

***OpJAGAF 2018-34, 20 August 2018, Under Honorable Conditions (general) Administrative Discharge for PFA Failures***

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***TOPIC***

Characterization of Administrative Discharge for multiple physical fitness assessment failures

***TEXT OF THE DECISION***

This opinion is in response to an inquiry regarding an Administrative discharge for under Honorable conditions for five failed physical fitness assessments over the last two years. The case file is legally sufficient to support Respondent's discharge with an under honorable conditions (general) characterization.

***BACKGROUND***

Respondent failed five fitness assessments over the last two years.

On 28 July 2015, Respondent failed to pass his physical fitness assessment by achieving a poor composite score of 36, which is below the minimum passing score of 75. This was his first failure within a 24-month period. During this fitness assessment, Respondent ran the mile-and-a-half in 17:04, for which he received 0 points. He received a Letter of Counseling (LOC), but did not submit any matters.

On 28 April 2016, Respondent failed his second physical fitness assessment by achieving a poor composite score of 36. During this assessment, Respondent's run time was 16:02, which again earned him 0 points. He received a Letter of Reprimand. In his response, he conceded he failed because a "long lack of due diligence" on his part. He stated he would contact the dietician to discuss his eating habits and a physical therapist to correct his running style. He also stated he was "visiting the chaplain to discuss [his] long standing problems. [He was] also strongly considering a counselor to assist [him] in finding ways to reduce [his] stress and stabilize [his] sleeping patterns."

On 26 July 2016, Respondent failed his third fitness assessment in the current 24-month period with a poor composite score of 35.8. Once again, he struggled on the aerobic portion of the assessment, completing the run in 17:30, again resulting in 0 points. He received a Letter of Reprimand, to which he did not submit any matters.

On 24 October 2016, Respondent failed his fourth fitness assessment by receiving a poor composite score of 37.4. His run time was 15:12, which resulted in 0 points. Following this failure, his command recommended his promotion to first lieutenant be delayed.

On 23 January 2017, Respondent failed his fifth fitness assessment in a 24-month period. His run time was 18:55, for which he received 0 points and resulted in the failing score. He received another Letter of Reprimand (LOR) for this failure. Again, Respondent elected not to respond.

Although not a basis for discharge, the following instances of misconduct are also included in Respondent's record and may be considered when determining the most appropriate way to characterize his discharge:

On 28 February 2016, Respondent was derelict in the performance of his duties when he copied and pasted a Regional Weather Bulletin verbatim instead of writing it on his own as required. This dereliction was exacerbated by the fact that hazardous weather was forecasted to occur in the area of responsibility. In response to a verbal counseling, Respondent stated he ran out of time and forgot about the bulletin during his shift due to other duties.

On 11 March 2016, Respondent failed to pass along UCC instructions and data collection pertaining to a flood event to the next shift. Respondent was counseled about the importance of passing along instructions during shift changes, especially in a critical event such as a flood.

On 23 March 2016, it was discovered Respondent had not been attending his mandatory three fitness sessions per week as required by Respondent's Squadron Operating Instruction 36-2905. Respondent was counseled for his absence.

On 30 March 2016, Respondent failed to take a mock physical fitness assessment as required by his squadron Operating Instruction 36-2905, for which he received an LOC. In response, Respondent apologized and said he would strive to improve his qualities as a follower, leader, and Airman.

On many occasions between 9 and 27 September 2016, Respondent failed to attend weekly physical training sessions as required by the squadron Operating Instruction 36-2905, for which he received an LOC. In his response, Respondent indicated he was struggling with confidence. He started seeing a counselor at Family Advocacy in an attempt to improve his "thought patterns." He was also meeting with Mental Health, during which he discussed ways to improve his confidence and reduce his fitness assessment anxiety.

On 28 October 2016, Respondent failed to go to his appointed place of duty, the Wing Medical Clinic. This was his second "No-Show" occurrence, and he received an LOR. In response, Respondent indicated he thought the first missed appointment had been cancelled because he was scheduled for a different appointment later that day. With regard to the second missed appointment, he conceded he failed to go and forgot to inform his leadership about his failure.

On multiple occasions between 8 November 2016 and 18 January 2017, Respondent failed to attend the three weekly mandatory physical training sessions as required by Respondent's Squadron Operating Instruction 36-2905, for which Respondent received an LOR. In his response, Respondent admitted he missed the sessions and stated the "holiday months were emotionally difficult for me and I began to relapse into my depressive tendencies. I started to withdraw and isolate, fully aware of the situation but unwilling to go through the necessary steps to pull myself from my downward spiral."

On 10 March 2017, Respondent's Commander recommended NAF/CC consider initiating action against Respondent pursuant to AFI 36-3206, paragraph 2.3.8.<sup>1</sup> On 8 June 2017, NAF/CC initiated

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<sup>1</sup> Respondent was notified the basis for discharge was AFI 36-3206, paragraph 2.3.8 (Failure in the Air Force Fitness Program as specified in AFI 10-248, *Fitness Program*). The discharge was also processed under this paragraph. The note in the AFI accompanying this basis paragraph reads:

*Administrative actions commenced on or before 31 Dec 03 may be executed to completion, using this paragraph and separation program designator (SPD) codes BCR and GCR. Officers who have been notified in writing IAW this directive on or after 1 Jan 04 (as specified in AFI 10-248) will be separated using SPD codes BFT and GFT and paragraph 2.3.9.*

Accordingly, paragraph 2.3.9 was the appropriate paragraph to cite vice paragraph 2.3.8. Paragraph 2.3.9 provides that failure to conform to prescribed standards of dress, physical fitness, or personal appearance is a basis for

action against Respondent under AFI 36-3206, paragraph 2.3.8. On 21 June 2017, Respondent's Commander signed the acknowledgment on Respondent's behalf, indicating "Member failed to provide requested statements." On 28 July 2017, NAF/CC recommended Respondent be separated under AFI 36-3206, paragraph 2.3.8, with an honorable service characterization. On 23 October 2017, MAJCOM/CD also recommended Respondent be separated under AFI 36-3206, paragraph 2.3.8, with an honorable service characterization.

## ***GUIDANCE***

"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." Department of Defense Instruction (DoDI) 1332.30, *Separation of Regular and Reserve Commissioned Officers*, paragraph 4(c)(1). The Secretary of the Air Force is the approval authority for officer discharges and will determine the characterization of the discharge.

## ***DISCUSSION***

As provided in AF 36-3206, paragraph 2.1.1, when directing an officer's discharge in accordance with Chapter 2, the Office of the Secretary of the Air Force may direct an honorable or under honorable conditions (general) discharge. An honorable discharge is appropriate when the quality of the member'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 is appropriate when the negative aspects of the Service member's conduct or performance of duty outweigh positive aspects of the Service member's conduct or performance of duty as documented in their service record.

With regards to the positive aspects of Respondent's career, his record contains two performance reports and one Air Force Form 475 for his Weather Officer Course in October 2014. The latter contains comments such as, "Good Student! Achieved 86% GPA;" "Developing officer; adhered to military standards/customs/courtesies--steadily demonstrated Air Force values;" and "Vol'd 3 hrs to Fisher House; prep'd/cook'd/serv'd meal for 15 patients." His 2015 performance report includes phrases such as: "Sharp Element OIC!"; "aided Flt's 100% FMC rate"; "Superb ops ldr! Powered Sq's Verne Orr Awd '14 nom by Gp"; "Hard-charging ldr!" and "Motivated ldr! Aided Sq's 2014 FOA OWS of Yr win." His 2016 report was more subdued: "Growing ops ldr"; "Failed 2x fitness assessments"; "Technically astute SDO; aided Sq 'Best seen to date' UEI...continue ldrshp dvlpmt for WWO"; "Eager Element OIC! Led ops/trng; spurred growth of 11 Amn...led to 83% of Sq functional/AOY '15 awd Flt wins"; and "Developing ldr; helped Gp win 'Qs/Yr' awd (#1/6) for 3rd straight yr."

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administrative discharge. The primary standard at issue in this case is failure to conform to prescribed standards of physical fitness. The record is clear that Respondent failed to conform to prescribed physical fitness standards and failed his fitness assessment five times within a 24-month period. Respondent received many administrative actions resulting from his failure in the fitness program and responded to many of them. He was clearly on notice for failing to meet these standards and the basis for the show cause action. Accordingly, adequate legal basis exists for this discharge action under the appropriate paragraph (paragraph 2.3.9).

Despite some positive contributions to his squadron, Respondent's short career is littered with minor infractions which reflect poorly on his leadership and officership. Clearly, he failed to maintain fitness standards. Respondent only received points for his aerobic time on two out of seven fitness assessments, with 13:07 on 26 January 2015 and 13:34 on 21 October 2015. His abdominal circumference was never greater than 29 inches, so he received 20 points on each assessment. His lowest push-up count was 46, but he completed as many as 64 on 28 April 2016, with his average being 57 push-ups. His performance was similar with regard to sit-ups. His lowest number was 44, and his highest was 54. As he admitted, he was simply unwilling to put forth the effort to achieve a passing run score. There is no evidence his failures were intentional; however, this is not an Airman with a medical concern that prohibited him from meeting standards.

Respondent was negligent at his job, "pencil-whipping" a weather bulletin on one occasion and failing to provide turnover for the next shift on another. As the senior duty officer, his actions could have affected missions, especially since one instance occurred during hazardous weather. Moreover, Respondent failed to go to multiple fitness training sessions throughout the year. Officers cannot pick and choose which valid lawful orders to follow. Officers must lead by example, and in this Respondent failed. The unit took notice of this and recommended his promotion to first lieutenant be delayed. The administrative measures the command took to correct Respondent's behavior had little to no effect. Respondent's service has not been otherwise been "so meritorious that any other characterization would be clearly inappropriate," and the negative aspects of his conduct outweigh the positive aspects of his conduct. Accordingly, an honorable service characterization is not appropriate.

#### *Errors or Irregularities*

The command did not initiate discharge after Respondent's fourth fitness failure, as required by Air Force Instruction 36-2905, *Fitness Program*, paragraph 10.1.5.1. There is nothing in the record explaining why command did not initiate action. However, this failure on the part of command did not prejudice Respondent. On the contrary, Respondent could have passed his January 2017 assessment, which would have been evidence that could have supported retention.

Respondent received administrative paperwork on more than one occasion for violating Squadron Operating Instruction 36-2905. This Operating Instruction is not a punitive instruction. As provided in Air Force Instruction 33-360, *Publications and Forms Management*, paragraph 1.7.1.1, the absence of "punitive" language in a paragraph of a publication does not mean compliance is optional, or that a military member cannot be disciplined for violating non-punitive requirements in a publication. Punitive language allows the member to be found to have violated Article 92(1) of the Uniform Code of Military Justice regardless of the member's knowledge of the requirements established by the publication. Absent the punitive language, it must be established Respondent had knowledge of the requirements of the publication. Although there is not a read receipt indicating Respondent read the Operating Instruction, he conceded in his response to his paperwork he "committed the offense of ignoring the orders of a superior officer by way of commander driven OIs."

Respondent elected not to acknowledge or submit matters in response to the show-cause notification. This is his prerogative, and his area defense counsel made it clear Respondent knowingly made this choice. Accordingly, his failure to respond does not affect the legal sufficiency of this discharge action.

As indicated above, Respondent was notified the basis for discharge was paragraph 2.3.8. However, as explained in footnote 1, the facts of this case render this error harmless.

In several responses to the administrative paperwork he received, Respondent discussed mental health issues. He stated he was “visiting the chaplain to discuss [his] long standing problems. [He was] also strongly considering a counselor to assist [him] in finding ways to reduce [his] stress and stabilize [his] sleeping patterns.” He mentioned he was seeing Family Advocacy and Mental Health, and that the “holiday months were emotionally difficult for me and I began to relapse into my depressive tendencies. I started to withdraw and isolate, fully aware of the situation but unwilling to go through the necessary steps to pull myself form my downward spiral.”

On 12 May 2017, Medical Examination Clearance Memorandum stated respondent was medically cleared for separation. Although he sought counseling at Mental Health, he was not diagnosed with a mental disorder which would form a basis for discharge under paragraph 2.3.7.

### *Options*

AFI 36-3206, paragraph 2.1, and 6.6, 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***

There are no significant errors or irregularities that prejudice Respondent’s substantive rights. The case file is legally sufficient to support Respondent’s discharge with an under honorable conditions (general) characterization.

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