

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> ██████████	<b>GRADE AB</b> ██████████	<b>AFSN/SSAN</b> ██████████
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<b>TYPE</b>	<b>PERSONAL APPEARANCE</b>	<b>X RECORD REVIEW</b>
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<b>COUNSEL</b>	<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>
<b>YES</b>	<b>No</b>	
	<b>X</b>	

<b>MEMBER SITTING</b>	<b>VOTE OF THE BOARD</b>				
	HON	GEN	UOTHC	OTHER	DENY
██████████					X
██████████					X
██████████					X
██████████					X
██████████					X

<b>ISSUES</b> A94.05	<b>INDEX NUMBER</b> A67.30	<b>EXHIBITS SUBMITTED TO THE BOARD</b>		
		<b>1</b>	ORDER APPOINTING THE BOARD	
		<b>2</b>	APPLICATION FOR REVIEW OF DISCHARGE	
		<b>3</b>	LETTER OF NOTIFICATION	
		<b>4</b>	BRIEF OF PERSONNEL FILE	
			COUNSEL'S RELEASE TO THE BOARD	
<b>HEARING DATE</b> 23 Sep 2003	<b>CASE NUMBER</b> FD-2003-00249		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE	
			TAPE RECORDING OF PERSONAL APPEARANCE	

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

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

<b>SIGNATURE OF RECORDER</b> ██	<b>SIGNATURE OF BOARD PRESIDENT</b> ██
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<b>INDORSEMENT</b>	<b>DATE: 09/30/2003</b>
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<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

**FD-2003-00249**

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

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 is denied.

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

**ISSUE:** Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15 for willfully disobeying an order and an Article 15 for willfully consuming alcoholic beverages while under the legal age of 21. The applicant stated that he refused to take the Anthrax vaccination. He also states that he had exemplary performance while enlisted. 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 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.

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

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTHC Disch fr USAF 1 May 03 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for General Disch.

2. **BACKGROUND:**

a. DOB: 17Feb82. Enlmt Age: 18 2/12. Disch Age: 21 2/12. Educ: HS DIPL. AFQT: N/A. A-82, E-75, G-74, M-85. PAFSC: 2A353A - Tactical Aircraft Maintenance Journeyman. DAS: 14 May 01.

b. Prior Sv: (1) AFRes 28 Apr 00 - 7 Aug 00 (3 Months 11 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 8 Aug 00 for 6 yrs. Svd: 2 Yrs 8 Mo 24 Das, all AMS.

b. Grade Status: AB - 30 Dec 02 (Article 15, 30 Dec 02)  
A1C - 22 Sep 00

c. Time Lost: None.

d. Art 15's: (1) 30 Dec 02, Seymour Johnson AFB, NC - Article 90. You, having received a lawful command from [REDACTED] your superior commissioned officer, then known by you to be your superior commissioned officer, to report to the Immunization Clinic, 4<sup>th</sup> Medical Group, Seymour Johnson AFB, NC, or words to that effect, did, on or about 24 Dec 02, willfully disobey the same. Reduction to AB, and a reprimand. (No appeal) (No mitigation)

(2) 12 Mar 02, Seymour Johnson AFB, NC - Article 92. You, who knew of your duties, on or about 3 Mar 02, were derelict in the performance of those duties in that you willfully consumed alcoholic beverages while under the legal age of twenty-one, as it was your duty not to do. Article 111. You did, on or about 3 Mar 02, physically control a vehicle, to wit: a passenger car, while the alcohol concentration in your blood was 0.13 grams of alcohol per 100 milliliters of blood or greater as shown by chemical analysis. Suspended reduction to AMN, and 30 days extra duty. (No appeal) (No mitigation)

e. Additional: None.

- f. CM: None.
- g. Record of SV: 8 Aug 00 - 19 Apr 02 Seymour Johnson AFB 4 (Dir by HAF)  
(Discharged from Seymour Johnson AFB)
- h. Awards & Decs: AFTR, NDSM, AFOUA.
- i. Stmt of Sv: TMS: (3) Yrs (0) Mos (4) Das  
TAMS: (2) Yrs (8) Mos (24) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 May 03.  
(Change Discharge to General)

Issues: I want to change my Other than Honorable to at least General, Under Honorable Conditions. The Anthrax vaccination is an experimental drug. Under Title 10, Section 1107, a service member does not have to take an experimental drug. Bio Port Corporation still has their application pending for FDA approval. I am enclosing an Enlisted Performance report along with letters of reference to show my exemplary performance while I was enlisted. The Department of Defense website also states that they do (sic) did not even study the relationship of the anthrax vaccination to birth defects as of yet.

**ATCH**

1. Congressional Inquiry.
2. Character References (2).
3. Letters of Appreciation (2).
4. Enlisted Performance Report.
5. DD Form 214



175AM 83

MEMORANDUM FOR A [REDACTED]

FROM: 4 AMXS/CC

SUBJECT: Notification Memorandum - Board Hearing

1. I am recommending your discharge from the United States Air Force for misconduct, specifically the commission of a serious offense according to AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, under the provisions of Chapter 5, Section H, Paragraph 5.52.3. Copies of the documents to be forwarded to the separation authority to support the recommendation are attached.
2. My reason for this action is that you committed a serious offense by willfully disobeying the lawful order of a superior commissioned officer. On 23 December 2002, in the midst of a large-scale deployment from Seymour Johnson AFB in support of the ongoing war on terrorism, I ordered you to report to the Immunization Clinic, 4th Medical Group, Seymour Johnson AFB, North Carolina, and receive an anthrax vaccination, not later than 24 December 2002 at 1000 hours. On 24 December 2002, you willfully disobeyed this order. Your willful disobedience on the 24 December 2002 and your continued refusal to receive an anthrax shot has jeopardized the military readiness of the unit and prompted the initiation of your administrative discharge.
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 special court-martial jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force and will probably be denied enlistment in any component of the armed forces and any special pay, bonus, or education assistance funds may be subject 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.
  - 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 been scheduled for a medical examination. You must report to the 4th Medical Group, Family Practice Clinic (Green Team) on 16 January 2003 at 1420 hours with [REDACTED]. You must report 20 minutes prior to your scheduled appointment time.

*Global Power For America*

GOVERNMENT EX 3 FOR ID  
PAGE OF RD 5 PAGE ADMIT 5  
page 1 of 3 pages

6. Military legal counsel [REDACTED] 1185 Cannon Avenue, Suite 308 Seymour Johnson AFB, NC, DSN: 722-5345 has been obtained to assist you. An appointment has been scheduled for you to consult him/her on 16 JAN 03 at 1330 hours. 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, *Administration of Military Justice*. 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 in your unit's Commander's Support Staff (CSS) or the Area Defense Counsel's Office.

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. If you received advanced educational assistance, special pay, or bonuses, and have not completed the period of active duty you agreed to serve, you may be subject to recoupment.

11. You have been scheduled for mandatory Transition Assistance Program (TAPs) counseling on 17 JAN 03 2003 at 0800 hours. You must report to building 3602 for your TAPs counseling.

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

[REDACTED]  
[REDACTED]  
Commander, 4 AMXS

Attachments:

1. AF Form 3070, dated 24 December 2002
2. Order to Take Anthrax Vaccine, dated 23 December 2002
3. AF Form 3070, dated 11 March 2002