

ADMINISTRATIVE DISCHARGE

Administrative Discharge

The attached case file is legally sufficient to support command's recommendations to accept the Respondent's offer to resign in lieu of further discharge action and to separate him with an under honorable conditions (general) service characterization. Recoupment is not an issue.

Factual Background

Respondent is a 29-year-old probationary commissioned officer with a total federal commissioned service date (TFCSD) of 29 September 2008. He received his commission through ROTC at University X. Respondent is currently assigned to Base Y.

In November 2009, Respondent was willfully derelict in the performance of his duties. At this time, he was acting at the Maintenance Unit Officer-in-Charge. During the unit's Logistics Compliance Assessment Program Inspection, Respondent scheduled multiple personal appointments, failed to attend key meetings concerning the unit's performance and direction, failed to communicate with aircraft maintenance unit and squadron leaders and failed to perform up to expectations. Based on this misconduct, Respondent was issued a Letter of Admonishment dated 24 November 2009.

In July 2010, Respondent was appointed as the Investigating Officer (IO) for a Commander Directed Investigation (CDI). As part of his IO responsibilities, Respondent was required to submit a written report with his findings on 15 August 2010. Respondent was willfully derelict in the performance of his duties in that he failed to submit the required written report until 29 October 2010. When asked about the written report, Respondent lied to a Senior Noncommissioned Officer by stating he had turned the report into the legal office twice but that they had lost it. Additionally, Respondent lied to members of the Maintenance Group on divers occasions between November 2008 and March 2011 in that he falsely claimed to have played football at University X and to have served as an enlisted member in the Marine Corps. For these infractions, Respondent received nonjudicial punishment dated 28 April 2011.

On 13 September 2011, Respondent lied to his commander. When his commander inquired about his whereabouts on 12 and 13 September 2011, Respondent indicated that he was working with another member of the squadron on a Maintenance Effectiveness Award on 12 September and was away attending appointments on 13 September. Later investigation revealed that both of these statements were false. On 7 November 2011, Respondent was issued a Letter of Reprimand for this misconduct.

Between 12 and 13 September 2011, Respondent wrongfully absented himself from his unit. For this misconduct, Respondent received nonjudicial punishment dated 21 September 2011.

Case Processing

By memorandum dated 31 January 2012, the Squadron Commander recommended the initiation of a show cause action. On 3 February 2012, the Wing Commander served the Respondent with a notification of show cause action based on paragraphs 3.6.4 (serious or recurring misconduct punishable by military or civilian authorities) and 3.6.7 (intentionally misrepresenting or omitting facts in official statements) of AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*. Respondent receipted for notification of show cause action on 7 February 2012.

On 17 February 2012, Respondent provided a response to the notification of show cause action which included submission of an offer of resignation of commission. In his response, Respondent apologized for his misconduct and detailed personal matters he believes contributed to his engaging in the misconduct. He indicated that he understood he could receive an under honorable conditions (general) discharge but respectfully requested that his service be characterized as honorable.

Respondent was served with an amended notification of show cause action on 6 March 2012 by the Wing Commander.¹ The initial notification of show cause action indicated that Respondent could be separated with an under honorable conditions (general) discharge unless the Secretary of the Air Force determines he should receive an honorable discharge. The amended notification corrected the initial notification by noting that Respondent could be separated with an under other than honorable conditions or under honorable conditions (general) discharge unless the Secretary of the Air Force determines he should receive an honorable discharge.

Respondent receipted for the amended notification of show cause action on 7 March 2012. On 15 March 2012, he provided a response reaffirming his desire to resign in lieu of further discharge processing and again asking that he be discharged with an honorable discharge characterization.

On 28 March 2012, the Wing Commander recommended that Respondent's request to resign in lieu of discharge be accepted and that Respondent be separated with an under honorable conditions (general) characterization.

Respondent's initial requests to resign in lieu of discharge were not in compliance with AFI 36-3207. He submitted a new request on 9 April 2012.

On 20 April 2012, the Numbered Air Force Commander recommended that Respondent's request to resign in lieu of discharge be accepted and that Respondent be separated with an under honorable conditions (general) discharge pursuant to AFI 36-3206, paragraph 3.6.4. On 4 May 2012, the MAJCOM Vice Commander recommended that Respondent's request to resign in lieu of discharge be accepted and that Respondent be separated with an under honorable conditions (general) characterization.

¹ As noted and discussed below under "Errors and Irregularities," the amended notification of show cause action incorrectly indicated it was from "XX AF/CC."

On 23 July 2012, Respondent provided a memorandum acknowledging his understanding that, based on his tender of resignation, he could receive an under other than honorable conditions or under honorable conditions (general) discharge unless the Secretary of the Air Force determines he should receive an honorable discharge.

Case Analysis

Pursuant to AFI 36-3207, paragraph 3.6.4, an officer may be discharged for serious or recurring misconduct punishable by military or civilian authorities. The AFI states that serious misconduct “includes any misconduct that, if punished under the Uniform Code of Military Justice (UCMJ), could result in confinement for 6 months or more, and any misconduct requiring specific intent for conviction under the UCMJ.”

Since November 2008, Respondent has made three false official statements, been willfully derelict in the performance of his duties twice and wrongfully absented himself from his place of duty once. Making a false official statement and willful dereliction of duty are punishable under the Uniform Code of Military Justice (UCMJ) with confinement of up to 6 months or more. As such, there is a basis for discharge under AFI 36-3207, paragraph 3.6.4. While Respondent’s conduct in absenting himself from his place of duty is not conduct for which confinement for 6 months or more could be imposed in a trial by court-martial and, thus is not a basis for discharge under paragraph 3.6.4, such misconduct can be considered as to the question of whether Respondent should be discharged.

Additionally, paragraph 3.6.7 of AFI 36-3207 provides that an officer may be discharged for “[i]ntentionally misrepresenting or omitting facts in official statements, records, or commissioning documents.” Respondent’s three false official statements meet the requirements of this paragraph and support an additional basis for discharge.

AFI 36-3206, paragraph 3.1 authorizes either a discharge under other than honorable conditions (UOTHC), under honorable conditions (general), or honorable service characterization for officers involuntarily discharged. An Under Honorable Conditions (General) Discharge is appropriate when a Respondent’s military record is not sufficiently meritorious to warrant an honorable discharge but doesn’t warrant a discharge under other than honorable conditions.

Paragraph 2.46.3 allows an officer to tender his resignation in lieu of further involuntary discharge action at any time before a final decision is reached on the pending discharge action. The Respondent tendered his resignation and it is now in proper form. An under honorable conditions (general) service characterization was recommended by the Wing Commander, the Numbered Air Force Commander and the MAJCOM Vice Commander. Such a characterization, under the facts of this case, is appropriate.

Errors and Irregularities

The initial notification of show cause action incorrectly indicated that Respondent could receive either an under honorable conditions (general) or honorable discharge. It should have noted that

Respondent's discharge could also be characterized as under other than honorable conditions. This error was corrected in the amended notification of show cause action. In his responses to the initial notification of show cause action and the amended notification of show cause action, Respondent acknowledged his understanding that he could receive an under honorable conditions (general) or honorable discharge. Neither response indicated that Respondent understood his discharge could also be characterized as under other than honorable conditions. This was corrected on 23 July 2012 when Respondent provided a memorandum acknowledging his understanding that, based on his tender of resignation, he could receive an under other than honorable conditions or under honorable conditions (general) discharge unless the Secretary of the Air Force determines he should receive an honorable discharge.

Although Respondent was not initially advised properly of the potential service characterizations available in his case, he was eventually put on proper notice. After being put on proper notice, Respondent ultimately acknowledged his understanding of the possible characterizations of his service and reaffirmed his desire to resign his commission in lieu of further administrative discharge processing. Respondent's rights were not prejudiced as a result of these administrative errors given that in the end he was put on proper notice and reaffirmed his desire to resign his commission after properly acknowledging the potential service characterizations in his case.

The amended notification of show cause action incorrectly indicated that it was from XX AF/CC. It also indicated that Respondent's initial notification of show cause action was dated 3 February 2011. The amended notification of show cause action was from the Wing Commander, not the "XX AF/CC" and the initial notification of show cause action was dated 3 February 2012 not 3 February 2011. Respondent was on notice that the amended notification of show cause action was from the Wing Commander based on the signature block on the memorandum and the previous notification of show cause action. Furthermore, the amended notification of show cause action was clearly referencing the 3 February 2012 notification based upon the contents of the memorandum. Neither of these typographical errors prejudiced the rights of Respondent.

Conclusions

There are no significant errors or irregularities that prejudice the Respondent's substantive rights. The case file is legally sufficient to support acceptance of the Respondent's resignation and to separate him with an under honorable conditions (general) discharge characterization.