

ADMINISTRATIVE DISCHARGE

Resignation in Lieu of Administrative Discharge

We have reviewed the case file and find it legally sufficient to support command's recommendation to accept the Respondent's offer to resign in lieu of an involuntary discharge, and to separate him with an honorable service characterization. Recoupment is not appropriate.

Factual Background

The Respondent is a 27-year-old non-probationary Regular officer with a total active federal commissioned service date (TAFCS D) of 6 January 2007. He is an electrical engineer assigned to Base X. He was commissioned through an ROTC program. His active duty service commitment expired 4 November 2011. On 10 February 2012, later amended on 9 March 2012, the Show Cause Authority (SCA) initiated action to administratively discharge Respondent under AFI 36-3206, paragraph 2.3.8, Failure in the Air Force Fitness Program.

The Respondent failed the Air Force physical fitness test six times between December 2009 and December 2011, a 24-month period. Under AFI 36-2905_AFGM3, dated 3 January 2012, paragraph 12, unit commanders may recommend officers for administrative discharge only after the Airman has: "received four Unsatisfactory FA scores in a 24-month period; and failed to demonstrate significant improvement (as determined by the commander) despite the reconditioning period; and has been evaluated by a military health care provider to rule out medical conditions."

- On 21 December 2009, the Respondent received a score of 50.63 out of 100.00, and received a referral OPR.
- On 22 March 2010, he received a score of 54.00 out of 100.00, and was verbally counseled.
- On 21 June 2010, he received a score of 58.25 out of 100.00, and was verbally counseled.
- On 27 September 2010, he received a score of 43.30 out of 100.00, and received a Letter of Reprimand for his Unsatisfactory score.
- On 22 December 2010, he received a score of 72.70 out of 100.00 and was verbally counseled.
- On 5 Jan 2011, he received a Satisfactory score (75.10 out of 100.00).

Based on his improvements since his last test (the Respondent lost 9 inches in abdominal circumference and improved his run time by 39 seconds), his unit recommended that the Respondent be retained in the Air Force in spite of his five FA failures between 9 December 2009 and 23 December 2010. The Wing Commander concurred with this retention recommendation.

- On 28 July 2011, the Respondent received a score of 28.70 out of 100.00, or unsatisfactory.¹
- On 26 October 2011, his last FA, the Respondent scored 81.33, or Satisfactory.
- On 5 April 2012, a medical doctor certified that Respondent does not have a medical condition that would prevent him from success in the fitness program.

Case Processing

On 6 January 2012, the Respondent's Commander recommended the initiation of a show cause action, and the Wing Commander concurred. On 10 February 2012, the SCA served the Respondent with a notification of show cause action based on paragraph 2.3.8 (Failure in the Air Force Fitness Program), AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*. On 6 March 2012, the SCA submitted an addendum to this show cause action, to clarify the least favorable characterization that the Respondent could receive if discharged under the above paragraph.

On 14 February 2012, the Respondent submitted an unconditional resignation. In this letter, he expressed an understanding that if he resigned he would receive an honorable characterization. On 9 March 2012, he submitted an additional resignation memorandum in which he stated that he understood that he could receive an honorable OR an under honorable conditions (general) discharge if his resignation was accepted.

By indorsement memorandum to Respondent's 9 March 2012 resignation memorandum, dated 13 March 2012, the SCA recommended accepted of the Respondent's resignation and characterization of his service as "honorable." By second indorsement, dated 21 March 2012, the MAJCOM Vice Commander concurred.

Case Analysis

AFI 36-3206, paragraph 2.3.8 presents a basis for administrative discharge for failure to conform to prescribed standards of physical fitness. AFI 36-2905_AFGM3, *Fitness Program*, paragraph 12 states that an officer may be discharged after receiving four unsatisfactory fitness scores in a 24-month period, provided the officer has failed to demonstrate improvement and a military medical provider has ruled out medical conditions precluding the officer from achieving a passing score. For discharges under chapter 2 of the AFI, honorable or under honorable conditions (general) service characterizations are authorized.

The Respondent tested eight times in a 24-month period, and failed six of those times. One of his "Satisfactory" scores at 75.1, was less than one point away from a seventh failure. His last documented FA score prior to commencement of the show-cause action was "Satisfactory"—81.33—but the Respondent also recorded a weight of 254 pounds on a 5-foot 11-inch frame (corresponding to a Body Mass index of 35.4 kg/m³). In spite of substantial support from and intervention by his unit (intervention of a Fitness Review Panel, enrollment in the Health Living

¹ This grade reflects changes made to the scoring data IAW Air Force Guidance Memorandum (2) for AFI 36-2905, which requires scores below the minimum requirements to be accessed as "zero" for that component.

Program, verbal counselings, written reprimands, etc., all of which are documented in the file), the Respondent has had great difficulty meeting or maintaining a “Satisfactory” level on the FA. Additionally, a military medical provider evaluated the Respondent, and she determined that he has no medical conditions which would preclude him from passing the physical fitness test. Other than his inability to conform to prescribed standards of physical fitness, however, the Respondent’s military record shows honorable performance. Accordingly, we concur with command’s recommendation to accept the Respondent’s conditional waiver and administratively discharge him with an honorable service characterization.

Errors and Irregularities

The initial show-cause memorandum (10 Feb 2012) did not notify the Respondent that his service could be characterized as either honorable or general. However, the SCA served an addendum on 6 March 2012 including this additional information. The Respondent acknowledged receipt of this addendum on 9 March 2012 and reiterated his intention to voluntarily resign from the Air Force, acknowledging that he could receive either a general or an honorable characterization if his resignation were accepted.

The SCA recommends discharge under AFI 36-3206, para 2.3.8, *Failure in the Air Force Fitness Program*. However, that paragraph has a note stating that officers notified for discharge on/after 1 Jan 04 should be separated under paragraph 2.3.9, which specifies that officers can be administratively separated for “[f]ailure to conform to prescribed standards of dress, **physical fitness**, or personal appearance” (emphasis added).

We find that the Respondent’s substantive rights have not been prejudiced by use of paragraph 2.3.8 instead of 2.3.9. Both paragraphs allow for discharge for failure to meet Air Force standards of physical fitness. Both paragraphs allow a discharge characterization of honorable or general. Given the facts presented and procedures followed, there is a lawful basis for discharge under AFI 36-3206.

Recoupment

The case file includes a memorandum for HQ AFPC/DPSOS stating that the Respondent does not have an Active Duty Service Commitment for which recoupment needs to be considered.

Conclusions

There are no errors or irregularities that prejudice the Respondent’s substantive rights. The case file is legally sufficient to support command’s recommendation to accept the Respondent’s request for resignation and separate him with an honorable service characterization. Recoupment is not appropriate.