

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)		GRADE	AFSN/SSAN
		A1C	
TYPE	PERSONAL APPEARANCE	X RECORD REVIEW	
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	NO		
	X		

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	BOTH	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A94.05	INDEX NUMBER A70.00	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 2 OCT 02	CASE NUMBER FD2002-0214	4	BRIEF OF PERSONNEL FILE	
			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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

INDORSEMENT		DATE: 2 OCT 02
TO: SAF/MIHR 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 RD FLOOR ANDREWS AFB, MD 20762-7002	

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0214

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 to Honorable 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: The applicant contends his discharge was inequitable because it was too harsh in that it was based on one isolated incident in 6 years and 11 months of service with no other adverse actions. The applicant also states that he was given a UOTHIC discharge based solely on the fact that he would not take a vaccine that was not FDA approved for the purpose it was being given. The records indicated the applicant received an Article 15 for failure to obey a lawful command (twice) to be inoculated with the anthrax vaccine. The vaccine and DoD's use of the vaccine has FDA approval. The Board concluded the misconduct was a significant departure from conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

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

(Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF 99/03/09 UP AFI 36-3208, para 4.3 (Misconduct - Discharge in Lieu of Trial by Court-Martial). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 73/07/10. Enlmt Age: 18. Disch Age: 25 8/12. Educ: HS DIPL. AFQT: N/A. A-35, E-71, G-74, M-76. PAFSC: 2A652 - Aerospace Ground Equipment Journeyman. DAS: 96/10/17.

b. Prior Sv: (1) AFRes 91/07/10 - 92/04/16 (9 Mos 7 Days) (Inactive).

(2) Enld as AB 92/04/17 for 4 yrs. Ext: 94/08/11 for 6 Mos. Ext: 95/11/15 for 12 Mos. Svd: 4 Yrs 3 Mos 10 Das, all AMS. AMN - 92/10/17. A1C - 93/08/17. SRA - 95/04/17. EPRs: 4,4,4.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SRA 96/07/26 for 5 yrs. Svd: 2 Yrs 7 Mos 14 Das, all AMS.

b. Grade Status: A1C - 98/12/22 (Article 15, 98/12/22)

c. Time Lost: None.

d. Art 15's: (1) 98/12/22, Travis AFB, CA, Article 90. You, having received a lawful command from -----, your superior commissioned officer, then known by you to be your superior commissioned officer, to submit to Anthrax Immunizations, or words to that effect, did, on or about 11 Dec 98, fail to obey the same. Reduction to the grade of A1C, 45 days extra duty, and a reprimand. (Appeal denied) (No mitigation).

e. Additional: None.

f. CM: None.

g. Record of SV: 95/08/21 - 96/08/20 Incirlik AB 4 (Annual)
96/08/21 - 97/08/20 Travis AFB 5 (Annual)
97/07/21 - 98/08/20 Travis AFB 4 (Annual)

(Discharged from Travis AFB)

h. Awards & Decs: AFLSW, AFTR, SASM (10LC), AFOSTR, AFOUA (10LC), AFGCM (10LC).

i. Stmt of Sv: TMS: (7) Yrs (8) Mos (0) Das
TAMS: (6) Yrs (10) Mos (23) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/04/02.
(Change Discharge to Honorable)

Issue 1: My undesirable discharge was inequitable because it was based on one isolated incident in 6yrs, 11mos. (sic) of service with no other adverse action.

Issue 2: I was given a UOTHC discharge based solely on the fact that I would not take a vaccine that was not FDA approved for the purpose it was being given.

ATCH
None.

02/08/22/cx



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS FIFTEENTH AIR FORCE (AMC)

16 FEB 99

MEMORANDUM FOR 15 AF/CC

FROM: 15 AF/JA

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial, U.S. v. [REDACTED]
[REDACTED], Travis AFB

1. By request dated 8 February 1999, [REDACTED], 815 AMS, Travis AFB, California, asks that he be discharged in lieu of trial by court-martial under the provisions of AFI 36-3208, Chapter 4. The request, together with the recommendations of the reviewing authorities, was received at 15 AF/JA on 16 February 1999. I note one irregularity in the request, which is the first sentence of paragraph 4 of the request. The inclusion of this sentence in the request does not, in my opinion, affect the validity of the request.
2. [REDACTED] is charged with failing to obey a lawful command to be inoculated with the anthrax vaccine. The order [REDACTED] is accused of refusing, is, in fact, his second refusal to be inoculated. On 1 December 1998, 815 AMS/CC issued him a written order to get his anthrax shot after the requisite medical counseling. [REDACTED] persisted in his refusal to get the shot and, as a result, he was offered nonjudicial punishment proceedings, which he accepted. His commander administered punishment consisting of a reduction to airman first class and 45 days extra duties. Then, on 29 December 1998, 815 AMS/CC again directed [REDACTED] to be innoculated with the anthrax vaccine. He again refused. A charge of violating a lawful command was preferred against [REDACTED] and referred to a summary court-martial on 21 January 1999. On 27 January 1999, [REDACTED] submitted a Chapter 4 request, conditioned upon his receipt of no less than a general discharge. 60 AMW/CC rejected this request on 29 January 1999, and on 31 January 1999, the accused objected to trial by summary court-martial. The charge was referred to a Special Court-Martial on 1 February 1999.
3. In support of [REDACTED] request to be discharged in lieu of trial, his defense counsel urges you to consider that her client has sincerely held concerns about potential adverse long-term health effects of the anthrax vaccine. She contends that court-martialing [REDACTED] is "out of line" when other airmen who have refused the vaccine across the Air Force have received "General Discharges" and "that the fundamental fairness of our military justice system is at issue here" when... "the Department of Defense has set a precedent of administratively discharging airmen for this offense..." She also contends that "we must distinguish between orders given in a time of war and those given in a time of peace." She otherwise focuses on the accused's record of good duty performance and the time and money saved by avoiding court-martial as reasons for approval.
4. [REDACTED] commander recommends the request be disapproved and that the [REDACTED] be tried by court-martial. 60 AMW/JA recommends approval of the request, citing, among other factors, that it is now clear [REDACTED] will not submit to the anthrax vaccinations under any circumstances, that the combination of Article 15 punishment for his first refusal and characterization of his service as Under Other Than

Honorable Conditions (UOTHC) upon approval of this request equal significant prices [REDACTED] paid for his misconduct, and that there is precedent from other commands for accepting the request. 60 AMW/CC recommends approval of the request and that he be separated with an (UOTHC) discharge. I likewise recommend approval of the request, but note that his defense counsel's arguments attempting to justify acceptance are comprised of faulty logic, legally unsupportable assertions and false assertions of fact. Her arguments do everything but invite the command to press ahead to court-martial if only to demonstrate the falsity of her assertions of fact and the fallacy of her legal arguments. In the factual arena, the evidence gathered about [REDACTED] motivation for refusing the vaccine indicate anything but a "sincerely held concern" about the long term effects of taking the anthrax vaccine. Rather, statements he has made to co-workers and supervisors indicate he has wanted to separate from the service for some time so that he may concentrate on a civilian job selling AMWAY products, I believe. Legally, there is, for instance, no "Department of Defense precedent" for handling anthrax refusals, but rather a number of individual command dispositions of members disobeying orders to take the vaccine. As you are well aware, there are also no fundamental differences between an order issued in wartime as opposed to peacetime. I recommend acceptance of the Chapter 4 request because it ultimately is a just and appropriate disposition of this case and most importantly, appropriately characterizes the nature of the accused's service. I also have concerns, given the nature of his counsel's arguments, about the quality and nature of the advice he has been receiving from his counsel, who, it appears, has only helped him wander down the wrong path towards achieving his objective of an early separation from his service obligation.

5. As mentioned, 60 AMW/CC recommends a UOTHC discharge. I agree that the seriousness of [REDACTED] offense, coupled with the evidence that his refusal to be inoculated with the anthrax vaccine is simply his latest means to achieve an early separation from the service, warrants an under other than honorable conditions (UOTHC) discharge characterization. Customarily, the service of airmen discharged under AFI 36-3208, Chapter 4, will be characterized as UOTHC. [REDACTED] is not eligible for probation and rehabilitation because the reason for the proposed discharge is in lieu of trial by court-martial.

6. Your options are to:

a. Approve the request for discharge under honorable, general, or under other than honorable conditions (justification must be cited if service characterization is other than UOTHC), or

b. Disapprove the request for discharge and return the case to the SPCMCA with appropriate comments and separate disposition instructions.

7. RECOMMENDATION: That you sign the proposed letter at Attachment 1, approving the request for discharge in lieu of trial by court-martial and directing that the [REDACTED] be discharged with an under other than honorable conditions discharge.

[REDACTED], Colonel, USAF
Staff Judge Advocate

1 Atch
Proposed Letter

FD 2002-0214



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 60TH AIR MOBILITY WING (AMC)

11 FEB 1999

MEMORANDUM FOR 60 AMW/CC

FROM: 60 AMW/JA
510 Mulheron Street
Travis AFB CA 94535-2406

SUBJECT: Request for Discharge in Lieu of Trial by Court-Martial Under AFI 36-3208,
Chapter 4, ██████████, FR ██████████, 815 AMS

1. Background:

a. I have reviewed ██████████'s request for discharge in lieu of trial by special court-martial pursuant to AFI 36-3208, Chapter 4. Although the member's offense is significant and there are certain aggravating circumstances present, I recommend that the attached request for discharge be approved. ██████████, 815 AMS/CC recommends disapproval.

b. ██████████ presently faces trial by special court-martial for a violation of Article 90, UCMJ. The nature of the offense is a refusal to obey a lawful written order from his commander, ██████████ to receive the anthrax vaccinations. ██████████ received Article 15 punishment for a previous failure to obey an order to receive the vaccinations. Given his second refusal to comply, the matter was referred to summary court-martial. The summary court-martial was scheduled for 1 February 1999. ██████████ rejected the summary court-martial forum and the matter was referred to special court-martial.

2. Summary of Evidence: On 29 December 1998, ██████████ gave ██████████ a lawful written order to submit to the anthrax vaccination not later than 1630 hours on 30 December 1998. ██████████ acknowledged receipt of the order and immediately stated he was not willing to comply. He has steadfastly declined to do so.

3. A1C Bettendorf's Record of Performance: ██████████ military record contains nonjudicial punishment under Article 15, dated 22 Dec 98, for failing to obey a prior lawful order from his squadron commander to submit to anthrax vaccinations, in violation of Article 90, UCMJ. He has no other documented misconduct.

4. Discussion:

a. ██████████ is a 25-year-old AGE journeyman. He submitted the present request to be discharged in lieu of facing a special court-martial on 8 February 1999. He acknowledged that if accepted he might be discharged under other than honorable conditions (UOTHC). This Chapter 4 request is similar to his 27 January 1999 request—with one significant difference. In his 27 January 1999 request, ██████████ conditioned his Chapter 4 upon receipt of no less than a general (under honorable conditions) discharge. This request is unconditional and may result in a UOTHC discharge.

b. ██████████ claims an overwhelming fear for the safety of the vaccine and a belief that it is linked to Gulf War Syndrome as his reasons for not obeying the order. He also discussed his earlier Article 15, the Palace Chase program, his involvement with foster care, and his church. ██████████ is also on the Weight Management Program and has satisfactorily met his weigh-in requirements (after being told by his commander that he would not allow him to separate from active duty in that fashion).

c. As I stated in my review of his 27 January 1999 request, the subject of the anthrax vaccine has stirred much media attention in this case. ██████████ has represented his refusal to receive the vaccination is based on his belief that the vaccine is not safe or effective, despite FDA approval and DoD testing. As we know, the evidence is otherwise. There is substantial evidence that ██████████ was looking for a basis to separate from active duty *before* he was required to submit to the anthrax vaccine. The validity of his concerns (now and at the time he declined to obey the order) while likely relevant in sentencing, will have no bearing in findings. None of us are free to disobey lawful orders, regardless of how sincere our concerns or fears may be.

d. The commander had two purposes in preferring charges in this case—(1) to compel the member to submit to the vaccinations and thus remain mobility ready, and (2) to ensure others similarly situated did not come to view the anthrax program as a convenient way to evade their military commitments.

- By this point it seems clear that the accused will not submit to the anthrax vaccinations under any circumstances. Indeed, even if he did so now, I suspect most of us would have serious reservations about his fitness for continued military service. Anyone who must be brought up on criminal charges to compel his/her compliance with a lawful order clearly has no place in the military.
- While in one sense the member can claim he got what he wanted (an early separation from active duty) via his anthrax refusal, we still ensured (1) he was first punished heavily via Article 15 and (2) his military service was appropriately characterized with “the worst possible administrative discharge.” UOTHC is reserved for those whose “...personal conduct fall(s) significantly below acceptable military standards.” AFI 36-3208. Moreover, “Significant veterans benefits are denied by the UOTHC discharge.” Given the price ██████████ has paid in this case, refusing to submit to the anthrax vaccine surely will not be viewed by the rest of the force as an easy way out.
- A public conviction—and I remain convinced that is the result we would achieve—may convince some that the anthrax program is safe and effective as advertised. But the public relations outcome remains far from certain as (1) we’ll never be certain of balanced media reporting in this case, and (2) even if we are lucky and get a full and fair reporting of the facts, there are certain to remain some (in and outside the gate) who will continue to see this program as an evil government conspiracy.
- The potential downside of a public trial is that some will view (or attempt to portray) ██████████ as a martyr or use him as a lightning rod for the anti-anthrax crowd. While we do not achieve the public finding of guilt with a Chapter 4, the member has tacitly acknowledged that his conduct falls “significantly below acceptable Air Force standards.”
- There is precedent for accepting the Chapter 4 request. The chain of command at Langley AFB accepted a Chapter 4 with their pending summary court-martial of a female airman who refused the anthrax vaccination.
- This was not a deal fashioned in a smoke-filled room, the accused made us an unsolicited offer to accept the worst possible administrative separation. Nor has he (at this point) attempted to pressure us into accepting the Chapter 4 by going to the media with his offer.

5. **Options:** As the Special Court-Martial Convening Authority, you may deny this request and return it to the commander or you may recommend approval and forward the package to the GCMCA. A recommendation for approval must also contain a recommendation for service characterization.

6. **Recommendation:** Recommend approval of the Chapter 4 request with a UOTHC characterization by signing the letter at Attachment 1.



[REDACTED], Lt Col, USAF
Staff Judge Advocate

Attachments:

1. Proposed Letter
2. Case File (A1C Bettendorf)

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) ██████████		2. SSN ██████████	3. GRADE OR RANK A1C	4. PAY GRADE E-3
5. UNIT OR ORGANIZATION 815th Air Mobility Squadron (AMC) Travis Air Force Base, California 94535			6. CURRENT SERVICE	
7. PAY PER MONTH			a. INITIAL DATE 26 Jul 96	b. TERM 5 Years
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	8. NATURE OF RESTRAINT OF ACCUSED	
\$1,274.70	\$0.00	\$1,274.70	None	
9. DATE(S) IMPOSED N/A				

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 90

SPECIFICATION:

Specification : In that AIRMAN FIRST CLASS ██████████ United States Air Force, 815th Air Mobility Squadron, having received a lawful command from Lieutenant Colonel ██████████ his superior commissioned officer, then known by the said AIRMAN FIRST CLASS ██████████, to be his superior commissioned officer to submit to an anthrax immunization, or words to that effect, did, at Travis Air Force Base, California, on or about 30 December 1998, willfully disobey the same.

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) ██████████	b. GRADE Lt Col	c. ORGANIZATION OF ACCUSER 815th Air Mobility Squadron
d. SIGNATURE OF ACCUSER ██████████		e. DATE 19 Jan 99

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 19th day of January, 19 99, 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.

██████████

 Typed Name of Officer

Lieutenant Colonel

 Grade

██████████

 Signature

60th Air Mobility Wing

 Organization of Officer

Staff Judge Advocate

 Official Capacity to Administer Oath
 (See R.C.M. 307(b)—must be commissioned officer)