

TOPIC

Discharging Chaplains for Loss of Ecclesiastical Endorsements

TEXT OF THE DECISION

The attached case file is legally sufficient to support the command's recommendation to discharge Respondent pursuant to AFI 36-3207, *Separating Commissioned Officers*, 9 July 2004 (incorporating through interim change 6, 18 October 2011), Chapter 3, paragraph 3.7 (Officers who lose their ecclesiastical endorsements).

BACKGROUND

Respondent is a nonprobationary, regular officer assigned to the wing chapel's office. His total active federal commissioned service date is 27 April 2008. When adding his enlisted service time, he has over 18 years of military service toward retirement.

On 17 August 2017, Respondent stole cosmetics and a speed jump rope, with a combined value of over \$100.00, from the Base Exchange (BX). When questioned about the event, Respondent made an official statement, to wit: "I have never been accused of doing anything like this in my life." However, as part of the investigation it was discovered Respondent received nonjudicial punishment on 27 April 2000 when he was an E-2 in a sister service. The allegation was Respondent wrongfully appropriated from an automated teller machine \$300.00 from a credit union. He was found guilty, and his punishment consisted of reduction to E-1, extra duty for four days, and suspended forfeitures of pay.

For the theft from the BX, Respondent was offered, and accepted, nonjudicial punishment. The NAF/CC found Respondent guilty of this offense, and also found him guilty of making a false official statement when Respondent denied ever being accused of stealing. The punishment consisted of forfeiture of \$3,224.00 pay per month for two months.

On 22 September 2017, Respondent stole food from a local grocery store. Respondent was likewise offered nonjudicial punishment for this incident; however, he declined the forum and demanded trial by court-martial. On 17 May 2018, a General Court-Martial convicted Respondent of larceny, in violation of Article 121, Uniform Code of Military Justice (UCMJ), and conspiracy to commit larceny, in violation of Article 81, UCMJ. Specifically, the court convicted Respondent of stealing food items, of a value of less than \$500.00, the property of the local grocery store. Additionally, the court convicted Respondent of conspiring with his wife to steal food items of a value of less than \$500.00, also the property of the local grocery store. Respondent was sentenced to forfeit \$3,000.00 pay per month for one month.

On 7 June 2018, the Air Force Chief of Chaplains informed Respondent he was suspending Respondent's 52RX chaplain Air Force Specialty Code (AFSC) immediately pending a final decision on his designation in accordance with AFI 51-102, Volume 1, *Chaplain Professional Development*, 23 September 2015, paragraphs 3, 7.2, 7.2.3, and 7.3.2. The Chief of Chaplains afforded Respondent 10 duty days to show cause why his chaplain designation should not be withdrawn permanently. After reviewing Respondent's matters, the Chief of Chaplains decided to withdraw Respondent's chaplain designation permanently.

On 9 August 2018, Respondent's endorsing agency withdrew Respondent's ecclesiastical endorsement. The endorsing agency deferred withdrawing Respondent's endorsement initially to ensure he received due process through his UCMJ actions. The endorsing agency stated Respondent's contribution to the morale of, and spiritual support to, countless service members in the U.S. Armed Forces is highly regarded within many religious traditions and denominations. Although withdrawing Respondent's endorsement, the endorsing agency stated they "remain committed to ... [Respondent's] potential for future service in the Air Force.

On 24 September 2018, the NAF/CC informed Respondent she was initiating discharge action against Respondent because Respondent's endorsing agency withdrew its endorsement. She informed Respondent he had the following options: (1) seek another ecclesiastical endorsement; (2) apply for another career field; (3) apply for voluntary retirement (if eligible); or (4) resign.

On 28 September 2018, Respondent stated he intended to seek another ecclesiastical endorsement and to seek another career field. He indicated he would submit his official request within the next 10 workdays. However, Respondent never submitted this request.

On 18 October 2018, the NAF/CC requested Respondent's discharge be sent to SAF/MRB for action and recommended discharge.

LAW

Under the provisions of Title 10, United States Code (U.S.C.) Section (§) 643, a commissioned officer on the active-duty list of the Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired.

According to Department of Defense Instruction (DoDI) 1304.28, *Guidance for the Appointment of Chaplains in the Military Departments*, June 11, 2004 (Incorporating Change 3, effective March 20, 2014), Enclosure 3, paragraph E3.1.1.3, states a chaplain whose endorsement is withdrawn shall be processed for separation in accordance with paragraph 6.5 of the DoDI. Paragraph 6.5 states once the endorsing agency informs the Air Force it has withdrawn the chaplain's ecclesiastical endorsement, processing for separation in accordance with 10 U.S.C. § 643 shall be initiated immediately. Once initiated, the chaplain shall be informed of the following:

1. The chaplain has a right to consult with military counsel or with civilian counsel obtained at no expense to the Government, and to submit statements in response to the notice.

2. The chaplain has lost his ecclesiastical endorsement.
3. The chaplain may:
 - a. Seek another ecclesiastical endorsement within the time frame allotted by the Air Force.
 - b. Apply for non-chaplain duties with the understanding that the officer shall be discharged voluntarily as a chaplain on one day and appointed in a non-chaplain capacity on the next.
 - c. Apply for voluntary retirement, if eligible for such retirement; or
 - d. Tender a voluntary resignation.

If the chaplain does not submit any matters under paragraph 3 above, or if such request is disapproved, the chaplain shall be separated with an appropriate discharge.

Under the provisions of AFI 36-3207, when an endorsing agency withdraws its approval, HQ AFPC/DPPRP is notified of the action. The officer is sent a notification memorandum and AFPC sends separation instructions to the local MPF. There are no other substantive procedural requirements in the AFI. However, AFI 36-3207, paragraph 1.12 states, "The Air Force normally doesn't involuntarily separate officers within 2 years of qualifying for retirement from active service under 10 U.S.C. 8911... *EXCEPTION*: The SAF may approve or order involuntary separation under adverse conditions for these officers."

DISCUSSION

"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, *Administrative Discharge Procedures for Commissioned Officers*, 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, *Commissioned Officer Administrative Separations*, May 11, 2018, paragraph 1.2.a(3)(a). The Secretary of the Air Force is the approval authority for officer discharges and will determine the characterization of the discharge.

Although current Air Force policy is generally not to discharge an officer involuntarily within two years of retirement, Respondent is unfit for continued service in the Air Force. He was accessed to be an Air Force Chaplain. From all accounts, he performed his chaplain duties very well. However, his ecclesiastical endorsing agency withdrew their endorsement, and the Chief of Chaplains withdrew Respondent's designation as a chaplain because of Respondent's misconduct.

As to the characterization of his service, as a non-probation officer, he would normally be entitled to a discharge board. However, DoD policy is the Respondent *will* be separated unless he attains a new endorsement, is assigned to non-chaplain duties, or voluntarily resigns or retires. Respondent did not perform these actions. Accordingly, he shall be separated. AFI 36-3207 does not describe the permissible service characterizations when discharge occurs under this provision. The DoDI says simply the Service Secretary may direct an appropriate discharge if the chaplain does not take action to secure a new endorsement or a new career field, or does not submit a resignation or retirement application. Since he is a nonprobationary officer who was not afforded

a discharge board and he is not being separated for misconduct, an honorable service characterization is the only appropriate option under this basis at this time. If the Board determines a less favorable discharge characterization is appropriate, it may return the case to the Show Cause Authority and direct a Board of Inquiry under the provisions of AFI 36-3206.

CONCLUSION

We recommend Respondent be discharged, as Respondent did not: (1) submit a request for a new ecclesiastical endorsement; (2) submit a voluntary resignation request; (3) submit a retirement request; or (4) submit a request for assignment to non-chaplain duties. Respondent was properly notified of this action and the Show Cause Authority memorandum is in substantial compliance with the requirements of DoDI 1304.28, paragraph 6.5.3. There is a lawful basis for Respondent's discharge under AFI 36-3207, paragraph 3.7. We find this case file legally sufficient to discharge Respondent with an honorable service characterization.

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