

DISCHARGE AND SEPARATION

Transfer to the Retired Reserve

This opinion is in response to an inquiry regarding Regular Air Force Officers voluntarily transferring to the Retired Reserve instead of undergoing further administrative discharge proceedings.

Background

Respondent is a 49-year-old Regular Air Force officer serving at Base X. He served with the Air National Guard from 10 October 1986 for 20 years. He has a TAFMSD of 2 April 2005, a TFCDS of 21 September 2001, and a TAFCSO of 25 September 2006. He promoted to major on 1 August 2014.

In March 2016, Respondent wrongfully used his wife's prescription medication of Adderall (Dextroamphetamine). On 30 August 2016, Respondent received non-judicial punishment for wrongful use of a Schedule II controlled substance in violation of Article 112a, Uniform Code of Military Justice. The punishment consisted of forfeiture of \$3,372.00 pay per month for two months and a reprimand. Additionally, evidence revealed Respondent sent an email to his psychiatrist on 28 February 2015 admitting he used his wife's prescription Ritalin medication on two occasions.

On 29 November 2016, the Show Cause Authority initiated discharge action against Respondent for drug abuse in accordance with AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, 9 June 2004 (incorporating through interim change (IC) 7, 2 July 2013), AFI36-3206_AFGM2017-01, 2 June 2017, paragraph 3.6.3. In response, Respondent submitted an application for transfer to the retired reserve in lieu of further processing of the discharge action, and requested to be retired as a major. He blamed his decision to use the controlled substances on the behavioral side effects of another prescribed medication (Klonopin). He asserts he only used the controlled substances to help him focus and concentrate while serving as a student.

Analysis

Regular Officers Considered for Removal (10 U.S.C. §1186(a))

The statutory provision explaining the Secretary's options for Regular Air Force officers considered for removal, 10 U.S.C. §1186, paragraph (a), states: "At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer – (1) for voluntary retirement, if the officer is qualified for retirement; or (2) for discharge in accordance with subsection (b)(2)."

Regular Officers Removed Through a Board of Inquiry (10 U.S.C. §1186(b))

Additionally, 10 U.S.C. §1186(b) provides an officer removed from active duty through a Board

of Inquiry shall – “(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and (2) if ineligible for voluntary retirement under any provision of law on the date of such removal – (A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title;¹ or (B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.”

Retired Reserves

10 U.S.C. §1186 does not provide Regular Air Force respondents with the option to transfer to the Retired Reserves unlike 10 U.S.C. §14905 (involuntary separation of reserve component officers). Section 14905 was enacted a year after §1186 and is almost verbatim of §1186. The primary difference is §14905 has provisions for transferring reserve component officers to the retired reserve. Accordingly, if Congress intended to permit Regular Air Force officers to have the option to transfer to the retired reserves, §1186 would state so.

The Retired Reserves consists of *Reserves* who are or have been retired under §8911². (10 U.S.C. §10154, *emphasis added*) Additionally, DoDI 1332.30, *Separation of Regular and Reserve Commissioned Officers*, 25 November 2013 (incorporating Change 1, 31 March 2017), paragraph 5, states, “at any time before final action in the case, the Secretary concerned may grant a request by the commissioned officer concerned for: (1) voluntary retirement; (2) transfer to the retired reserve (**when the officer is a reservist**); (3) discharge.” (*emphasis added*)

Respondent is a Regular officer serving on active duty and cannot simply transfer to the Retired Reserves. As mentioned in DoDI 1332.30, Enclosure 3, paragraph 5.a(2)³, Respondent would need to be in the Reserve Component to transfer to the retired reserves. Furthermore, transfer to the Retired Reserve *is* envisioned when separating members of the Reserve Component; categories of personnel who are not eligible for transfer to the Retired Reserve include “commissioned officers of the Regular Air Force.”⁴

To become an officer in the Reserve Component, Respondent would have to resign his regular

¹ 10 U.S.C. § 1181 explains the authority to establish procedures to consider the separation of officers for substandard performance of duty and certain other reasons. Subsection (a) is procedures when the officer’s performance of duty has fallen below standards prescribed by the Secretary of Defense; subsection (b) applies when the officer is required to show cause because of misconduct, because of moral or professional dereliction, or because retention is not clearly consistent with the interests of national security.

² 10 U.S.C. § 8911 states, “The Secretary of the Air Force may, upon the officer’s request, retire a regular or reserved commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this *title*, at least 10 years of which have been active service as a commissioned officer.” Paragraph (b) of § 10154 authorizes the Secretary of the Air Force, from 7 January 2011 through 30 September 2018 to reduce the requirement under section (a) for at least 10 years of active service as a commissioned officer to a period of not less than eight years.

³ See also DoDI 1200.15, *Assignment to and Transfer Between Reserve Categories, Discharge from Reserve Status, Transfer to the Retired Reserve, and Notification of Eligibility for Retired Pay*, Enclosure 3, paragraph 6; AFI 36-3203, *Service Retirements*, 18 September 2015 (incorporating change 1, 30 August 2017) paragraph 8.4 and Tables 8.1 – 8.3; AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, 14 April 2005 (incorporating through Change 3, 20 September 2011), paragraph 5.9.

⁴ See AFI 36-3209, paragraph 5.9.

appointment and request a reserve appointment. See AFI 36-2005, *Officer Accessions*, 2 August 2017, paragraph 12.2. The Secretary of the Air Force would then have to recommend to the Secretary of Defense that Respondent is physically, mentally, morally, and professionally qualified for the appointment, and the Secretary of Defense would then have to appoint Respondent as a reserve officer. See 10 U.S.C. §§ 12201 and 12203; DoDI 1310.02, *Original Appointment of Officers*, 26 March 2015, Enclosure 4, paragraph 1⁵; AFI 36-2005, paragraph 1.2.3 and Table 12.2. If Respondent receives a Reserve appointment, he could then request transfer to the Retired Reserve. However, since he is facing removal for drug abuse, Respondent does not appear to meet the criteria for appointment in the Reserve Component.

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⁵ DoDI 1310.02, Enclosure 4, paragraph 1, reads: “In general, an original appointment applies to an ... officer transferring between components within a Military Service...” Paragraph 2.b. states, “To receive an original appointment as an officer in a Reserve Component, an officer must be appointed in accordance with [Title 10] section 12203.” Section 12203 provides appointments of reserve officers in commissioned grades of lieutenant colonel and below shall be made by the President alone; however, this authority was delegated to SecDef in Executive Order 13358.