

DISCHARGE AND SEPARATION

Administrative Discharge

We have reviewed the attached case file and find it legally sufficient to support the recommendation to discharge Respondent, with an Under Honorable Conditions (General) service characterization, pursuant to AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, paragraph 3.6.4 (*serious or recurring misconduct punishable by military or civilian authorities*). Respondent has an outstanding service commitment (ADSC) for which recoupment is at issue.

Factual Background.

The respondent is a 29-year-old probationary Regular Air Force officer assigned to Base Y, as a Family Medicine Resident. He served in the United States Air Force Reserves as a Health Professions Scholarship Student (HPSP), attending Medical School from 12 May 2008 through 20 May 2012. His Total Federal Commissioned Service Date (TFCS D) is 12 May 2008. His Total Active Federal Commissioned Service Date (TAFCS D) is 28 May 2012. He is married with one dependent.

On 6 March 2013, Respondent, at or near Location X, operated a motor vehicle with a blood alcohol concentration of .11 g/mL, exceeding the applicable limit of .08 g/mL. He was convicted in state court on 8 May 2013, for alcohol related reckless driving, and placed on probation. For this misconduct, Respondent received a Letter of Reprimand (LOR), on 8 May 2013. In his response, dated 13 May 2013, he stated, "I have already made a decision to never drive under the influence of alcohol and to either not consume alcohol or to be a designated driver myself."

On 13 February 2015, Respondent, at or near Location Z, operated a motor vehicle, with a blood alcohol concentration of .23 g/mL, exceeding the legal limit of .08 g/mL, and struck another vehicle. The District Attorney retained jurisdiction for criminal prosecution. He is presently charged with Driving Under the Influence (DUI) of alcohol, and failure to decrease speed or use due care. His next trial appearance is scheduled for 29 February 2016. For this misconduct, Respondent received a LOR, dated 13 May 2015.

On 18 February 2015, following his second drunk driving arrest, Respondent's commander ordered he provide a urine specimen, which tested positive for THC. On 13 May 2015, Respondent received an LOR for wrongful use of marijuana.

Case Processing.

Based on the recommendations of WG/CC, dated 30 June 2015, NAF/CC as Show Cause Authority (SCA), initiated a Show Cause Action on 14 July 2015, under

AFI 36-3206, paragraph 3.6.4 (serious or recurring misconduct punishable by military or civilian authorities), based on the above misconduct. Respondent acknowledged receipt of the Show Cause Notification on 22 July 2015.

On 3 August 2015, Respondent submitted his response on 25 September 2014, wherein he asserted that, given his reserve service from 2008 through 2012, he qualified as a non-probationary officer and requested a Board of Inquiry (BOI). He provided no substantive comments on the basis for discharge or his service characterization.

On 17 September 2015, the SCA determined sufficient evidence existed to warrant separation for serious or recurring misconduct and recommended an Under Honorable Conditions (General) service characterization.

On 30 December 2015, the MAJCOM/CV concurred and recommended Respondent be discharged with an Under Honorable Conditions (General) service characterization.

Law and Analysis.

“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. Further, 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*, paragraph 3(c)(1).

AFI 36-3206, paragraph 3.6.4, authorizes the involuntary separation of an officer when there is evidence of serious or recurring misconduct punishable by military or civilian authorities. “Serious misconduct” is defined any misconduct punishable by military or civilian authorities. This includes any misconduct that, if punished under the UCMJ, could result in confinement for six months or more, and any misconduct requiring specific intent for conviction under the UCMJ.

The SCA had sufficient evidence to conclude by a preponderance of the evidence that Respondent committed an offense constituting serious or recurring misconduct. Respondent was twice arrested for drunk driving. After his 6 March 2013 arrest, a California state court judge ordered him to serve three years on probation and pay a fine. Subsequently, on 13 February 2015, he collided with a car in front of him, causing that car to strike a third vehicle. A chemical analysis showed his blood alcohol content was .231 g/mL. He is currently facing prosecution for this incident. Following this second drunk driving arrest, Respondent’s commander directed him to submit to a urinalysis test. The sample tested positive for 20 ng/mL of THC, the human metabolite for marijuana. Respondent received three LORs for these actions. Since Respondent tested positive for THC through the Air Force drug testing program, the SCA properly concluded, based on a preponderance of the evidence, Respondent wrongfully used an illegal drug. In declining to submit substantive matters, refuting any of the factual bases

contained in the SCA notification, Respondent failed to show cause why he should be retained as an officer in the Air Force.

When directing an officer's discharge in accordance with AFI 36-3206, Chapter 3, the Office of the Secretary of the Air Force may characterize a discharge as Honorable; Under Honorable Conditions (General); or Under Other Than Honorable Conditions (UOTHC). AFI 36-3206, paragraph 3.1.1. The SCA determined Respondent's misconduct significantly outweighs the positive aspects of his military record and recommended an Under Honorable Conditions (General) service characterization. We concur in this recommendation.

BOI Entitlement.

10 U.S.C. § 630, *Discharge of commissioned officers with less than six years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)*, provides that the Secretary concerned may discharge regular officers on the ***active duty list (ADL)*** who have less than six years of active commissioned service. (Emphasis added). DoDI 1332.30, *Separation of Regular and Reserve Commissioned Officers*, defines the "ADL" as a "single list for the Army, the Navy, the Air Force, and the Marine Corps ... all officers of that Military Service other than officers described in section 641 of Reference (d) who are serving on active duty." Part II, Definitions.

10 U.S.C. § 14503, *Discharge of officers with less than six years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)*, states that the Secretary concerned may discharge any reserve officer who has less than six years of service in an active status as a commissioned officer.

DoDI 1332.30 also provides that in ***probationary officer*** cases in which the SCA determines that an honorable or general characterization is appropriate, the SCA may initiate separation action without a BOI. Enclosure 6, paragraph 1.a. (Emphasis added). A "probationary commissioned officer" is further defined as a "commissioned officer ***on the ADL*** with fewer than 6 years of active commissioned service; or a Reserve commissioned officer with fewer than 6 years of commissioned service." Part II, Definitions. (Emphasis added). A non-probationary commissioned officer is a commissioned officer other than a probationary commissioned officer." *Id.*

Similarly, AFI 36-3206, defines a probationary officer as "a Regular officer with less than five years of active commissioned service, computed from the total active federal commissioned service date or a Reserve officers with less than five years of commissioned service, computed from the total federal commissioned service date." Attachment 14.

These authorities do not require the SCA to combine prior reserve service to a Regular officer's current active duty service when determining nonprobationary status. 10 U.S.C. § 630, authorizes discharge of regular officers on the *active duty list (ADL)* with less than six years of active commissioned service. Respondent is a Regular officer, per DoDI 1332.30, serving on the ADL with fewer than six years of active service. At the time of the SCA notification, he was not a reserve officer, and thus, 10 U.S.C. § 14503, does not govern.

AFI 36-3206 provides further clarity, stating that active commissioned service is computed from the TAFCSO, which, in Respondent's case, is 28 May 2012. Respondent has not accumulated six (or five, per AFI 36-3206) of active commissioned service. Rather, Respondent obtained a medical degree from 12 May 2008 through 20 May 2012 in an inactive status. Consequently, Respondent does not meet any of the statutory or regulatory requirements, which would trigger the right to a BOI.

Conclusion and Recommendation.

There appear to be no significant errors that materially prejudice any of Respondent's substantive rights. The case file is legally sufficient to support Respondent's administrative discharge for serious or recurring misconduct under AFI 36-3206, paragraph 3.6.4. We recommend discharge with an Under Honorable Conditions (General) service characterization. Respondent received educational benefits through the HPSP. We recommend the government seek recoupment for any unearned portion of HPSP benefits.

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