

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]		GRADE AB	AFSN/SSAN [REDACTED]				
TYPE	PERSONAL APPEARANCE		X RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	NO						
MEMBERS SITTING [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]			VOTE OF THE BOARD				
			HON	GEN	UOTHC	OTHER	DENY
							X
							X
							X
							X
ISSUES A92.01; A92.03; A92.05; A92.21; A94.01; A94.05; A92.35		INDEX NUMBER A67.90		EXHIBITS SUBMITTED TO THE BOARD			
HEARING DATE 6 FEB 03		CASE NUMBER FD2002-0401		1	ORDER APPOINTING THE BOARD		
				2	APPLICATION FOR REVIEW OF DISCHARGE		
				3	LETTER OF NOTIFICATION		
				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 RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.							
REMARKS Case heard at Travis AFB, California. Advise applicant of the decision of the Board, the right to a personal appearance and to submit an application to the AFBCMR.							
SIGNATURE OF RECORDER [REDACTED]			SIGNATURE OF BOARD PRESIDENT [REDACTED]				
INDORSEMENT				DATE: 6 FEB 03			
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 RD FLOOR ANDREWS AFB, MD 20762-7002				

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

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 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 the evidence of record or that provided by the applicant substantiates an impropriety that would justify upgrade of the discharge.

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

ISSUE 1. Applicant contends discharge was inequitable because it was too harsh and that it was based on one isolated incident in 25 months of service. The records indicated the applicant received an Article 15, a Letter of Reprimand, and two Letters of Counseling for disobeying a lawful order (twice) by refusing to take the Anthrax immunization shot, failure in the weight management program, and failure to go (three times) to his unit mobility section with required documentation. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members. 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 reports, letters of recommendation and other accomplishments. 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.

ISSUE 3 applies to the applicant's post-service activities. The DRB was pleased to see that the applicant was doing well. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

ISSUE 4. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366, on 12 Dec 97) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

The Board reviewed the entire record and found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge. The DRB concluded that the characterization of the applicant's discharge was appropriate due to the misconduct.

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

[REDACTED]

(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF 27 Dec 99 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 13 Feb 77. Enlmt Age: 20 8/12. Disch Age: 22 10/12. Educ: HS DIPL. AFQT: N/A. A-85, E-52, G-52, M-45. PAFSC: 3P031 - Security Apprentice. DAS: 25 Mar 98.

b. Prior Sv: (1) AFRes 6 Nov 97 - 19 Nov 97 (14 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 20 Nov 97 for 4 yrs. Svd: 2 Yrs 1 Mo 8 Das, all AMS.

b. Grade Status: AB - 30 Sep 99 (Article 15, 30 Sep 99)
A1C - 20 Mar 99
AMN - 20 May 98

c. Time Lost: None.

d. Art 15's: (1) 30 Sep 99, Fairchild AFB, WA - Article 91. You, having received a lawful order from MSgt -----, a noncommissioned officer, then known by you to be a noncommissioned officer, to submit to the Anthrax Immunization, an order which it was your duty to obey, did at or near Fairchild Air Force Base, Washington, on or about 15 Sep 99, willfully disobey the same. Reduction to the grade of AB, forfeiture of \$479 pay per month for two months, 45 days extra duty, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOR, 22 OCT 99 - Failure to make satisfactory progress on the weight management program.
LOC, 25 MAY 99 - Failure to obey a lawful order.
LOC, 20 DEC 98 - Failure to go.

f. CM: None.

g. Record of SV: 27 Nov 97 - 19 Jul 99 Fairchild AFB 4 (Initial)

(Discharged from Fairchild AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (2) Yrs (1) Mo (22) Das
TAMS: (2) Yrs (1) Mo (8) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 15 Jul 02.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF

ATCH

1. Applicant's Issues.
2. Enlisted Performance Report.
3. Two Letters of Commendation with Certificates.
4. Two Letters of Reference.
5. Discharge Documents.
6. Information on the Anthrax immunization program.

18Dec02/cr

FD2002-0401



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

MEMORANDUM FOR 15 AF/CC

17 DEC 1999

FROM: 15 AF/IA

SUBJECT: Administrative Discharge [REDACTED]
92nd Security Forces Squadron, Fairchild AFB WA

1. INTRODUCTION

a. I reviewed the attached discharge file on the Respondent, [REDACTED] and find it legally sufficient to support his discharge for A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline, pursuant to AFI 36-3208, Section H, paragraph 5.50.2.

b. The basis of this action is A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline, as shown by the following incidents:

(1) The Respondent missed a mandatory Commander's Call on 18 Dec 98, for which he received a letter of counseling on 20 Dec 98.

(2) In Mar 99, Apr 99 and May 99, the Respondent failed to report to his unit mobility section with his spot records, dog tags and a copy of his leave and earnings statement. For this misconduct he received a letter of counseling on 25 May 99.

(3) On 15 Sep 99, the Respondent failed to obey a lawful order to take his anthrax shot. For this misconduct he received an Article 15 punishment, consisting of a reduction from the grade of Airman First Class to Airman Basic, forfeiture of \$479 pay per month for two months, a reprimand and 45 days extra duty. The Article 15 was placed in an Unfavorable Information File (UIF).

(4) On 18 Oct 99, the Respondent failed to obey an order to get his anthrax shot. For this misconduct, as part of a pattern of misconduct, this discharge action was initiated.

c. On 18 Nov 99, 92 SFS/CC started this action by notifying the Respondent he was recommending the Respondent be separated with an Under Other Than Honorable Conditions (UOTHC) service characterization for A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline. The Respondent submitted a conditional waiver of his rights to a discharge board, asking for a General (Under Honorable Conditions) service characterization. This request was denied by 92 ARW/CC on 1 Dec 99. On 6 Dec 99, the Respondent submitted an unconditional waiver of his rights to a discharge board.

d. On 22 Nov 99, 92 SFS/CC recommended discharge with a UOTHC characterization and without Probation and Rehabilitation (P&R). On 14 Dec 99, 92 ARW/CC recommended acceptance of the unconditional waiver and discharge with a UOTHC service characterization and no P&R.

2. BASIS FOR DISCHARGE AND SERVICE CHARACTERIZATION

a. AFI 36-3208, Chapter 5 outlines the bases for involuntary separation of airmen. Paragraph 5.50.2 says airmen are subject to discharge for A Pattern of Misconduct in the current enlistment which constitutes Conduct Prejudicial to Good Order and Discipline. This includes conduct of a nature that tends to

FD2002-0401

disrupt order, discipline or morale within the military community.

b. According to AFI 36-3208, paragraph 5.48.1, usually members processed for separation under paragraph 5.50 should receive an Under Other Than Honorable Conditions (UOTHC) service characterization. A UOTHC characterization is appropriate when a pattern of behavior or one or more acts or omissions constitute a significant departure from the conduct expected of airmen. A General (Under Honorable Conditions) characterization is warranted if an airman's service has been honest and faithful yet significant negative aspects of the airman's conduct or performance of duty outweigh positive aspects of the airman's military record. An Honorable characterization, in misconduct-based actions, is warranted only when a member's record has been so meritorious any other characterization would be clearly inappropriate.

3. PROBATION AND REHABILITATION (P&R): P&R is based on the principle of conditional suspension of administrative discharge for cause in deserving cases. The premise is that airmen can change a pattern of behavior. Airmen should be offered the opportunity for P&R when it is reasonably possible to do so. An airman deserving P&R is one who has demonstrated a potential to serve satisfactorily, has the capacity to be rehabilitated, and whose retention on active duty is consistent with the maintenance of good order and discipline. Normally, if the reason for discharge is misconduct, the case file must show P&R was considered by the initiating commander, the board members if a hearing is involved, and the separation authority. Both 92 SFS/CC and 92 ARW/CC recommend against P&R.

4. LEGAL ANALYSIS AND DISCUSSION

a. The Respondent entered the Air Force on 20 Nov 97 with a four year enlistment. He was assigned to his present unit on 25 Mar 98. He is 22 years old. He has received one EPR with an overall rating of "4." The Respondent is entitled to wear the AF Training Ribbon.

b. With his unconditional waiver, the Respondent submitted a memo explaining why he feels he should not get a UOTHC service characterization. He says he researched the information about the vaccine and wants the shots to be made voluntary. He also explains that his second refusal was about to result in a trial by court-martial, but instead, his counsel was able to negotiate for an administrative discharge.

c. The Respondent has several incidents of misconduct. All of the incidents show his refusal to obey orders. He refused to go to a Commander's Call, even after being personally contacted about the appointment. He failed on three distinct occasions to bring in required information for deployments, even after a direct order, and then he twice failed to obey direct orders to receive shots required for mobility.

d. In addition to the misconduct mentioned in paragraph 1b above, the Respondent also has a 22 Oct 99 letter of reprimand for unsatisfactory progress on the weight management program. This letter was placed in his UIF. This information may be used in deciding whether to retain or separate the Respondent and whether the Respondent should be offered P&R. However, it cannot be used in determining whether there is a basis for discharge or in choosing the characterization of the discharge.

e. The reprimand given by 92 SFS/CC as part of the Article 15 punishment summarizes the key to this case.

You are hereby reprimanded. I consider disobeying a lawful order to be one of the most serious offenses an Air Force member can commit. Strict adherence to orders, whether we like or agree with them or not, is the only way that any military force can ever successfully execute its missions. Our unit is no different. You have damaged our mission capability by identifying yourself

FD2002-0401

as one who cannot be depended upon to perform as ordered. You are going to have to strive diligently to reestablish dependability. Any repetition of this totally unacceptable behavior will result in even stronger action against you.

92 ARW personnel considered a court-martial for the second refusal of a direct order to take the anthrax shot, so they certainly considered the refusal to obey these direct orders as a serious matter.

f. [REDACTED] may have forgotten to go to the commander's call. However, his repeated refusals to be prepared for mobility and his repeated refusals to take the anthrax shot were deliberate. Because of his repeated and deliberate refusals to obey orders, discharge is appropriate. A UOTHC service characterization is certainly appropriate, because his repeated deliberate refusals to obey orders are a significant departure from the conduct expected of airmen. Because of the deliberate and repeated refusals, and his clear decision not to meet USAF standards, P&R would not be appropriate.

5. OPTIONS OF THE DISCHARGE AUTHORITY: You may:

a. Accept the Respondent's conditional waiver of his rights associated with a discharge board and order him separated from the Air Force for A Pattern of Misconduct, with an Honorable, General (Under Honorable Conditions), or UOTHC service characterization with or without P&R.

b. Retain the Respondent.

6. RECOMMENDATION: That you accept Respondent's unconditional waiver and order him separated from the Air Force for A Pattern of Misconduct, Conduct Prejudicial to Good Order and Discipline with an UOTHC service characterization without P&R.

[REDACTED]

I concur.

[REDACTED]

Attachments:

1. Proposed Memorandum
2. Case File [REDACTED]

cc: 92 ARW/JA



FD2002-0401

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92D AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE WASHINGTON

10 DEC 1999

MEMORANDUM FOR 92 ARW/CC

FROM: 92 ARW/JA

SUBJECT: Legal Review of AFI 36-3208, *Administrative Separation of Airmen*
Administrative Discharge - [REDACTED]

1. I have reviewed the proposed involuntary separation action concerning [REDACTED] the respondent, and find it legally sufficient to support involuntary discharge for a pattern of misconduct consisting of conduct prejudicial to good order and discipline under AFPD 36-32 and AFI 36-3208, paragraph 5.50.
2. Background: On 18 Nov 99, the 92 SFS/CC initiated this separation action against the respondent for a pattern of misconduct. He recommends an under other than honorable conditions discharge without the opportunity for probation and rehabilitation (P&R). The respondent acknowledged notification of this action on 18 Nov 99.
3. The following misconduct supports this discharge which is warranted by the evidence:
 - a. [REDACTED] did, on or about 18 Dec 98, miss a mandatory appointment in that he did not show for Commander's Call at 0700. For this action, he received a letter of counseling dated 20 Dec 98.
 - b. [REDACTED] did, on or about 6 May 99, fail to return his shot records, dog tags, and a copy of his leave and earnings statement from 6 Apr 99 to 24 May 99. For this failure, he received a letter of reprimand dated 25 May 99.
 - c. [REDACTED] having received a lawful order from [REDACTED] a noncommissioned officer, then known by him to be a noncommissioned officer, to submit to the Anthrax Immunization, an order which it was his duty to obey, did at or near Fairchild Air Force Base, Washington, on or about 15 Sep 99, willfully disobey the same. For this action, he received an Article 15 dated 30 Sep 99 and an unfavorable information file was established. The punishment consisted of a reduction to the grade of AB, with a new date of rank of 30 Sep 99, forfeiture of \$479 pay per month for two months, and 45 days extra duty.
 - d. [REDACTED] having received a lawful written order from [REDACTED] Operations Officer, 92d Security Forces Squadron, to report to the immunization clinic to start the Anthrax vaccination schedule, which it was his duty to obey, did at or near Fairchild Air Force Base, Washington, on or about 18 Oct 99, willfully disobey the same. For this misconduct, this discharge action was initiated.

4. Evidence favorable to [REDACTED] includes the following:

a. This 22-year old airman has been on active duty for 2 years. He began his current term of enlistment on 20 Nov 97. His military record contains one performance report with a "4" rating.

b. The respondent has previously submitted a conditional waiver relating he would waive his rights to an administrative discharge board if granted a general discharge. His request was denied and [REDACTED] was afforded the opportunity to submit an unconditional waiver or to proceed to an administrative discharge board. Subsequently, he submitted an unconditional waiver of his rights to an administrative discharge board. In addition, he submitted a statement for your consideration. [REDACTED] states that he is discouraged that he will not be able to continue his military career. He believes his decision to not take the anthrax shot is justified and hopes further research will prove his theory. Other than refusing to take this shot, he feels he has upheld the duties appointed to him in his short career.

5. Discussion: By a preponderance of the evidence, a basis for discharge exists for a pattern of misconduct consisting of conduct prejudicial to good order and discipline pursuant to paragraph 5.50.2 of AFI 36-3208. This includes conduct of a nature that tends to disrupt order, discipline, or morale within the military community. This category of misconduct usually involves causing dissent, disruption, and degradation of mission effectiveness. It also includes conduct of a nature that tends to bring discredit on the Air Force in the view of the civilian community. When discharge is based on a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of an airmen, an under other than honorable conditions (UOTHC) discharge is warranted. The member must have an opportunity for a hearing by an administrative discharge board. The 92 SFS/CC recommends an under other than honorable conditions discharge. I concur that [REDACTED] service should be characterized with a UOTHC discharge.

6. As the special court-martial convening authority, you may:

a. Forward the unconditional waiver to 15 AF, recommending approval or denial of the respondent's unconditional waiver.

b. Forward the file to 15 AF recommending an honorable, general, or UOTHC discharge.

7. Recommendation: Forward the unconditional waiver recommending an under other than honorable conditions discharge.

[REDACTED]



FD 2002-0401

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92D AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE WASHINGTON

18 NOV 1999

MEMORANDUM FOR [REDACTED]

FROM: 92 SFS/CC

SUBJECT: Notification Letter--Board Hearing

1. I am recommending your discharge from the United States Air Force for a pattern of misconduct consisting of conduct prejudicial to good to order and discipline. The authority for this action is AFPD 36-32 and AFI 36-3208, under the provisions of 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. You did, on or about 18 Dec 98, miss a mandatory appointment in that you did not show for Commander's Call at 0700. For this action, you received a letter of counseling dated 20 Dec 98.

b. You did, on or about 6 May 99, fail to return your shot records, dog tags, and a copy of your leave and earnings statement from 6 Apr 99 to 24 May 99. For this failure, you received a letter of reprimand dated 25 May 99.

c. You, having received a lawful order from [REDACTED] a noncommissioned officer, then known by you to be a noncommissioned officer, to submit to the Anthrax Immunization, an order which it was your duty to obey, did at or near Fairchild Air Force Base, Washington, on or about 15 Sep 99, willfully disobey the same. For this action, you received an Article 15 dated 30 Sep 99 and an unfavorable information file was established. The punishment consisted of a reduction to the grade of AB, with a new date of rank of 30 Sep 99, forfeiture of \$479 pay per month for two months, and 45 days extra duty.

d. You, having received a lawful written order from [REDACTED] Operation Officer, 92d Security Forces Squadron, to report to the immunization clinic to start the Anthrax vaccination schedule, which it was your duty to obey, did at or near Fairchild Air Force Base, Washington, on or about 18 Oct 99, willfully disobey the same. For this action, discharge action was initiated.

3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable conditions 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.

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.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.

5. You have previously been scheduled for a medical examination. Complete all follow up appointments.

6. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [REDACTED] 247-2918, at 0830 hrs on 18 Nov 99. 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 7 workdays, [date] 30 Nov 99, 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 your unit 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 right to be present at the hearing.

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

[REDACTED]

Attachments:

1. Letter of counseling dated 20 Dec 98 (2 pages)
2. Response to LOC dated 23 Dec 98 (1 page)
3. SFOB duty Roster (2 pages)

4. MFR by [REDACTED] no date (1 page)
5. Letter of counseling dated 25 May 99 (2 pages)
6. Article 15 dated 30 Sep 99 (3 pages)
7. MFR by [REDACTED] dated 15 Sep 99 (1 page)
8. Statement of suspect/witness/complaint Pierce dated 15 Sep 99 (2 pages)
9. Statement of suspect/witness/complaint Maddaloni dated 15 Sep 99 (2 pages)
10. Statement of suspect/witness/complaint Spradling dated 15 Sep 99 (2 pages)
11. Response to Article 15 dated 27 Sep 99 (28 pages)
12. UIF summary (1 page)



8. Issues:

- 1. Under current standards, I would not receive the type of discharge I did.

When I was discharged from the Air Force in 1999, I was the first person to refuse the Anthrax vaccination at Fairchild Air Force Base (FAFB) in Spokane, Washington. Because of this I feel that I was made an example of. There were no clear protocols or standards in order to address my refusal to take the Anthrax vaccine. I do not believe that equal treatment or applying the same set of rules and regulations to refusing the Anthrax was followed. Some personnel who refused such as a naval officer in California was given a swift and honorable discharge while other are spending time in jail, receiving less than honorable discharges, having wages garnished. There are several examples through the nation of the government showing inconsistency with how they process a claim to refuse the anthrax vaccine. The Air Force did not follow its own set of rules and regulations in processing my discharge. Further, I do not feel my case was fairly represented. I feel that lack of knowledge and lack of set protocol was the reason I received an Under Other Than Honorable Conditions discharge. I also feel that FAFB commanding officers involved in my case set out to make an example of me so that if other service men and women were thinking of not taking Anthrax, they would that they would be stripped of their weapons, stripes and be punished. Service men and women would also be aware that not only would they be discharged from the service but also they would be given Under Other Than Honorable Conditions discharge. Based on this information, this warrants an upgrade to an Honorable discharge.

- 2. My average conduct and efficiency ratings/behavior and proficiency marks were good.

An example of my outstanding and high rating proficiency marks as well as good conduct, can be seen in Document 1. This is an Enlisted Performance Report. This was written by [redacted] MSgt, USAF, 92nd Security Forces Squadron (AMC) and a concurrence signature from my commander, [redacted]. Based on this information, this warrants an upgrade to an Honorable discharge.

- 3. I received awards and decorations.

During my Air Force career, I received the Air Force Training Ribbon. Please also see Document's 2 and 3 for certificates of commendation. Based on this information, this warrants an upgrade to an Honorable discharge.

- [REDACTED]
4. I received letters of recommendation.

Please see Document 4 which is a character statement written by my wife, [REDACTED] MSW. Please see Document 6 which was written by [REDACTED] CMsgt, USAF (retired). Based on this information, this warrants an upgrade to an Honorable discharge.

5. My record of promotions showed I was generally a good service member.

I went into the Air Force with the rank of Airmen Basic. For 6 months and beings that I was in good standing, I was promoted to Airmen first class. Please again see Document 1, Document 2, and Document 3 for further examples of my record of promotions and good service. Only after refusing the Anthrax vaccine, was my promotions record changed. I was stripped of my 2 stripes and demoted to Airmen Basic, which is the rank I was discharged from the military as. Based on this information, this warrants an upgrade to an Honorable discharge.

6. I have been a good citizen since discharge.

Please see Document's 4, 5 and 6 for examples of my outstanding citizenship and commitment to my community.

I am continuing my service to Oriental Lodge Number 74, Free and Accepted Masons in Spokane Washington. I was elected Senior Warden for the 2002-2003 year. Next year, I will be the Grand Master in charge of the Lodge. This is a great responsibility and one that my fellow brothers feel I can carry out with confidence. We continue to do very good things for the Spokane Community. This year we I am on the board of the scholarship committee. We award scholarship to local seniors in high school who are going on to college. Based on this information, this warrants an upgrade to an Honorable discharge.

7. My record of Article 15's indicates only isolated and minor offenses.

The only Article 15 ever received was on the 15th of September I failed to obey a lawful order to take anthrax. Based on this information, this warrants an upgrade to an Honorable discharge.

8. I tried to serve and wanted to, but just couldn't or wasn't able to.

Please see Document 8, paragraph 8 as well as Document 11 paragraphs 2,3 and 4. Within these paragraphs you will find that I my purpose was never to end my military career. I tried to serve, I wanted to serve however after I refused to take the Anthrax vaccination, It was never considered that I be trained into another career field one in which I would not have to take the vaccination. Based on this information, this warrants an upgrade to an Honorable discharge.

9. I had applied or tried to apply for a compassionate reassignment but was unfairly denied or told to forget it.

From the beginning of this process, I asked for a reassignment to a career field which would not require the anthrax vaccination. I was never considered for the probation and rehabilitation program. It is also to be noted that until I refused the Anthrax Vaccine, I was in good standing with the military.

Major Herman Reinhold, chief of judge law assessed that I had established a pattern of misconduct. However, as I will state in my defense, this is inaccurately portrayed. Please see document 9 which is a memorandum for acceptance of unconditional wavier of discharge board and separation order AB Giancarlo V. Maddaloni, FR001-50-5870, 92nd Security Forces Squadron, Fairchild AFB, WA.

This letter states, "AFI 36-3208 Chapter 5 outlines the basis for involuntary separation of airmen. Paragraph 5.50.2 says airmen are subject for discharge for A Pattern Of Misconduct ...". Further AFI 35-3208 paragraph 5.48.1 states the conditions of determination an Under Other Than Honorable Condition (UOTHC) as well as General (under Honorable Conditions) and Honorable discharge. It states that an Honorable characterization in misconduct-based actions is warranted only when a member's record has been meritorious any other characterization would be clearly inappropriate.

Based on the evidence I have provided in my defense such as The Air Force Training Ribbon as well as 2 certificates of commendation and a highly ranked enlisted performance report, I should have been grated an honorable discharge by these very standards. It was argued that the military established a pattern of misconduct based on 1. Missing a commanders call on 18th of December. For this I received a letter of counseling. However, I wrote a letter of rebuttal on my behalf to refute this letter of counseling as I should not have received it. Please see Document 10 for a copy of this letter. I also received a letter of counseling in May of 1999 for forgetting my shot records which I could not locate or producing a copy of my leave and earnings statement.

9. Continued

Based on only these instances [REDACTED] felt this was enough evidence to establish misconduct and show a pattern of refusing a direct order. In no instance did they take into account [REDACTED] 1 letter of counseling. In looking at trying to establish a pattern there must be more than 1 letter of counseling for forgetting shot records. Thus, this so-called evidence cannot establish a pattern.

Probation and Rehabilitation is based on the principal that air men and women can change a pattern of behavior and should be offered the opportunity when it is reasonably possible. The probation and rehabilitation goes on to state "if the reason for discharge is misconduct, the case file must show P&R was considered by the initiating commander, the board members if a hearing is involved and the separation authority. Both 92 SFS/CC and 92 ARW recommended against P&R." This statement in direct conflict with the law. I feel that I was definitely a candidate for probation and rehabilitation because I refused the Anthrax Vaccine and very much wanted to be retrained into a new career field which would not require the vaccine. I asked for this based on my pattern of success and I should have been granted this. I do not feel that the Probation and Rehabilitation Program was fairly considered in my case. Please see document 11 for my statement regarding document.

Based on this information, this warrants an upgrade to an Honorable discharge.

10. Other.

Receiving an Under other Than Honorable Conditions discharge has had many negative consequences. First, I have not been able to utilize any of the GI Bill money that I contributed to for 2 years. I am currently a full-time student. This financial assistance that I financially contributed to for 2 years would be helpful because I have to pay out of pocket now. This has been a financial hardship on my family. The financial stress has been great.

Further, because of the Under Other Than Honorable discharge I received, it has left me unable to access any of the Healthcare Veterans can received at the Veterans Administration Medical Centers. This has added to the financial burden. Because of this, my spouse must pay an extra \$150.00 a month to carry me on her insurance policy.

I deserve to have access to the VAMC especially since I have had trouble with an ankle injury I sustained while in the military. On 1/30/02, I went to his family physician, [REDACTED] regarding a recurrence of right ankle pain that has been on-going since I injured myself while in the service. My physician [REDACTED] wrote the following statement. "Currently R ankle injury/impairment is on a more likely than not basis related to the right ankle injury sustained in the military service". Please see Document #7 for a copy of this statement. For this reason, I am entitled to receive medical care for my ankle at the Veterans Affairs Medical Center and have the right to file a service



10. Continued

connected disability claim. Based on this information, this warrants an upgrade to an Honorable discharge

I would also like to mention that in my pursuit of making an informed decision to refuse taking the anthrax vaccine, the evidence was overwhelming that the safety of this program is severe. I made the choice to refuse the anthrax vaccine based on this evidence. The military should always be concerned first and foremost with the safety of its people as well as all citizens. I made my choice to refuse the anthrax with the utmost respect to the military. However, I was not willing to put neither my family nor myself at risk.

In my most recent literature review, Connecticut attorney General Rickard Blumenthal wrote "Unfortunately, and directly contrary to law, the [vaccine] is being administered to military personnel under threat of imprisonment. Loss or pay and discharge", Brumenthal went on to write, "In effect, the military is forcing its personnel to serve as human guinea pigs for an unlicensed drug that has not been proven to be safe or effective. General Blumenthal went on to state "there are four reasons why the anthrax immunization program is illegal: 1. The anthrax vaccine has not been proven safe or effective for its intended use in that [it] has never been licensed for protection against inhalation anthrax. 2. The vaccine is not being manufactured in accordance with either its site license or product license. 3. The vaccine is not being administered according the license. And 4. Since the vaccine has not been tested on humans, there is no basis for concluding that it is safe and effective. Lastly, There are no longitudinal studies regarding the long-term health effects of the anthrax vaccine. Please see Document 14 for further information.

Based on this evidence, it is reasonable to me to refuse to be inoculated with this unsafe vaccine. In another article written February 5, 2002, it states that the Pentagon is now stating this vaccine will be use on a limited basis temporarily while officials study other options, including developing a new vaccine. This further supports the fact that this not safe practice. This article goes on to point out that the Centers for Disease Control and Prevention does not recommend vaccinations for the general public, despite the scare created by anthrax mailed to congressional and national new offices. Anthrax was given to many soldiers that went over to the Gulf War. Many soldiers came back sick.

The Veterans Administration Medical Center is treating veterans for Gulf War Syndrome. To this date it anthrax has not been ruled out as possible cause of Gulf War Syndrome. Further, it is now recommended that pregnant women not be inoculated with anthrax because of its strong ties to both defects. Finally, It is my fourth amendment right as well as every Americans to privacy. I cannot be forced to put unsafe chemicals into my body. Based on this information, this warrants an upgrade to an Honorable discharge



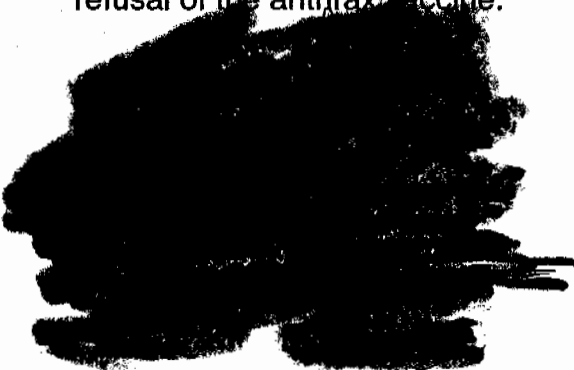
10. Continued.

There has been a federal lawsuit filed challenging the defense department anthrax immunization program. Please see document 16 for further information. One important point that is made in this document is that the Department of Defense was never received FDA approval although it has inoculated more than 500,00 persons.

The Anthrax Vaccination Immunization Program (AVIP) issued a report in 1994 stating that this vaccine could not be expected to protect servicemen against the airborne anthrax and should be considered experimental. Congressional staff report 103-97 says, "Although the results of this study suggest the vaccine might protect against anthrax that has been sprayed, it is not sufficient to prove that anthrax vaccine is safe and effective as used in the Persian Gulf. The Anthrax vaccine should therefore be considered investigational when used to protect against biological warfare".

In September of 1999 President Clinton signed Executive Order 13139, which does not allow DOD to administer, and investigational new drugs without informed consent to service members.

Thank you for your time and effort in affording me this opportunity to explain my refusal of the anthrax vaccine.



Reference Page

7. Supporting Documents

Document 1

Enlisted Performance Report of [REDACTED]

Document 2

Certificate of Commendation presented to [REDACTED]

Document 3

Certificate of Commendation presented to [REDACTED]

Document 4

Character Statement from [REDACTED] spouse and MSW. Employed by Veterans Administration Medical Center, Spokane, Washington.

Document 6

Character Statement from [REDACTED], USAF (Retired).

Document 12

Statement on Anthrax vaccine immunization program (AVIP) by [REDACTED] Colonel, USAFR.

Document 13

GAO Testimony before the subcommittee on National Security Veterans' Affairs and International Relations, Committee on Government Reform, House of Representatives. Medical Readiness. Issues Concerning the Anthrax Vaccine.

Document 14

Shots In The Dark. [REDACTED]
What the Pentagon doesn't want you to know about the anthrax vaccine.

Document 15

Pentagon Explores Other Vaccine Options. By [REDACTED] Courant Staff Writer

Document 16

Federal lawsuit filed today challenging defense departments anthrax vaccination immunization program.

[REDACTED]

Reference Page Continued.

Document 17

February 21, 2000

Memorandum for Brigadier General Starbuck from Major [REDACTED]

Document 18

Statements of [REDACTED], Major, USAF

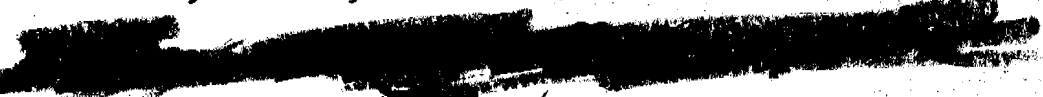
Prepared for the house of Representatives


Committee of Government Reform October 12, 1999

Handwritten initials

ISSUES

[INSTRUCTIONS: retype any of the following sample issues that apply to your case, number consecutively, add detailed explanation and attach to application. Add any other issues that are relevant to your case.]

Name & Signature: 

Address: 

Dear DRB [or] BCMR: The following issues are the reasons I believe my discharge should be upgraded to Honorable. If you disagree, please explain in detail why you disagree. The presumption of regularity that might normally permit you to assume that the service acted correctly in characterizing my service as less than honorable does not apply to my case because of the evidence I am submitting.

- Clemency is warranted because it is an injustice for me to continue to suffer the adverse consequences of a bad discharge.
- Under current standards, I would not receive the type of discharge I did.
- My average conduct and efficiency ratings/behavior and proficiency marks were good [or pretty good].
- I received awards and decorations.
- I received letters of recommendation.
- I had combat service.
- I was wounded in action.
- My record of promotions showed I was generally a good service member.
- There were other acts of merit.
- I was so close to finishing my tour that it was unfair to give me a bad discharge.
- I had a prior Honorable Discharge.
- I have been a good citizen since discharge.
- My record of NJPs/Article 15s indicates only isolated or minor offenses.
- My record of court-martial convictions indicates only isolated or minor offenses.
- My record of convictions by civil authorities while I was in service indicates only minor or isolated offenses.
- My record of AWOL/UA indicates only minor or isolated offenses.
- My ability to serve was impaired by my youth and immaturity.
- My low aptitude scores and level of education impaired my ability to serve.
- My ability to serve was impaired by my deprived background.
- My ability to serve was impaired because of marital and family and child care problems.
- Personal problems impaired my ability to serve.
- Financial problems impaired my ability to serve.