

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	GRADE AB	AFSN/SSAN <div style="border: 1px dashed 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 dashed black; height: 100px; width: 100%;"></div>					X
					X
					X
					X
					X

ISSUES	A92.21 A93.01 A94.05	INDEX NUMBER	A67.10	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

HEARING DATE	12 Jun 2007	CASE NUMBER	FD-2006-00172
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard in Washington, D.C. via video teleconference with Robins AFB, GA

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.

INDORSEMENT		DATE: 6/12/2007
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-2006-00172

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

The applicant appeared and testified before the Discharge Review Board (DRB) without counsel, via video teleconference between Andrews AFB, MD and Robins AFB, GA on 12 Jun 2007. Observing the DRB hearing was Ms. [REDACTED], the applicant's wife.

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 1. The applicant's implicit contention is that his discharge was inequitable because it did not take into account the fact that the initial mandatory Anthrax Vaccine Immunization Program (AVIP) was followed by an intervening period of time in which it was purely voluntary, or words to that effect. The record indicates that the applicant received an Article 15 and one Memorandum for Record for twice failing to obey a lawful order to receive an Anthrax vaccination. It is important to note that at the time of the applicant's refusal to comply (October 1999) the AVIP was a mandatory program for individuals within his organization. The DRB found the member's refusal particularly unusual in the context of his testimony that he had previously received an initial Anthrax vaccine that resulted in a non-systemic reaction ("painful lump"); a recognized reaction which did not result in nor require referral for further medical analysis. In the applicant's response to the Article 15, however, he cited the death of his father due to "four different types of cancer" reportedly due to exposure to Agent Orange, and his "refusal to let [his] son grow up without a father if it could be prevented" by avoidance of the Anthrax vaccine. The applicant's response also included a statement of the "several occasions [in which he believes] the U.S. Government hasn't taken responsibility for any action imposed upon its members." The applicant also testified that prior to deciding against taking the Anthrax vaccine, he had consulted with his mother and immediate supervisor; the former supporting the applicant's refusal and the latter encouraging him to comply. 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. The Board acknowledged the applicant's concerns, but concluded the applicant's misconduct was a significant departure from conduct expected of all military members.

Issue 2. The DRB acknowledged the member's exceptional post-service employment and the significant contributions he has made as a civilian contract employee during combat operations in Iraq. The DRB was also pleased to hear that the current characterization of the applicant's service has not adversely affected his employability. Further, given the opportunity to serve again, the applicant testified that he would now comply with his required Anthrax vaccine, citing among reasons his current age, experience, and the length of time that has transpired since the initial concerns regarding the safety of the vaccine were raised. However, the Board again found no evidence of an inequity or impropriety in the course of the hearing.

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 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 USAF Elmendorf AFB, AK on 19 Nov 99 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 5 Dec 76. Enlmt Age: 20 4/12. Disch Age: 22 11/12. Educ: HS DIPL. AFQT: N/A. A-80, E-77, G-86, M-81. PAFSC: 3E131 - Heating, Ventilation, Air Conditioning and Refrigeration Apprentice. DAS: 10 Jan 98.

b. Prior Sv: (1) AFRes 29 Apr 97 - 25 Jun 97 (1 month 27 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 26 Jun 97 for 4 yrs. Svd: 02 Yrs 04 Mo 24 Das, all AMS.

b. Grade Status: AB - 18 Oct 99 (Article 15, 18 Oct 99)
A1C - 26 Oct 98
Amn - 26 Dec 97

c. Time Lost: None.

d. Art 15's: (1) 18 Oct 99, Elmendorf AFB, Germany - Article 92. You, having knowledge of a lawful written order, dated 5 Oct 99, issued by Col [REDACTED]; 3 CES/CC, to wit: to immediately report to Military Public Health, 3rd Medical Group, Elmendorf AFB, Alaska, and there receive an anthrax vaccination, an order which it was your duty to obey, did, on 6 Oct 99, fail to obey the same by wrongfully refusing to report to Military Public Health, 3rd Medical Group, Elmendorf AFB, Alaska, and there receive an anthrax vaccination. Reduction to AB. (No appeal) (No mitigation)

e. Additional: 3 CES/CC MEMO, 19 OCT 99 - Failure to obey a lawful order.

f. CM: None.

g. Record of SV: 26 Jun 97 - 11 Mar 99 Elmendorf AFB 4 (Initial)
12 Mar 99 - 01 Oct 99 Elmendorf AFB 5 (CRO)

h. Awards & Decs: AFTR, AFOUA.

i. Stmt of Sv: TMS: (02) Yrs (06) Mos (21) Das
TAMS: (02) Yrs (04) Mos (24) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 27 Apr 06.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. DD Form 214.

9JUN06/ia

APPLICATION FOR THE REVIEW OF DISCHARGE FROM THE ARMED FORCES OF THE UNITED STATES <i>(Please read instructions on Pages 3 and 4 BEFORE completing this application.)</i>		OMB No. 0704-0004 OMB approval expires Aug 31, 2006
The public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Executive Service Directorate (0704-0004). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ORGANIZATION. RETURN COMPLETED FORM TO THE APPROPRIATE ADDRESS ON BACK OF THIS PAGE.		
PRIVACY ACT STATEMENT		
AUTHORITY: 10 U.S.C. 1553; E.O. 9397. PRINCIPAL PURPOSE(S): To apply for a change in the characterization or reason for military discharge issued to an individual. ROUTINE USE(S): None. DISCLOSURE: Voluntary; however, failure to provide identifying information may impede processing of this application. The request for Social Security Number is strictly to assure proper identification of the individual and appropriate records.		
1. APPLICANT DATA <i>(The person whose discharge is to be reviewed).</i> PLEASE PRINT OR TYPE INFORMATION.		
a. BRANCH OF SERVICE <i>(X one)</i>		COAST GUARD
<input type="checkbox"/> ARMY <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> NAVY <input checked="" type="checkbox"/> AIR FORCE		
b. NAME <i>(Last, First, Middle Initial)</i>		c. GRADE/RANK AT DISCHARGE E-1
		d. SOCIAL SECURITY NUMBER
2. DATE OF DISCHARGE OR SEPARATION <i>(YYYYMMDD) (If date is more than 15 years ago, submit a DD Form 149)</i> 19991118		4. DISCHARGE CHARACTERIZATION RECEIVED <i>(X one)</i>
		<input type="checkbox"/> HONORABLE <input checked="" type="checkbox"/> GENERAL/UNDER HONORABLE CONDITIONS <input type="checkbox"/> UNDER OTHER THAN HONORABLE CONDITIONS <input type="checkbox"/> BAD CONDUCT <i>(Special court-martial only)</i> <input type="checkbox"/> UNCHARACTERIZED <input type="checkbox"/> OTHER <i>(Explain)</i>
3. UNIT AND LOCATION AT DISCHARGE OR SEPARATION 3 CES CEO F1 Elmendorf AFB, AK		5. BOARD ACTION REQUESTED <i>(X one)</i>
		<input checked="" type="checkbox"/> CHANGE TO HONORABLE <input type="checkbox"/> CHANGE TO GENERAL/UNDER HONORABLE CONDITIONS <input type="checkbox"/> CHANGE TO UNCHARACTERIZED <i>(Not applicable for Air Force)</i> <input type="checkbox"/> CHANGE NARRATIVE REASON FOR SEPARATION TO:
6. ISSUES: WHY AN UPGRADE OR CHANGE IS REQUESTED AND JUSTIFICATION FOR THE REQUEST <i>(Continue in Item 14. See instructions on Page 3.)</i> The military has directed that anthrax vaccines be voluntary. I feel that my my discharge should be upgraded. I was discharged for refusing the anthrax vaccine in November 1999 and was reduced to the rank of Airman (E-1). There where no other offenses on my record.		
7. <i>(X if applicable)</i> AN APPLICATION WAS PREVIOUSLY SUBMITTED ON (YYYYMMDD) _____ N/A AND THIS FORM IS SUBMITTED TO ADD ADDITIONAL ISSUES, JUSTIFICATION, OR EVIDENCE.		
8. IN SUPPORT OF THIS APPLICATION, THE FOLLOWING ATTACHED DOCUMENTS ARE SUBMITTED AS EVIDENCE: <i>(Continue in Item 17. If military documents or medical records are relevant to your case, please send copies.)</i> DD Form 214 Letter of Explanation		
9. TYPE OF REVIEW REQUESTED <i>(X one)</i>		
<input type="checkbox"/> CONDUCT A RECORD REVIEW OF MY DISCHARGE BASED ON MY MILITARY PERSONNEL FILE AND ANY ADDITIONAL DOCUMENTATION SUBMITTED BY ME. I AND/OR <i>(counsel/representative)</i> WILL NOT APPEAR BEFORE THE BOARD.		
<input type="checkbox"/> I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE THE BOARD IN THE WASHINGTON, D.C. METROPOLITAN AREA.		
<input checked="" type="checkbox"/> I AND/OR <i>(counsel/representative)</i> WISH TO APPEAR AT A HEARING AT NO EXPENSE TO THE GOVERNMENT BEFORE A TRAVELING PANEL CLOSEST TO <i>(NOTE: The Navy Discharge Review Board does not have a traveling panel.)</i> <i>(enter city and state)</i> Port Charlotte, FL		
10.a. COUNSEL/REPRESENTATIVE <i>(If any)</i> NAME <i>(Last, First, Middle Initial)</i> AND ADDRESS <i>(See Refit 10 of the instructions about counsel/representative.)</i> N/A		b. TELEPHONE NUMBER <i>(Include Area Code)</i> N/A
		c. E-MAIL N/A
		d. FAX NUMBER <i>(Include Area Code)</i> N/A
11. APPLICANT MUST SIGN IN ITEM 13.a. BELOW. If the record in question is that of a deceased or incompetent person, LEGAL PROOF OF DEATH OR INCOMPETENCY MUST ACCOMPANY THE APPLICATION. If the application is signed by other than the applicant, indicate the name <i>(print)</i> _____ and relationship by marking a box below.		
<input type="checkbox"/> SPOUSE <input type="checkbox"/> WIDOW <input type="checkbox"/> WIDOWER <input type="checkbox"/> NEXT OF KIN <input type="checkbox"/> LEGAL REPRESENTATIVE <input type="checkbox"/> OTHER <i>(Specify)</i>		
12.a. CURRENT MAILING ADDRESS OF APPLICANT OR PERSON ABOVE <i>(Forward notification of any change in address.)</i>		b. TELEPHONE NUMBER <i>(Include Area Code)</i>
		c. E-MAIL
		d. FAX NUMBER <i>(Include Area Code)</i> N/A
13. CERTIFICATION. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for willfully making a false statement or claim. <i>(U.S. Code, Title 18, Sections 287 and 1001, provide that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)</i>		CASE NUMBER <i>(Do not write in this space.)</i> FD 2006-00172
a. SIGNATURE - REQUIRED <i>(Applicant or person in Item 11 above)</i>		b. DATE SIGNED - REQUIRED <i>(YYYYMMDD)</i> 20060427

FD 2006-00172



April 27, 2006

In Attn to: Board of Corrections of Air Force Records

Board of Corrections of Air Force Records
SAF/MRBR
550-C Street West Suite 40
Randolph AFB, TRX 78150-4742

To Whom It May Concern:

I: _____ am submitting this asking this court to upgrade my current general discharge to Honorable. In November, 1999, I was discharged for refusing the anthrax vaccine. Other than this situation my military record was spotless.

Since my discharge, I have dedicated my life to civil service. I became Firefighter/Emergency Medical Technician in Florida. I worked in this field until March of 2005, when I was offered the opportunity to go to Iraq and work as a Firefighter/ EMT. While in Iraq, I was the Training Officer for Camp Fallujah Fire Rescue, Iraq. In October 2005, I was offered a job as a Security Operator/ Tactical Medic. I conducted convoy security operations in Western Iraq. In March 2006, I completed my National Registry Emergency Medical Technician Intermediate in Savannah, Georgia. I am planning on returning to Iraq for another contract.

Based on these information and the fact that anthrax vaccine are now voluntary and not mandatory, I feel that it wrong and unjust to refuse the upgrade of my discharge.

Sincerely



FD7006-00172

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

OCT 26 1999

MEMORANDUM FOR 3 CES/CEOFI (AB: [redacted])

FROM: 3 CES/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 5 Oct 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 21 Oct 99, and an Unfavorable Information File entry. You were reduced to the rank of airman basic with a new date of rank of 18 Oct 99.

b. On or about 19 Oct 99, you, having knowledge of a second lawful order to immediately receive an anthrax vaccination, did fail to obey the same. For this offense discharge action was initiated. This is evidenced by 3 CES/CC Memo, dated 19 Oct 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]; 552-3887, at Bldg 10480, Rm 330 on _____ at _____. 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 5595, at 0700 on 1 NOV 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 2 NOV 99. You have also been scheduled for a TMO Household Goods Shipment preprocessing briefing. You must report to Bldg 8517 (People Center), Rm 247 at 0730 on 2 NOV 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.

Commander

Attachments:

1. 3 CES/CC Memo, 19 Oct 99
2. Article 15, 21 Oct 99