

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) 		GRADE AB	AFSN/SSAN 			
TYPE	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
ISSUES 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 10 May 2007	CASE NUMBER FD-2006-00397					
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE						
<p>Case heard in Washington, D.C.</p> <p>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</p> <p>Names and votes will be made available to the applicant at the applicant's request.</p>						
INDORSEMENT		DATE: 5/30/2007				
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-2006-00397

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

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 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:

The applicant contends discharge was inequitable on the basis of U.S. District Court Judge Emmet Sullivan's ruling on 22 December 2003 stating that the discharge be voluntary. The record indicates that the applicant received a General discharge for Misconduct--Minor Disciplinary Infractions. The misconduct included an Article 15 for disobeying a lawful order to report to Military Public Health and receive an anthrax vaccination and a memorandum indicating a second refusal to obey a lawful order to receive the anthrax vaccination. At the time the 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 commander. The Board concluded that 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.

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 SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF Elmendorf AFB, AK on 17 Sep 99 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 12 Nov 74. Enlmt Age: 18 5/12. Disch Age: 24 10/12. Educ: HS DIPL. AFQT: N/A. A-77, E-67, G-84, M-76. PAFSC: 2W031 - Munitions Systems Apprentice. DAS: 13 May 97.

b. Prior Sv: (1) AFRes 7 May 93 - 21 Jul 93 (2 months 15 days) (Inactive).

(2) Enlisted as AB 22 Jul 93 for 4 years. Svd: 3 Yrs 3 Mo 8 Das, all AMS. Amn - 22 Jan 94. A1C - 22 Nov 94. SrA - 22 Jul 96. EPRs: 4,5.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 30 Oct 96 for 4 years. Svd: 02 Yrs 10 Mo 18 Das, all AMS.

b. Grade Status: AB - 4 Aug 99 (Article 15, 4 Aug 99)

c. Time Lost: None.

d. Art 15's: 4 Aug 99, Elmendorf AFB, AK - Article 92. You, having knowledge of lawful written order issued by Lt Col [redacted] 3EMS/CC, to wit: to immediately report to Military Public Health, 3rd Medical Group, Elmendorf AFB, AK, and there receive an anthrax vaccination, dated 3 Aug 99, an order which it was your duty to obey, did, at Elmendorf AFB, AK, on 3 Aug 99, fail to obey the same by wrongfully refusing to report to Military Public Health, 3rd Medical Group, Elmendorf AFB, AK, and there receive an anthrax vaccination. Reduction to AB.

e. Additional: MFR, 4 Aug 99 - Second lawful order to immediately receive an anthrax vaccination and did fail to obey the same.

f. CM: None.

g. Record of SV: 22 Mar 96 - 21 Mar 97 Luke AFB 4 (Annual)
22 Mar 97 - 14 Dec 97 Elmendorf AFB 5 (CRO)
15 Dec 97 - 14 Dec 98 Elmendorf AFB 5 (Annual)

h. Awards & Decs: AFLSAR, AFTR, NDSM, SAEMR, AFOUA W/2 DEVS, AFGCM W/1
DEV.

i. Stmt of Sv: TMS: (06) Yrs (04) Mos (10) Das
TAMS: (06) Yrs (01) Mos (26) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 29 Aug 06.
(Change Discharge to Honorable)

Issue 1: Individual discharged under refusal to take anthrax shot. See
U.S. District Court Judge [REDACTED] ruling on Dec 22, 2003 stating the
shot be voluntary. Individual has exemplary military record otherwise and has
been an asset to the community.

ATCH

1. Civil Action.
2. Memorandum For Secretaries of the Military Departments.
3. Congressional Correspondence.

15DEC06/ia

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCESMEMORANDUM FOR 3 EMS/LGMWPL (AB:)

AB 16 000

FROM: 3 EMS/CC

SUBJECT: Notification Memorandum--Board Hearing

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, under the provisions of paragraph 5.49. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached.

2. My reasons for this action are:

a. On or about 3 Aug 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 3 Aug 99, an Unfavorable Information File entry, and were reduced to the rank of airman basic with a new date of rank of 4 Aug 99.

b. On or about 4 Aug 99, you, having knowledge of a second lawful order to immediately receive an anthrax vaccination, did fail to obey the same. This is evidenced by a memorandum for record, dated 4 Aug 99. For this refusal I initiated discharge action.

3. This action could result in your separation with an under other than honorable conditions discharge. ~~I am recommending you receive an under other than honorable conditions discharge.~~ The commander exercising SPCM 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, and any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have the right to:

a. Receive written notice of the reasons for discharge, including the circumstances upon which each reason is based, and the least favorable type of separation authorized.

b. Receive copies of the documents to be forwarded to the separation authority in support of the recommendation for discharge.

c. Consult legal counsel. Military legal counsel will be detailed to assist you.

d. Request a hearing before an administrative discharge board.

e. Present written statements in addition to, or in lieu of, the board proceedings.

f. Be represented before the board by Area Defense Counsel assigned to the installation or by military counsel of your choice, if the counsel of choice is reasonably available, but not by both. The availability of counsel of choice will be determined according to AFI 51-201, Military Justice Guide.

g. Be represented before the board by civilian counsel. Civilian counsel may be employed only at your own expense.

h. Waive any of the above rights. Your failure to respond, after being given a reasonable opportunity to consult counsel, constitutes a waiver of all rights listed above except the first two. You must consult legal counsel before making a decision to waive any of your rights.

5. You have been scheduled for medical examinations. You must report to the 3rd Aerospace Medicine Squadron, Bldg 5595 at 0700 on 18 Aug 99 with your medical records. 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.

6. Military legal counsel has been obtained to assist you. An appointment has been scheduled for you to consult Capt Evors, 552-3887, at Bldg 10480, Rm 330 on 18 Aug 99 at 1000. Instead of the appointed counsel, you may have another attorney represent you, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. 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 duty days, specifying the rights, if any, you choose to exercise. This statement must be signed in the presence of your counsel who will also 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. You have been scheduled for a Transition Assistance Program briefing. You must report to the Family Support Center at 1445 on 18 Aug 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 0800 on 19 Aug 99.

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.

10. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

11. Execute the attached Receipt of Notification Memorandum and return it to me immediately.



Commander

Attachments:

1. 3 EMS/CC Memo, 4 Aug 99
2. Article 15, 3 Aug 99