

TOPIC

Board of Inquiry recommendation that Respondent be discharged with an under honorable conditions (general) service characterization

TEXT OF THE DECISION

We have reviewed the Board of Inquiry (BOI) proceedings and recommendations that Respondent be discharged with an under honorable conditions (general) service characterization pursuant to AFI 36-3206, paragraph 3.6.4, for serious or recurring misconduct punishable by military or civilian authorities. For the reasons set forth below, we find the case file is legally sufficient to support this recommendation.

BACKGROUND

Respondent has 16 years of total active federal military service, and his total federal commissioned service date is 16 August 2002.

On 22 September 2011, the SCA initiated administrative discharge action along with a notification of show-cause action against Respondent, for which he acknowledged receipt. The stated basis for the action is AFI 36-3206, paragraph 3.6.4, for serious or recurring misconduct punishable by military or civilian authorities. The show-cause memo specifically provides that the discharge action was initiated because Respondent:

- (1) did violate Article 134, Uniform Code of Military Justice (UCMJ), on or about 6 September 2009, by being drunk and disorderly on board Flight 8000, World Airways, which conduct was of a nature to bring discredit upon the armed forces.
- (2) did violate Article 112, UCMJ, on or about 6 September 2009, by being drunk, on duty as an Air Force officer in transit to his deployed location, on board Flight 8000.
- (3) did violate Article 134, UCMJ, between on or about 9 May 2010 and on or about 10 May 2010, in that he was drunk and disorderly at or near Commerce, California, which conduct was of a nature to bring discredit upon the armed forces.
- (4) did violate Article 111, UCMJ, on or about 12 November 2010, at or near the island of Oahu, Hawaii, by controlling a vehicle, to wit: a passenger car, while drunk.
- (5) did violate Article 133, UCMJ, on or about 12 November 2010, by being derelict in the performance of his duties as a commissioned officer in the United States Air Force, at or near the island of Oahu, Hawaii, when he was in a public place, to wit: Tripler Army Medical Center, while drunk and disorderly, to the disgrace of the armed forces.

(6) did violate Article 86, UCMJ, between on or about 13 January 2011 and on or about 20 January 2011, by absenting himself from his appointed place of duty at which he was required to be, to wit: Hawaii, United States, and did so remain absent until on or about 20 January 2011.

(7) did violate Article 86, UCMJ, on or about 24 January 2011, by failing to go at the time prescribed to his appointed place of duty at which he was required to be, to wit: for a mandatory squadron PT formation.

(8) did violate Article 86, UCMJ, on or about 24 March 2011, by failing to go at the time prescribed to his appointed place of duty.

(9) did violate Article 86, UCMJ, on or about 25 March 2011, by failing to go at the time prescribed to his appointed place of duty.

(10) did violate Article 86, UCMJ, on or about 28 March 2011, by failing to go at the time prescribed to his appointed place of duty.

(11) did violate Article 92, UCMJ, by failing to obey a lawful order given by his commander, on or about 31 March 2011, to call back to his unit after his appointment with the Area Defense Counsel, an order which it was his duty to obey, did fail to obey the same by not calling his unit.

(12) did violate Article 92, UCMJ, by failing to obey a lawful order given by his group commander, between on or about 2 April 2011 and on or about 3 April 2011, to check in every four hours daily between 0800 hours and 2000 hours, an order which it was his duty to obey, did fail to obey the same by not checking in 100% of the required times on those dates.

(13) did violate Article 86, UCMJ, on or about 4 April 2011, by absenting himself, without authority, from his appointed place of duty at which he was required to be, to wit: physical training.

(14) did violate Article 86, UCMJ, on or about 6 April 2011, by failing to go at the time prescribed to his appointed place of duty.

(15) did violate Article 92, UCMJ, by violating a lawful order given by his group commander to remain on the Air Force side of Joint Base unless written permission was granted after a written request, an order which it was his duty to obey, did fail to obey the same by going to the bachelors' quarters on the Navy side of the base.

(16) did violate Article 86, UCMJ, on or about 29 April 2011, by failing to go at the time prescribed to his appointed place of duty, to wit: the PT/accountability formation at 0700 hours.

(17) did violate Article 86, UCMJ, on or about 9 May 2011, by failing to go at the time prescribed to his appointed place of duty, to wit: morning formation at 0700 hours.

Case Processing

On 6 October 2011, Respondent provided his written response to the show cause acknowledging his rights and responsibilities. He requested a hearing before a BOI.

On 30 November 2011, a properly constituted BOI convened to hear Respondent's case. Respondent, through his military counsel, requested retention. At the BOI, Respondent largely argued that his misconduct was caused by his alcohol problems for which he had been treated. He further argued the positive aspects of his whole career, including numerous deployments, outweighed his misconduct and merited retention.

The BOI made factual findings consistent with the narrative above and recommended Respondent be discharged with an under honorable conditions (general) discharge. Respondent submitted post-Board matters. Respondent did not object to any part of the record of the BOI. However, Respondent contended his misconduct does not merit discharge, specifically asserting he committed no misconduct for the eight months leading up to his BOI. Respondent further argues his misconduct was based almost entirely on his alcoholism, mitigating his misconduct. Respondent requested lengthy service consideration under AFI 36-3207, paragraph 1.12, since he has 16 years in service. Finally, Respondent asked for an Honorable discharge characterization.

On 12 March 2012, the SCA concurred with the findings and recommendations of the Board and forwarded the case for review.

GUIDANCE

AFI 36-3206, paragraph 3.6.4, authorizes administrative separation for an officer who engages in serious or recurring misconduct punishable by military or civilian authorities. This is consistent with Department of Defense (DoD) policy "[t]o separate from military service those commissioned officers who will not or cannot . . . [e]xercise the responsibility, fidelity, integrity, or competence required of them." DoD Instruction 1332.30, *Separation of Regular and Reserve Commissioned Officers*, paragraph 4(c)(3) (11 December 2008).

DISCUSSION

The BOI members had sufficient evidence¹ before them to conclude by a preponderance of the evidence that Respondent engaged in the alleged misconduct. Respondent's arguments that his misconduct does not justify a discharge are without merit. Attachment 1 to AFI 36-3206 defines serious misconduct as "includ[ing] any misconduct that, if punished under the Uniform Code of Military Justice (UCMJ), could result in confinement for 6 months or more." Respondent is charged with committing numerous offenses, any one of which could result in greater than six months confinement at a court-martial. Furthermore, while Respondent enjoyed a successful

¹The Recorder called eight witnesses and introduced twenty exhibits, including the result of trial from Respondent's court-martial and copies of Respondent's two Article 15 actions.

career prior to 2009, a good service record does not give an officer a license to ignore standards. Respondent's pattern of poor judgment and failure to adhere to Air Force standards adequately support his discharge. Respondent also points to his problems with alcohol to excuse his misconduct. Arguably, Respondent suffers from alcohol problems. It is laudable he has sought treatment for his problems, but these problems do not excuse his misconduct and failure to comply with Air Force standards.

Likewise, we conclude Respondent is not entitled to lengthy service consideration. AFI 36-3207, paragraph 1.12, states, "[t]he Air Force normally doesn't involuntarily separate officers within 2 years of qualifying for retirement from active service under 10 U.S.C 8911 or for reserve retirement pay under 10 U.S.C 1331." Respondent only has 16 years in service. Therefore, he is not within two years of qualifying for retirement and is not entitled to lengthy service consideration.

Accordingly, there is a lawful basis for Respondent's discharge. As the basis for discharge is legally valid, and the hearing allowed for meaningful argument of all evidence and case merits, the BOI result is appropriate and should be permitted to stand. The Legal Advisor has certified the BOI proceedings are accurately reflected in the attached record. Thus, we concur with the SCA's recommendation to administratively discharge Respondent with an under honorable conditions (general) service characterization.

CONCLUSION

For the aforementioned reasons, the case file is legally sufficient to support Respondent's under honorable conditions (general) discharge pursuant to AFI 36-3206, paragraph 3.6.4, for serious or recurring misconduct punishable by military or civilian authorities.

OpJAGAF 2018/33 20 August 2018