

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

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

ISSUES A93.25	INDEX NUMBER A67.90	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 Aug 2004	CASE NUMBER FD-2004-00187			

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: 8/12/2004
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

FD2004-00187

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

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: Upgrade of discharge is denied.

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

Issues. Applicant was discharged for misconduct, conduct prejudicial to good order and discipline. He had two Articles 15 for two instances of failing to obey a direct order to report to the immunization clinic to receive his anthrax vaccination although he was scheduled for reassignment to South Korea. He had one Enlisted Performance Report during his period of service that was rated an overall "5", and a second one rated a referral "2" due to the anthrax vaccine refusals. Member also had two Letters of Counseling for failure to go and public intoxication. At the time of the discharge, applicant consulted counsel and submitted statements in his own behalf requesting retention, or in the alternative, an honorable discharge. Applicant now contends his discharge was too harsh in the context of an otherwise honorable period of service, and also notes the reasons for his refusal to take the vaccine were based on his personal convictions. The Board noted member had attended a mass briefing regarding the anthrax vaccine program, that medical staff counseled member twice about the anthrax vaccine program and its affects, providing him educational information about its safety track record, and the written orders he received to take the vaccine were also very detailed with respect to his refusal's effect on mission accomplishment, and the vaccine's safety. The Board further noted that member's thoughts about the anthrax vaccine program were based on essentially personal opinion garnered from internet and public media research regarding an alleged unacceptable health risk. 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. 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. No inequity or impropriety was found in this discharge in the course of the records review.

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 GEN Disch fr Ellsworth AFB, SD on 22 Dec 00 UP AFI 36-3208, para 5.50.2 (Pattern of Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 19 Oct 78. Enlmt Age: 18 10/12. Disch Age: 22 2/12. Educ: HS DIPL. AFQT: N/A. A-70, E-40, G-36, M-19. PAFSC: 2T337 - Vehicle Maintenance Control and Analysis Apprentice. DAS: 3 Oct 98.

b. Prior Sv: (1) AFRes 21 Aug 97 - 31 Mar 98 (7 months 11 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 1 Apr 98 for 4 yrs. Svd: 2 Yrs 8 Mo 22 Das, all AMS.

b. Grade Status: AB - 29 Nov 00 (Article 15, 29 Nov 00)
Amn - 19 Oct 00 (Article 15, 19 Oct 00)
A1C - (EPR Indicates): 1 Apr 98 - 30 Nov 99

c. Time Lost: None.

d. Art 15's: (1) 29 Nov 00, Ellsworth AFB, SD - Article 90. You, having received a lawful command from Maj [REDACTED] your superior commissioned officer, then known by you to be your superior commissioned officer, to immediately report to the Military Public Health, 28th Medical Group, prior to 1530 hours on 20 Nov 00, to receive the Anthrax vaccination, did, on or about 20 Nov 00, willfully disobey the same. Reduction to AB, forfeiture of \$500.00 pay, 30 days extra duty, and 30 days restriction. (No appeal) (No mitigation)

(2) 19 Oct 00, Ellsworth AFB, SD - Article 90. You, having received a lawful command from Maj [REDACTED] your superior commissioned officer, then known by you to be your superior commissioned officer, to immediately report to Military Public Health, 28th Medical Group, at 0900 hours on 6 Oct 00, to receive the Anthrax vaccination, did, on or about 6 Oct 00, willfully disobey the same. Reduction to Airman, forfeiture of \$500.00 pay, 30 days restriction, and 30 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional: LOC, 29 NOV 00 - Public intoxication.

RIC, 21 SEP 00 - Late for duty.

f. CM: None.

g. Record of SV: 01 Apr 98 - 30 Nov 99 Ellsworth AFB 5 (Initial)
01 Dec 99 - 30 Nov 00 Ellsworth AFB 2 (Annual)REF

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (3) Yrs (4) Mos (2) Das
TAMS: (2) Yrs (8) Mos (22) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 15 Apr 04.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.

23JUN04/ia

May 1, 2004

SUBJECT: Review of discharge from the Armed Forces of the United States
Request of Upgrade from "General" to "Honorable"

Item 6: Issues

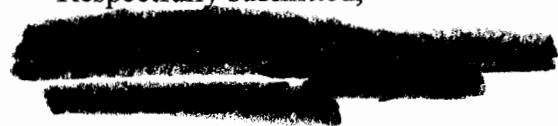
After enlisting in the Air Force and completing my basic training, I arrived at Ellsworth AFB in October, 1998. I feel I accomplished a lot. I finished my CDCs in a very timely manner even though part of that time I was deployed to Egypt for Bright Star. I received Technician of the Quarter twice and was put in for Senior Airman below the zone. I liked being in the Military!

In the year 2000, I was given an assignment to leave for South Korea. At that time, the anthrax shot was mandatory. I did a lot of research in regards to the anthrax shot by reading newspaper and magazine articles, and surfing the Internet. That was how I learned of the side effects of the shot, which in many cases caused illness and in some cases death. I became afraid that those things could happen to me if I took the shot. Since my tour of duty would have been completed in approximately two months, long before the completion of the series of shots, I felt it was especially dangerous for me to start the series and not finish. It was my fear that the anthrax vaccine was not safe that caused me to disobey the order. I was not afraid or hesitant about the overseas duty! In fact I volunteered to go without the shot – but wasn't allowed. Within days after I refused to take the anthrax shot, it was no longer required. I again volunteered to go to Korea, but again was refused.

I feel that emotionally I am still suffering from my discharge from the Air Force. I did not want to leave the Military. I wanted to continue serving my country. I hope you will consider upgrading my "general" to an "**honorable**" discharge so I can focus on the positive ways that I was able to help our Country during my two and a half years of dedicated service.

Thank you for your time and consideration in this matter.

Respectfully submitted,

A large black rectangular redaction box covering the signature and name of the submitter.



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 28TH BOMB WING (ACC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

FD 2004-0018

11 DEC 2000

MEMORANDUM FOR AIRMAN BASIC [REDACTED]

FROM: 28 TRNS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for a pattern of misconduct, specifically, conduct prejudicial to good order and discipline. The authority for this action is AFD 36-32 and AFI 36-3208, paragraph 5.50.2. If my recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reasons for this discharge action are the following:

a. You did, on or about 20 Sep 00, fail to show up at the time prescribed to your appointed place of duty, to wit: 28th Transportation Squadron. For this action you received a Letter of Counseling (LOC) on 21 Sep 00.

b. You, having received a lawful command from Major [REDACTED], your superior commissioned officer, then known by you to be your superior commissioned officer, to immediately report to Military Public Health, 28th Medical Group, at 0900 hours on 6 Oct 00, to receive the Anthrax vaccination, did, at or near Ellsworth Air Force Base, South Dakota, on or about 6 Oct 00, willfully disobey the same. For this action, you were punished under Article 15, UCMJ, on 19 Oct 00. Punishment was reduction to the grade of airman, forfeiture of \$500.00 pay, restriction to Ellsworth Air Force Base, South Dakota for 30 days, and 30 days extra duty. This Article 15 established your Unfavorable Information File (UIF).

c. On or about 26 Nov 00, A1C [REDACTED] another member of the 28 TRNS Squadron, was apprehended by civil authorities for drunken driving. Investigation also revealed you were a passenger in the vehicle and intoxicated as well. Your actions of being in a vehicle driven by someone who was intoxicated showed poor judgement and lack of planning. For this action, you received an LOC on 29 Nov 00.

d. You, having received a lawful command from Major [REDACTED], your superior commissioned officer, then known by you to be your superior commissioned officer, to immediately report to Military Public Health, 28th Medical Group, prior to 1530 hours on 20 Nov 00, to receive the Anthrax vaccination, did, at or near Ellsworth Air Force Base, South Dakota, on or about 20 Nov 00, willfully disobey the same. For this action, you were punished under Article 15, UCMJ, on 29 Nov 00. Punishment was reduction to the grade of airman basic, forfeiture of \$500.00 pay, 30 days extra duty, and restriction to Ellsworth Air Force Base, South Dakota for 30 days. This Article 15 was added to your UIF.

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 will be discharged or retained in the Air Force and, if you are discharged, how your discharge 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 counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult with Captain [REDACTED], Area Defense Counsel, 385-2158, 1000 Ellsworth Street, Suite 1700 on 12 Dec 00 at 0800 hours. 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 by 14 Dec 00 at 1300 hours, unless you request and receive an extension for good cause shown. I will send them to the separation authority.
6. If you fail to consult counsel or to submit matters in your own behalf, your failure will constitute a waiver of your right to do so.
7. You have been scheduled for a medical examination at the Physical Exams Section of the Base Clinic on _____ Dec 00 at _____ hours. This is a mandatory appointment and you must be in uniform. It is required that you report at least fifteen minutes prior to the scheduled start time of the examination to complete necessary paper work.
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 orderly room.
9. Execute the attached acknowledgment and return it to me immediately.

[REDACTED]
[REDACTED], Major, USAF
Commander

Attachments:

1. Supporting documents
 - a. LOC - 21 Sep 00
 - b. Article 15/UIF - 19 Oct 00
 - c. LOC - 29 Nov 00
 - b. Article 15/UIF - 29 Nov 00
2. Airman's Acknowledgment