

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>	GRADE <b>CAPT</b>	AFSN/SSAN <div style="border: 1px dashed black; height: 20px; width: 100%;"></div>
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<b>TYPE HON</b>	<b>X</b>	<b>PERSONAL APPEARANCE</b>	<b>RECORD REVIEW</b>
<b>COUNSEL</b>		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	<b>KENNETH B MARTIN</b>	<b>P O Box 10456 Tampa FL 33629</b>
<b>X</b>			

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
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ISSUES <b>A49.00</b> <b>A94.45</b>	INDEX NUMBER <b>A94.56</b>	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
		<b>1</b> ORDER APPOINTING THE BOARD
		<b>2</b> APPLICATION FOR REVIEW OF DISCHARGE
		<b>3</b> LETTER OF NOTIFICATION
		<b>4</b> BRIEF OF PERSONNEL FILE
		COUNSEL'S RELEASE TO THE BOARD
		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
		TAPE RECORDING OF PERSONAL APPEARANCE
HEARING DATE <b>23 May 2006</b>	CASE NUMBER <b>FD-2006-00118</b>	

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Washington, D.C.

Advise applicant of the decision of the Board, and the right to submit an application to the AFBCMR for issues beyond the DRB's authority.

Names and votes will be made available to the applicant at the applicant's request.

+ CHANGE REASON AND AUTHORITY TO SECRETARIAL AUTHORITY

SIGNATURE OF RECORDER <div style="border: 1px dashed black; height: 30px; width: 100%;"></div>	SIGNATURE OF BOARD PRESIDENT <div style="border: 1px dashed black; height: 30px; width: 100%;"></div>
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**INDORSEMENT**

**DATE: 5/23/2006**

TO: SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002
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**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE**

CASE NUMBER

**FD-2006-00118**

**GENERAL:** The applicant appealed to change the reason and authority for her discharge.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, MD on 23 May 2006.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

**FINDINGS:** The Board grants the requested relief insofar as it is within its power to do so.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's reason and authority for discharge inequitable.

**ISSUE:**

Issue 1. The applicant presented the DRB with requests for relief beyond the authority of the DRB to grant. The DRB noted the requests for relief; however, the DRB President briefed the applicant that the Board could not consider the issues that concerned matters beyond its authority.

Issue 2. The applicant argued that her discharge was inequitable because the narrative reason for her discharge on her DD 214 is "Unsatisfactory Duty Performance." She argued that her discharge was due to her recruiter's incorrect statement to her that the Air Force would accommodate her wearing of religiously mandated clothing along with the uniform. Under the unique facts of this case, the DRB agreed that the expressed reason for discharge did not accurately reflect the facts of her case. As an officer, the applicant had a duty to properly wear the uniform. The applicant would not have become an officer if she had known that the Air Force would not accommodate her religious beliefs. Because the root cause of her unsatisfactory duty performance appears to have been an unfortunate misunderstanding of the religious accommodation rules for uniform wear, the DRB concluded that it was inequitable to discharge her for unsatisfactory performance.

In view of the foregoing findings, the Board concludes that the reason for the discharge is more accurately described as Secretarial Authority and her DD Form 214 should be changed to show that reason for discharge under the provisions of Title 10, USC 1553.

Attachment:

Examiner's Brief

DEPARTMENT OF THE AIR FORCE  
AIR FORCE DISCHARGE REVIEW BOARD  
ANDREWS AFB, MD

(Former CAPT) (HGH CAPT)

1. **MATTER UNDER REVIEW:** Appl rec'd a HON Disch fr USAF Maxwell AFB, AL on 27 Sep 04 UP AFI 36-3206, para 2.3.11 (Unsatisfactory Performance). Appeals for a Change in Reason and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 1 Apr 72. Enlmt Age: 31 2/12. Disch Age: 32 5/12. Educ: Doctorate. AFQT: N/A. A-N/A, E-N/A, G-N/A, M-N/A. PAFSC: 47G1C - Dentist. DAS: 8 Jul 03.

b. Prior Sv: (1) AFRes 24 Jun 03 - 5 Jul 03 (12 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Appt to Capt and Ordered to EAD on 6 Jul 03. Svd: 01 Yrs 02 Mo 22 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: None.

h. Awards & Decs: NONE.

i. Stmt of Sv: TMS: (01) Yrs (03) Mos (04) Das  
TAMS: (01) Yrs (02) Mos (22) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Mar 06.  
(Change Discharge to the Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

## ATCH

1. Applicant's Issues.
2. Exhibit A: Notification to Show Cause Action.
3. Exhibit B: Congressional Record.
4. Exhibit C: Photograph.
5. Exhibit D: Excerpts from Daily Log of Captain [REDACTED].
6. Exhibit E: Multiple Character Witness Letters.
7. Exhibit F: Email Correspondence with Capt, Chaplain [REDACTED] and Capt [REDACTED].
8. Exhibit G: Email Correspondence between Lt [REDACTED] and Capt [REDACTED].
9. Exhibit H: Memorandum - Appeal Notification.
10. Exhibit I: Memorandum - Wear of Religious Apparel.
11. Exhibit J: Memorandum for Whom It May Concern - Religious Apparel.
12. Exhibit K: Memorandum - Request for Accomodation of Religious Apparel.
13. Exhibit L: Phtograph of Hijab Worn with Air Force Blues.
14. Exhibit M: Phtograph of Hijab Worn with Battle Dress Uniform.
15. Exhibit Me: Abbreviated Version of Bill of Rights, Amendment 1.
16. Exhibit N: Director of AEGD Letter.
17. Exhibit O: DOD Directive 1300.17.
18. Exhibit P: Memorandum For Record, Subject: Captain [REDACTED], from Major [REDACTED], 42 Mission Support Commander.
19. Exhibit Q: USAF/IG Letter.
20. Exhibit R: Request for Change of Counsel.
21. Exhibit S: Three Letters of Praise from Patients.
22. Exhibit T: Oath of Office.
23. Exhibit U: Report of Lt Col [REDACTED] Case.
24. Exhibit V: Telephone Interview.
25. Exhibit W: Tricare Explanation of Benefits Statement.
26. Exhibit X: Status of Waiver Memorandum.
27. Exhibit Y: Religious Apparel Waiver Request.
28. Exhibit Z: Talking Paper.

29MAR06/ia

**Brief in support of Captain [REDACTED] Application for Review of Discharge from the Armed Forces of the United States (DD Form 293)**

**1. Enclosures to Brief**

- Enclosure: (1) Statement of Captain [REDACTED] dated 13 Feb 2004 with exhibits A through Z  
 (2) 16 Jun 04 reply to FOIA request from Col [REDACTED] with 19 Aug 03 Memo from Gen [REDACTED]  
 (3) 24 Sept 04 e-mail from Col Odom to Maj [REDACTED]  
 (4) Company Grade Officer Performance Feedback Worksheet  
 (5) 12 Jan 04 memo for AU/CC from Maj [REDACTED]

**2. Summary of Facts<sup>1</sup>**

[REDACTED] is a devout Muslim and wears a head covering (hijab) as a religious expression of her faith. In late 2002, Ms. [REDACTED] contacted an Air Force recruiter. Ms. [REDACTED] was interested in the Advanced Education in Dentistry (AEGD) program in the Air Force. Her recruiter, Technical Sergeant (TSgt) [REDACTED] originally informed her that that the wearing of the hijab in an Air Force uniform was prohibited. This policy directly conflicted with Ms. [REDACTED] religious belief so she decided not to pursue the Air Force. Ms. [REDACTED] explained to TSgt [REDACTED] that she would not be interested in any Air Force programs if she could not wear the hijab.

A couple of weeks later TSgt [REDACTED] contacted Ms. [REDACTED] and informed her she could wear the hijab in uniform. Ms. [REDACTED] explained her religious requirements for modesty and asked about covering her arms and legs as well. TSgt [REDACTED] informed her she could wear the long-sleeved and pants versions of the uniform. TSgt [REDACTED] explained he had consulted with a Muslim Chaplain (Air Force Officer) and discovered the military (Air Force) had regulations that allowed the wearing of religious articles with the uniform. TSgt [REDACTED] encouraged Ms. [REDACTED] to apply for the AEGD program.

Ms. [REDACTED] applied for and was accepted in the AEGD program. Ms. [REDACTED] chose the program over other professional opportunities that were available to her primarily due to a desire to serve her country. Ms. [REDACTED] was sworn in on 24 June 03 in New York, New York by Captain [REDACTED]. Ms. [REDACTED] was dressed in accord with her faith to include wearing the hijab during the ceremony. Ms. [REDACTED] entered into a contract for Advanced Education in Dentistry (AEGD) program in return for three years of service in the Air Force.

On 6 July 2003, Captain [REDACTED] was appointed as a probationary reserve officer. She was ordered to report to the Commissioned Officers Training (COT) Course #MOTS-002 at Maxwell Air Force Base, Montgomery, Alabama. The class began on 9 Jul 03 with graduation scheduled for 7 Aug 03. Captain [REDACTED] was scheduled to report to Eglin Air Force Base, Florida after completion of COT.

<sup>1</sup> For a detailed background of the facts consult Enclosure 1

On 9 July, at COT, Captain: [REDACTED] was wearing the hijab as she had been told by the Air Force recruiter she would be allowed to wear. Captain: [REDACTED] was never issued military uniforms as normal during the first day of COT. On 10 July 03, Captain: [REDACTED] was removed from COT classes. She was dis-enrolled from COT on 19 July 03 for failure to meet eligibility requirements. The only requirement she failed to meet was her insistence on dressing in accordance with her faith.

Captain: [REDACTED] then began the process to seek a request for religious accommodation in accordance with AFI 36-2903. On 26 Nov 03, her request was denied by LtGen: [REDACTED], III AF Deputy Chief of Staff for Personnel. On 16 December 2004, Captain: [REDACTED] was informed that her request was denied. She was informed she had the option to attend the next COT class which was scheduled to begin on 6 Jan 04. Captain: [REDACTED] was told she would not be able to dress in accordance with the requirements of her religion while attending COT.

On 24 December 03, CPT: [REDACTED] informed her commander she could not return to COT if she would be required to dress in a manner that was forbidden by her beliefs. On 27 September 2004, Captain: [REDACTED] was discharged from the Air Force. The character of service was honorable and the narrative reason for separation was unsatisfactory performance.

Captain: [REDACTED] worked at the Maxwell Dental Clinic from July 03 until her separation. She was assigned duties as a dental officer and she performed in an outstanding manner. Captain: [REDACTED] dressed in civilian attire wearing the hijab. During this time she was subjected to both intentional and unintentional harassment.

### 3. Legal Analysis.

Captain: [REDACTED] (hereinafter the petitioner) has the burden of demonstrating that the discharge was improper or inequitable. As a general rule, a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force. *10 USC 774* The Code defines religious apparel as apparel the wearing of which is part of the observance of the religious faith practiced by the member. *10 USC 774(d)* There is no question the petitioner's request to wear the hijab and dress in long sleeves and pants meets the criteria of *10 USC 774* ( See Encl. 1, Exhibits L-M)

There are two exceptions to the general rule that items of religious apparel can be worn in uniform. The exceptions are if the Secretary concerned determines that the item of religious apparel:

- (1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or
- (2) if the Secretary determines, under regulations that the item of apparel is not neat and conservative. *10 USC 774(b)*

Congress has passed legislation that provides even further protection to American citizens. *42 USC 2000bb (1-4)* Congress was responding to Supreme Court rulings which

had virtually eliminated the requirement that the government justify burdens on religious exercise imposed by laws neutral to religion. *42 USC 2000bb (a) (4)* Congress specifically applied the act to all previous legislation to include *10 USC 774, 42 USC 2000bb-3 (b)* The Religious Freedom Restoration Act reestablished the compelling interest test. *42 USC 2000bb (a) (5) and (b) (6)*

In response to *10 USC 774*, the Secretary of Defense issued DOD 1300.17. The Secretary of the Air Force has issued AFI 36-2903 Table 2.6 and Table 2.9. Both the DOD Instruction and the AFI violate *42 USC 2000bb*. Both instructions ignore the compelling interest test.

**Issue #1- The Air Force is at fault for informing the petitioner that she would be allowed to dress in accordance with her faith by wearing the hijab and wearing uniforms covering her legs and arms and subsequently refusing to allow the petitioner to do so.**

The military departments should develop a statement advising of DOD policy on individual religious practices and military requirements to applicants for commissioning, enlistment and reenlistment. *DOD 1300.17 par 3.2.5* Despite that the instruction was issued over 10 years prior to the petitioner beginning her commissioning process the Air Force has failed to develop such a statement. The petitioner's reliance on the promise of Air Force officials was reasonable. The petitioner was clear about her religious dress requirements and was ultimately informed she could dress in conformance with her beliefs. Her recruiter told her directly she could dress in accordance with her beliefs. She was informed an Air Force Officer had research the issue and there were written orders that allowed the wearing of the hijab. She wore the hijab at every stage of the recruiting process to include the commissioning ceremony conducted by another Air Force Officer. The United States Code states religious apparel can generally be worn with the uniform. Under the totality of the circumstances the petitioner's belief was reasonable.

**Issue # 2- The Air Force's failure to inform the petitioner of the DOD policy on individual religious practices as required by DOD policy when she applied for commissioning and subsequent treatment resulted in both personal and professional hardship to the petitioner and her family**

The Defense Department has recommended the services provide guidance on the DOD policy on individual religious practices and military requirements to applicants for commissioning, enlistment and reenlistment. *DOD 1300.17 par 3.2.5* Other services, such as the Army have developed policies as directed by the DOD. The Air Force has either intentionally or negligently failed to follow DOD guidance.

This failure by the Air Force caused TSgt:.....(petitioner's recruiter) to either intentionally or negligently misrepresent Air Force policy to the petitioner. In the event the misrepresentation was intentional, had the Air Force had a requirement to provide such a policy statement to the petitioner, the petitioner would have had the opportunity to

discover the misrepresentation. In the event the misrepresentation was the result of negligence of the recruiter, had the Air Force had such a requirement, the recruiter would have known the policy.

If the petitioner was aware of the policy prior to enlistment, the petitioner could have sought the waiver as part of her enlistment package and some of the harm the petitioner suffered would not have occurred.

**Issue # 3- DOD 1300.17 and AFI 36-2903 violate 10 USC 774, 42 USC 2000 bb (1-4) and the 1<sup>st</sup> Amendment and are unlawful**

Congress clearly states that the general rule is a service member may wear religious apparel in uniform with limited exceptions. DOD 1300.17 and AFI 36-2903 turn the law on its head by making the exceptions the rule. *10 USC 774* places the burden on the Service Secretary to demonstrate that one of the exceptions applies. Both instructions place the burden on the servicemember to request an accommodation for an action which the law protects except under limited circumstances. The system in place in the military is unlawful.

Neither instruction even plays lip service to *42 USC 2000bb*. The DOD instruction does not even mention as a reference. The AFI does not refer to it. Both instructions clearly do not pass the compelling interest test.

DOD 1300.17 and AFI 36-2903 violate the 1<sup>st</sup> Amendment to the Constitution of the United States. The petitioner and other females that practice her religion are barred from serving in the United States Air Force solely because of their religious belief.

**Issue # 4- Denial of petitioner's request to cover up her arms and legs with the military uniform to accommodate her religious belief was a violation of DOD 1300.17, AFI 36-2903 and the US Constitution**

See Analysis for Issue 3.

**Issue # 5- Allowing members of COT classes to wear the Jewish yarmulke and refusing to allow members of the COT to wear the hijab is a violation of the US Constitution, 42 USC 2000bb (1-4) and 10 USC 774**

The petitioner should have the same right to practice her religion and serve in the Air Force as a male who practices the Jewish religion. The Air Force accommodating one religion while not the other is a violation of *10 USC 774*, *42 USC 2000bb*, *1<sup>st</sup> Amendment to the US Constitution*, and the *14<sup>th</sup> Amendment to the US Constitution*.

The Chaplain of the Air Force recognized that the wearing of the hijab would not detract from any Air Force uniform. (See Encl 1, Exhibit K) Americans have seen various generals in uniform with various religious or cultural headdresses identical or similar to the hijab beginning with Desert Storm and continuing to the present day. Other than a



preference for the Jewish religion in favor of the Muslim religion there is no logical reason to permit the wear on the yarmulke on the head while forbidding the wearing of the hijab on the head while uncovered. Both are visible religious wear familiar to most Americans. However, Air Force policy allows one and not the other.

**Issue # 6- The endorsements to petitioner's religious waiver request are flawed and its flawed logic contributed to the wrongful denial of petitioner's request**

See Analysis for Issues # 3, 4 and 5. One would hope that if commissioned officers in a COT class were informed that the wearing of either the hijab or yarmulke was allowed for religious reasons those officers could accept that and not allow it to interfere with discipline, unit cohesion, team building, morale and safety that are vital to the COT training environment. Members of the Air Force have the intelligence and religious tolerance to understand that such accommodations are not defeating the uniformity that is a desirable requirement in the military but recognizing the strength of the diversity in the Air Force. In today's military environment and the potential military environment the wearing of the hijab by the petitioner would have likely been an asset in many deployment situations.<sup>2</sup>

The statement that AFI 36-2903 indicates religious headgear must be able to be worn concealed beneath Air Force headgear is incorrect. The AFI does not prohibit wearing of religious headgear that is not concealed rather the instruction just requires the approval at a higher level. The concern about the wearing of long sleeves in hot weather is addressed in a common sense manner by the Chaplain of the Air Force. (See Encl 1, Exhibit K) The petitioner was attending a COT class during the winter months.

The petitioner was not provided enough information in answers to petitioner's FOIA request to determine if the legal advice provided to the decision maker was flawed. (See Encl 2) However, in reading the denial to petitioner's request it is hard to imagine that the decision maker started with the position as required by law that a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force. *10 USC 774* A cynic might suggest that the Department of Defense has no intention to provide for religious accommodation when wearing the military uniform. One could suggest that the only reason that the department has accommodated the yarmulke is due to Congressional interest after the case of *Goldman v. Weinberger, 475 US 503 (1986)*

**Issue # 7- Blocks 26 and 28 of petitioner's DD Form 214 do not accurately reflect Petitioner's service and will harm her for the rest of her life**

Block 26 separation code is GHJ and block 28 narrative reason for separation is unsatisfactory performance. Separation code GHJ stands for involuntary discharge recommended by board, failure to adhere to acceptable standards of proficiency. (See Encl 3)

<sup>2</sup> A well known example would be the controversy then LtCol [redacted] and the requirement to wear the hijab and other cultural dress requirements during operations in the Middle East

Petitioner was removed from her COT class because her religious beliefs conflicted with the COT's uniform requirements. At most her performance at COT was two days of which her only transgression was the failure to wear a uniform in accordance with COT requirements. Of course, the uniform was never issued to her. Petitioner would have become a dentist in the Air Force medical (dental) corps if she had successfully completed COT. She performed the duties of a dental officer from late July 2003 until her separation in on September 27, 2004. She performed those duties in an exemplary manner. (See Encl 1, Exhibits E and S and Encl 4)

A conservative estimate would place her actual performance as a dental officer as approximately 240 days.<sup>3</sup> Her two days of performance at COT would be less than 1% of her total performance on active duty. Even assuming the Air Force's failure to provide her religious accommodation is correct; her only transgression was to abide by her religious beliefs in an orderly and professional manner. Compound that with the Air Force's failure to provide potential commission applicants with the DOD policy on religious belief as required by DOD policy and the active misstatements of recruiting personnel of Air Force policy it is clear that such labels on a DD 214 are unjust and inequitable. Petitioner performed in an exemplary vice unsatisfactory manner and her performance was well above acceptable standards of proficiency. Petitioner was never a respondent at a Board of Inquiry (BOI) despite the petitioner's request for a BOI. Petitioner's DD 214 cast her in a negative light and will affect her adversely for the rest of her life.

**Issue # 8- Block #21 of petitioner's DD Form 214 is a result of petitioner's belief that Blocks 26 and 28 were unjust and inequitable**

Block 21 states member refused to sign. This statement most likely will be viewed negatively by anyone reviewing the form. The petitioner's refusal to sign was justified as outline in Issue # 7. The petitioner would be willing to sign a DD 214 that accurately reflects her service.

**Issue # 9- Removal of any adverse information as a result of petitioner's request for religious accommodation that remains in her Air Force Records**

See Analysis for Issues # 1-8. The petitioner's military record contains many references to failing to maintain satisfactory progress. (See Encl 5) Any adverse information in any records maintained by the Air Force that are part of petitioner's military record is wrong and the records must be removed.

**Issue # 10- Waiver of recoupment of bonus pay**

All the petitioner did was attempt to serve her country and practice her religion. She did an outstanding job as a dentist in the Air Force. Both petitioner and her husband

<sup>3</sup> The conservative number of days is arrived at by taking the minimum number of months 12 and multiplying it by 20 working days per month

suffered enormous personal and financial costs because of mistakes and illegal practices of the Air Force. Simply put the United States Air Force is at fault. Although allowing the petitioner to keep the bonus paid to her will not offset the harm caused it is the right thing to do.

**Issue # 11- The endorsement and denial of petitioner's request for religious accommodation was a violation of the 10 USC 774, 42 USC 2000bb (1-4), and the US Constitution**

See Analysis for Issues # 3 and 6.

**Issue # 12- Allowing waiver of COT for other officers in a similar position as the petitioner but not allowing petitioner to waive COT is a violation of the Constitution and 42 USC 2000bb (1-4)**

The petitioner is aware that the Air Force did not require at least one other officer to attend COT. This officer had a similar military background as the petitioner, i.e. no previous military service and in the dental corps. Many of the Air Force's objections to petitioner's request for religious accommodation were raised due to the alleged impact in a training environment. The Air Force could have waived COT for the petitioner and accommodated her religious requirements as an Air Force dentist. See Analysis for Issues 3-11.

**4. The following relief is requested:<sup>4</sup>**

- a) Restore to active duty in the Air Force in the AEGD program<sup>5</sup>
- b) Correct adverse remarks on DD 214 Blocks 21, 26, and 28
- c) No recoupment attempt of any monies paid to petitioner as bonus pay
- d) Approval of petitioner's request for religious accommodation
- e) Finding that DOD 1300.17 and AFI 36-2903 are unlawful
- f) Require the Air Force to follow DOD policy and develop a statement advising applicants for commissioning, enlistment and reenlistment of DOD policy on individual religious practices and military requirements.
- g) Remove any adverse remarks in petitioner's military file
- h) Award the petitioner the National Defense Service Medal<sup>6</sup>



<sup>4</sup> In the event the authority is not vested to grant the relief requested by the petitioner by your agency the petitioner requests a recommendation that the relief requested be granted.

<sup>5</sup> In the event petitioner is not restored to active duty petitioner demands payment for damages caused by the Air Force's breach of contract. The damages include but are not limited to \$30,000 bonus, \$27,000 loss of residency (conservatively estimated at hours of residency times \$240 per credit hour), and \$80,000 in student loan repayment lost (\$20,000 per year)

<sup>6</sup> The petitioner was on active duty during a time period that any active duty servicemember would be awarded the NDSM



DEPARTMENT OF THE AIR FORCE  
AIR UNIVERSITY (AETC)

JAN 20 2004

MEMORANDUM FOR CAPTAIN: [REDACTED], 42 MSS

FROM: AU/CC

SUBJECT: Notification of Show Cause Action Initiated Under AFI 36-3206,  
Chapter 2, Paragraph 2.3.11

1. I am initiating action against you under AFI 36-3206, paragraph 2.3.11, that requires you to show cause for retention on active duty.
2. I am taking this action because you failed to maintain satisfactory progress while in an active status student officer program. Specifically you were disenrolled from Commissioned Officer Training (COT) for failure to meet eligibility requirements. You submitted a waiver requesting to be allowed to wear a hijab head covering while in uniform and not wear the short sleeve blouse. That request has been denied. You then indicated you did not wish to be enrolled in COT and requested separation. The least favorable character of discharge that the Secretary of the Air Force may approve in this case is a discharge under honorable conditions (general). Attached are copies of documentary evidence supporting this action.
3. Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of the notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will indicate on it the date and time that you declined to acknowledge receiving it, and it will be included as a part of your case file.
4. Familiarize yourself with AFI 36-3206, particularly the rights that you have. This publication is available for your review at the Office of the Staff Judge Advocate, Air University. If you do not apply for retirement or request a resignation in lieu of further administrative action, a board (Air Force Personnel Board (AFPB) or Board of Inquiry (BOI)) will convene as provided in Chapter 6 or Chapter 7. Contact Captain: [REDACTED]; Area Defense Counsel, 565 Pine St., Maxwell AFB AL 36112, phone: DSN 493-2186; COM (334) 953-2186, to discuss the procedures involved and your rights and options. If you decline counsel, contact Major: [REDACTED]; (334) 953-6499, 42 MSS/DPM, Chief, Military Personnel Flight, 50 LeMay Plaza South, Maxwell AFB, AL 36112, for counseling about your rights and options.
5. If you elect to present matters to a BOI, the standard of proof used by the board to make findings is a preponderance of evidence. You may present evidence and argument to rebut the reason set forth in this notification memorandum or any additional reason or information developed during the BOI proceedings. You also may present other pertinent evidence.

6

6. Within 10 calendar days after you receive this notification memorandum, you must respond by indorsement to me. If I do not receive the indorsement within the allotted time, I will proceed with further action under AFI 36-3206. Include in your indorsement:

a. Any statement you wish to submit on your own behalf and/or any additional evidence that you wish me to consider. If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time to HQ AU/JA. If you do not submit statements or evidence, your failure will constitute a waiver of your right to do so, and I will refer your case to the AFPB.

b. A statement that Captain: [redacted] Area Defense Counsel, counseled you and that you fully understand your rights and options in this action. If you decline counsel, so state and indicate that Major: [redacted] Chief, Military Personnel Flight, counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of education assistance, special pay, or bonuses received if you haven't completed the period of active duty you agreed to serve:

(1) Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.

(2) Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.

(3) Recoupment of a portion of special pay or bonus monies received regardless of the basis for involuntary discharge.

(4) The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.

(5) If you dispute that you are indebted for educational assistance, the board of inquiry, or if you do not choose or are not entitled to a board of inquiry, an authority appointed by the MAJCOM/CC, will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, 4.32. and 4.33., regarding special rules for recoupment.

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the retirement application or the resignation.

e. A statement that the Area Defense Counsel or the Chief, Military Personnel Flight explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information.

7. In response to this notification memorandum, you may, within 10 calendar days, tender your resignation under AFI 36-3207, chapter 2, section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive a discharge under honorable conditions (general) unless the Secretary of the Air Force determines that you should receive an honorable discharge. If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon as possible but no later than 10 calendar days after the date that the MPF receives separation instructions.

8. I have not taken action required under AFI 31-501 because you do not have and have not within the past three years had access to Sensitive Compartmented Information (SCI), Single Integrated Operational Plan-Extremely Sensitive Information (SIOP-ESI), or other special access programs.

9. You may request excess leave if the Air Force doesn't require your further participation in processing your case.



Lieutenant General, USAF  
Commander

5 Attachments:

1. Commander's Recommendation for Action, dated 13 January 2004
2. Memo from Major [redacted], dated 8 January 2004
3. Appeal Notification, dated 16 December 2003
4. AFI 36-3206
5. AFI 36-3207

1st Ind, AU/CC, 20 January 2004, Notification of Show Cause Action Initiated Under AFI 36-3206, Chapter 3, Paragraph 2.3.11

Captain:

MEMORANDUM FOR AU/CC

I acknowledge receiving the notification of administrative discharge action memorandum from AU/CC, dated 20 Jan 04 with five attachments at 21 Jan 04 on 0745.

