

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="border: 1px solid black; height: 20px; width: 100%;"></div> | GRADE A1C | AFSN/SSAN <div style="border: 1px solid black; height: 20px; width: 100%;"></div> |
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| TYPE | GEN | X | PERSONAL APPEARANCE | RECORD REVIEW |
| COUNSEL | | NAME OF COUNSEL AND OR ORGANIZATION | | ADDRESS AND OR ORGANIZATION OF COUNSEL |
| YES | No | | | |
| | X | | | |

| MEMBER SITTING | VOTE OF THE BOARD | | | | |
|---|--------------------------|-----|-------|-------|------|
| | HON | GEN | UOTHC | OTHER | DENY |
| <div style="border: 1px solid black; height: 100%; width: 100%;"></div> | | | | | X* |
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| ISSUES A67.10 | INDEX NUMBER A93.25 A94.05 | 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 HE |

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| HEARING DATE 19 Oct 2006 | CASE NUMBER FD-2006-00126 | |
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard in Washington, D.C.

Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.

Names and votes will be made available to the applicant at the applicant's request.

*Reason & Authority

| | | |
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| INDORSEMENT | | DATE: 10/23/2006 |
| 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

FD-2006-00126

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

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, at Andrews AFB on October 19, 2006. The following witnesses were present on the applicant's behalf: Ms Luisa Schmidt (mother), and Mr Manfred Schmidt (grandfather). Neither witness testified on behalf of applicant.

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:

Issue 1. Applicant was discharged for misconduct, minor disciplinary infractions. He received a Letter of Reprimand and an Article 15 for two instances of failing to obey direct orders to begin the Anthrax Vaccination Program. He had three Enlisted Performance Reports during his period of service with overall ratings of "5". At the time of his discharge, applicant consulted counsel and submitted statements in his own behalf. 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 applicant had attended a mass briefing regarding the Anthrax Vaccination Program, he obtained counseling from medical staff members, his supervisors and first sergeant, and the written orders he received were very detailed with respect to his refusal's effect on mission accomplishment, and the vaccine's safety. The Board further noted that applicant'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 no excuse a military member from obedience. At the time applicant served in the Air Force, the Anthrax vaccination was mandatory, and thus the applicant was required to comply with the lawful order directed by his superior commissioned officer. 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. The DRB was pleased to see that the applicant was doing well and has a good job and is continuing his education. 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 3. 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 April 10, 2000) 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.

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

FD2006-00126A

(Former A1C) (HGH SRA) (REHEARING)

1. MATTER UNDER REVIEW: Appl rec'd a Gen Disch fr Hurlburt Field, FL on 17 Mar 03. UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge, and to Change the Reason and Authority for Discharge.

2. OTHER FACTS:

a. See attached cy of Examiner's Brief dtd 14 Jan 03.

b. The AFDRB reviewed case on 11 Mar 04 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. BASIS ADVANCED FOR REHEARING: Appl (DD Fm 293) dtd 07 Mar 06. (Change Discharge to Honorable & Change the Reason and Authority for Discharge)

Issues: I was discharged with a General Discharge for refusing to participate in the Anthrax Vaccination Program. I am requesting that the discharge be upgraded to honorable, the G.I. Bill be reinstated, and to have the 12 months of back pay reimbursed. This is justified due to the fact that the Anthrax shots are no longer mandantory (sic). In April of 2005 a briefing went out stating that "you may refuse Anthrax Vaccination under the EUA, and you will not be punished. No disciplinary action or adverse personnel action will be taken if you refuse vaccination." On Oct 27, 2004 the U.S. District Court for the District of Columbia issued an order declaring unlawful and prohibiting mandatory Anthrax vaccinations to protect against inhalational anthrax. I was unjustly discharged.

Atch

1. Copy of AVIP EUA, 10 Apr 05.

4MAY06/ia

DEPARTMENT OF THE AIR FORCE
 AIR FORCE DISCHARGE REVIEW BOARD
 ANDREWS AFB, MD

[REDACTED] (Former A1C) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 17 Mar 03 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 28 Jul 80. Enlmt Age: 19 6/12. Disch Age: 22 7/12. Educ: HS DIPL. AFQT: N/A. A-94, E-90, G-82, M-89. PAFSC: 3C051 - Communications Apprentice. DAS: 8 Sep 00.

b. Prior Sv: (1) AFRes 17 Feb 00 - 29 Mar 00 (1 month 13 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 30 Mar 00 for 4 yrs. Svd: 2 Yrs 11 Mo 16 Das, all AMS.

b. Grade Status: A1C - 13 Feb 03 (Article 15, 13 Feb 03)
 SrA - 30 Jul 02

c. Time Lost: None.

d. Art 15's: (1) 13 Feb 03, Hurlburt Field, FL - Article 92. You, having knowledge of a lawful order issued by LTC [REDACTED], to wit: to begin the Anthrax Vaccination Program, an order which it was your duty to obey, did, on or about 22 Jan 03, fail to obey the same by wrongfully refusing to begin the Anthrax Vaccination Program. Reduction to A1C. (No appeal) (No mitigation)

e. Additional: LOR, 15 JAN 03 - Failure to obey a lawful order.

f. CM: None.

g. Record of SV: 30 Mar 00 - 29 Nov 01 Hurlburt Field 5 (Initial)
 30 Nov 01 - 01 Oct 02 Hurlburt Field 5 (CRO)
 11 Jan 02 - 10 Jan 03 Hurlburt Field 5 (Annual)

(Discharged from Hurlburt Field)

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

i. Stmt of Sv: TMS: (3) Yrs (1) Mos (1) Das
 TAMS: (2) Yrs (11) Mos (16) Das

FD2006-00126A

FD2003-00561

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 18 Dec 03.
(Change Discharge to Honorable)

NO ISSUES SUBMITTED.

ATCH
None.

14JAN03/ia



DEPARTMENT OF THE AIR FORCE
16th COMMUNICATION SQUADRON (AETC)

FD 7006-00126A

MEMORANDUM FOR A1C [REDACTED], 16 CS

FEB 27 2003

FROM: 16 CS/CC

SUBJECT: Notification of Discharge Recommendation

1. I am recommending your discharge from the United States Air Force for misconduct, more specifically, minor disciplinary infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, chapter 5, section H, paragraph 5.49. If my recommendation for discharge is approved, your service will be characterized as either honorable or general. I am recommending your service be characterized as general.

2. My reasons for this action are based on the following:

a. You, having knowledge of a lawful order issued by Lieutenant Colonel [REDACTED], to wit: to begin the Anthrax Vaccination Program, an order which it was your duty to obey, did at or near Hurlburt Field, Florida, on or about 22 January 2003, fail to obey the same by wrongfully refusing to begin the Anthrax Vaccination Program, for which you were given Nonjudicial Punishment under Article 15, UCMJ, on 13 Feb 03, which was filed in you Personnel Information File (PIF).

b. On 7 Jan 03, you failed to obey a written order by Lt Col [REDACTED] to immediately begin the Anthrax Vaccine Immunization Program.

c. On 6 Jan 03, you failed to obey an order by SMSgt [REDACTED] to begin the Anthrax Vaccine Immunization Program, for which you received a Letter of Reprimand, dated 15 Jan 03, which was filed in your PIF.

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Courts-Martial jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force and, if you are discharged, the characterization of your discharge. Additionally, if you are discharged, you will be ineligible for reenlistment in the Air Force.

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 the Area Defense Counsel at Bldg 90042, Hurlburt Field, FL, on 28 Feb 03 at 1430 hours. You may consult civilian counsel at your own expense.

5. You have the right to submit statements on your own behalf. Any statements you want the separation authority to consider must reach me within three workdays of your receipt of this memorandum, unless you request and receive an extension for good cause. If you provide such statements, I will send them to the separation authority.

6. If you fail to consult counsel or to submit statements on your own behalf, your failure will constitute a waiver of your right to do so.

7. You are scheduled for a medical examination and you must report to the Hurlburt Clinic at 0900 hrs on 28 Feb 03 for this purpose.

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 the unit orderly room.



Commander

Attachments:

Supporting documents--for the reason for discharge

1. AF Form 3070, dtd 13 Feb 03 (6 p.)
2. LOR, dtd 15 Jan 03 (5 p.)
3. MFR, dtd 7 Jan 03 (1p.)
4. Airman's receipt of notification memorandum