

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████		GRADE AB	AFSN/SSAN ████████████████			
TYPE GEN	PERSONAL APPEARANCE	X	RECORD REVIEW			
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL				
NAME OF COUNSEL AND OR ORGANIZATION						
YES	No					
	X					
MEMBER SITTING		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
						X
						X
						X
						X
						X
ISSUES	INDEX NUMBER	EXHIBITS SUBMITTED TO THE BOARD				
A92.35 A92.01 A94.05	A67.10	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	CASE NUMBER					
21 May 2004	FD-2004-00123					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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						
TO:			DATE: 5/21/2004			
SAF/MRBR 550 C STREET WEST, SUITE 20 RANDOLPH AFB, TX 78150-4742			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

FD-2004-00123

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

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 and change of reason and authority for discharge, and change of reenlistment code are 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, and one Memorandum for Record for misconduct. The misconduct included failure to obey a lawful written order by refusing to take the anthrax vaccination on two separate occasions. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the willful 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

(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Elmendorf AFB, AK on 12 May 99 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, and to Change the RE Code, Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 28 Oct 78. Enlmt Age: 18 5/12. Disch Age: 20 6/12. Educ: HS DIPL. AFQT: N/A. A-60, E-70, G-80, M-52. PAFSC: 2W031 - Munitions Systems Apprentice. DAS: 12 Jan 98.

b. Prior Sv: (1) AFRes 12 Apr 97 - 2 Sep 97 (4 months 22 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 3 Sep 97 for 4 yrs. Svd: 1 Yrs 8 Mo 10 Das, all AMS.

b. Grade Status: AB - 14 Apr 99 (Article 15, 14 Apr 99)
A1C - 3 Jan 99
Amn - 3 Mar 98

c. Time Lost: None.

d. Art 15's: (1) 14 Apr 99, Elmendorf AFB, AK - Article 92. You, having knowledge of a lawful order issued by Lt Col [REDACTED], 3 EMS/CC, to wit: to immediately report to Military Public Health, 3rd Medical Group, Elmendorf AFB, and there receive an anthrax vaccination, dated 9 Apr 99, an order which it was your duty to obey, did, on 9 Apr 99, fail to obey the same by wrongfully refusing to receive an anthrax vaccination. Reduction to AB, forfeiture of \$479.70 pay per month for 2 months. (No appeal) (No mitigation)

e. Additional: MFR, 16 APR 99 - Failure to obey a lawful written order.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: AFTR, AFOUA, AFOSLTR.

i. Stmt of Sv: TMS: (2) Yrs (1) Mos (1) Das
TAMS: (1) Yrs (8) Mos (10) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 16 Mar 04.
(Change Discharge to Honorable, and Change the RE Code, Reason and Authority for Discharge)

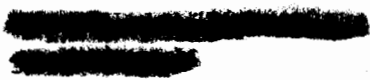
ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Forms 214 (Member 1 & 4).
3. Character Reference.

30APR04/ia

Attachment DD Form 293



Statement

I was ordered to receive an anthrax vaccination in April 1999. I refused the vaccination because of my concerns about the validity and safety of the vaccination. I received an Article 15 because of my actions. I have enclosed a copy of the memorandum which I submitted to my Commander regarding my decision. I chose not to request a court martial, because I was advised by my military attorney that the military judge could decide to disallow any evidence regarding the validity of the vaccine. Without that evidence, my entire defense would have been undermined.

The Article 15 sentence included an Unfavorable Information File (UIF) entry, a reduction in rank, and a monetary fine. Later, I was notified that my Commander had recommended my discharge from the Air Force. Her recommendation was approved. I was administratively discharged. My character of discharge is General (Under Honorable Conditions). The narrative reason for my separation is misconduct.

Prior to being given the Article 15, my military record was unblemished. I have enclosed a statement from my military supervisor attesting to my conduct and character.

8. Issues

1. I do not believe that my refusal to receive the anthrax vaccine merits a general discharge.
2. I do not believe that my conduct merited mention of misconduct. I understand that misconduct is based on a pattern of behavior. A review of my service record will reveal that my conduct (prior to the anthrax vaccine issue) was exemplary.
3. Change re-enlistment code to permit me to enlist in the military again, in the future.

FD 2004-00120

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

MEMORANDUM FOR 3 EMS/LGMWPL (AB [REDACTED])

APR 21 1999

FROM: 3 EMS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct based on minor disciplinary infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable, general, or under other than honorable conditions. I am recommending your service be characterized as general.
2. My reasons for this action are:
 - a. On or about 16 Apr 99, you, having knowledge of a second lawful order to immediately receive an anthrax vaccination, did fail to obey the same. This offense is evidenced by a memorandum for record, dated 16 Apr 99. For this offense I initiated discharge action.
 - b. On or about 9 Apr 99, you, having knowledge of a lawful order to immediately report to Military Public Health and receive an anthrax vaccination, did fail to obey the same. For this offense you received an Article 15, dated 9 Apr 99, an Unfavorable Information File (UIF) entry, and were reduced to the rank of airman basic with a new date of rank of 14 Apr 99.
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 are 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, and any special pay, bonus, or education assistance funds may be subject to recoupment.
4. You have the right to consult legal counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult Capt [REDACTED], at Bldg 6-920, Rm 330 on 21 APR 99 at 0945. 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 three duty days after the date of this letter unless you request and receive an extension for good cause shown. I will forward any statements you provide to the separation authority.
6. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.

7. You have been scheduled for medical examinations. You must report, with your medical records, to the 3rd Aerospace Medicine Squadron, Bldg 24-850, at 0830 on 27 Apr 99 for your first exam, at which time you will be notified of the time for your second exam. You are to refrain from alcohol for 72 hours, and refrain from the use of tobacco products for 6 hours, prior to examination. Bring eyeglasses (and contact solution if using contacts) if applicable. You must be in uniform for these examinations.

8. You have been scheduled for a Transition Assistance Program briefing. You must report to the Family Support Center at 1445 on 28 Apr 99. You have also been scheduled for a TMO Household Goods Shipment preprocessing briefing. You must report to Bldg 2-900 (People Center), Rm 247 at 0830 on 28 Apr 99. You must be in uniform for all appointments.

9. 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 Squadron Orderly Room.


 Lt Col, USAF
Commander

Attachments:

1. 3 EMS/CC Memo, 16 Apr 99
2. Article 15, 9 Apr 99