

Fact Sheet: Administrative Discharge (Enlisted)



Fact Sheet Prepared by the Texas Air Guard Military Defense Counsel

INTRODUCTION

You've just been notified that you are being recommended for administrative discharge. You're upset, confused, and unsure of what steps to take and what rights you have. The purpose of this fact sheet is to provide some answers to questions you may have concerning discharges under AFI 36-3209. For example, how is a discharge under AFI 36-3209 processed and how does it affect you? Once you are notified that discharge proceedings have been initiated, how long does it take until you are actually out of the Texas Air National Guard? What are your veteran and military entitlements? Can an administrative discharge be upgraded? After you've read this fact sheet, you should have a general understanding of such questions. The MPF can also answer your questions in this area.

REASONS FOR DISCHARGE

AFI 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members* (14 April 2005, Incorporating Through Change 3, 20 September 2011), sets forth the reasons for which you can be involuntarily separated from the Texas Air National Guard before the expiration of your enlistment. The stated basis for the discharge often affects the type of discharge you can receive. While AFI 36-3209 lists many reasons for discharge, airmen are most frequently discharged under one of the following sections:

Misconduct:

You can be discharged from the Air National Guard for misconduct that falls short of a court-martial. There are several subsections under misconduct:

- Minor Disciplinary Infractions - Paragraph 3.21.1. Airmen are subject to discharge for a pattern of misconduct consisting solely of minor disciplinary infractions. Such infractions may involve failure to comply with nonpunitive regulations or minor offenses under the Uniform Code of Military Justice (UCMJ) or Texas Code of Military Justice (TCMJ). Infractions of this type normally result in informal or formal counseling, Letters of Reprimand, Article 15 or Section 15 punishment.
- A Pattern of Misconduct - Paragraph 3.21.2. Airmen are subject to discharge for a pattern of misconduct consisting wholly or in part due to misconduct more serious than that considered to be minor disciplinary infractions. Examples include, but are not limited to, the following:
 - Discreditable Involvement With Military or Civil Authorities;
 - Conduct Prejudicial to Good Order and Discipline;
 - Failure to Support Dependents; and
 - Failure to meet financial obligations.

- Commission of a Serious Offense - Paragraph 3.21.3. Airmen are subject to discharge for misconduct based on the commission of a serious offense if a punitive discharge would be authorized for the same or closely related offense under the UCMJ or TCMJ. Discharge action under this paragraph will often be initiated in the following cases:
 - Sexual Deviation
 - Drug Abuse
 - Misrepresentation
 - Other Serious Offenses.

- Civilian Conviction - Paragraph 3.21.4. Airmen are subject to discharge for misconduct based on a conviction by civilian authorities or action tantamount to a finding of guilty when a punitive discharge would be authorized for the same or closely related offense under the Manual for Courts-Martial; or, the sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

Substandard (Unsatisfactory) Performance:

Under paragraph 3.18, Airmen are subject to discharge for unsatisfactory performance based on documented failure to meet Air Force or Texas Air National Guard standards. Substandard duty performance includes the following: failure to perform assigned duties properly; a progressively downward trend in performance ratings; or failure to demonstrate the qualities of leadership required by the member's grade. A member may also be separated under this provision for: failure to progress in on-the-job training (OJT); irresponsibility in the management of personal finances; unsanitary habits; failure to attain or maintain required job skill proficiency; failure to meet minimum fitness standards; or, failure to complete a mandatory technical school requirement which was a condition of enlistment or assignment action.

Unsatisfactory Participation:

Under paragraph 3.13.2, Airmen are subject to discharged for unsatisfactory participation when the member has accumulated nine or more unexcused absences from UTA within a 12-month period.

Entry Level Performance and Conduct:

Under paragraph 3.16, Airmen are subject to discharged for entry level performance and conduct when it is determined the member is unqualified for further military service by reason of unsatisfactory performance or conduct. Members are subject to this provision if they are in an entry level status. A member may be separated for the following reasons: lack of aptitude for military service; failure to adapt to the military environment; failure to report for scheduled IADT within 365 days of enlistment; failure to make satisfactory progress in a required training program; reluctance to make the effort necessary to meet Air Force standards of conduct and duty performance; lack of self-discipline; or, minor disciplinary infractions.

DISCHARGE PROCESS

The discharge process begins when your Commander notifies you that he/she is recommending to the Separation Authority that you be discharged. This is done through a "Notification Memorandum," which will articulate the basis for the discharge, the recommended characterization (honorable, general, or under other than honorable conditions), and the evidence which supports the discharge. You will also be given several other documents which will notify you of your rights and provide you certain elections. The first document is the "24-Hour Acknowledgment of Receipt of Letter of Notification." This document will notify you of your rights, provide written documentation that you have received the notification of discharge and allow you to make the election to either waive all of your rights or to take your 15 days to consult with a military attorney. The second document is your "15-Day Election of Rights - Proposed Discharge under AFI 36-3209" in which you will notify your command what rights you have elected to use, whether you will submit a written response, and whether you believe you are entitled to a board.

Once notified of your possible discharge, the discharge process differs depending on whether or not you are entitled to a discharge board hearing. An individual is entitled to a discharge board if one of the following conditions is met: 1) the commander recommends you receive an under other than honorable conditions (UOTHC) service characterization; or, 2) you have more than 6 years of satisfactory years of service for a retirement.

NOTIFICATION PROCEEDINGS

If you don't meet the criteria for a board hearing as outlined above, your discharge will be a paper discharge – in other words, you will not get a chance to personally appear before the Separation Authority (usually, the Wing Commander). However, you will be able to submit a written response.

Once your Commander notifies you that he/she is recommending your discharge, you will be given 24 hours to acknowledge receipt of the action and 15 days to submit your response, although extensions are possible. You may prepare a statement (see Attachment 1 for format and ideas), as well as submit additional information (EPRs, "atta boys/girls", character letters, etc.). Try to gather as many character letters as possible, both from work and family (see Attachment 2). The purpose of your package is to convince your commander to not discharge you, to give you probation, or to give you a more favorable discharge characterization. Remember, he or she may not know much about you, other than the discharge evidence.

Your response, along with the Notification Memorandum, a "Recommendation for Discharge" memorandum, and the evidence against you, will be forwarded to the Separation Authority. The final decision, for both whether you will be discharged and the characterization of your discharge, rests with the Separation Authority and he/she may overrule the recommendation of your commander.

DISCHARGE BOARD PROCEEDINGS

If you are entitled to an administrative discharge board hearing, you are entitled to have a hearing which outwardly resembles a court-martial proceeding; however, it is administrative in nature and is therefore not controlled by the same stringent rules of evidence.

The burden of proof is upon the government, who is represented by an attorney from the base legal office or an officer, called the “recorder.” The standard of proof is a “preponderance of the evidence” or the greater weight of the evidence standard. You are the “respondent” in these proceedings and are represented by your defense counsel, known as “respondent's counsel.” The fact-finder (the Board) is a panel of three officers.

The purpose of an administrative discharge board is to serve as a findings and recommendation board. It must reach clear, logical findings of fact as to each allegation set out in the notification letter. On the basis of its findings, the board recommends: (1) whether the evidence supports administrative discharge and (2) whether you should be discharged. If the board recommends discharge, it must also make separate recommendations as to: (1) the type of discharge characterization and (2) whether the respondent should be offered an opportunity for probation and rehabilitation.

The separation authority is bound by some, but not all, of the board's findings and recommendations. After the separation authority has decided your case, you will be notified of the decision in writing.

You may also offer to waive your right to a board in exchange for receiving a certain discharge characterization under certain circumstances. If you are interested in this option, be sure to discuss it with your defense counsel.

PROBATION AND REHABILITATION

There is one other component to a discharge, Probation and Rehabilitation (P&R). Your commander (or the Board) has the authority to recommend that the Separation Authority sign your discharge notification but suspend execution of the discharge while you undergo a period of P&R. This program is covered in AFI 36-3209, para 3.25 and is based on the principle of allowing certain Airmen the opportunity to change their pattern of behavior and remain in the Air Force. Certain types of misconduct are not eligible for P&R, including fraudulent entry, entry level performance, drug abuse, and discharge in the interest of national security. This probationary period lasts between 6 and 12 months. If you have any misconduct during that time period, your discharge can be immediately executed and you will be out-processed. If you know that your record is bad enough to get you discharged but you would like to stay in, you can include a request for P&R in your statement to the Separation Authority. The idea is that it is a “no-risk” option for the Air Force – if you mess up again, you will be gone immediately. Tailor your letter to show that you meet the criteria for P&R: (1) you have demonstrated a potential to serve satisfactorily; (2) you have the capacity and desire to be rehabilitated; and/or (3) your retention in the Texas Air National Guard in a probationary status is consistent with the maintenance of good order and discipline in the Air Force. If you are granted P&R, you will be served with paperwork documenting the conditions and length of your probation.

DISCHARGE CHARACTERIZATION

If and when you are discharged, your service will be characterized in accordance with your military behavior and performance.

Honorable Discharge:

An Honorable Discharge is a separation from the Air Force under honorable conditions. Issuance is conditioned upon proper military behavior and proficient performance of duty. According to AFI 36-3209, para A2.2.1., it is granted in cases where the Airman's service generally has met Air Force standards of acceptable conduct and performance of duty or when the Airman's service is otherwise so meritorious that any other characterization would be inappropriate. Therefore, it is normally given after completion of an enlistment, and is not generally awarded in administrative discharges under AFI 36-3209.

General Discharge:

An Under Honorable Conditions (General) service characterization is also considered a separation under honorable conditions. Under 36-3209, para A2.2.2., a "General" service characterization is appropriate when a member's service has been honest and faithful, but significant negative aspects of conduct or performance of duty outweigh positive aspects of the member's military record. The use of conduct in the civilian community of a member who is not on active duty, or ADT, to characterize service as "General" is appropriate only if the conduct has an adverse impact on the effectiveness of the Air Force, including military morale and efficiency.

Under Other Than Honorable Conditions (UOTHC) Discharge:

An Under Other Than Honorable Conditions (UOTHC) discharge carries a serious stigma. It is defined in AFI 36-3209, parag A2.2.4., as appropriate when the reason for separation is based on one more acts or omissions that constitute a significant departure from expected conduct. Examples of the type of conduct which may warrant a UOTHC include: the use of force or violence to produce serious bodily injury or death; abuse of a special position of trust; disregard by a superior of customary superior-subordinate relationships; acts or omissions that endanger the health and welfare of other members of the Air Force; or, deliberate acts or omissions that seriously endanger the health and safety of other persons.

Conduct in the civilian community of a member who is not on active duty or ADT may be used to characterize service as UOTHC only if the conduct directly affects the performance of military duties. Examples of conduct that directly affects the performance of military duties include, but are not limited to, the following: missing muster or screening; missing a UTA, IADT, or ADT; offense which involve either a military member or a DoD agency as a victim.

A UOTHC can only be given if the member is given an opportunity for a hearing at an administrative discharge board.

WHERE DO I WORK WHILE MY DISCHARGE IS BEING PROCESSED?

Normally, Airmen either remain in their regular duty section or are assigned to special details in accordance with their squadron's policy on handling Airmen pending administrative separation.

POST-DISCHARGE REVIEW:

Once an administrative discharge is approved, there is no military appeals procedure. However, after separation, the individual may seek review of the case and possible upgrading of the discharge by applying to the Air Force Discharge Review Board (AFDRB) within 15 years or to the Air Force Board for Correction of Military Records (AFBCMR) within 3 years. Procedures for making such applications are set forth in AFI 36-2603 and at the following website: www.afpc.af.mil/board-for-correction-of-military-records. The website also provides a list of veteran organizations which may provide assistance or if you desire, you may retain civilian legal counsel to assist you in making and completing an application. You should keep copies of all your discharge package paperwork, including your submission to the separation authority, since much of that material is not maintained in your “permanent” Air Force records. Also, before you leave the base, you should get additional character letters and make copies of the favorable information contained in your PIF.

SOME CLOSING COMMENTS ...

Being served notice of involuntary separation or discharge is by its nature a serious employment action and you should seek legal counsel to advise you of your rights and discuss your case.

**If you have further questions, you should call the Texas State Defense Counsel at
michael.j.kirkland8.mil@mail.mil**

Major Michael Kirkland – Texas State Defense Counsel

GUIDELINE FOR PERSONAL WRITTEN STATEMENTS:

Date

MEMORANDUM FOR _____

FROM: _____

SUBJECT: Written Response to Discharge Notification

1. On (date), I received notification that you have recommended that I be discharged from the military under (type of discharge) conditions. I have consulted with my appointed defense counsel, (name of assigned counsel), concerning your recommendation of my discharge from the United States Air Force. I would like to submit this written presentation for your consideration.
2. (In this paragraph, discuss your background. You will need to talk about where you were born; what kind of education you received; what high school you attended; school activities that you were involved in; type of employment during the school years, if any; and any special achievements, awards.)
3. (In this paragraph, discuss why you joined the Air Force: whether it was a desire to serve your country; learn new job skills; travel; educational benefits; some other reason; or a combination of any and/or all of them.)
4. (In this paragraph, discuss the type of training that you have received while being in the Air Force: what you did on your previous assignment(s); technical school, where, when, what field; any special honors earned during this timeframe; and any other training – such as upgrade, additional duties, etc.)
5. (In this paragraph, discuss your military assignment(s): what did you do on your previous assignment(s); when did you arrive on station; what is your present assignment; do you like/love what you are doing; and type of award, decorations that you may have received.)
6. (Outside/off-duty activities: squadron athletics; help in the community; part-time job; and other activities.)
7. (In this paragraph, request what you want. If you want to be retained, ask for retention. Then, tell them why you are an asset to the Air Force. If you do not want retention, request an honorable or general discharge, or just simply discuss your future plans. Remember, your commander may not know much about you, except for the reasons you are being discharged. So, provide him or her with the information needed to justify changing his or her mind.)

FIRST MI LAST, Rank, USAF

GUIDELINE FOR CHARACTER LETTERS:

MEMORANDUM FOR

FROM:

SUBJECT: Letter of Recommendation

1. (What is your duty performance like? Primary duty; additional duties; were you a supervisor? Of how many people? How well do you supervise? What noted achievements on duty have you received?)
2. (How long and in what capacity do you know the person being discharged: number of years; on/off duty; co-worker or supervisor; and what job do they hold. At this point, state that you are aware of the reason that the member is being recommended for discharge.)
3. (Character and military bearing of the person recommended for discharged: Honest, trustworthy, reliable; self starter, eager, industrious; well organized, knowledgeable, efficient; agreeable, polite, and/or well mannered.)
4. (Recommend for retention: rehabilitation, a good risk for retention, likely to succeed in the Air Force.)

Note to client: Make sure that these people are aware of why you are being recommended for discharge. They should state that they are aware of the reasons in their letter.

FIRST MI LAST, Rank, USAF
Duty title