

*TOPIC*

Exception to policy religious accommodation request to wear a hijab in uniform, both indoors and outdoors.

*TEXT OF THE DECISION*

This opinion is in response to an inquiry regarding a religious accommodation request for a waiver from the dress and appearance standards. Specifically, Applicant would like to wear a hijab in uniform, both indoors and outdoors, in accordance with her Muslim faith. We reviewed the religious accommodation request and concur with the recommendation of Applicant's chain of command to approve the accommodation with the limitations explained herein.

*BACKGROUND*

Applicant is assigned to the "backshop" for the component maintenance squadron. She works indoors in a closed, air conditioned room. She performs operational checks, analyzes performance tests, and aligns and calibrates 10 avionics test stations for the assigned aircraft. She removes and replaces avionics test station assemblies and modules, verifying the serviceability of the components using software.

Applicant submitted a memorandum to the Wing Commander requesting approval to wear her hijab in uniform, both indoors and outdoors. Her request includes but is not limited to the following uniforms: Airman Battle Uniform, Service Dress, Semi-Formal Dress, Mess Dress and PT uniform. Applicant cites her sincerely held religious belief, as a practicing Muslim, which requires her to wear her hijab. According to Applicant, the Qur'an states, "O prophet, tell your wives, your daughters, and the wives of the believers that they shall lengthen their garments. Thus, they will be recognized (as righteous women) and avoid being insulted. God is Forgiver, Most Merciful." Applicant states the wearing of the hijab will not interfere with performing foreign object damage (FOD) walks on the flight line, as her hijab will be "secured tightly" to her body and secured without pins while on the flight line to hold it in place to prevent any FOD.

The Wing Chaplain submitted a memorandum regarding his interview with Applicant. Chaplain conducted the interview in accordance with the procedural guidance in AFI 36-2903, paragraph 9.12.3.2. Based on the interview, Chaplain stated Applicant "expressed a sincere desire to make her request in accordance with deeply held religious beliefs." Applicant "strongly desires to be faithful to the Islamic teachings for women to practice modesty, humility and righteousness." Additionally, prior to her arrival at the Wing, Applicant was permitted to wear her hijab indoors at Lackland AFB, Texas, while attending Basic Military Training.

Applicant plans to wrap the hijab in such a way that it is tucked into the undershirt of her uniform. According to her unit, the hijab will present no greater risk of creating FOD than a watch cap, which is approved for wear on the flight line. Applicant's chain of command concurs with the request.

## *GUIDANCE*

“The DoD places a high value on the rights of members of the Military Services to observe the tenets of their respective religions or to observe no religion at all.” DoDI 1300.17, *Accommodation of Religious Practices Within the Military Services*, February 10, 2009 (Incorporating Change 1, Effective January 22, 2014), paragraph 4.a.

“In accordance with section 533(a) of Public Law 112-239, as amended, unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Military Departments will accommodate individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs) of Service members in accordance with the policies and procedures of this instruction.” DoDI 1300.17, paragraph 4.b.

“Requests for religious accommodation will be resolved in a timely manner and will be approved when accommodation would not adversely affect mission accomplishment, including military readiness, unit cohesion, good order, discipline, health and safety, or any other military requirement.” DoDI 1300.17, paragraph 4.e.

“Religious apparel” is defined as apparel worn as part of the observance of a religious faith practiced by an Airman. Religious items and apparel, other than head covering, may only be worn visibly during religious services. Plain, dark blue or black religious head coverings may be worn, indoors if approved by the installation commander. Plain, dark blue, or black religious head coverings may be worn, concealed under the uniform/headgear, outdoors if approved by installation commander. AFI 36-2903, paragraph 6.3.7. “Airmen may request a waiver to permit wear of neat and conservative (defined as, discreet, tidy, and not dissonant or showy in style, size, design, brightness or color) religious apparel. AFI 36-2903, paragraph 9.12.1.

### *Approval Authority*

“Religious accommodation requests that require a waiver of service regulations will be forwarded to the Secretary of the Military Department for decision. The Secretary may delegate authority to resolve these requests no lower than the Deputy Chief of Staff for Manpower, Personnel and Services (AF/A1).” DoDI 1300.17, paragraph 4.f.(2).

As per paragraph 9.12.5 of AFI 36-2903, “[r]eligious head covering requests for outdoor wear and wear of items not concealed under headgear, or those impacting grooming standards and/or personal appearance (e.g., hair length and style, tattoos, body art) require endorsement from the unit commander, installation chaplain, appropriate installation commander, and the MAJCOM, FOA or DRU A1.” The request and associated recommendations are forwarded through A1 channels to AF/A1 for approval or disapproval, per AFI 36-2903, paragraph 9.12.5.2.

### *Commander’s Determination and Recommendation*

Air Force commanders must approve requests “when accommodation would not adversely affect mission accomplishment. For requests for religious accommodation when accommodation would adversely affect mission accomplishment, in accordance with section 2000bb-1 of Title 42, United

States Code, requests for religious accommodation from a military policy, practice, or duty that substantially burdens a Service member's exercise of religion may be denied only when the military policy, practice, or duty: (a) furthers a compelling governmental interest and (b) is the least restrictive means of furthering that compelling governmental interest." AFI 36-2903, paragraph 9.12.1.

In considering whether a compelling governmental interest exists, commanders are advised to consider that "[m]ilitary interests in standardized dress and appearance are generally substantial and commanders should take the historic, well-understood functions of and considerations about uniforms into account when considering requests for uniform and dress and appearance-related religious accommodation...." AFI 36-2903, paragraph 9.12.2.

#### *Requesting a Religious Accommodation Waiver for Wear of Religious Apparel*

"Airmen may submit a letter addressed to the installation commander (or equivalent) through their chain of command. The request letter includes a photo or description of the item, unit commander's endorsement, and installation chaplain's endorsement." AFI 36-3203, paragraph 9.12.3.1.

"The installation chaplain ensures a base chaplain interview the Airmen to assess whether the apparel is in keeping with the doctrinal or traditional observances of the member's faith. The installation chaplain endorses the Airman's letter with those findings." AFI 36-3203, paragraph 9.12.3.2.

"Unit commanders endorse the request and address affect [sic] on health or safety and impact on duties of the Airman. Recommendations for disapproval should be unusual unless for safety or when precluded by a 'compelling' [i.e., especially important] governmental [not only Air Force] interest that takes precedence over the requested accommodation. Requests should normally be recommended for approval unless approval would have an adverse impact on military readiness, unit cohesion, standards, or discipline. When requests are precluded by military necessity, commanders and supervisors should seek reasonable alternatives." AFI 36-3203, paragraph 9.12.3.3.

#### *DISCUSSION*

Applicant requests a religious accommodation to wear her hijab in observance of her Muslim faith. She submitted her request for a religious accommodation. She followed the requirements to request an exception to policy to permit wear of neat and conservative religious apparel as outlined in AFI 36-2903, paragraph 9.12.1. The wing chaplain then interviewed Applicant and indorsed her request.

#### *Hijab Accommodation*

We recommend approval of the request to wear the hijab subject to the following limitations:

The hijab will be made of subdued material that closely resembles authorized uniform colors, generally plain, dark blue, black, or the same camouflage pattern as the Airman Battle Uniform or Operational Camouflage Pattern Uniform. The hijab will be free of designs or markings except it can be a camouflage pattern matching the uniform.

The hijab will be worn in a neat and conservative manner and present a professional, well-groomed appearance closely fitted to the contours of the head and neck but not covering the eyebrows, eyes, cheeks, nose, mouth, or chin, and the bottom edge be tucked underneath the blouse of the uniform worn top and all required headgear will still be worn.

The hair underneath the hijab will comply with the grooming standards in AFI 36-2903, and the hijab may not impair or interfere with the ability to operate assigned weapon, military equipment, or machinery, interfere with the ability to perform military duties, or the wearing of required headgear. Specifically, the hijab will not be worn when performing flight line duties. The hijab will not be worn when performing active maintenance requiring the use of powered/non-powered Aerospace Ground Equipment and machinery, to include moving conveyor belts, chains, open rotating shafts, or hand power tools. Additionally, the hijab will not be worn around running aircraft or during maintenance activities if PPE (personal protective equipment) wear will be affected (i.e., if wearing the hijab prevents proper fit and security of safety helmet, face shields, goggles, etc.), or if it is otherwise deemed unsafe or in violation of AFI 91-203.

If Applicant is assigned or directed to perform hazardous duties (duties for which she would be entitled to receive incentive pay for hazardous duty, special pay for duty subject to hostile fire or imminent danger, or hazardous duty incentive pay for flying duty) or operate in a hazardous environment (to include a chemical threat), continuation of this accommodation will be re-evaluated by her chain of command.

The Air Force has a compelling interest in ensuring the readiness of all Airmen for contingency operations that may involve exposure to chemical, biological, radiological, or nuclear hazards. In addition, the Air Force has a compelling interest in ensuring the health and safety of Applicant, which interest, under some circumstances, is furthered in the least restrictive manner by requiring compliance with uniform and grooming standards.<sup>1</sup> With respect to grooming practices, the Air Force is specifically charged with the obligation to carefully consider whether an accommodation would interfere with the wear or proper function of special or protective clothing or equipment<sup>2</sup> such as gas protective masks.<sup>3</sup>

#### *CONCLUSION:*

We recommend approving Applicant's request subject to the above-mentioned limitations. We believe it is feasible to accommodate Applicant while otherwise preserving Air Force interests. We do not recommend approving Applicant's request in full and without limitations, as blanket approval of Applicant's request would not align well with Air Force Standards, and it is not what Applicant requested. In addition, without more data to support a compelling interest to deny

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<sup>1</sup> See generally, DoDI 1300.17, paragraph 4.h.

<sup>2</sup> DoDI 1300.17, Enclosure, paragraph 10.(a) – (d).

<sup>3</sup> Enclosure, paragraph 5.c.

Applicant her request under DoDI 1300.17 and case law, we believe denying the request is not legally supportable.

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