

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

MEMBER SITTING	VOICE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
		X			
		X			
		X			
		X			
		X			

ISSUES A94.12 A92.16	INDEX NUMBER A67.30	EXHIBITS SUBMITTED TO THE BOARD		
		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 DATE 12 May 2004	CASE NUMBER FD-2004-00054			

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.

INDORSEMENT		DATE: 5/12/2004
TO: SAF/MRBR 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, 3RD FLOOR ANDREWS AFB, MD 20762-7002	

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2004-00054

GENERAL: The applicant appeals for upgrade of discharge to honorable.

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

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

FINDINGS: The discharge is upgraded to general (under honorable conditions).

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify an upgrade of the discharge. However, based upon the record, the Board finds that the applicant's characterization of service is inequitable.

Issues. Applicant was discharged for misconduct, commission of a serious offense. He had two Articles 15, both for disobeying a direct order to report to the immunization clinic to receive his fourth anthrax vaccination in a series of six. This was after having received the first three shots, and deploying to Oman for an extended temporary duty assignment on short notice. At some point, member began to experience physical symptoms that he attributed to the shots and sought medical care. He was sent to Wilford Hall Medical Center for a complete medical evaluation and was seen by a rheumatologist and allergist. All of the medical tests and review returned with normal results, and no correlation was found between the anthrax shots and member's symptoms. Member's unit commander recommended he receive a general discharge, but the wing commander recommended he receive an under other than honorable conditions (UOTHC) discharge. This entitled member to an administrative discharge board, which found he had committed the offenses and recommended the UOTHC. The Board notes that the anthrax vaccine program is based on a military readiness obligation, and personal philosophy or unfounded health concerns do not excuse a military member from obedience. Such a contention has no place in a military organization grounded in good order and discipline. Personal opinion cannot be the basis of questioning the morality or wisdom of a Department of Defense directive; all military members must obey orders given with a valid military purpose. Therefore the Board concluded applicant's misconduct was a significant departure from conduct expected of all military members and the Board finds the discharge proper. However, the Board further concluded the characterization of the discharge received by the applicant was too harsh in the absence of any other misconduct or derogatory information in his records, and in view of his otherwise excellent duty performance.

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 further concludes that the overall quality of applicant's service is more accurately described as general (under honorable conditions). The applicant's characterization of discharge should be changed to general (under honorable conditions) under the provisions of Title 10, USC 1553.

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 Grand Forks AFB, ND on 11 Dec 03 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 30 Mar 75. Enlmt Age: 26 8/12. Disch Age: 28 8/12. Educ: HS DIPL. AFQT: N/A. A-77, E-70, G-72, M-76. PAFSC: 3E731 - Fire Protection Apprentice. DAS: 19 Oct 02.

b. Prior Sv: (1) AFRes 11 Dec 01 - 27 Feb 02 (2 months 17 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 28 Feb 02 for 6 yrs. Svd: 1 Yrs 9 Mo 14 Das, all AMS.

b. Grade Status: AB - 28 Aug 03 (Article 15, 28 Aug 03)
Amn - 15 Jul 03 (Article 15, 15 Jul 03)
A1C - 12 Apr 02

c. Time Lost: None.

d. Art 15's: (1) 28 Aug 03, Grand Forks AFB, ND - Article 90. You, having received a lawful command from Lt Col [REDACTED], your superior commissioned officer, then known by you to be your superior commissioned officer, to report to the immunization clinic and to receive an anthrax vaccination within one hour, or words to that effect, did, on or about 19 Aug 03, willfully disobey the same. Reduction to Airman Basic. (No appeal) (No mitigation)

(2) 15 Jul 03, Grand Forks AFB, ND - Article 90. You, having received a lawful command from Lt Col [REDACTED], your superior commissioned officer, then known by you to be your superior commissioned officer, to report to the immunization clinic and to receive an anthrax vaccination no later than 2 Jul 03, or words to that effect, did, on or about 2 Jul 03, willfully disobey the same. Reduction to Airman Basic (reduction below Airman suspended). Suspended forfeiture of \$200.00 pay per month for 2 months. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 28 Feb 02 - 27 Oct 03 Grand Forks AFB 1 (Initial)REF

h. Awards & Decs: NDSM, AFTR, BFPB.

i. Stmt of Sv: TMS: (2) Yrs (0) Mos (1) Das
TAMS: (1) Yrs (9) Mos (14) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 13 Jan 04.
(Change Discharge to Honorable)

Issue 1: I want to change my discharge because I don't feel I should be penalized for refusing a shot that has had a negative affect on my health. My superiors have testified I have a (sic) outstanding work record and ethic.

ATCH

1. Congressional Correspondence.
2. DD Form 214.
3. DD Form 149.
4. Newspaper Articles.
5. Four Character References.
6. Enlisted Performance Report (Page 1).
7. Performance Feedback Worksheet.
8. Knox County Sheriff's Department Criteria for Employment.
9. Business Card.

15MAR04/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 319TH AIR REFUELING WING (AMC)
GRAND FORKS AIR FORCE BASE, NORTH DAKOTA

FD2004-09054

24 SEP 2003

MEMORANDUM FOR AB [REDACTED]

FROM: 319 ARW/CC

SUBJECT: Notification Memorandum – Board Hearing

1. I am recommending your discharge from the United States Air Force for the Commission of a Serious Offense, Other Serious Offenses. The authority for this action is AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, Section 5H, paragraph 5.52.3. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.
2. My reason for this action is that, you, having received a lawful command from Lieutenant Colonel [REDACTED] your superior commissioned officer, then known by you to be your superior commissioned officer, to report to the immunization clinic and to receive an anthrax vaccination within one hour, or words to that effect, did, on or about 19 August 2003, willfully disobey the same. For this act of misconduct, you received a Record of Nonjudicial Punishment Proceedings (Article 15), dated 28 August 2003. The Article 15 was added to your existing Unfavorable Information File (UIF). (Attachment A.)
3. Other derogatory data: You having received a lawful command from Lieutenant Colonel [REDACTED] your superior commissioned officer, then known by you to be your superior commissioned officer, to report to the immunization clinic and to receive an anthrax vaccination no later than 2 July 2003, or words to that effect, did, on or about 2 July 2003, willfully disobey the same. For this act of misconduct, you received an Article 15, dated 15 July 2003. The Article 15 was used to establish an Unfavorable Information File UIF. (Attachment B.)
4. This action could result in your separation with an honorable, under honorable conditions (General), or an under other than honorable conditions (UOTHC) characterization. I am recommending that you receive a UOTHC discharge. The commander exercising general 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. 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. Your previously scheduled and completed medical examination (conducted on or about 19 September 2003) satisfies the medical examination requirement for this proceeding, thus no reexamination is required.
6. Your appointed military legal counsel is Capt [REDACTED]. 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 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 Privacy Act statement is attached. A copy of AFI 36-3208 is available for your use in the squadron orderly room.
9. If you request a board and 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 already received a temporary identification card IAW AFI 36-3026(I), paragraph 4.2. If you need to extend your temporary identification card's validity past the current expiration date, contact your first sergeant.
12. Execute the attached acknowledgment and return it to me, through the base Legal Office, immediately.

[REDACTED]
[REDACTED] Colonel, USAF
Commander