

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

(INITIAL)

TYPE GEN		PERSONAL APPEARANCE	X	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
					X
					X
					X
					X
					X

ISSUES	A93.09	INDEX NUMBER	A67.30	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 DATE	28 Jul 2005	CASE NUMBER	FD-2005-00053
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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 at Washington, D.C.

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.

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

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT

INDORSEMENT		DATE: 8/1/2005
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, 3RD FLOOR ANDREWS AFB, MD 20762-7002

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2005-00053

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: Applicant does not contest his discharge. He merely states that he would like to receive his GI Bill Benefits. The records indicated the applicant was found guilty by the 5th Judicial District, Roswell, NM, of domestic battery and aggravated domestic battery. In addition, he also received a Letter of Reprimand and four Records of Individual Counseling for being absent from duty, failure to go on three separate occasions and for excessive tardiness. 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. 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 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

(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr Holloman AFB, NM on 04 Nov 02 UP AFI 36-3208, para 5.52 (Misconduct - Commission of a Serious Offense). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 11 Mar 79. Enlmt Age: 20 1/12. Disch Age: 23 7/12. Educ: HS DIPL. AFQT: N/A. A-11, E-58, G-55, M-15. PAFSC: 3M051 - Services Specialist Journeyman. DAS: 3 Dec 99.

b. Prior Sv: (1) AFRes 20 Apr 99 - 03 Aug 99 (3 months 15 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 4 Aug 99 Svd: 03 Yrs 03 Mo 01 Das, all AMS, of which AMS is 03 Yrs 02 Mo 28 Das (ex. 03 Das lost time).

b. Grade Status: None.

c. Time Lost: 22 Jun 01 - 24 Jun 01 (3 days).

d. Art 15's: None.

e. Additional: RIC, 30 MAR 01 - Excessive Tardiness.

RIC, 31 JAN 01 - Failure to Report to Training to turn in his CDC's on the required 30 day time frame.

RIC, 08 DEC 00 - No Show; Failure to take closed book pre-test for CDC Vol 1 on the scheduled date.

LOR, 13 NOV 00 - Failure to go on 6 and 7 Nov 00.

RIC, 11 OCT 00 - Absent from Duty.

f. CM: None.

g. Record of SV: 05 Aug 99 - 15 Jan 01 Holloman AFB 4 (HAF DIR)
16 Jan 01 - 15 Jan 02 Holloman AFB 3 (Annual)

h. Awards & Decs: AFTR, NDSM.

i. Stmt of Sv: TMS: (03) Yrs (06) Mos (13) Das
TAMS: (03) Yrs (02) Mos (28) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 25 Jan 05.
(Change Discharge to Honorable.)

Issue 1: To further my education with the help of the GI Bill. I am married with 2 girls, have a mortgage and expenses that need to be met. A copy of my classes is attached also a copy of my Service Member for the Montgomery GI Bill. Please feel free to contact me for additional information. Any help would be greatly appreciated.

ATCH

1. DD Form 214.
2. DD Form 2366.
3. Student Schedule.

22Mar05/day



DEPARTMENT OF THE AIR FORCE

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

24 Sep 02

MEMORANDUM FOR AIC [REDACTED]

FROM: 49 SVS/CC

SUBJECT: Letter of Notification

1. 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, Section 5H, paragraph 5.52. If my recommendation is approved, your service will be characterized as honorable or as under honorable conditions (general). I am recommending that your service be characterized as an under honorable conditions (general).

2. My reasons for this action are as follows:

a. You did, at or near Roswell, New Mexico, on or about 31 May 2001, unlawfully batter your wife, [REDACTED]. You were found guilty of battery against a household member by a Fifth Judicial District jury in Roswell, New Mexico on 21 May 2002. Based on conversations with the Fifth Judicial District attorneys office, it is my understanding that you will also plead guilty to aggravated battery against a household member. (Atch 1)

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, will probably be denied enlistment in any component of the armed forces, and any special pay, bonus, or education assistance funds may be subjected 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 Area Defense Counsel, Building 222, Holloman AFB, phone 3474, at 0800 hours on 25 September 2002. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 27 Sep 02 unless you request and receive an extension for good cause shown. I will forward your statements to the separation authority.

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 have been scheduled for a medical examination. You must report to Flight Medicine, Bldg 17, at 0845 hours on 25 September 2002 for the examination.

7. 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 in the office of the Area Defense Counsel.

8. You must execute the attached receipt and return it to me immediately. This receipt 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.

 [Redacted Signature]

Commander

Attachments:

1. OSI Investigation Report, 23 August 2001
2. Letter from Roswell DA
3. Letter of Counseling, 11 October 2000
4. Letter of Reprimand, 13 November 2000
5. Letter of Counseling, 8 December 2000
6. Letter of Counseling, 31 January 2001
7. Letter of Counseling, 30 March 2001