

ADMINISTRATIVE DISCHARGE

Administrative Discharge (Board of Inquiry)

We have reviewed the 6 Dec 10 Board of Inquiry's (BOI) proceedings and recommendations that Respondent be discharged with an Honorable service characterization, pursuant to AFI 36-3206, para 2.3.3, failure to discharge duties equal to his grade and experience; and 2.3.7, mental disorders that interfere with the officer's performance of duty and don't fall within the purview of the medical disability process (alcohol dependence and Narcissistic Personality Disorder traits).¹ The Show-Cause Authority concurs with these recommendations. The case file is legally sufficient to support them. Recoupment action is appropriate (education assistance).²

Factual Background

Respondent is a 33-year old non-probationary, regular line officer. He is married with three children, and is assigned as a B-52 pilot to Base X. His Total Active Federal Military Service Date is 24 May 04.

The evidence shows that the Respondent has struggled with an alcohol addiction since early 2008 when he self-referred to the Alcohol and Drug Abuse Prevention and Treatment program (ADAPT). He was initially evaluated by a psychiatrist, who deferred his diagnosis until the ADAPT Program Manager had an opportunity to meet with the Respondent. She met with him in Mar 08, when the Respondent reported doing well, that he had been able to reduce the amount of alcohol he was drinking and wasn't having any difficulties staying within the limits he set for himself. Based on this information, the ADAPT program personnel determined that the Respondent did not meet the criteria for a diagnosis and recommended he attend the "alcohol education" class as part of their ADAPT requirements. This scenario repeated itself twice more in the timeframe of a year, when the Respondent went back to the ADAPT program expressing his concerns about alcohol abuse, but "under-reported" the amount actually consumed. Also, during that year he cancelled or didn't show-up for three of the six scheduled managing alcohol use counseling appointments.

The Respondent's vacillating attitude towards alcohol use control came to a halt in Feb 09, when he was taken to the emergency room for loss of consciousness/seizures related to alcohol

¹ The basis for Respondent's discharge is AFI 36-3206, para 2.3.7. This paragraph authorizes the discharge of those suffering from mental disorders that interfere with the officer's performance of duty and don't fall within the purview of the medical disability process. A psychiatrist or clinical psychologist must make the qualifying diagnosis. Pursuant to DoDI 1332.38, E5, 1.3.9.1, Uncomplicated alcoholism and other substance abuse disorders are classified among "conditions, circumstances, and defects of a developmental nature" that do not constitute a physical disability requiring an MEB.

² The Respondent owes ~\$400.00 (Education Assistance). Also, he has a Active Duty Service Commitment for UPT training; however IAW 10 U.S.C. §2005, UPT is a type of "education" or "training" not subject to recoupment.

withdrawal. The Respondent was immediately referred to a civilian detoxification program. From that date forward, the Respondent has been admitted to the detoxification program three times, and unfortunately, every time after his release from the program, the Respondent has failed to follow the after-care plan, and, as expected, he has relapsed. Because these alcohol incidents became the norm rather than the exception, the Respondent was decertified from PRP in Oct 09, and was temporarily assigned to another squadron, to perform non-flying duties.

On 22 Jul 10, and pursuant to DSM-IV (Diagnostic and Statistical Manual of Mental Disorders), Maj G, psychiatrist, diagnosed Respondent as having a Mental Disorder: Alcohol Dependence and a Personality Disorder: Narcissistic Personality Disorder traits. He stated that the Respondent “meets criteria for alcohol dependence, as evidenced by multiple treatment failures, significant tolerance for alcohol, inability to stop drinking, concealed drinking behavior, poor decisions and choices related to and surrounding alcohol use. He has not utilized learned therapy techniques and [he is unable] to abstain from alcohol usage despite multiple attempts to stop drinking.” Maj G concluded that the traits of this member’s disorder are so severe that the member’s ability to function effectively in the military environment is significantly impaired. He recommended administrative separation and a permanent disqualification from weapons bearing, PRP, SCI, or other sensitive duty access.

Case Processing

On 1 Oct 10, the squadron commander recommended the Respondent be discharged for “failure to discharge duties equal to his grade and experience, and for diagnosis of a mental disorder (alcohol dependence) and a personality disorder (narcissistic personality traits).” The group commander, and the wing commander, concurred with the squadron commander’s opinion and recommendation.

On 8 Oct 10, the Show Cause Authority (SCA) notified the Respondent to show cause for his retention on active duty pursuant to AFI 36-3206, para 2.3.3, for failing to discharge duties equal to the Respondent’s grade and experience and para 2.3.7, for diagnosis of a mental disorder (alcohol dependence) and a personality disorder (narcissistic personality disorder traits). Specifically, the show cause letter states that:

On 22 Jul 10, Maj G, Psychiatrist, diagnosed the Respondent on DSM IV Axis I (mental disorders) with Alcohol Dependence and DSM IV Axis II (personality disorders) with Narcissistic Personality Disorder traits. Maj G determined the Respondent appeared unsuitable for continued military service and recommended that he be discharged. The following information further details the Respondent’s history of alcohol abuse:

On 27 Feb 08, the Respondent self-referred to Base X’s ADAP program and was evaluated due to his own concerns about his alcohol consumption. Based on the assessment, the Respondent did not meet the criteria for a substance use diagnosis, and he was provided education and encouraged to reduce his consumption of alcohol. The Respondent then failed to attend his first two scheduled Substance Abuse Seminars classes.

On 18 Jun 08, the Respondent self-referred a second time to the ADAPT program. Again, he did not meet the criteria for substance use diagnosis. The Respondent stated that he intended to not drink for the next six months as he felt anxiety associated with time periods when he drank alcohol. He was given information on anxiety management and was encouraged to contact the Mental Health Clinic for services.

On 12 Sep 08, the Respondent's flight surgeon referred him to the Mental Health Clinic due to concerns that the Respondent raised during a medical appointment. The Respondent reported responsible use [of alcohol] but continued to feel anxious.

On 1 Feb 09, the Respondent was admitted to the hospital for seizures, which were determined to be most likely due to alcohol withdrawal. The Respondent went through alcohol detoxification and he was entered into a 21-day residential alcohol treatment program. Upon completion, the Respondent was enrolled in the ADAPT after-care plan. The Respondent displayed inconsistent attendance throughout after-care and therefore he was unable to regain flying status.

On 3 Jun 09, the Respondent reported to the ADAPT clinic that he had a relapse and consumed alcoholic beverages for five consecutive days. The Respondent's commander counseled him in writing, and Respondent committed to put "forth the best effort to be successful and to avoid any further relapses."

During the week of 17 Jun 09, the Respondent had another relapse, after which a treatment team met to review the requirements for the Respondent to return to flying status. Within a month, the Respondent's AA and after-care attendance became inconsistent again.

The week of 20 Aug 09, it was noted that the Respondent had missed an ADAPT appointment. Soon after that, the Respondent experienced a significant relapse. He was re-entered into alcohol detoxification and into a residential treatment at a civilian medical facility. The Respondent was recommended for a permanent decertification from Personnel Reliability Program duties on 21 Aug 09.

On 18 Nov 09, the squadron commander discovered that the Respondent was going to check himself into the hospital after drinking excessive amounts of alcohol. The squadron commander drove to the Respondent's house to ensure the Respondent would get to the hospital and check himself into the clinic. The Respondent entered alcohol detoxification on the same day.

On 2 Feb 10, the Respondent checked himself into the hospital after drinking excessive amounts of alcohol. He was immediately admitted into the detoxification program.

From 29 Jun 10 until 1 Jul 10, the Respondent was absent without leave from his place of duty. His team chief had to attend meetings in his place. When the Respondent did not respond to multiple attempts to contact him, his team chief had to search for him. On 14 Sept 10, the Respondent received nonjudicial punishment, for violation Art 86, UCMJ, absence without leave.

On 6 Dec 10, a properly constituted Board convened to hear the Respondent's case. Although the Respondent, through his legal counsel, conceded that there was a basis³ for discharge, he requested to be retained. He noted that by not hearing his early (2008) cry for help, "the Air Force dropped the ball with" the treatment of his case. He explained that "ADAPT is a cookie-cutter program," which does not provide individual attention, and it didn't provide what the Respondent needed to recover. Additionally, the Respondent specifically requested to be retained, noting that even the Air Force made some mistakes, it can help him recover from the problem he has [alcoholism], providing the financial stability he and his family need. In support of his request, the Respondent presented the BOI members with testimony and character statements as well as letters highlighting his accomplishments.

The Board found Respondent failed to discharge duties equal to his grade and experience. They also found the Respondent has a mental disorder that interferes with the officer's performance of duty; specifically, alcohol dependence.⁴ The Board determined that the Respondent should not be retained and recommended that the Respondent be removed from active duty, and receive an Honorable discharge.

On 2 Mar 11, the SCA, concurred with the findings and recommendations of the Board.

Case Discussion

The Air Force judges the suitability of officers for continued service on the basis of their conduct and their ability to meet required standards of duty, performance, and discipline. AFI 36-3206, preface. It is DoD policy to separate officers who will not or cannot maintain those high standards of performance and conduct through appropriate actions that sustain the traditional concept of honorable military service. DoDI 1332.30, para 4c(1). Accordingly, Respondent's actions (or omissions) are a sufficient basis upon which to sustain his discharge from active duty. The documentary and testimonial evidence more than support the basis for discharge by a preponderance of the evidence.

The Respondent has had an opportunity for over two years to conform to Air Force standards, but has continuously disregarded the support and care provided by his unit. For almost a third of his career, he has received attention and support from his command to address his alcoholism; he has received counseling from mental health providers, and has even been admitted three times for treatment as an inpatient at a detoxification facility. Time and again, the Respondent put his own interest first and disregarded the help and opportunities given to him. While we are sympathetic to the Respondent's illness, we find it falls short of excusing what appears to be a complete unwillingness to conform and meet the obligations of an Air Force officer. The failure

³ Respondent, thru his counsel, argued that although the Respondent suffered from an alcohol dependence mental disorder, there was no evidence supporting the other two bases for discharge: (1) failure to discharge duties equal to his grade and experience, and (2) Narcissistic Personality Disorder trait.

⁴ They found the Respondent did not have a personality disorder, specifically Narcissistic Personality Disorder traits.

of his effort is all more disturbing when measured against the time, attention and care invested in the Respondent by his command.

The recommendation for an Honorable discharge is supported by the evidence. Respondent's prior contributions and achievements suggest that an Honorable discharge is the most appropriate.⁵

Case Irregularities

AFI 36-3206, para 7.33.1.1 states that "Board members sign the report to certify that a majority of the voting members concurred in the findings and recommendations." Para 7.33.1.2 of the same AFI provides that "The board president adds the following statement at the bottom of the signature page: "The above signatures certify that the findings and recommendations of this board represent a majority opinion of the board." While this specific statement was not added to the bottom of the signature page, the "Findings Sheet" contained the following statement: "The undersigned certify that a majority of the voting members concur in the above findings and recommendations." This is followed by the Board's members' signatures, including the Board's President. Despite this administrative "deviation," it is clear that the majority of the Board members concurred with the findings and recommendations and the President signed for it. Therefore, we conclude that the language noted above substantially complies with the post-BOI administrative functions and does not affect the legal sufficiency of the BOI package.

We have identified a number of typographical errors in the verbatim transcript of the BOI record, and have determined that none have an impact on the legal sufficiency of the package.

Maj G's evaluation lacks express affirmation of the member's ability to understand the nature of the proceedings or to conduct or cooperate intelligently in defense of the case. AFI 36-3206, para 4.19.2.3.3. However, such affirmation is implicitly present in the credibility he (Maj G) accords to the member's acknowledgement with his determination that the Respondent's diagnosis did not qualify as a disability nor entitle him to disability benefits. We are of the opinion that if he believed him of unsound mind, he would not have found his acknowledgement worthy of consideration by himself or others. Additionally, it is clear from the BOI's record that the Respondent understood the nature of the proceeding and he cooperated intelligently in his defense.

During the BOI hearing there was an error that was immediately identified and properly corrected. There was an incorrectly reported date of rank for one of the members of the Board. When the discrepancy was noted, the correction affected the designation of the senior member as Board President. Upon the Legal Advisor's request, the commander issued a new Convening

⁵ During his pilot training, the Respondent was described as the ideal student and officer. "His tireless work ethic was the definition of 'excellence'." While at B-52 initial qualification course, his commander stated that the Respondent's outstanding performance during training was characterized by a high degree of professionalism and dedication. The Respondent's OPRs contained statements such as "Outstanding officer & aviator . . . aircraft commander upgrade next; resident BDE, ASAP; Super officer/warrior; aces all the toughest tests; etc."

order that corrected the identified mistake. Neither the Recorder nor the Respondent had any objection to the introduction of this document.

Although, the Show Cause Notification included personality disorder (Narcissistic Personality Disorder traits) as one of the discharge bases, at the beginning of the BOI's proceedings the Recorder conceded that there was no evidence supporting such a basis.⁶ Even though one may consider the Recorder's act a modification of the show cause notification, the departure from the established AFI procedure⁷ is inconsequential given the lack of any defense objections regarding the notification and the full and fair proceedings otherwise reflected in the Board record.

Recoupment

The file includes a memo from AFPC/DPSOS stating that Respondent has no service commitment for which recoupment is appropriate. Upon further inquiry, AFPC/DPSOS discovered the Respondent has an outstanding active duty service commitment (education assistance) for which recoupment needs to be considered.

Although the BOI did not make any findings in this area, we find that recoupment action is appropriate. The governing recoupment statute, 37 U.S.C. § 303a(e), very simply provides that in the absence of authorized Secretarial excusal, those who receive a bonus or other special benefits (educational benefits, stipends, etc.) which they have not earned, "shall" repay them. We find none of the authorized bases for Secretarial excusal applicable to Respondent's case. See *DoD Financial Management Regulation*, Vol 7A, Chap 2, para 202 (added Mar 09 – available at www.defenselink/comptroller/fmr/07a/index.html). Accordingly, we find that Respondent's tuition assistance benefits should be recouped. The BOI records confirmed that the Respondent concurred with this action.

Conclusions. There appear to be no errors or irregularities that might prejudice any of the Respondent's substantive rights. The case file is legally sufficient to support Respondent's

⁶ During his opening statement, the Recorder informed the BOI that further development of the facts, the medical records and the documents did not support a Personality Disorder finding. The Board concurred.

⁷ AFI 36-3206, para 4.27: "The SCA may amend the Show Cause notification memorandum before sending a case to the AFPB through HQ AFPC/DPPRS or referring a case to a BOI.

4.27.1. When amending the notification memorandum, the SCA will give the officer the reasons for amending the action memorandum, enclose a copy of the SCA memorandum amending the show cause notification memorandum, and allow the officer 10 calendar days to prepare a response.

4.27.2. If the SCA receives additional information after referring the case to a sitting BOI. If the SCA receives additional information after referring the case to a sitting BOI the SCA should forward the information to the recorder for submission to the BOI . . ."

Honorable discharge for failure to discharge duties equal to his grade and experience (para 2.3.3); and mental disorders that interfere with the officer's performance of duty and don't fall within the purview of the medical disability process – alcohol dependence (para 2.3.7). Recoupment is appropriate.

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