

OpJAGAF 2018-36, 20 August 2018, Administrative Discharge for Intentional Misrepresenting or Omitting Facts in Official Statements

TOPIC

Administrative discharge (classification Honorable) for intentionally omitting previous drug use on SF-86 form.

TEXT OF THE DECISION

This opinion is in response to an inquiry regarding an Honorable classification administrative discharge for intentionally omitting previous drug use on SF-86 form. There is a lawful basis for Respondent's discharge under paragraph 3.6.7. We find this case file legally sufficient to discharge Respondent with an under honorable conditions (general) service characterization.

BACKGROUND

On 26 May 2015, Respondent completed his SF-86, *Electronic Questionnaires for Investigations Processing*. On the form, he answered "No" to question 23 regarding illegal use of a controlled substance in the last seven years. During a background investigation interview on 24 November 2015, Respondent again denied using illegal drugs during the last seven years. When confronted with information regarding his marijuana use, Respondent admitted he tried marijuana twice in 2010. His first use was while he was in the seventh grade after students in the eighth grade pressured him to use (he could not recall the date and maintained he did not inhale). The investigator confronted Respondent with facts regarding his regular use of marijuana. Respondent admitted regular use between 2010 and 2013. The investigator then informed Respondent he had information of drug use as recent as 2015. Respondent again admitted using marijuana between 2010 and 2014, but insisted his last use was in 2014.

On 30 March 2016, Respondent's Squadron Commander initiated the security clearance revocation process. In response, Respondent asserted his recruiter told him to lie on his paperwork. On 8 May 2017, the Air Force Personnel Security Appeal Board notified Respondent of their final denial of security clearance eligibility.

On 11 August 2017, Respondent's Squadron Commander recommended NAF/CC initiate show cause action against Respondent under AFI 32-3206, paragraph 3.6.7 and that Respondent's service be characterized as honorable. On 14 August 2017, Respondent's Group Commander concurred with this recommendation. On 23 October 2017, NAF/CC initiated show cause action against Respondent under paragraph 3.6.7 and properly notified Respondent that his service could be characterized as Honorable, General, or Under Other Than Honorable (UOTHC).¹ However NAF/CC indicated he intended to recommend Respondent's service be characterized as honorable.

On 9 November 2017, Respondent submitted a one-page response in which he agreed separation was in his and the Air Force's best interest. He thanked NAF/CC for his help during this time in

¹ UOTHC not an option in this particular case because Respondent was not afforded a Board of Inquiry.

his life and stated he will “always be grateful that [he] was able to move on with [his] life under Honorable terms and begin [his] new journey.”

On 20 December 2017, after reviewing Respondent’s matters and the case file, NAF/CC recommended Respondent be separated with an honorable service characterization. On 13 February 2018, MAJCOM/CD recommended the same.

GUIDANCE

AFI 36-3206 *Administrative Discharge Procedures for Commissioned Officers*, 14 June 2018, states “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.”

It is Department of Defense policy to administratively separate commissioned officers who do not “[m]eet rigorous and necessary standards of duty, performance, and discipline.” DoDI 1332.30, *Separation of Regular and Reserve Commissioned Officers*, 25 November 2013 (incorporating through Change 1, 31 March 2017), paragraph 3(c)(1).

DISCUSSION

AFI 36-3206, paragraph 3.6.7, authorizes involuntary separation for officers for intentionally misrepresenting or omitting facts in official statements, records, or commissioning documents. Respondent omitted facts about his drug use on his SF 86. Accordingly, a basis for discharge exists. Respondent does not deny drug use; rather, he claims he no longer uses and avers the recruiter told him to lie on his paperwork.

When directing an officer’s discharge pursuant to this provision, the Office of the Secretary of the Air Force may characterize a discharge as honorable, under honorable conditions (general) or UOTHC. AFI 36-3206, paragraph 7.31.2.2.4. The glossary of AFI 36-3206 describes the different service characterizations. An honorable discharge is appropriate when the quality of the Airman’s service generally has met the standards of acceptable conduct and performance of duty for military personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate. An under honorable conditions (general) discharge characterization is warranted when the negative aspects of the Airman’s conduct or performance of duty outweigh positive aspects of the Airman’s conduct or performance of duty as documented in their service record. A UOTHC discharge is appropriate when a pattern of behavior constitutes a significant departure from the conduct expected of Airmen. Paragraph 3.1.2 of AFI 36-3206 provides an honorable discharge is normally appropriate when the basis for discharge pertains solely to pre-commissioning activities. However, a UOTHC or discharge under honorable conditions (General) may be appropriate if an officer intentionally misrepresents or omits facts in official statements, records or commissioning documents.

Although it appears Respondent’s brief period of service has been acceptable, he lied about his drug use. The investigation revealed Respondent was a regular marijuana user from 2010 to 2014, and that he used as early as 2009 and as late as 2015. In his response to his security clearance removal action, Respondent spent five pages blaming the recruiter for his false statements and his

friends for his drug use. With regard to his SF 86, it was not until confronted with information regarding his drug use that Respondent ultimately admitted to any use, and it was not until confronted with evidence of his regular use that he conceded his use from 2010 to 2014. Had he been candid with his recruiter, he would never have been allowed to serve. His service therefore should be characterized as under honorable conditions (general).

Errors or Irregularities

The MAJCOM/CD memo correctly states AFI 36-3206, paragraph 3.1.2, provides an honorable discharge is normally appropriate when the basis for discharge pertains solely to pre-commissioning activities. But, as described above, the rest of the paragraph reads: “However, a UOTHC or discharge under honorable conditions (General) may be appropriate if an officer intentionally misrepresents or omits facts in official statements, records or commissioning documents.” Although Respondent does not have additional misconduct in his record, there is also nothing in his record to warrant receiving the highest service characterization.

Options

AFI 36-3206, paragraph 3.1, and 6.9, provides AFPB’s options:

- (1) Retain Respondent on active duty; or,
- (2) Discharge Respondent from active duty with
 - a. an Honorable discharge characterization; or,
 - b. an Under Honorable Conditions (General) discharge characterization.

CONCLUSION

Respondent was properly notified of this action and the Show Cause Authority memorandum is in substantial compliance with the requirements of AFI 36-3206, paragraph 4.20 and Attachment 4. There is a lawful basis for Respondent’s discharge under paragraph 3.6.7. We find this case file legally sufficient to discharge Respondent with an under honorable conditions (general) service characterization.

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