

ADMINISTRATIVE DISCHARGE

Administrative Discharge

We have reviewed the attached case file and find it legally sufficient to administratively discharge the Respondent pursuant to Air Force Instruction (AFI) 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, paragraph 3.6.4 (serious or recurring misconduct punishable by military or civilian authorities) with an under honorable conditions (general) service characterization. Due to an outstanding service commitment, recoupment action is appropriate.

Factual Background

The Respondent is a 41-year-old probationary Regular officer with a total active federal commissioned service date (TAFCSO) of 19 August 2007. She is a clinical nurse assigned to Base X. She received her commission by direct appointment. The Respondent has an active-duty service commitment through 18 August 2013 for her participation in the health professions loan repayment program. She also had an active duty service commitment for a registered nurse accession bonus; however, it expired on 19 August 2011.

The Respondent has engaged in a pattern of misconduct since March 2009. In March 2009, she failed to complete a mandatory accountability exercise as directed. As a result, the nurse manager telephoned her and ordered her to report to work to complete the tasking on two successive days. The Respondent failed to return the phone calls or report to work. She received a letter of counseling (LOC) for this misconduct. In her response, she claimed to have returned the first phone call, to have reported to work following the second phone call, and to have completed what she believed she was required to do.

On 17 May 2009 the Respondent failed to report to work at 0530 hours. At 0730 hours, the acting shift leader directed her to report at 1200 hours with the understanding that the nurses who were working would be relieved; however, she failed to report until 1500 hours. Despite the fact that she was assigned only one pediatric patient, the Respondent failed to properly administer the child's medication. When the shift leader alerted her to the medication error, the Respondent stated that one of the airmen probably changed the intravenous pump. The Respondent received her second LOC for this misconduct. In her response to this LOC, the Respondent stated her alarm clock failed to go off and her "actions in no way amounted to a violation of the Uniform Code of Military Justice (UCMJ)."

On 2 October 2009, in an effort to obtain approval of her leave request, the Respondent lied to the nurse manager about the date on which she submitted her request to make it appear as though she had submitted her request before two other nurses in her unit. Immediately following this incident, the Respondent made a derogatory comment about the nurse manager to their co-workers. To address this misconduct, the Respondent received a letter of admonishment (LOA). In response to the LOA, she claims her untruthful statement were "errors in miscommunication" and the inappropriate comment was the result of her failure "to read social cues."

On 12 April 2010, the Respondent told Dr. P that she had been seen by another doctor and placed on quarters, but the paperwork had not been completed. In reality, the Respondent had not been seen by a doctor or placed on quarters. Based on the Respondent's false statement, Dr. P placed her on quarters from 12-15 April 2010, and gave her two copies of the completed paperwork. The Respondent changed the date on one form, so it would appear that she had also been placed on quarters from 15-19 April 2010. The Respondent signed the forms and submitted them for processing. For this misconduct, the Respondent was offered nonjudicial punishment. She declined the offer. On 14 October 2010, the Respondent was found guilty by general court-martial of two specifications of Article 107, UCMJ, and sentenced to forfeitures of pay and a reprimand.

Case Processing

On 10 January 2011, the Wing Commander served the Respondent with a Notification of Show Cause Action initiated under paragraph 3.2 of AFI 36-3206, for which the Respondent acknowledged receipt. On 8 March 2011, the Wing Commander amended the notification memorandum to document the acknowledgement of her rights and obligations pertaining to the discharge action. On 7 April 2011, the Respondent submitted a written response to the notification of show cause action, outlining her accomplishments. Additionally, she requested retention or, in the alternative, an honorable service characterization as she believes her "offenses are minor and do not warrant such a negative portrayal of what [she] believe[s] has been honorable service to our Air Force and our nation." She also requested a personal appearance before the Air Force Personnel Board. On 18 May 2011, the Respondent submitted a waiver of a board hearing conditioned upon receipt of no less than an honorable service characterization.

On 14 April 2011, the Wing Commander recommended discharge with an honorable service characterization. By memoranda respectively dated 5 May 2011 and 28 June 2011, the Numbered Air Force Commander and MAJCOM Commander recommended discharge with a general service characterization.

Case Analysis

AFI 36-3206, paragraph 3.6.4 presents a basis for administrative discharge for serious or recurring misconduct punishable by military or civilian authorities. In addition to her general court-martial conviction, the Respondent has engaged in a pattern of misconduct over the course of approximately one year. Therefore, the evidence in the case file establishes a basis for discharge under AFI 36-3206, paragraph 3.6.4.

It is Department of Defense (DoD) 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*, paragraph 4(c)(1). The Respondent's continuing pattern of misconduct raises doubt that she is suited for continued service. After receiving her first LOC, the Respondent had ample opportunity to adjust her attitude and actions to conform to the Air Force Core Values and expected standards of

officership. Instead, she compromised her integrity and continued to prioritize her personal desires above the mission. As further aggravation, she fails to take responsibility for her actions or to recognize that her actions are a serious departure from “the rigorous and necessary standards of duty, performance, and discipline” required for service as an Air Force officer. Accordingly, involuntary discharge is warranted.

Paragraph 3.1 of AFI 36-3206 instructs on the three service characterizations available for an administrative discharge based on misconduct: honorable, general, and under other than honorable conditions (UOTHC).¹ AFI 36-3207, *Separating Commissioned Officers*, paragraph 1.7.1.2 states that an honorable service characterization is the highest service characterization and is normally directed “when the basis for discharge pertains solely to precommissioning activities under AFI 36-3206, chapter 3.” Paragraph 1.7.2 of AFI 36-3207 explains that a general service characterization is appropriate when the member’s military record is not sufficiently meritorious to warrant an honorable discharge, but it does not warrant an UOTHC discharge. The Respondent’s offenses were not so egregious to warrant an UOTHC service characterization; however, her positive achievements over her relatively short military career do not outweigh her misconduct. Thus, there is sufficient evidence to conclude by a preponderance of the evidence that the Respondent should be discharged with a general service characterization.

Errors and Irregularities

The initial notification memorandum and its addendum mistakenly cited AFI 36-3206, paragraph 3.2 (Misconduct or Moral or Professional Dereliction) as the basis for discharge. While paragraph 3.2 does give procedural guidance about discharges for misconduct, paragraph 3.6.4 provides the basis to initiate a discharge for misconduct. Despite the error, the Respondent was placed on notice that discharge proceedings were initiated based on her misconduct. The notification memorandum gave detailed information about each instance of misconduct that formed the basis for the discharge action. Therefore, we find that this error does not affect the legal sufficiency of the action.

Paragraph 6 of both the initial notification memorandum and its addendum incorrectly state that the Respondent had the option to “elect to present matters to a BOI [board of inquiry].” In response, on 18 May 2011, the Respondent submitted a waiver of the BOI conditioned upon receipt of no less than an honorable service characterization. The Wing Commander’s recommendation memorandum, dated 14 April 2011, does not address the conditional waiver, nor do the memoranda from the Numbered Air Force Commander and MAJCOM Commander. The Respondent is a probationary officer with less than five years of active commissioned service and the SCA did not recommend an UOTHC service characterization. Accordingly, she is not entitled to a BOI. On 19 September 2011, the Wing Commander confirmed with AF/JAA that they discussed this irregularity with the Respondent’s military counsel. More specifically, the Wing/JA explained to the military counsel that the Respondent was not entitled to a BOI and he expressed his understanding. Based on the fact that the Respondent was not entitled to a BOI

¹ An UOTHC service characterization in this case would require returning the case file to the SCA for initiation of a board of inquiry.

and that the Wing/JA explained this fact to the Respondent's military counsel, this oversight constitutes harmless error.

Recoupment

The Respondent participated in the health professions loan repayment program for which she incurred an ADSC until 18 August 2013.² On 7 June 2007, the Respondent signed a contract acknowledging that only the Secretary of the Air Force may excuse her obligation to reimburse the United States government for the unearned percentage of her loan repayment should she fail to fulfill her service commitment.

37 U.S.C. § 303a(e) states that in the absence of Secretarial excusal, a person who receives a bonus or similar benefit (to include an educational benefit or stipend) conditioned upon the fulfillment of specified service requirements must repay to the United States any unearned portion of the benefit if that member fails to satisfy the service requirements. Paragraph 4.32.2.1 of AFI 36-3206 states that an officer is subject to recoupment if the Secretary directs involuntary separation for any reason listed in Chapters 2 or 3 of the instruction.

The basis for the Respondent's separation is found in Chapter 2 of the AFI. The Respondent received a benefit from the loan repayment program, and she has not completed her service commitment incurred for that benefit. Accordingly, if the Respondent is discharged recoupment on a pro rata basis is appropriate.

Conclusions

There are no significant errors or irregularities that prejudice the Respondent's substantive rights. The case file is legally sufficient to support the Respondent's administrative discharge for serious or recurring misconduct punishable by military or civilian authorities, pursuant to paragraph 3.6.4 of AFI 36-3206. Additionally, we concur with the Numbered Air Force Commander and MAJCOM Commander that a general service characterization is warranted in this case. Finally, recoupment is appropriate.

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² The Respondent also received a registered nurse accession bonus; however, her ADSC expired on 19 August 2011.