of Reference.
2. Written Response to Discharge.
3. Letter of Appreciation.
4. Certificate of Recognition.
5. Letter of Appreciation.
6. Certificate of Appreciation.
7. DD Form 214.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 27th FIGHTER WING (ACC)
CANNON AIR FORCE BASE NEW MEXICO

03 APR 1999

MEMORANDUM FOR 27 FW/CC

FROM: 27 FW/JA

SUBJECT: Legal Review of Proposed AFI 36-3208 Discharge Action Under AFPD 36-32
[REDACTED] 27 CRS)

1. I have reviewed the attached discharge action on [REDACTED] and consider it factually, procedurally, and legally sufficient. The initiating commander recommends discharge for misconduct, specifically, a pattern of misconduct prejudicial to good order and discipline. This case meets the criteria for discharge under AFI 36-3208, paragraph 5.50.2 and is supported by a preponderance of the evidence. The commander recommends a General Discharge. This member is not entitled to a hearing before an administrative discharge board.

2. DISCUSSION:

a. In support of this action, the commander cites the following reasons: [REDACTED] failed to go to his appointed place of duty at prescribed time on four occasions, failed to pay a just debt on two occasions, disobeyed a lawful order on two occasions, and was derelict in his duties. This misconduct is evidenced by four Letters of Reprimand, three Records of Individual Counseling, placement on a Control Roster, and an Unfavorable Information File.

b. The respondent's service should be characterized as general. The significant negative aspects of his conduct outweigh the positive aspects of his record. The respondent's service is not otherwise so meritorious that an Honorable Discharge is appropriate. On the other hand, the respondent's misconduct is not so severe as to warrant an under other than honorable conditions characterization. Separation is warranted because of the respondent's failure to comply with Air Force standards and because of his failure in all previous rehabilitative efforts.

c. Probation and rehabilitation are not appropriate in this case. The respondent's commander has already used rehabilitative tools without effect.

d. The respondent elected to submit a statement after consulting counsel (Tab 2). In addition to his statement [REDACTED] provided six Reference Letters. In his statement [REDACTED]

3. ERRORS AND IRREGULARITIES: None.
4. OPTIONS OF THE SPECIAL COURT-MARTIAL CONVENING AUTHORITY. You may:
- a. Retain the respondent in the Air Force; or
 - b. Recommend to the General Court-Martial Convening Authority that the respondent be discharged because of misconduct, for the reasons stated by the commander, with an Honorable Discharge, with or without probation and rehabilitation; or
 - c. Discharge the respondent because of misconduct, for the reasons stated by the commander, with a General Discharge, with or without probation and rehabilitation; or
 - d. Direct the unit to reinstate the action to be processed under board hearing procedures if you determine an Under Other Than Honorable Conditions Discharge may be warranted.

If you determine retention or a General Discharge is appropriate, you are the final authority in this matter and your action will result in a final determination. If you recommend approval of an Honorable Discharge, you must forward the case file to the discharge authority, 8 AF/CC, along with a statement of reasons stating why the case warrants the issuance of such a characterization.

5. RECOMMENDATION: I find that the reasons listed in the commander's recommendation are sufficient to warrant discharge under AFI 36-3208, paragraph 5.50.2. Accordingly, I recommend that [REDACTED] be discharged from the United States Air Force with a General Discharge without probation and rehabilitation.



Attachments

1. CC App Ltr
2. AIC [REDACTED] Statement
3. Case File



FD 2002-0016

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 27th FIGHTER WING (ACC)
CANNON AIR FORCE BASE NEW MEXICO

MEMORANDUM FOR [REDACTED] 27 CRS

FROM: 27 CRS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically, a pattern of misconduct prejudicial to good order and discipline. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.50.2. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. On or about 13 Apr 99, and again on or about 15 Apr 99, you failed to go to your appointed place of duty at the prescribed time, as evidenced by a Letter of Reprimand, dated 19 Apr 99 (Atch 1a).

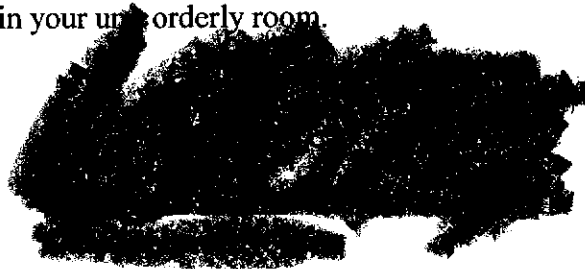
b. On or about 11 Mar 99, and again on or about 12 Mar 99, you failed to go to your appointed place of duty at the prescribed time, as evidenced by a Record of Individual Counseling, dated 12 Mar 99 (Atch 1b).

c. On or about 15 Nov 98, you failed to obey a lawful order of CAFBI 32-08, by keeping a dog in your dormitory room, as evidenced by a Letter of Reprimand, dated 16 Nov 98 (Atch 1c).

d. Between on or about 14 Jul 98 and 14 Aug 98, you failed to pay a just debt to Outdoor Recreation in the amount of \$48.00, as evidenced by a Letter of Reprimand, dated 19 Aug 98 and Unfavorable Information File, dated 1 Sep 98 (Atch 1d).

e. Between on or about 29 Jun 98 and 29 Jul 98, you failed to pay a just debt to First Bank of New Orleans in the amount of \$594.74, as evidenced by a Letter of Reprimand, dated 30 Jul 98 (Atch 1e).

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force and, if you are discharged, how your service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force. Special pay, bonuses, or education assistance funds may be subject to recoupment.
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] at building 327, ext. 2915, on 26 Apr 99 at 1330 hours. You may consult civilian counsel at your own expense.
5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within 3 workdays from today 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 statements on your own behalf, your failure will constitute a waiver of your right to do so.
7. You will complete a medical examination at the 27th Medical Group on 26 Apr 99 at 0730.
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 unit orderly room.



Attachments

- 1a. Letter of Reprimand, dated 19 Apr 99
- 1b. Record of Individual Counseling, dated 12 Mar 99
- 1c. Letter of Reprimand, dated 16 Nov 98
- 1d. Letter of Reprimand, dated 19 Aug 98; Unfavorable Information File, dated 1 Sep 98
- 1e. Letter of Reprimand, dated 30 Jul 98
- 1f. Record of Individual Counseling, dated 7 Jul 98
- 1g. Record of Individual Counseling, dated 23 Jun 98
2. Other Derogatory Data

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE SSGT	AFSN/SSAN [REDACTED]				
TYPE	X PERSONAL APPEARANCE		RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	NO	[REDACTED]		VETERANS OF FOREIGN WARS			
X							
MEMBERS SITTING			VOTE OF THE BOARD				
			HON	GEN	UOTHC	OTHER	DENY
COL JOSEPH M. MARCHINO II							X
COL HORACE R. CARSON							X
COL MICHAEL D. CORNELL							X
LTCOL R. GAYLE FULTS							X
LTCCOL FELIX A. LOSCO							X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD			
A92.35		A67.90		1	ORDER APPOINTING THE BOARD		
A94.05				2	APPLICATION FOR REVIEW OF DISCHARGE		
				3	LETTER OF NOTIFICATION		
HEARING DATE		CASE NUMBER		4	BRIEF OF PERSONNEL FILE		
19 SEPTEMBER 2002		FD2002-044			COUNSEL'S RELEASE TO THE BOARD		
					ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
					TAPE RECORDING OF PERSONAL APPEARANCE HEARING		
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE							
REMARKS							
Case heard at Washington, D.C.							
Advise applicant of the decision of the Board.							
SIGNATURE OF RECORDER <i>[Signature]</i>				SIGNATURE OF BOARD PRESIDENT <i>[Signature]</i>			

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0044

GENERAL: The applicant appeals for upgrade of discharge, change of reason for discharge, and change of reenlistment eligibility (RE) code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, Maryland on 19 September 2002. The following witness also testified on the applicant's behalf: Mrs. [REDACTED], the applicant's wife.

The following additional exhibits were submitted at the hearing:

- Exhibit 5: Applicant's contentions
- Exhibit 6: Anthrax court case
- Exhibit 7: Article on the safety of Anthrax vaccine
- Exhibit 8: Congressional Bill
- Exhibit 9: Testimony of an Anthrax expert
- Exhibit 10: Four cases of negative reaction to Anthrax vaccine

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

FINDINGS: Upgrade of discharge, change of reason for discharge, and change of RE code are denied.

The DRB finds no evidence of record nor that provided by the applicant in verbal testimony that substantiates an inequity or impropriety which would justify a change of discharge.

ISSUES: The applicant felt that his punishment was too harsh for the offenses that he committed and that it was based upon "one isolated incident in seven years of exemplary service with no other adverse action." The member also took issue with the term "pattern of misconduct" when applying to his refusal to obey the same order twice to take the Anthrax immunization. The member feels this "cannot logically or fairly" be described as a "pattern of misconduct". The member also cites the Air Force Core Values and his personal integrity as reasons for making the decision not to take the Anthrax immunization that he characterizes as "an experimental, potentially dangerous, and unproven medical treatment." The member admitted that he did not participate in a formal briefing on the safety, efficacy, and expected adverse effects of the Anthrax immunization from an official military source and that he got most of his information from internet sources and personal acquaintances. The member's final issue was the "omission" of some of his military awards (AF Achievement Medal and Aerial Achievement Medal) from his discharge paperwork, which may have contributed to his "getting a less than honorable discharge". The Board provided evidence to the member from official Department of Defense sanctioned authorities, i.e. Institute of Medicine, that the Anthrax immunization program is safe and effective against pulmonary or aerosolized Anthrax. The medical DRB member pointed out that, although the manufacturer of the Anthrax vaccine, *Biodort*, halted production in

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 change of reason for discharge and change of RE code, 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

[REDACTED]
[REDACTED]
(Former SSGT) (HGH SSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 00/03/03 UP AFI 3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge and to Change the Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 73/02/04. Enlmt Age: 19 10/12. Disch Age: 27 1/12. Educ:HS DIPL. AFQT: N/A. A-95, E-89, G-98, M-72. PAFSC: 8D000 - Linguist Debreifer/Interrogator Journeyman. DAS: 98/09/21.

b. Prior Sv: (1) AFRes 92/12/17 - 93/02/24 (2 months 8 days) (Inactive).

(2) Enlisted as AB 93/02/25 for 6 yrs. Extended 97/05/07 for 1 month. Svd: 5 yrs 7 months 12 days, all AMS. A1C - 93/04/10. SRA - 95/08/10. EPRs: 5,5,5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SRA 98/07/30 for 4 yrs. Svd: 01 Yrs 07 Mo 03 Das, all AMS.

b. Grade Status: SSgt - 99/05/01.

c. Time Lost: none.

d. Art 15's: (1) 99/11/02, Brooks AFB, TX - Article 92. In that you, having knowledge of a lawful order issued by LtCol ---- -- to report to the Brooks AFB Shot Clinic on 4 Oct 99 to receive the Anthrax vaccination, an order which it was your duty to obey, did, on or about 4 Oct 99, fail to obey the same by wrongfully not receiving the vaccination. Thirty days extra duty, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOR, 02 DEC 99 - Failure to obey a lawful order to get the Anthrax shot.

h. Awards & Decs: AFLSAR, AFTR, NDSM, BMTHGR, SAEMR, NCOPMER, AFOUA W/3
OLCS, JMUA, AFGCM W/1 OLC, JSCM.

i. Stmt of Sv: TMS: (07) Yrs (02) Mos (17) Das
TAMS: (07) Yrs (00) Mos (09) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/01/20.
(Change Discharge to Honorable and Change the Reason and Authority for
Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Memorandum For SAF/MIBR, 10 Jan 02.
3. Nine Character References.
4. Legal Review of Administrative Discharge.
5. Five Enlisted Performance Reports.
6. U.S. Senate Correspondence, 29 Jan 02.

02/04/15/ia

7. SUPPORTING DOCUMENTS (X as applicable) (Please print name and Social Security Number on each document.)

WILL NOT BE SUBMITTED. PLEASE COMPLETE REVIEW BASED ON AVAILABLE SERVICE RECORDS.

FD 2002-0044

ARE LISTED BELOW AND ARE ATTACHED TO THIS APPLICATION: (Continue on a plain sheet of paper if more space is needed.) (CONTINUED)

a. DOCUMENT 1: Memorandum for SAF/MIBR

From: [REDACTED]

b. DOCUMENT 2: Letter from [REDACTED];

c. DOCUMENT 3: Letter from [REDACTED]

B. ISSUES

The Board will consider any issue submitted by you prior to closing the case for deliberation. The Board will also review the case to determine whether there are any issues that provide a basis for upgrading your discharge. However, the Board is not required to respond in writing to issues of concern to you unless those issues are listed or incorporated by specific reference below. Carefully read the instructions that pertain to Block B prior to completing this part of the application. If you need more space, submit additional issues on an attachment.

- 1- My discharge was inequitable because it was based on one isolated incident in seven years of exemplary service with no other adverse action.
- 2- Despite my desire to pursue an Honorable Discharge, my military defense counsel advised against this and convinced me to request a General Discharge (Under Honorable Conditions).
- 3- The reason for my discharge is inaccurate because disobeying the same order more than once cannot logically or fairly be described as a "pattern of misconduct."
- 4- In the memo from my Wing legal office to the Wing commander recommending my discharge, a "service characterization of general, under honorable conditions" is described as being "appropriate when the member's service has been honest and faithful, but significant negative aspects of the member's conduct or duty performance outweigh the positive (REFERENCE: Attachment 2). But no one can honestly or rationally claim that my seven years of selfless, exemplary duty can be outweighed by my refusal to accept an experimental, potentially dangerous, and unproven medical treatment.
- 5- My most prestigious military awards were omitted from my discharge paperwork by my squadron commander and my Headquarters Command legal office (including my Joint Service Commendation Medal, my Air Force Achievement Medal, and my Aerial Achievement Medal) (REFERENCE: Attachments 2-4). This omission might have contributed to my getting a less than honorable discharge. (My Air Force Achievement Medal and my Aerial Achievement Medal were also omitted from my DD Form 214.)

I HAVE LISTED ADDITIONAL ISSUES AS AN ATTACHMENT TO THIS APPLICATION. (Attachment 1)

I PREVIOUSLY SUBMITTED AN APPLICATION ON (Enter date) AND AM COMPLETING THIS FORM IN ORDER TO SUBMIT ADDITIONAL ISSUES.

THE ABOVE ISSUES SUPERSEDE ALL PREVIOUSLY SUBMITTED.

9. CERTIFICATION

I make the foregoing statements as part of my application with full knowledge of the penalties involved for willfully making a false statement. (U.S. Code, Title 18, Section 1001, provides that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

ITEM 8 - "ISSUES" (continued):

- 6 - My military service was exemplary, as minimally demonstrated by my obtaining a maximum rating of "5" on every Enlisted Performance Report (EPR) (REFERENCE: Attachments 5-9).
- 7 - My importance to the Air Force and to my unit was expressed to me by my squadron commander, [REDACTED], who told me "I think it's bad for the Air Force to lose you."
- 8 - While in the military, I always tried to better myself for the Air Force by seeking and completing much extra training, volunteering for potentially dangerous assignments, and testing in four different foreign languages.
- 9 - While on flying duty during the Kosovo crisis, I suffered from severe airsickness on more than half of my 20+ flights, but I continued flying anyway, which proves that I was willing to endure physical suffering for the sake of the mission. But the unknown and demonstrated adverse side effects were too great a risk for me to take in order to continue my military career.
- 10 - The anthrax vaccine is no longer being administered as it was when I refused it for one of the reasons I refused it! The vaccine's manufacturer is no longer allowed to produce it because they cannot pass federal quality control inspections.
- 11 - The anthrax vaccine is not even being given to the few people who have actually contracted anthrax in the last several months since the terrorist attacks on the United States.
- 12 - Thousands of service members have resigned or been discharged to avoid receiving the anthrax vaccine. Ironically, most of those who have refused the vaccine are those who always obey orders and perform their duties in an exemplary manner, and not those who consistently misbehave or get into trouble.
- 13 - Many service members have already suffered adverse reactions to the anthrax vaccine, and at least one service member has been granted a medical discharge due to a short-term adverse reaction to the vaccine (and some of the vaccine's long-term adverse effects are yet to be fully discovered, since no long-term testing of the vaccine has ever been done).

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15 - Although I have been accused of refusing the anthrax vaccine just to get out of the military, this is not the case. In fact, my wife and I bought a house in San Antonio, thinking that we would be there at least 3 years, instead of the 8 months we actually lived there. I had planned to remain in the Air Force for at least the remainder of my enlistment.

16 - Due to the classification of my discharge, my wife and I have suffered extreme financial hardship. I am being forced to pay back to the Air Force the unused portion of my re-enlistment bonus and a housing allowance I was erroneously paid twice (of which I informed my base finance office immediately with no correction to the problem). I also received no separation pay, which I was not seeking, but which I was led to believe is standard practice for those receiving early Honorable Discharges. I was also informed that I cannot use my Montgomery G.I. Bill benefits due to the classification of, and reason for, my discharge.



DEPARTMENT OF THE AIR FORCE
AIR INTELLIGENCE AGENCY

FD 2002-0044
15 February 2000

MEMORANDUM FOR AIA/CC

FROM: HQ AIA/JA
102 Hall Blvd Ste 272
San Antonio TX 78243-7067

SUBJECT: Legal Review of Administrative Discharge - Board Waiver - SSgt [REDACTED]
FR [REDACTED] Intelligence Squadron (IS)

1. SUMMARY: [REDACTED] has submitted a conditional waiver of his right to a board hearing. The proposed discharge and the conditional waiver have been reviewed and found legally sufficient to support separation under AFI 36-3208, Section H, paragraph 5.50.2 for a Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline. I recommend you accept [REDACTED] offer to waive a board hearing and direct his separation with a general (under honorable conditions) service characterization without probation and rehabilitation.
2. BACKGROUND: On 24 January 2000, the Commander of the 68 Intelligence Squadron, Kelly AFB, TX, initiated this separation action pursuant to AFI 36-3208, paragraph 5.50.2, for a Pattern Of Misconduct, Conduct Prejudicial to Good Order and Discipline. He informed [REDACTED] the action could result in an under other than honorable conditions (UOTHC) discharge. On 1 February 2000, after consulting with counsel, [REDACTED] conditionally waived his right to a discharge board in exchange for not less than a general discharge. His waiver did not include any statements or matters for your consideration. The 67 IW/CC recommends acceptance of [REDACTED] conditional waiver.
3. SUMMARY OF THE EVIDENCE:
 - a. On 1 October 1999, [REDACTED] acknowledged receipt of a written order from his commander to report to the Brooks AFB Shot Clinic on Monday, 4 October 1999, to receive the first in a series of mission-essential Anthrax inoculations required for his upcoming deployment. [REDACTED] failed to obey this order and consequently received on 2 November 1999 Article 15 punishment consisting of 30 days extra duty and a reprimand.
 - b. On 24 November 1999, [REDACTED] acknowledged receipt of yet another written order from his commander to report to the Brooks AFB Shot Clinic to receive the first in a series of mission-essential Anthrax inoculations. This time he was to report to the Shot Clinic on Monday, 29 November 1999.

actions are required." On 1 February 2000, after consulting with his defense counsel, [REDACTED] submitted his conditional waiver signed by both himself and his defense counsel.

d. [REDACTED] is 27 years old and has 6 years and 11 months of military service. His record contains five EPRs, each of which has an overall rating of 5. He is entitled to wear the Joint Meritorious Unit Award, Air Force Outstanding Unit Award (3 OLC), Air Force Good Conduct Medal (1OLC), National Defense Service Medal, Air Force Longevity Service Award, USAF Noncommissioned Officer Professional Military Education Graduate Ribbon, Basic Military Training Honor Graduate Ribbon, Small Arms Expert Marksmanship Ribbon, and Air Force Training Ribbon.

4. DISCUSSION: Though his record prior to refusal to obey the orders to get the Anthrax inoculation was a good one, it is not sufficiently meritorious to warrant an honorable discharge. His persistent and willful refusals to obey his commander's orders, thereby making him unfit to deploy and perform his duties, clearly warrants something less than the most favorable characterization of discharge. Nonetheless, the nature of his misconduct does not warrant an under other than honorable conditions (UOTHC) discharge either. Airmen whose service is characterized with a UOTHC discharge have been those who have committed especially serious crimes, or acts that endangered the security of the United States, or the health and welfare of other service members, or seriously endangered the health and welfare of other persons. Though the use of the UOTHC characterization is not limited solely to those types of cases, [REDACTED] misconduct does not arise to the level that makes this the most appropriate service characterization. [REDACTED] has not submitted for your consideration any matters in addition to his conditional waiver. Due to the on-going refusal to obey the lawful order, I do not believe any period of probation and rehabilitation would serve a productive purpose; [REDACTED] clearly has no intention of ever complying with the mission-essential standards.

5. IRREGULARITIES IN THE FILE: There are no errors or irregularities in the file that affect the respondent's rights.

6. OPTIONS: As the General Court-Martial Convening Authority, you may:

- a. Direct that [REDACTED] be retained.
- b. Accept [REDACTED] conditional waiver and direct that he be discharged with an honorable or general (under honorable conditions) discharge, with or without probation and rehabilitation.
- c. You may reject [REDACTED] offer of a conditional waiver and direct that he submit an unconditional waiver or go to a discharge board.

7. RECOMMENDATION: I recommend that you direct the discharge of [REDACTED] with a general discharge (under honorable conditions) without probation and rehabilitation.

[REDACTED]



DEPARTMENT OF THE AIR FORCE
AIR INTELLIGENCE AGENCY

4 February 2000

MEMORANDUM FOR 67 IW/CC

FROM: 67 IW/JA

SUBJECT: Legal Review of Administrative Discharge – SSgt [REDACTED]
FR [REDACTED], 68 IS

1. I have reviewed the attached AFI 36-3208 separation action concerning SSgt [REDACTED] and find it to be legally sufficient.

2. BACKGROUND: On 24 January 2000, the 68 IS/CC initiated this separation action pursuant to AFI 36-3208, paragraph 5.50.2, for a Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline. On 1 February 2000, [REDACTED] submitted a conditional waiver of his right to a hearing before an administrative discharge board contingent upon the receipt of no less than a general discharge. The 68 IS/CC recommends acceptance of his conditional waiver and a general discharge characterization.

3. SUMMARY OF THE EVIDENCE:

a. On 1 October 1999 Lt [REDACTED] gave [REDACTED] an order to report to the Brooks AFB Shot Clinic on 4 October 1999 to receive the Anthrax inoculation. [REDACTED] failed to obey this order and received an Article 15, dated 2 November 1999. On 24 November 1999, [REDACTED] gave [REDACTED] another order to report for his inoculation on 29 November 1999. Once again he failed to obey the order. For this infraction, he received a Letter of Reprimand (LOR), dated 2 December 1999.

b. [REDACTED] is 27 years old and has served 6 years, 11 months on active duty.

c. [REDACTED] consulted military counsel and conditionally waived his right to an administrative discharge board contingent upon his receipt of no less than a general discharge. He also waived his right to submit statements.

d. Under AFI 36-3208, paragraph 7.3, probation and rehabilitation (P & R) is appropriate in cases where "members have demonstrated a potential to serve satisfactorily" and where a member's "retention on active duty is consistent with the maintenance of good order and

b. Acceptance of [REDACTED] conditional waiver may result in his receipt of a service characterization of general, under honorable conditions. This characterization is appropriate when the member's service has been honest and faithful, but significant negative aspects of the member's conduct or duty performance outweigh the positive. Weighing [REDACTED] misconduct versus his otherwise solid service record, a general service characterization is the most appropriate.

5. ACTION: You may:

a. Determine that the recommendation for discharge is unsupported by the evidence and direct the action be discontinued; or

b. Reject the conditional waiver and advise [REDACTED] to submit an unconditional waiver or request a board hearing; or

c. Refer the discharge package to AIA/CC, and

1) Recommend acceptance of the conditional waiver with an honorable discharge; or

2) Recommend acceptance of the conditional waiver with a general discharge.

6. RECOMMENDATION: That you sign the letter at Tab 1 recommending AIA/CC accept [REDACTED] waiver of his right to a discharge board and that he receive a general discharge. P & R is not appropriate because of the failure of previous rehabilitative efforts.

[REDACTED]
[REDACTED], Major, USAF
Staff Judge Advocate

4 Attachments:

1. Ltr to AIA/CC
2. 68 IS/CC's Ltr of Recommendation
3. Permission to Proceed

FD 2002-0094



DEPARTMENT OF THE AIR FORCE
AIR INTELLIGENCE AGENCY

MEMORANDUM FOR SSGT [REDACTED]

24 JAN 00

FROM: 68 IS/CC

SUBJECT: Notification Letter – Board Hearing

1. I am recommending your involuntary discharge from the United States Air Force for a Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline, according to AFPD 36-32 and AFI 36-3208, paragraph 5.50.2. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.
2. My reasons for this action are:
 - a. On 1 October 1999, I gave you an order to report to the Brooks AFB Shot Clinic on 4 October 1999 to receive your Anthrax inoculation. You failed to obey this order. For this infraction you received nonjudicial punishment under Article 15, dated 2 November 1999.
 - b. On 24 November 1999, I gave you another order to report to the Brooks AFB Shot Clinic on 29 November 1999 to receive your Anthrax inoculation. You failed to obey this order. For this infraction, you received a Letter of Reprimand (LOR), dated 2 December 1999.
3. This action could result in your separation with an under other than honorable conditions (UOTHC) discharge. The commander exercising SPCM 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 Forces. Any special pay, bonus, or educational assistance funds may be subjected to recoupment.
4. You have the right to:
 - a. Consult legal counsel;
 - b. Present your case to an administrative discharge board;
 - c. Be represented by legal counsel at a board hearing;

5. You have been scheduled for a medical examination, you must report to

Brooks AFB Clinic, at 0730 hours, on 25 JAN 2000.

6. Military legal counsel, [REDACTED], Area Defense Counsel Office, Bldg 1000, Lackland AFB, TX extension 3-2924, has been obtained to assist you. An appointment has been scheduled for you to consult him/her on 24 JAN 00, at 1500. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing, within seven (7) workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

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 at the squadron's orderly room.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your rights to be present at the hearing.

10. Execute the attached acknowledgement and return it to me immediately.

[REDACTED]
[REDACTED], Lt Col, USAF
Commander

Attachments:

1. Order for Inoculation, dtd 1 Oct 99
2. AF Form 3070, Nonjudicial Punishment, dtd 2 Nov 99
3. Order for Inoculation, dtd 24 Nov 99
4. LOR, dtd 2 Dec 99
5. Airman's Receipt of Notification
6. Airman's Response Letter