

ADMINISTRATIVE DISCHARGE

Tender of Resignation (TOR) in Lieu of Administrative Discharge

We have reviewed the attached administrative discharge action and Respondent's tendered resignation in lieu thereof. The MAJCOM Vice Commander recommends Respondent's tender of resignation be accepted and that her service be characterized as Under Honorable Conditions (General). Although the case file is legally sufficient to support an administrative discharge, we concur with the MAJCOM Vice Commander's recommendation that Respondent's resignation be accepted and her service characterized as Under Honorable Conditions (General). Respondent is subject to recoupment of a portion of the \$5,408.00 in educational assistance received through the Air Force Reserve Officers' Training Corp (ROTC) college scholarship program.

Factual Background

Respondent is a 22-year-old probationary officer with a Total Federal Commissioned Service Date (TFCS D) of 13 August 2010. She is currently assigned to Base X. Her primary Air Force Specialty Code is 92TO (Student Pilot Training), and at the time her misconduct was discovered she was awaiting entry into undergraduate pilot training.

In order to receive her Air Force commission, Respondent, an Air Force ROTC cadet, was required to provide proof to the Air Force ROTC Detachment at her University, where she was cross-enrolled, that she had received her college degree from University Y. The proof required by the Detachment was an Air Force template "Graduation Letter" signed by each of Respondent's current course instructors, University Y's Business School Dean, and University Y's Registrar's Office, demonstrating degree completion. Respondent's math instructor, Ms. S, declined to sign the letter annotating that Respondent passed the course since the final exam had not yet been administered. Respondent forged Ms. S's signature, enabling her to get the Business School Dean's and University Registrar's signatures, and turned in the Letter, dated 12 August 2010, to the Detachment. Respondent was commissioned on 13 August 2010. She ultimately failed the math course, and in a letter from University Y, dated 15 September 2010, the Air Force was informed that Respondent had not completed her degree requirements.

Case Processing

On 14 December 2010, the Squadron Commander recommended to the Wing Commander, that action be initiated to administratively discharge Respondent under AFI 36-3206, paragraph 3.6.7, for intentionally misrepresenting facts in commissioning documents. The Wing Commander concurred, and on 16 December 2010, recommended to the Numbered Air Force Commander, the Show Cause Authority, that action be initiated to administratively discharge Respondent under AFI 36-3206, paragraph 3.6.7, and that Respondent's service be characterized as Under Other Than Honorable Conditions.

By Memorandum of Notification dated 14 January 2011, Respondent received from the Numbered Air Force Commander, notification of the initiation of discharge action pursuant to AFI 36-3206,

paragraph 3.6.7, for intentionally misrepresenting or omitting facts in official statements, records, or commissioning documents between 28 July 2010 and 16 September 2010. Specifically, Respondent was informed discharge action had been initiated because of her actions in fraudulently procuring an appointment as a second lieutenant in the United States Air Force by forging college documents that ostensibly showed she would meet the academic requirements for appointment. Respondent was advised she was being recommended for an Under Honorable Conditions (General) discharge. She was further advised of her right to tender her resignation, and that if the Secretary of the Air Force accepts her resignation her service would be characterized as Under Honorable Conditions (General) or Under Other Than Honorable Conditions unless the Secretary determined an Honorable discharge was appropriate.

On 28 January 2011, Respondent replied by executing a tender of resignation. Respondent submitted a written statement with her tender of resignation, in which she apologized for her actions, cited her honesty in cooperating with the AFOSI during the investigation, and emphasized her eight years in JROTC and ROTC and her dream of becoming a commissioned officer and an Air Force aviator. On 7 March 2011, the Numbered Air Force Commander recommended to the MAJCOM Commander that Respondent's resignation not be accepted and that she instead be discharged, but that her service be characterized as Under Honorable Conditions (General) whether discharged or allowed to resign. By an undated memo, the MAJCOM Commander forwarded the case file with a recommendation that the tender of resignation be approved and that Respondent's service be characterized as Under Honorable Conditions (General).

Case Analysis

Discharge or Resignation

Membership in the United States Air Force is not an individual's inherent right. Consistent with DoD policy to separate officers who shall not or cannot meet rigorous and necessary standards of duty, performance, and discipline, DoDD 1332.30, paragraph 4.3.1, members not qualified to properly fulfill their obligation to serve may be separated or discharged from the USAF. *See generally* AFI 36-3206.

AFI 36-3206, paragraph 3.2, provides that wing or comparable commanders may take administrative action when evidence of misconduct or moral or professional dereliction raises doubts about an officer's suitability for continued service, regardless of whether the officer has already received judicial or nonjudicial punishment. A preponderance of the evidence establishes that Respondent is subject to discharge for intentionally misrepresenting or omitting facts in official statements, records, or commissioning documents.

If discharged for intentionally misrepresenting or omitting facts to official statements, record, or commissioning documents, Respondent may receive an Honorable or Under Honorable Conditions (General) discharge, or if a Board of Inquiry is convened, an Under Other Than Honorable Conditions discharge. The Secretary normally directs an Honorable discharge when the basis for discharge pertains solely to precommissioning activities. However, the Secretary may direct an Under Honorable Conditions (General) discharge or, if a Board of Inquiry is convened, an Under Other Than Honorable Conditions discharge, if an officer intentionally misrepresents or

omits facts in official statements, records or commissioning documents. AFI 36-3207, paragraph 1.7.1.2. Prior to submission of the tender of resignation, the Numbered Air Force Commander, the Show Cause Authority, had recommended an Under Honorable Conditions (General) discharge, and the MAJCOM Commander concurs with that recommendation. If Respondent's resignation is accepted by the Secretary, the Secretary can properly determine that Respondent's service is appropriately characterized as Under Honorable Conditions (General).

It is generally in the best interests of the Air Force to accept a member's voluntarily tendered resignation than to pursue an involuntary discharge. In the long term, a voluntary separation at the member's own behest is inherently immunized against almost all manner of future attacks whereas an involuntary discharge "foisted upon" the member is vulnerable to a variety of possible substantive and procedural challenges.

Case Irregularities/Errors

The Numbered Air Force Commander recommended to the MAJCOM Commander that Respondent's resignation not be accepted, but that instead her "unconditional waiver of discharge board" be accepted. However, as a probationary officer, Respondent has no right to a Board of Inquiry unless an Under Other Than Honorable Conditions discharge is recommended. Since the Numbered Air Force Commander, the Show Cause Authority, did not recommend an Under Other Than Honorable Conditions discharge, Respondent's waiver of her ". . . right to a hearing before any administrative discharge board" has no operational effect. Respondent's substantive rights have not been prejudiced by the manner in which the Numbered Air Force Commander forwarded the case file up the chain of command.

Recoupment

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 benefit¹ conditioned upon 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. We find that none of the approved bases for Secretarial excusal are applicable in the Respondent's case. *See DoD Financial Management Regulation, Volume 7A, Chapter 2, paragraph 0202 (March 2011), available at http://comptroller.defense.gov/fmr/07a/07a_02.pdf* (last visited 12 May 2011). As an Air Force ROTC college scholarship recipient, Respondent is subject to recoupment of a portion of the \$5,408.00 in educational assistance received.

Conclusions

There appear to be no errors or irregularities that might prejudice any of the Respondent's substantive rights. The case file is legally sufficient to support accepting Respondent's tendered

¹ 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).

resignation and characterizing her service as Under Honorable Conditions (General). Should Respondent's resignation be rejected in favor of pursuing her involuntary discharge, we recommend characterization of her service as Under Honorable Conditions (General). Recoupment is appropriate.

OpJAGAF 2011/8 3 June 2011