

# AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100%; height: 1em;"></div>		GRADE <b>A1C</b>	AFSN/SSAN <div style="background-color: black; width: 100%; height: 1em;"></div>						
TYPE	PERSONAL APPEARANCE	X RECORD REVIEW							
NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL							
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">COUNSEL</td> <td style="width: 50%;">NAME OF COUNSEL AND OR ORGANIZATION</td> </tr> <tr> <td>YES</td> <td>NO</td> </tr> <tr> <td></td> <td>X</td> </tr> </table>		COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	YES	NO		X		
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION								
YES	NO								
	X								
MEMBERS SITTING		VOTE OF THE BOARD							
		HON	GEN	UOTHC	OTHER	DENY			
		X*							
		X*							
		X*							
		X*							
ISSUES <b>A92.22, A94.06</b>	INDEX NUMBER <b>A64.00</b>	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						
HEARING DATE <b>03 12 05</b>									
CASE NUMBER <b>FD00-00142</b>									
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.									
REMARKS <b>Case heard at Randolph AFB, TX</b>  <b>* Secretary Authority</b>  <b>Advise applicant of the decision of the Board.</b>									
SIGNATURE OF RECORDER <div style="background-color: black; width: 100%; height: 2em;"></div>			SIGNATURE OF BOARD PRESIDENT <div style="background-color: black; width: 100%; height: 2em;"></div>						
INDORSEMENT			DATE: 03 12 05						
TO: SAF/MIBR 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, 3 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002						

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

FD00-00142

**GENERAL:** The applicant appeals for upgrade of his March 1, 1996 discharge from General to Honorable, to change the reason for the discharge, and to change his reenlistment code. The applicant requested to appear before the Board but was unable to appear as requested. The Board considered his request for upgrade on December 5, 2003.

The attached brief contains the available pertinent data and factors leading to the applicant's discharge.

**FINDINGS:** The applicant's request is **APPROVED**.

**Issues:** The applicant contends that his general discharge was inequitable and too harsh because the allegations of his discharge are mitigated and do not reflect the proper characterization of his service. The record indicates that the applicant was discharged for misconduct (civilian conviction and discreditable involvement with military or civilian authorities) after receiving two letters of reprimand and an Article 15 within a six-month period. The applicant contends that his LOR for leaving his post is mitigated by the fact that his physical condition at the time necessitated immediate relief to allow him to use the restroom. The Board found this reason credible. Further, the applicant's record indicates that although he plead no contest to a charge of domestic battery involving his girlfriend and was found guilty by the court, the applicant's sentence was deferred for 180 days on unsupervised probation, after which time the charge would be dismissed. While the Board agrees that such a finding of guilty may be used as a basis for discharge, the later dismissal of the charge minimizes any impact that such a charge should have on the characterization of the applicant's service. Finally, the applicant's post-service activity has included successful college and preparation to attend medical school.

**CONCLUSIONS:** The Discharge Review Board concludes that the applicant's 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.

However, in view of the foregoing findings, the Board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge instead of General. The applicant's discharge characterization should therefore be changed to Honorable and the reason for discharge changed to Secretary Authority under the provisions of Title 10, USC 1553. The applicant's reenlistment code should remain unchanged.

Attachment:  
Examiner's Brief  
Case File

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

(Former AlC) MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 96/03/01 UP AFI - 36-3208, para 5.51 & 5.50.1 (Misconduct - Civilian Conviction and Discreditable Involvement with Mil/Civ Auth). Appeals for HON Disch.

2. **BACKGROUND:**

a. DOB: 76/04/13. Enlmt Age: 18 0/12. Disch Age: 19 10/12. Educ: HS DIPL. AFQT: N/A. A-43, E-72, G-74, M-45. PAFSC: 3P031 - Security Apprentice. DAS: 94/11/21.

b. Prior Sv: AFRes 94/04/19 - 94/07/12 (2 months 24 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 94/07/13 for 4 yrs. Svd: 1 Yrs 7 Mo 19 Das, all AMS.

b. Grade Status: AlC - 95/11/06  
AMN - 95/01/13

c. Time Lost: none.

d. Art 15's: (1) 95/12/19, Holloman AFB, NM - Article 86. You did, o/a 22 Nov 95, and o/a 24 Nov 95, w/o auth, fail to go at the time prescribed to your appointed place of duty. Rdn to Amn (susp til 18 Jun 96), forfeiture of \$50.00 pay per month for 2 months, 21 days restriction, and 21 days extra duty. (No appeal) (No mitigation)

e. Additional: LOR, 18 OCT 95 - Deserting assigned post.  
LOR, 12 JUN 95 - Failure to go.

f. CM: none.

g. Record of SV: none.  
(Discharged from Holloman AFB)

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

i. Stmt of Sv: TMS: (1) Yrs (10) Mos (13) Das  
TAMS: (1) Yrs (7) Mos (19) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 00/03/03.  
(Change Discharge to Honorable)

FD00-00142

ISSUES ATTACHED TO BRIEF.

**ATCH**

1. Issues.
2. Two Academic Achievement Letters.

00/04/12/ia

ITEM#7

**Document 1: Leaving Post**

The day that I left my post without being properly relieved, I was working a close boundary. I went to my post feeling fine but soon I was overcome with an irritable feeling in my lower abdomen. Anticipating that this was going to be trouble, I called command post and requested permission to be relieved. I was told that someone was on his or her way to take over my post so that I could go to the restroom. After approximately 6-8 minutes, I still had not been relieved yet. I then called command post again and requested that someone come and relieve me *quickly*. Once again I was told that someone should be on his or her way. Roughly 5 minutes had passed without any sign of anyone. I could no longer control my diarrhea, so I ran to the restroom. Once I went back out to post five minutes later, my relief was finally arriving (keeping in mind that the command post was manned by a four-man team and was one minute away from my post). Next, I went to the hospital because I continued to have a deep pain in my lower abdomen. The doctor put me on a liquid diet and stated that I more than likely had food poisoning. I did not return to my post following this incident. The visit to the doctor can be verified through the hospital's records, since I do not have a copy of my visit. Yes I did leave my post, but I feel there was an extenuating circumstance that lead to my disciplinary action.

**Document 2: Off base behavior**

At the time of the incident I was dating a woman by the name of [REDACTED] and I had been going out for roughly 6 months when the off base incident occurred. We went to dinner and got into an argument that quickly escalated. She requested that I take her home immediately. I complied and began to drive her to her house. Half way to her house she started screaming and slapping me while I was trying to drive. Next she grabbed my emergency brake and caused my car to lose control and end up almost in a ditch. She then began to run out of my car down the middle of the road for no apparent reason. I quickly became very worried for her safety and mine. I chased after her hoping to convince her to get back into the car and let me take her home. She then became irate and began to bite me and proceeded to kick me in the groin area. I then slapped her hoping to gain control of the situation. Finally, I heard the police coming to hopefully sort things out. Once the police arrived, I was arrested and charged with misdemeanor assault although [REDACTED] did not have a scratch on her body. Eventually the outcome was me receiving a general discharge under honorable conditions. A few days later I learned that [REDACTED] had been using drugs and was using drugs the night of our incident through my aunt who knew her family. Lastly, I went back to my hometown and began to restructure my precious life. After returning home I completed an 18-week counseling program. Next, I enrolled in college and began my drive to succeed and become a productive individual. In document 3, I have listed some of my accomplishments in school and future goals.

[REDACTED]

**Document 3: Academics (documentation attached)**

I am a senior at Texas A & M University in College Station, Texas. I currently hold a 3.65 GPA and I will be applying to medical school in June. I am also a member in the Golden Key National Honor Society, Pre-medical Society, Bio-medical Science Association, and a fraternity (Sigma Nu-position of academic advisor). In addition to this I am on the dean's list at Texas A & M University and I hold a part-time job at [REDACTED]. This past summer I did a medical school internship at Texas Tech Medical School consisting of surgery, pediatrics, and internal medicine. I plan to start medical school in September 2001 and practice urology.

I know that the two situations listed above were not the only circumstances that led to my dismissal but they were a very large part of it. I did make mistakes in my young airman career 4.5 years ago, but I have rectified my priorities in life. I am no longer prone to irresponsibility and carelessness along with rash judgement. I have a new and more productive life now and I am requesting my discharge be upgraded to Honorable Conditions. I do not regret being in the military because it showed me that there was a lot of work that needed to be done by me on my character in order to be the man that I wanted to be. Now that I have corrected my past character, I am asking for forgiveness.

Thank-you



## DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 49TH FIGHTER WING (ACC)  
HOLLOMAN AIR FORCE BASE, NEW MEXICO

21 February 1996

## MEMORANDUM FOR 49 FW/CC

FROM: 49 FW/JA (x7218)

SUBJ: Legal Review - Administrative Discharge Action - A1C [REDACTED]  
[REDACTED] 49 SPS1. ACTION:

a. The attached file pertaining to the proposed discharge action against A1C [REDACTED] 49 SPS, was reviewed and found legally sufficient to support administrative discharge action with a general service characterization without probation and rehabilitation (P & R).

b. 49 SPS/CC notified A1C [REDACTED] by letter on 13 February 1996 that he recommended A1C [REDACTED] be discharged from the United States Air Force for a civilian conviction and for discreditable involvement with military or civil authorities, pursuant to AFI 36-3208, Section H, paragraphs 5.51 and 5.50.1. Respondent's misconduct includes failure to go, leaving his post without being properly relieved and the involvement in a batter-domestic violence act. As punishment for his misconduct, and pursuant to the rehabilitative guidance of paragraphs 5.2. and 5.47.7., A1C [REDACTED] received one Article 15, two Letters of Reprimand with a UIF action and the finding of guilty in the Municipal Court of Alamogordo. 49 SPS/CC recommends a general discharge without probation and rehabilitation. A1C [REDACTED] acknowledged receipt of the letter of notification on 13 February 1996.

c. Pursuant to paragraph 6.2.2., respondent is not entitled to a board hearing. Thus, this case is being processed by the notification procedure in Section B, Chapter 6, AFI 36-3208. A1C [REDACTED] was given written notice of his commander's recommendation for discharge, of the reasons for the discharge action and of the least favorable type of separation authorized, and copies of the documents supporting the recommendation for discharge. Further, A1C [REDACTED] was advised of his rights to consult counsel, to submit statements to the separation authority, and to waive any or all of these rights. Furthermore, he was given until 16 February 1996 to submit matters for your consideration. A1C [REDACTED] has consulted counsel and has submitted statements for your consideration.

2. PERSONAL DATA:

a. Date and Term of Enlistment: 13 July 1994, 4 years.

b. Total Active Federal Military Service Date: 13 July 1994.

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- c. Performance Report: An EPR is not required per AFI 36-3208, Chapter 6.

3. EVIDENCE FOR THE GOVERNMENT:

This discharge recommendation is based on the following documented acts of misconduct:

- a. On or about 9 February 1996, at Alamogordo, New Mexico, the respondent was found guilty in the Municipal Court of Alamogordo, New Mexico, for a battery-domestic violence act.
- b. The respondent did, at Holloman AFB, New Mexico, on or about 22 November 1995 and on or about 24 November 1995, without authority, fail to go at the time prescribed to his appointed place of duty, to wit: Building 517, Security Police Dormitory. For his misconduct, he received nonjudicial punishment, UCMJ, on 19 December 1995.
- c. The respondent did, at Holloman AFB, New Mexico, on or about 11 October 1995, leave his assigned post without being properly relieved. For his misconduct, he received a Letter of Reprimand on 18 October 1995 with a corresponding UIF action.
- d. The respondent, at Holloman AFB, New Mexico, on or about 2 June 1995, was scheduled for initial CWDT training, which he failed to show for. For his misconduct, he received a Letter of Reprimand on 12 June 1995.

4. EVIDENCE FOR THE RESPONDENT:

Respondent has consulted counsel and has submitted statements for your consideration.

5. DISCUSSION AND LAW:

a. The type and number of respondent's instances of misconduct are sufficient to support a discharge under paragraphs 5.51. and 5.50.1. This discharge action is legally sufficient subject to inclusion of the medical examination report indicating respondent is qualified for worldwide duty.

b. Characterization of service in this case can be under other than honorable conditions (UOTHC), general (under honorable conditions) or honorable.

(1) According to paragraph 1.18.3., a UOTHC characterization is appropriate only when the behavior constitutes a significant departure from the conduct expected of airmen.

(2) A general characterization is appropriate when the member's service has been honest and faithful, but significant aspects of the member's conduct or performance outweigh the positive aspects of the member's career (paragraph 1.18.2).



(3) Paragraph 1.18.1. provides, an honorable discharge is appropriate only if the member's service has been so meritorious that any other characterization would be inappropriate.

c. Respondent's military record documents several incidents of misconduct, resulting in one article 15, two Letters of Reprimand with a UIF action and the finding of guilty in the Municipal Court of Alamogordo. He is unfit for further military service. In exhibiting his aforementioned acts of misconduct, A1C [REDACTED] failed to maintain the high standards of personal conduct required of active duty Air Force members. His negative conduct outweighs any positive aspects of his Air Force career. In his memorandum to 49 SPS/CC, A1C [REDACTED] requests a hearing with the commander. He is not entitled to such, only at the discretion of the commander. Nothing in his written statements invalidates his basis for discharge. Each of his derogatory documents were legally sufficient. Accordingly, the appropriate characterization for respondent's entire military record is a general characterization.

d. Based on respondent's negative response to past rehabilitative measures, I concur with 49 SPS/CC, that respondent is not a good candidate for P & R. Although he received two Letters of Reprimand with a UIF, one Article 15, and the finding of guilty in the Municipal Court for his criminal misconduct, respondent failed to embrace the Air Force way of life; instead, he continued to ignore both civilian and military authority and good order and discipline. Thus, I agree with his commander that P & R should not be an option, as it is not in the best interests of the member's unit, nor the Air Force, to attempt further rehabilitation.

e. In accordance with paragraph 6.46., discharge actions must cite a primary reason for discharge if an airman is directed for discharge for more than one reason, as we have in this case.

6. **OPTIONS:** As the Separation Authority, you have the following options, pursuant to AFI 36-3208, paragraphs 5.56. and 6.12.:

- a. Direct retention if you determine the evidence is insufficient to support discharge;
- b. Refer the case to 12 AF/CC with your recommendation for an honorable service characterization with or without a suspension of discharge for P & R, if you determine an honorable service characterization is warranted;
- c. Direct discharge with a general service characterization with or without suspension of the discharge for P & R, if you determine the action recommended by 49 SPS/CC is supported by the evidence;
- d. Direct reinitiation for processing according to Section C if you determine an Under Other Than Honorable Conditions (UOTHC) discharge is warranted; or

e. Direct reinitiation under a more appropriate section of AFI 36-3208, if you determine this discharge action was processed under an inappropriate section.

7. **RECOMMENDATION:** Approve respondent's administrative separation with a general service characterization, without probation and rehabilitation, for discreditable involvement with military or civil authorities and for discreditable involvement with military or civil authorities, pursuant to AFI 36-3208, Chapter 5, Section H, Paragraphs 5.51 and 5.50.1, the primary basis for discharge being 5.50.1.

  
Capt, USAF  
Assistant Staff Judge Advocate

1st Ind, 49 FW/JA

MEMORANDUM FOR 49 FW/CC

I concur.

  
Lt Col, USAF  
Staff Judge Advocate

FD00-00141



## DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 49TH FIGHTER WING (ACC)  
HOLLOMAN AIR FORCE BASE, NEW MEXICO

13 February 1996

MEMORANDUM FOR A1C [REDACTED]

FROM: 49 SPS/CC

SUBJ: Letter of Notification

1. I am recommending your discharge from the United States Air Force for a civilian conviction and discreditable involvement with military or civil authorities. The authority for this action is AFI 36-3208, Section H, paragraph 5.51 and 5.50.1. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are as follows:

a. You, on or about 9 February 1996, at Alamogordo, New Mexico, were found guilty in the Municipal Court of Alamogordo, New Mexico, for a battery-domestic violence act.

b. You did, at Holloman AFB, New Mexico, on or about 22 November 1995 and on or about 24 November 1995, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Building 517, Security Police Dormitory. For your misconduct, you received nonjudicial punishment, UCMJ, on 19 December 1995.

c. You did, at Holloman AFB, New Mexico, on or about 11 October 1995, leave your assigned post without being properly relieved. For your misconduct, you received a Letter of Reprimand on 18 October 1995 with a corresponding UIF action.

d. You, at Holloman AFB, New Mexico, on or about 2 June 1995, were scheduled for initial CWDT training, which you failed to show for. For your misconduct, you received a Letter of Reprimand on 12 June 1995.

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising Special Court-Martial 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 service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force and any special pay, bonus, or educational assistance funds may be subject to recoupment.

3. 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 Captain [REDACTED] Area Defense Counsel, Building 302, Holloman AFB, phone 3474, at 1600 on 13 February 1996. You may consult civilian counsel at your own expense.

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4. You have the right to submit statements in you own behalf. I will forward your statements to the separation authority. Any statements you want me to forward must reach the Separations Processing Center, Room 1940, Building 29, Holloman AFB, by 16 February 1996 unless you request and receive an extension for good cause shown. You must submit your request for extension to the Separation Processing Center in a timely manner.

5. 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.

6. You are scheduled for a medical examination on 20 February 1996, at 0930, Flight Medicine.

7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement of 1974. A copy of AFI 36-3208 is available for your use in the office of the Area Defense Counsel. The separation authority will make any findings and recommendations required under 10 U.S.C 2005(g).

8. You must execute the attached acknowledgment and return to me immediately. The acknowledgment does not admit or deny any of the allegations against you, nor does it mean that you agree with the discharge action. It is simply an acknowledgment that you have received this Letter of Notification.

  
Commander

Attachments:

1. Judgment and Sentence, 9 February 1996
2. Article 15, 19 December 1995
3. Letter of Reprimand w/UIF, 18 October 1995
4. Letter of Reprimand, 12 June 1995
5. Airman Acknowledgment