

# AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="background-color: black; width: 100px; height: 15px;"></div>		GRADE AB	AFSN/SSAN <div style="background-color: black; width: 100px; height: 15px;"></div>			
TYPE GEN	PERSONAL APPEARANCE	X RECORD REVIEW				
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO					
	X					
MEMBERS SITTING		VOTE OF THE BOARD				
		HON	GEN	UOTHC	OTHER	DENY
		X*				
		X*				
		X*				
		X*				
ISSUES A01.02, A01.08, A01.54		INDEX NUMBER A67.30		EXHIBITS SUBMITTED TO THE BOARD		
				1	ORDER APPOINTING THE BOARD	
HEARING DATE 03-04-09		CASE NUMBER FD2002-0366		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	
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.						
REMARKS  * Change Reason and Authority to Expired Term of Service.  Case heard at Washington, D.C.  Advise applicant of the decision of the Board.						
SIGNATURE OF RECORDER			SIGNATURE OF BOARD PRESIDENT			
INDORSEMENT			DATE: 03-04-14			
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

FD2002-0366

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

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:** The Board grants the requested relief and also determined the reason and authority for discharge should be changed to "expired term of service" (ETS).

Issue. After a thorough and complete consideration of the information submitted by the applicant and contained in the records, the Board concluded there was an impropriety in the processing of the applicant's discharge requiring an upgrade and change of reason for the discharge. Specifically, the Board found applicant's unit put him on administrative hold before his enlistment expired in October 2001 for the purposes of investigation and court martial. After his conviction, he served time in confinement; after his release, he was improperly held on active duty for the purposes of processing an administrative discharge. Furthermore, member's defense counsel requested member's immediate release from active duty at the time of discharge processing, noting the prohibition against holding members beyond their ETS, which was denied. The Board concluded this was an improper denial of said request. The Board noted that applicant's term of service had expired and the chain of command was prohibited from extending member on active duty for the purpose of administrative separation. While the Board does not condone member's misconduct for which he was convicted at court martial, the Board did conclude legal errors occurred in the processing of the discharge, which were detrimental to the member.

**CONCLUSIONS:** The Discharge Review Board concludes that the discharge was not consistent with the procedural and substantive requirements of the discharge regulation, although within the discretion of the discharge authority, and that the applicant was not provided full administrative due process.

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 and the reason for the discharge is more accurately described as "Expired Term of Service." The applicant's characterization and reason for discharge should be changed to Honorable, and "Expired Term of Service," under the provisions of Title 10, USC 1553.

Attachment:  
Examiner's Brief

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

[REDACTED]  
(Former AB) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 21 JUN 02 UP AFI 36-3208, para 5.52.3 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 26 Jun 75. Enlmt Age: 21 5/12. Disch Age: 26 11/12. Educ: HS DIPL. AFQT: N/A. A-36, E-60, G-41, M-43. PAFSC: 3A051 - Information Management Craftsman. DAS: 03 Jul 97.

b. Prior Sv: (1) AFRes 23 Dec 96 - 01 Apr 97 (3 months 10 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 02 Apr 97 for 4 yrs. Extended 2 Apr 01 for 6 months. Svd: 5 Yrs 2 Mo 19 Das, of which AMS is 4 yrs 11 mos 10 days (excludes 3 months 11 days lost time).

b. Grade Status: AB - 13 Feb 02 (SPCMO#1, 5 Mar 02)  
SrA - 14 Nov 99

c. Time Lost: 13 Feb 02 through 23 May 02 (3 months 11 days).

d. Art 15's: None.

e. Additional: None.

f. CM: Special Court-Martial Order No.1 - 5 March 2002

CHARGE I: Article 128. Plea: G. Finding: G.

Specification 1: Did, at or near Peterson AFB, CO, on or about September 2001, unlawfully strike ----- in the face with his hand, unlawfully grab ----- on the arm with his hand, and unlawfully hold ----- on the floor and cut her hair with a pair of scissors. Plea: G. Finding: G.

Specification 2: Did, at or near Peterson AFB, CO, on or about 5 August 2000, unlawfully repeatedly strike ----- about her person with his hand and unlawfully push -----'s person with his hand. Plea: G. Finding: G.

CHARGE II: Article 107. Plea: NG. Finding: G.

Specification: Did, at or near Peterson AFB, CO, on or about 8

January 2002, with intent to deceive, make to -----, an official statement, to wit: that he had been placed on quarters, which was totally false, and was then known by the said Senior Airman ----- to be false. Plea: NG. Finding: G. Sentence adjudged by the military judge on 13 Feb 02: 5 months confinement, forfeiture of \$550 pay per month for 5 months, and reduction to E-1. The execution of that part of the sentence which calls for forfeiture of \$550 pay per month for 5 months and confinement in excess of 4 months suspended for 5 months conditioned upon AB ---- establishing an allotment of \$550 pay per month for the benefit of Mrs. -----, his spouse, and his dependent child, and maintaining that allotment for 5 months.

g. Record of SV: 02 Apr 97 - 15 Oct 98 Peterson AFB 3 (HAF Dir) REF  
 16 Oct 98 - 15 Oct 99 Peterson AFB 4 (Annual)  
 16 Oct 99 - 15 Oct 00 Peterson AFB 5 (Annual)

(Discharged from Peterson AFB)

h. Awards & Decs: AFAM, AFLSAR, AFTR, AFEM, NDSM, AFOUA W/3 OLCS, AFGCM.

i. Stmt of Sv: TMS: (5) Yrs (5) Mos (20) Das  
 TAMS: (4) Yrs (11) Mos (10) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Aug 02.  
 (Change Discharge to Honorable)

Issue 1: Areas of concern that should be taken under consideration is the fact that I have served my 4 years contracted commitment to the Air Force Honorable (sic). I was held passed (sic) my date of separation involuntarily. Therefore, time served was honorable.

#### ATCH

1. Memorandum For SAF/MIBR.
2. Discharge Documents.
3. Three Character References.
4. Personal Data.
5. Three Enlisted Performance Reports.
6. Referral Enlisted Performance Reports.
7. Memorandum For 21 MSS/DPMAR/DPMAS, 24 Sep 01.
8. Duty Assignment Data.
9. No Contact Order, 10 Sep 01.
10. Seven Letters of Appreciation.
11. Change of Command Ceremony Letter, 08 Jun 99.
12. Letter of Appreciation.
13. Two Congratulatory Letters.
14. Six Letters of Appreciation.
15. Two Certificates of Appreciation.
16. Air Force Expeditionary Medal Citation.
17. News Article.
18. Two Certificates of Training.
19. Report On Individual Person.

20. Award Nomination.
21. Certificate of Recognition.
22. Receipt of Certificate of Naturalization.
23. Certificate of Training.
24. Certificate of Recognition.
25. Certificate of Completion.
26. Award Certificate.
27. Certificate of Training.
28. Award Certificate.
29. Four Training Certificates.
30. Certificate of Achievement.
31. Congratulations Certificate.
32. Certificate of Admission.
33. Two Certificates of Achievement.
34. Five Certificates of Recognition.
35. Training Certificate.
36. Certificate of Baptism.

03DEC02/ia



DEPARTMENT OF THE AIR FORCE  
21ST SPACE WING (AFSPC)

DATE ?

MEMORANDUM FOR 21 SW/CC

FROM: 21 SW/JA

SUBJECT: Legal Review, Administrative Discharge Action -  
Airman Basic [REDACTED] 21 SVS

1. **SUMMARY:** On 24 May 02, Lt Col [REDACTED] 21 SVS/CC, initiated an involuntary discharge action against AB [REDACTED] for Commission of a Serious Offense, under the provision of AFI 36-3208, *Administrative Separation of Airmen*, para 5.52.3, 10 Mar 00. She recommends an Under Honorable Conditions (General) Discharge. AB [REDACTED] is not entitled to a discharge board. After consulting with his military defense counsel, AB [REDACTED] has submitted matters for your consideration (Tab 4). I have reviewed the case file and find it legally sufficient. I recommend you sign the proposed memorandum, at tab 1, separating AB [REDACTED] from the United States Air Force with a General Discharge, without probation and rehabilitation, without probation and rehabilitation.

2. **BASIS FOR DISCHARGE:** The details of the basis for this action are set out in the notification memorandum to AB [REDACTED] (Tab 3). On or about 9 Sep 01, AB [REDACTED] unlawfully battered his wife by grabbing her arm, striking her in the face, holding her on the floor, and forcibly cutting off her hair; on or about 5 Aug 00, AB [REDACTED] unlawfully battered his wife by striking and pushing her; and, on or about 8 Jan 02, AB [REDACTED] made a false official statement. For this misconduct, the subject was found guilty in a Special Courts-Martial on 13 Feb 02. Punishment consisted of Reduction to E-1, forfeiture of \$550 pay per month for five months, and five months confinement (Tab 3). AB [REDACTED] did not receive a punitive discharge.

3. **STANDARD OF PROOF:** Pursuant to AFI 36-3208, para 6.12.1, as the separation authority, you should determine whether the allegations set forth in the notification memorandum are supported by a preponderance of the evidence. A preponderance of the evidence simply means the greater weight of credible evidence. This means you should determine whether it is more probable than not that the facts supporting each allegation occurred. As shown by the evidence at tab 3, it is clearly more probable than not that AB [REDACTED] engaged in the misconduct set out in paragraph 2 above.

4. **PERSONAL DATA:**

a. AB [REDACTED] is 26 years old. He has five years and one month of active duty service with a TAFMSD of 2 Apr 97.

b. AB [REDACTED] has three enlisted performance reports (EPRs) with the following closeout date and overall rating of: 15 Oct 00, "5," 15 Oct 99 "4" and 15 Oct 98, "3" (referral).

c. AB [REDACTED] is entitled to wear the Air Force Achievement Medal, the Air Force Outstanding Unit Award (3 devices), the Air Force Good Conduct Medal, the National Defense Service Medal, the Air Force Longevity Service Award Ribbon, and the Air Force Training Ribbon.

## 5. MATTERS SUBMITTED BY AB JOSEPH:

a. After consulting with his military defense counsel, subject submitted matters for your consideration (Tab 4). His military defense counsel, Capt [REDACTED] prepared AB [REDACTED] initial response. In Capt [REDACTED] memorandum, he asserts that this discharge package cannot lawfully be served on AB [REDACTED]. As support for this contention, Capt [REDACTED] maintains that AB [REDACTED] date of separation (DOS) expired on 1 Oct 01. Therefore, he cannot be administratively discharged. Capt [REDACTED] requested AB [REDACTED] immediate release from active duty and, in the alternative, a delay to submit further matters. A delay request was faxed to Lt [REDACTED] and AB [REDACTED] was verbally granted an indefinite delay to coordinate this legal issue with the 21 SW/JA.

b. Originally, AB [REDACTED] had an ETS of 2 Apr 01. This ETS was extended voluntarily to 1 Oct 01 for a TDY to Saudi Arabia with his unit. On 24 Sep 01, AB [REDACTED] was placed on administrative hold for the purpose of a pending investigation. After his ETS expired on 1 Oct 01, he was convicted in a Special Courts-Martial and was incarcerated from 13 Feb 02 until 23 May 02. [REDACTED] served him a discharge notification on 24 May 02 after his return to the unit.

c. In accordance with AFI 36-3208, para 2.8, an airman cannot be involuntary extended for the sole purpose of accomplishing involuntary discharge and no extension was made in this matter. However, AB [REDACTED] was charged with "bad time" on 30 May 02 and his enlistment was extended for his period of confinement (Tab 5).

d. AFI 36-3202, *Separation Documents*, 20 May 94, and MPFM 02-21 establish the guidelines for charging airman with bad time pursuant to 10 U.S.C. § 972 (2002). Under these guidelines, an airman cannot be charged with "bad time" for time served in jail after his enlistment expires. Neither do these separation regulations mandate that an airman be separated from service immediately after his term of incarceration ends.

e. Without regulatory guidance, both [REDACTED] and [REDACTED] 21 SW/JA contacted Lt [REDACTED], AFPC/JA for guidance on separation procedure. Lt Col [REDACTED] stated that the Air Force had a "reasonable" amount of time to separate a member after his release from incarceration and AFPC had interpreted a reasonable time to be up to ten days from release (Tab 6). Based upon this information, AB [REDACTED] asserts that the Air Force failed to separate him within ten days of his release from confinement and that he cannot be legally discharged.

administratively. Capt [REDACTED] further contends that separation should have been accomplished while the member was in confinement pursuant to AFI 36-3208, para 6.9.12 (Tab 4).

f. If discharge had been accomplished while AB [REDACTED] was in confinement, AB [REDACTED] would have become a military prisoner and no longer a member of the United States Air Force. AFI 36-3208, para. 1.9.4. It is important to note that, as part of his clemency, AB [REDACTED] waived his right to receive pay by means of an involuntary allotment in favor of his victim, wife. Accomplishing discharge prior to his expiration of sentence would have deprived his family of income and frustrated AB [REDACTED] ability to satisfy his requirements pursuant to this clemency agreement (Tab 7). Furthermore, AB [REDACTED] was served with the discharge notification on 24 May 02 (one day after release) and requested a delay to submit matters. AB [REDACTED] completed his submission of matters on 13 Jun 02 (Tab 4). AB [REDACTED] discharge was not delayed due to neglect on behalf of the government but upon AB [REDACTED] own request. Therefore, based upon the above facts, AB [REDACTED] cannot now claim that the government did not act within a "reasonable" time and that he suffered any prejudice as a result.

#### 6. CHARACTERIZATION:

a. Lt Col [REDACTED] has reviewed AB [REDACTED] service record and recommends that AB [REDACTED] receive a General Discharge. Under AFI 36-3208, para 1.18.2, if an airman's service has been honest and faithful, but significant negative aspects of the airman's conduct or duty performance outweigh the positive aspects of the airman's military record, a General service characterization is warranted.

b. AFI 36-3208, para 5.48.1, dictates that, usually discharges for Commission of a Serious Offense should be Under Other Than Honorable Conditions (UOTHC). However, para 1.21.3 instructs not to discharge airman with an UOTHC characterization if the sole basis for discharge is a serious offense that resulted in conviction by a court-martial that did not adjudge a punitive discharge unless the Secretary of the Air Force approves such characterization. In the present matter, the subject's misconduct was presented to a military judge in a Special Courts-Martial for consideration and a Bad Conduct Discharge was rejected. Considering AB [REDACTED] misconduct and the previous Courts-Martial action, a General discharge is the appropriate characterization in this case.

7. PROBATION AND REHABILITATION (P&R): AB [REDACTED] is eligible for P&R under AFI 36-3208, Chapter 7. However, AFI 36-3208, para 7.2.7, states that P&R should be offered only in cases where "there seems to be a reasonable expectation of rehabilitation." A close examination of misconduct evidence and his EPRs, evidenced at tab 3, reveal that his retention would be inconsistent with maintaining good order and discipline.

8. OPTIONS: As the separation authority, you have the following options:

a. Direct that AB [REDACTED] be retained, with ultimate separation in accordance with his

date of separation;

b. Recommend to 14 AF/CC that AB [REDACTED] be separated with an Honorable discharge, with or without P&R;

c. Direct that AB [REDACTED] be separated with an Under Honorable Conditions (General) discharge, with or without P&R;

d. Direct that this case be reinitiated and processed as a board hearing discharge, with ultimate submission to the Secretary of the Air Force, if you believe that an Under Other Than Honorable Conditions (UOTHC) discharge is appropriate.

**9. RECOMMENDATION:** Separate AB [REDACTED] with a General discharge, without probation and rehabilitation, by signing the proposed memorandum at tab 1.

[REDACTED]

I concur.

[REDACTED]



DEPARTMENT OF THE AIR FORCE  
21ST SPACE WING (AFSPC)

MAY 24 2002

MEMORANDUM FOR AB [REDACTED] 21 SVS

FROM: 21 SVS/CC

SUBJECT: Notification Memorandum

**1. Recommendation.** I am recommending your discharge from the United States Air Force for Commission of a Serious Offense. The authority for this action is AFI 36-3208, *Administrative Separation of Airmen*, para 5.52.3, 10 Mar 00. If my recommendation is approved, your service will be characterized as either Honorable or Under Honorable Conditions (General), or Under Other Than Honorable Conditions (UOTHC). I am recommending that your service be characterized as General.

**2. Reason for the Recommendation.**

a. On or about 9 Sep 01, you unlawfully battered your wife. You grabbed her, struck her in the face, held her on the floor, and forcibly cut off her hair with a pair of scissors. For this misconduct, you were found guilty in a Special Courts-Martial, dated 13 Feb 02, and received a sentence of Reduction to E-1, forfeiture of \$550 pay per month for five months, and five months confinement (Tab 1).

b. On or about 5 Aug 00, you unlawfully and repeatedly struck and pushed your wife, [REDACTED]. For this misconduct, you were found guilty in a Special Courts-Martial, dated 13 Feb 02, and received the punishment in para 2(a) (Tab 1).

c. On or about 8 Jan 02, with the intent to deceive, you made a false official statement, that you had been placed on quarters, which was totally false. For this misconduct, you were found guilty in a Special Courts-Martial, dated 13 Feb 02, and received the punishment in paragraph 2(a) (Tab 1).

**3. Separation Authority.** 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.

**4. Legal Rights.**

- a. You have the right to consult counsel.
- b. Military legal counsel has been obtained to assist you.
- c. I have made an appointment for you to consult Captain [REDACTED], the Area Defense Counsel, on 24 May at 0830 hours.
- d. You can also consult counsel through telephone at the same appointed date and time.
- e. You may consult civilian counsel at your own expense.

**5. Statements on your Behalf.**

- a. You have the right to submit statements on your own behalf.
- b. Any statements you want the separation authority to consider must reach me NLT 1600 hours on 30 May 02 2002 (3 workdays) unless you request and receive an extension from me for good cause shown.
- c. Your response will be sent to the separation authority. If there is no response within three workdays, it will be understood that you do not have any intentions on submitting a response.

**6. Waiver.** 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. Privacy Act.** Any personal information you furnish in rebuttal is covered by the Privacy Act of 1974. Your orderly room has a copy of AFI 36-3208 available for your use.

**8. Acknowledgement.** Execute the attached acknowledgment and return it to me immediately.

[REDACTED]

**Attachments:**

- 1. AF Form 1359, dated 13 Feb 02
- 2. Enlisted Performance Reports
- 3. Airman's Receipt of Notification Memorandum