

ADMINISTRATIVE DISCHARGE

Administrative Discharge

The Show Cause Authority (SCA) recommends that the Respondent be administratively discharged pursuant to Air Force Instruction (AFI) 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, paragraph 2.3.7.3 (adjustment disorder) and that her service be characterized as honorable. The case file is legally sufficient to support these recommendations. Recoupment action is appropriate.

Factual Background: The Respondent is a 56-year-old probationary Regular officer, assigned as a family medicinal nurse at Base X. On 13 February 2007, the Respondent signed a registered nurse accession bonus agreement, incurring a four-year active duty service obligation. She received her commission by direct appointment,¹ and has a total active federal commissioned service date (TAFCSO) of 30 June 2007.

Since her arrival at Base X, the Respondent's supervisors and colleagues have witnessed her escalating difficulties in coping with the fast-paced military health care environment. On 21 May 2010, the Unit Commander referred the Respondent to a commander-directed mental health evaluation, as she was concerned that the Respondent's behavior might be the result of a medical or psychiatric condition. The Respondent was removed from her primary duties in June 2010.

On 7 June 2010, the Respondent submitted to the mental health evaluation at Base Y. The evaluation was performed by Major G, a clinical neuropsychologist, in consultation with Doctor T, a psychiatrist. Pursuant to the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV, Major G diagnosed the Respondent with "Adjustment Disorder with Depression and Anxiety, chronic." She noted that the Respondent's conditioning is worsening over time and that "it is not felt that therapy will be sufficient to render her suitable for active duty within the remaining time frame of her AF commitment." Ultimately Major G recommended that "[i]t would be in the best interests of both [the Respondent] and the Air Force for her to separate earlier than her commitment date secondary to unsuitability."

Case Processing: On 25 October 2010, the SCA served the Respondent with a Notification of Show Cause Action initiated under paragraph 2.3.7.3 of AFI 36-3206, for which she acknowledged receipt.² On 4 November 2010, the Respondent submitted a response to the notification memorandum requesting an honorable service characterization and noting the administrative discharge is a "win-win solution" for herself and the Air Force. The response included six letters of recommendation that generally describe the Respondent as a caring, competent nurse. On 5 November 2010, the Respondent submitted a written acknowledgement

¹ The Respondent has prior active duty military service from 21 May 1979 to 20 August 1983 as an enlisted personnel specialist.

² Although not noted in the case file, AFNWC/JA confirms that the Respondent does not hold a special access that requires permission to proceed under paragraph 8.9 of AFI 31-501, *Personnel Security Program Management*.

of her rights and obligations pertaining to the discharge action and a waiver of her rights associated with an administrative discharge board hearing contingent upon an honorable service characterization.

On 2 December 2010, AFNWC/JA advised the SCA that if he concurred with their recommendation for an honorable discharge he need not act on the waiver because the Respondent would not be entitled to a hearing based on her status as a probationary officer. On 8 December 2010, the SCA recommended that the Respondent be discharged with an honorable service characterization. He did not comment on recoupment.

Case 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. 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). Paragraph 2.3.7 of AFI 36-3206, authorizes the administrative separation of Airmen with mental disorders that are not within the purview of the medical disability process. Pursuant to DoDI 1332.38, paragraph E5.1.3.9.4, adjustment disorders are expressly identified as conditions outside the medical disability process.

The Respondent was diagnosed with “Adjustment Disorder with Depression and Anxiety, chronic.” However, the commander-directed mental health evaluation noted that she “does not appear to be experiencing a significant psychiatric or cognitive disorder that would render her medically unfit for duty.” Rather, the evaluation determined that she was unsuited for military duty. Accordingly, administrative discharge processing vice medical disability processing is appropriate in this case. Based on a review of the case file, the SCA had before him sufficient evidence to conclude by a preponderance of the evidence that the Respondent should be administratively discharged with an honorable service characterization.

Case Irregularities/Discrepancies. The mental health evaluation completed by Major G does not include a statement as to whether the Respondent has a mental disease or defect that renders her unable to understand the nature of the administrative discharge process or to participate in her defense, as required by AFI 36-3206, paragraph 4.19.2.3.3. On 4 March 2011, Major J, a psychiatrist assigned to Base X, reviewed the Respondent’s case file and spoke with the Unit Commander, and he concluded that the Respondent was competent to understand and participate in the administrative discharge proceedings. On 7 March 2011, this additional information was served on the Respondent and her defense counsel. On 9 March 2011, the Respondent’s counsel indicated that the Respondent would not be providing additional comments. As the Respondent’s competency has been addressed, the initial oversight does not affect the legal sufficiency of this administrative discharge.

Additionally, the notification memorandum for the commander-directed mental health evaluation does not include the full “Notification of the Service Member’s Statement of Rights,” as required by DoDI 6490.4, *Requirements for Mental Health Evaluation of Members of the Armed Forces*, paragraph 6.1.1.4.1.3. More specifically, the memorandum is missing paragraphs 4(e) and 4(f).

Paragraph 4(e) notes that the patient should have two business days, absent emergencies, before the evaluation to consult with counsel or other appropriate parties. Paragraph 4(f) notes the commander must give reasons for any inability to comply with evaluation procedures when compliance is impractical because the member is geographically separated, deployed, or aboard a naval vessel. The failure to list these items does not affect the Respondent's substantial rights: The Respondent received more than the required number of days between notification and evaluation and, in fact, did consult with counsel, and her duty location did not impact the evaluation process.

Lastly, as the Respondent is a probationary officer and the SCA recommended an honorable service characterization, the Respondent is not board entitled. Therefore, she has no board rights to conditionally waive. The preferable command response to an invalid conditional waiver of a board hearing is to return the waiver to the Respondent as invalid or to notify the Respondent of its rejection on those grounds. That was not accomplished in this case. However, AFNCA/JA indicates that they did tell the Respondent's defense counsel that the SCA did not consider the invalid conditional waiver. Thus, the lack of an official response to the conditional waiver does not affect the legal sufficiency of this discharge action.

Recoupment: As previously mentioned, the case file includes a memorandum from HQ AFPC/DPSOS indicating that the Respondent has an outstanding ADSC for tuition assistance for which recoupment is a consideration. The statute governing recoupment of special pay, 37 U.S.C. § 303a(e), provides that in the absence of Secretarial excusal, an individual who receives a bonus or similar benefit³ conditioned upon the fulfillment of specified service requirements must repay to the United States any unearned portion of the benefit if that member fails to satisfy the service requirements. As a general rule, recoupment will not be pursued in situations in which the member's inability to fulfill a service commitment is due to circumstances determined reasonably beyond the member's control. *DoD Financial Management Regulation*, Volume 7A, Chapter 2, paragraph 020201 (2009), available at www.defenselink.mil/comptroller/fmr/07a/index.html.

While it may be debated whether or not the Respondent's mental health condition is beyond her control, her accession bonus contract provides a clear basis for recoupment. Paragraph 8 of the section entitled "Conditions of Agreement" unequivocally states that the Respondent is subject to recoupment in the event of involuntary separation before completion of her active duty service commitment for any reason other than death. Accordingly, recoupment on a pro rata basis is warranted and appropriate.

³ For the purposes of this statute, a "bonus or similar benefit" means "a bonus, incentive pay, or similar payment, or *an educational benefit or stipend*, paid to a member of the uniformed services under a provision of law that refers to the repayment requirements of this subsection." 37 U.S.C. § 303a(e)(5)(A) (emphasis added).

Conclusions: There appear to be no significant errors or irregularities that might prejudice any of the Respondent's substantive rights. The case file is legally sufficient to support the Respondent's honorable discharge under AFI 36-3206, paragraph 2.3.7.3. Recoupment is appropriate.

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