

**BY ORDER OF THE SECRETARY
OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE
MANUAL 51-507**



27 JULY 2023

Law

**ENLISTED DISCHARGE
BOARDS AND BOARDS OF OFFICERS**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

ACCESSIBILITY: This publication is available for downloading or ordering on the e-Publishing website at ww.e-Publishing.af.mil

RELEASABILITY: There are no releasability restrictions on this publication

OPR: AF/IAJM

Certified by: AF/IAJ
(Brigadier General Gail E. Crawford)

Supersedes: DAFMAN 51-507, 24 January 2019

Pages: 22

This manual implements Air Force Policy Directive (AFPD) 51-5, *Administrative Law, Gifts, and Command Relationships*, and provides instructions for conducting administrative discharge boards and Boards of Officers (Boards of Inquiry) authorized by DAFPD 36-32, *Military Retirements and Separations*, and Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*. This publication applies to uniformed members of the Regular Air Force (RegAF), United States Space Force (USSF), Air Force Reserve (AFR) and Air National Guard (ANG), as well as cadets at the United States Air Force Academy (USAFA) being discharged for misconduct. This manual may be used as a guide for other administrative boards authorized by other publications. In case of a conflict between the provisions of this manual, when made applicable, and the provisions of the specific instruction authorizing the board, the latter governs. The authorities to waive wing, unit or delta level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Manual (DAFMAN) 90-161, *Publishing Processes and Procedures*, for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority or alternately to the publication office of primary responsibility (OPR) for non-tiered compliance items. This manual requires the collection and/or maintenance of information protected by the Privacy Act of 1974 authorized by Title 10 United States Code (U.S.C.), Section 1169, *Regular enlisted members; Limitations on Discharge*; and Executive Order 9397, *Numbering System for Federal Accounts Relating to Individual Persons*; and Executive Order 13478, *Amendments to Executive Order 9397 Relating to Federal Agency Use of Social Security Numbers*. The applicable SORNs F036 AFPC P, *Separation Case Files, (Officer and Airman)*, F033 ARPC B, *Locator or Personnel Data*, and F036 AFPC C, *Military*

Personnel Records System are available at <http://dpclo.defense.gov/Privacy/SORNs.aspx>. Ensure all records generated as a result of processes prescribed in this publication are maintained in accordance with Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and disposed of in accordance with the Air Force Records Disposition Schedule in the Air Force Records Information Management System.

Refer recommended changes and questions about this publication to the OPR using the Department of the Air Force (DAF) Form 847, *Recommendation for Change of Publication*; route DAF Forms 847 from the field through the appropriate functional chain of command. This manual may be supplemented at the wing level, but all supplements must be coordinated and approved by The Office of the Judge Advocate General, Military Justice Directorate, Military Justice Law and Policy Division (AF/JAJM) prior to implementation.

SUMMARY OF CHANGES

This publication has been substantially revised and must be completely reviewed. Major changes include the elimination of template forms, scripts, and worksheets for administrative discharge boards and Boards of Officers, as well as updated language reflecting the burden of proof applicable to commissioned officers required to show cause for retention on active duty. All templates and forms can now be found only on the Virtual Military Justice Deskbook (VMJD) on FLITE KM. If a Respondent is represented by civilian counsel alone, or represents themselves *pro se*, the servicing legal office should locate and provide a copy of the relevant documents to civilian counsel or the *pro se* Respondent.

Chapter 1—OFFICER AND ENLISTED DISCHARGE BOARDS OVERVIEW	4
1.1. Overview.....	4
1.2. Administrative Discharge Boards.....	4
1.3. Boards of Officers.....	4
Chapter 2—ROLES AND RESPONSIBILITIES	5
2.1. For Enlisted Administrative Discharge Boards, Convening Authorities will:.....	5
2.2. For Boards of Officers, Show Cause Authorities will:	5
2.3. Commanders will:.....	6
2.4. Staff Judge Advocates will:	6
2.5. Legal Advisors will:	6
2.6. Victims' Counsel will:	6
2.7. Recorders will:	6
2.8. Reporters, when utilized, will:	7
2.9. Interpreters will.....	7

DAFMAN51-507 27 JULY 2023	3
Chapter 3—DISCHARGE BOARD COMPOSITION AND GUIDELINES	8
3.1. Voting Members.	8
3.2. Non-Voting members.	8
3.3. Guidelines.	9
Chapter 4—DISCHARGE BOARD PROCESS	14
4.1. Oaths.	14
4.2. Pre-Board Sessions.	14
4.3. Board Hearings.	14
4.4. Findings and Recommendations.	15
Chapter 5—RULES OF EVIDENCE	17
5.1. Admissibility of Evidence.....	17
5.2. Hearsay Evidence.	17
5.3. Privileges.	18
5.4. Polygraphs.	18
5.5. Additional Rules of Evidence.	18
5.6. Resolving Evidentiary Matters.	19
Attachment 1—GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION	20

Chapter 1

OFFICER AND ENLISTED DISCHARGE BOARDS OVERVIEW

1.1. Overview. Administrative separation boards function under the rules and procedures established by DAFI 36-3211, *Military Separations*. It is the Board's duty to ascertain and consider the admissible evidence, and to make findings and recommendations thoroughly and impartially in accordance with the relevant laws and instructions.

1.2. Administrative Discharge Boards. An administrative discharge board is an administrative board that makes findings and recommendations regarding the proposed administrative separation of enlisted RegAF, USSF, AFR, or ANG members.

1.3. Boards of Officers. A Board of Officers, also known as a Board of Inquiry (BOI), is an administrative discharge board that makes findings and recommendations regarding the proposed administrative discharge of RegAF, USSF, AFR, and ANG commissioned officers and certain USAFA cadets. For ANG commissioned officers, a Board of Officers is known as a Withdrawal of Federal Recognition Board.

Chapter 2

ROLES AND RESPONSIBILITIES

2.1. For Enlisted Administrative Discharge Boards, Convening Authorities will:

- 2.1.1. Inform Respondents of their rights relating to the discharge action.
- 2.1.2. Appoint at least three voting members to the board. If, after the exercise of challenges, the number of members of the board falls below three, the Convening Authority appoints additional members. The Convening Authority may appoint alternate members to be utilized should the number of members fall below three.
- 2.1.3. Appoint non-voting members to the board.
- 2.1.4. Issue orders convening the board.
- 2.1.5. Take final action on the case if the Convening Authority is also the Separation Authority.
- 2.1.6. Forward the Record of Board Proceedings with advice on the findings and recommendations to the Separation Authority when the Convening Authority is not the Separation Authority.

2.2. For Boards of Officers, Show Cause Authorities will:

- 2.2.1. Inform Respondents of their rights and obligations regarding the requirement to show cause for retention.
- 2.2.2. Appoint at least three members to the board. If the number of members of the board falls below three, the Show Cause Authority (SCA) appoints additional members. The SCA may appoint alternate members to be utilized should the number of members fall below three.
- 2.2.3. Appoint non-voting members to the board.
- 2.2.4. Issue orders convening the board.
- 2.2.5. Respond to requests by the Recorder for further investigation or for the supply of additional documentation.
- 2.2.6. If the board recommends discharge or retirement, send the completed, original Record of Board Proceedings, as well as the complete case file, to Air Force Personnel Center, Military Transition Operations (AFPC/DPMSSR). For ANG cases, transmit the same to Natural Guard Bureau Force Management Branch (NGB/A1PP). For AFRC cases, transmit the same to the Headquarters Air Force Reserve Personnel Directorate (AF/REP) and Air Reserve Personnel Center Transitions Division (ARPC/DPTT).
- 2.2.7. If the board recommends retention, send a copy of the board President's memorandum, as well as the completed, original Record of Board Proceedings, to the AFPC Automated Records Management System (ARMS) for filing. For ANG cases, transmit the same to NGB/A1PP. For AFRC cases, transmit the same to AF/REP and ARPC/DPTT.

2.3. Commanders will:

2.3.1. Determine whether to initiate, or in the case of commissioned officers, recommend to the Show Cause Authority, involuntary administrative separation of members under their command.

2.3.2. Ensure members under their command comply with pre-separation processing procedures and requirements.

2.4. Staff Judge Advocates will:

2.4.1. Advise commanders, Convening Authorities, and Show Cause Authorities on matters relating to involuntary administrative discharges.

2.4.2. Ensure each basis for discharge is legally sufficient.

2.4.3. Review the Record of Board Proceedings to ensure legal sufficiency.

2.5. Legal Advisors will:

2.5.1. Consult, as necessary, with the Recorder, Respondent's Counsel, and any Victims' Counsel, at any time prior to or after the convening of the board to:

2.5.1.1. Prepare for the hearing.

2.5.1.2. Clarify the issues, to include scheduling and evidentiary matters.

2.5.1.3. Rule on admissibility of evidence, requests for delay, and any other issues not requiring the presence of the voting members. The Reporter records and transcribes these sessions as part of the record.

2.5.2. Preside in all open sessions of Administrative Discharge Boards; advise the Board President who presides over all open sessions of Boards of Inquiry.

2.5.3. Instruct the board on its functions, duties, and procedures.

2.5.4. Rule on challenges to voting members.

2.5.5. Rule on the admissibility of evidence and procedural matters.

2.5.6. Authenticate the Record of Board Proceedings.

2.6. Victims' Counsel will:

2.6.1. Represent victims who are their clients throughout the administrative discharge process.

2.6.2. Ensure their clients are aware of the right to be present during the hearing.

2.6.3. Ensure their clients are aware of the right to present certain evidence for potential consideration by the voting members.

2.7. Recorders will:

2.7.1. Assist the President of the board and the Legal Advisor as required.

2.7.2. Review the case file to ensure the Respondent was properly notified, the statement of reasons was accurate, and all necessary documentation was included and has been prepared for the hearing. If more investigation, documentation, or information is needed for proper evaluation of the case, the Recorder will request it from the appropriate authorities.

2.7.3. Arrange for the Respondent and counsel to review all documents considered by the authorities who initiated or convened the board regarding Respondent's case, as well as those which the Recorder may offer into evidence in the board.

2.7.4. Provide the Respondent and counsel the names, addresses, and any relevant written or recorded statements of witnesses the Recorder may call as witnesses in the board.

2.7.5. Interview prospective witnesses and ensure their presence at the hearing.

2.7.6. Request affidavits or collect statements from prospective witnesses who will not be available for the hearing.

2.7.7. Call to the attention of the Legal Advisor any matters that might warrant a pre-hearing conference or a pre-board session and attend, along with Respondent, Respondent's Counsel, and victims' counsel, any such pre-hearing conference or pre-board session.

2.7.8. Attempt to bring to the attention of the board and make a matter of record all pertinent information favorable as well as unfavorable to the Respondent.

2.7.9. Make other necessary preparations for an orderly and proper board hearing.

2.7.10. Represent the Government's case at the administrative board.

2.7.11. Ensure a proper record of the proceedings is made.

2.7.12. Review the Record of Board Proceedings.

2.8. Reporters, when utilized, will:

2.8.1. Attend all board proceedings.

2.8.2. Prepare specialized equipment as necessary (stenography machines, microphones, video, and audio recording devices, etc.).

2.8.3. Transcribe the board proceedings, as required.

2.8.4. Prepare the Record of Board Proceedings when the board is complete.

2.9. Interpreters will. If necessary, translate the proceedings so the Respondent and other members can understand and take part in them.

Chapter 3

DISCHARGE BOARD COMPOSITION AND GUIDELINES

3.1. Voting Members. Boards are conducted before three (or five, if directed by the Convening Authority) voting members. Usually, all voting members are commissioned officers superior to the Respondent, including at least one field grade officer. If the Respondent is enlisted, members in the grade of E-7 or above may be appointed as voting members, but they must be senior to the Respondent. If enlisted members are appointed as voting members, at least one voting member of the Board must be in the grade of O-4 or higher, and a majority of the voting members that hear the Respondent's case must be commissioned officers. If the Respondent is a member of a reserve component, is enlisted, and a discharge with an Under Other Than Honorable Conditions (UOTHC) service characterization is authorized, all voting members must be commissioned officers, at least one of whom is a Reserve officer. In a BOI, the voting members must all be in a grade above O-4, senior to the Respondent, and at least one voting member must be in a grade above O-5. Voting members decide the matter on the evidence received or developed during the board. Voting is conducted in closed session, with only voting members in attendance. All findings and recommendations are determined by a majority vote.

3.1.1. President. The senior voting member of the board acts as the President. The President hears evidence on challenges to the Legal Advisor (if any), and then in closed session, rules on the challenge. The President collects and counts the votes and announces the ballot results to the board members. The President orally announces the board's findings, determinations, and recommendations.

3.1.2. Replacing voting members. If, during the hearing, the board is reduced below three (or five, if directed by the Convening Authority) voting members, if there is no longer a majority of commissioned officers, or if there is no longer at least one voting member in a grade above O-5 (or, for an enlisted discharge board, at least one voting member in the grade of O-4 or above), the board is recessed. If alternate members were not appointed in the order convening the board, a new voting member or members must be appointed. The Respondent and Recorder are given an opportunity to challenge any newly appointed members for cause. After a new member reads the verbatim transcript of the board proceeding to that point, the hearing resumes. If this procedure is utilized, it may be necessary to adjourn the board, to resume at a later date.

3.2. Non-Voting members.

3.2.1. Legal Advisor. The Legal Advisor assists the board in carrying out its functions. The responsibilities of the position make it necessary to select the best qualified (usually, the best trained and most experienced) officer available.

3.2.1.1. For enlisted Administrative Discharge Boards, the Legal Advisor must be a qualified Judge Advocate. For BOIs, the Legal Advisor must be a field grade judge advocate, certified under Article 27(b), Uniform Code of Military Justice (UCMJ), (or a company grade judge advocate, if certified as a military judge under Article 26(b), UCMJ).

3.2.1.2. The Legal Advisor will consult, as necessary, with the Recorder, Respondent's Counsel, and Victims' Counsel prior to or after convening the board to prepare for the hearing, clarify potential issues and administrative concerns, rule on the admissibility of evidence, rule on any requests for delay, and resolve any other issues not requiring the presence of the voting members.

3.2.1.3. The Legal Advisor may not dismiss any factual allegation against a Respondent or terminate the proceedings. The Legal Advisor recesses or adjourns the board as necessary and ensures the business of the board is properly conducted. The Legal Advisor is the final authority for all evidentiary and procedural matters, including challenges for cause against voting members. The Legal Advisor may question witnesses who testify under oath and, when necessary, advise witnesses of their rights. The Legal Advisor authenticates the Record of Board Proceedings.

3.2.2. Recorder. The Government will be represented by at least one Recorder. The Recorder must be a qualified Judge Advocate, or with the approval of the local Staff Judge Advocate, an officer of the Judge Advocate General Corps Reserve, or another officer assigned full time legal duties in the Judge Advocate General Corps (for example, a newly accessed attorney performing full time duties in a legal office, but who has not yet completed the Judge Advocate Staff Officer Course). For BOIs, the Recorder must be in the grade of O-2 or higher and be a qualified officer designated as a Judge Advocate.

3.2.2.1. Assistant Recorder. If appointed, an Assistant Recorder helps the Recorder prepare for a board and participates in presenting the Government's case. Assistant Recorders need not be qualified or certified under Article 27(b), UCMJ. If the Respondent is an enlisted member, the Assistant Recorder may be a military paralegal or civilian legal assistant (such as a paralegal, legal intern, or other similarly situated person).

3.2.2.2. Administrative Assistant. An administrative assistant may be utilized, with the concurrence of the Legal Advisor, to ensure the orderly conduct of the board. Such an administrative assistant acts in a similar manner to a bailiff in a trial by court-martial.

3.2.3. Reporter. A qualified Reporter or stenographer records the board proceedings. The Reporter shall prepare transcripts and Records of Board Proceedings. The Reporter must retain all the notes of the hearing until all action in the case is final.

3.2.4. Interpreter. An interpreter, if needed, translates the proceedings so the Respondent can understand and take part in the proceedings. An interpreter may also be necessary to ensure all Voting members and other non-voting members can understand the proceedings, such as in the case of a non-English speaking witness.

3.3. Guidelines.

3.3.1. Challenging Voting members. Voting members, including the President, are subject to challenge for cause. The following reasons may be used to challenge a voting member for cause:

3.3.1.1. The member was not properly detailed as a voting member of the board.

3.3.1.2. The member is in the Respondent's chain of command.

3.3.1.3. The member will be a witness before the board.

3.3.1.4. The member appeared as a witness before, or served as a member of, any previous board convened to review the record of the Respondent.

3.3.1.5. The member served as a member, convening authority, or reviewing authority of a court-martial where the Respondent was the accused.

3.3.1.6. The member previously issued any adverse personnel action to the Respondent, preferred, recommended preferral, or referred any charge(s) against the Respondent, or previously recommended Respondent be discharged.

3.3.1.7. The member wrote or indorsed any performance report on the Respondent.

3.3.1.8. The member acted as legal counsel for Respondent.

3.3.1.9. The member was an investigating officer in a case in which the Respondent was a subject.

3.3.1.10. The member has a personal bias, either express or implied, which might cast substantial doubt as to the legality, fairness, or impartiality of the proceeding.

3.3.1.11. The member has formed or expressed a definite opinion as to whether the Respondent should be discharged or retained.

3.3.1.12. The member has formed or expressed a definite opinion as to the service characterization the Respondent should receive if discharge is recommended.

3.3.1.13. In the case of an enlisted Respondent, the member has formed or expressed a definite opinion as to whether the Respondent should be offered the conditional suspension of an approved discharge to provide an opportunity for probation and rehabilitation.

3.3.2. Respondent's Rights.

3.3.2.1. Notice. The Recorder, at a reasonable time before the board convenes, provides the Respondent with written notice of:

3.3.2.1.1. The time and place the board has been directed to convene.

3.3.2.1.2. The reason(s) for discharge under DAFI 36-3211, *Military Separations*, including the factual basis upon which each reason is based, and the least favorable characterization of service authorized. If the original notice of the reason for discharge is amended, the Convening Authority issues a new notification memorandum. The memorandum will include as attachments any supporting documentary evidence. At any time, including after the board convenes, the Convening Authority may direct one or more alleged reasons for discharge be withdrawn. The Convening Authority may do this in any manner (*e.g.*, orally or in writing). The addition or modification of reasons for discharge may require the Legal Advisor to adjourn the proceedings in order to provide the Respondent adequate time to prepare.

3.3.2.1.3. The name, organization, duty station (if civilian, the physical address), and all known contact information of all witnesses the Recorder intends to call at the board.

3.3.2.2. Counsel. The Respondent has a right to be represented before the board, free of charge, by detailed military defense counsel or by civilian counsel at their own expense. If the Respondent employs civilian counsel, they may request their detailed military defense counsel be permitted to remain, but such a request does not have to be granted. The Respondent is only entitled to representation by one counsel and is not entitled to a delay of board proceedings to secure the availability of more than one counsel.

3.3.2.2.1. A defense paralegal may also be present during discharge boards and assist the Respondent's military defense counsel in the same manner an Assistant Recorder assists the Recorder.

3.3.2.2.2. The Respondent does not have a right to unreasonable delay of an administrative discharge board to secure the attendance of counsel of his or her own choosing, so long as the Respondent is represented by at least one sufficiently qualified counsel.

3.3.2.2.3. The Respondent may affirmatively waive the right to be represented by counsel.

3.3.2.3. Witnesses. The Recorder invites witnesses for the Government and the Respondent.

3.3.2.3.1. In the case of a dispute as to whether a witness should be produced, or the method of production, the Legal Advisor makes the final determination regarding whom to invite and in what manner. In making this determination, the Legal Advisor will consider:

3.3.2.3.1.1. The degree to which the witness will present relevant, material, competent, and not unduly cumulative evidence.

3.3.2.3.1.2. The timing of the request for production of the witness, including whether the request was made with sufficient opportunity to make travel or other arrangements.

3.3.2.3.1.3. The availability and sufficiency of other means to receive the witness's testimony, such as video teleconference, telephone, or by written statement or affidavit.

3.3.2.3.1.4. The likelihood of the witness's production interfering with essential military training, mission accomplishment, or operational deployment.

3.3.2.3.1.5. The burden production would place on the witness, including factors such as distance of travel, the witness's employment, and the witness's domestic obligations.

3.3.2.3.1.6. The potential delay in the proceedings that might be caused by producing the witness.

3.3.2.3.1.7. For civilian witnesses, the lack of power to compel the witness's attendance.

3.3.2.3.2. In a Board of Inquiry, the Show Cause Authority may deny a request for a witness if they determine military requirements do not permit the member or employee to appear before the board. In this case, every effort should be made by the parties to secure suitable alternatives to live testimony.

3.3.2.4. Appearance. The Respondent has a right to be present at the board proceedings (except during the voting members' closed session deliberations) and to present evidence on his or her own behalf. For procedures regarding enlisted administrative separations *in absentia*, consult DAFI 36-3211, paragraph 3.10. A BOI for a commissioned officer cannot be conducted *in absentia* unless the officer waives his or her statutory right to appear, in writing. In such cases, the commissioned officer is still entitled to representation by counsel before the *in-absentia* BOI.

3.3.2.5. Testimony. The Respondent has a right to testify at the board under oath and subject to cross-examination. The Respondent also has a right to submit an unsworn statement, which may be presented orally, in writing or both, alone or through counsel.

3.3.2.6. Examination of Evidence. The Respondent may examine and object to the introduction of any evidence submitted by the Government. The Respondent, themselves or through counsel, may question any witness appearing before the board. The Legal Advisor should set a reasonable time for the production and examination of all evidence the Government intends to offer at the board and may also set a reasonable time for any objection to that evidence to be received from the Respondent or his or her counsel, in writing.

3.3.2.7. Documents. The Respondent may submit, at any time before the board convenes or during the proceedings, documents from his or her record of service, letters, depositions, sworn or unsworn statements, affidavits, certificates, stipulations, or other documentary evidence, so long as the Legal Advisor determines they are relevant to the proceedings and otherwise admissible under these rules. In the absence of evidence to the contrary, documents maintained within the official military personnel record of the Respondent are presumed to be admissible.

3.3.3. Victim's Rights. A victim as set forth in the matters under consideration as a basis for discharge shall be afforded the following rights:

3.3.3.1. To be treated with fairness and with respect for his or her dignity and privacy.

3.3.3.2. To reasonable, accurate, and timely notice of the board.

3.3.3.3. To receive, upon request, the letter of notification and relevant attachments, as well as motions and other board documents relevant to the victim's role or interests in the proceedings.

3.3.3.4. To proceedings free from unreasonable delay.

3.3.3.5. To reasonably confer with the Recorder.

3.3.3.6. To be reasonably protected from the Respondent.

3.3.3.7. To not be excluded from the board, unless the Legal Advisor determines by a preponderance of the evidence that testimony by the victim of an allegation under consideration would be materially altered if the victim heard other testimony at that proceeding. However, after the victim testifies (if the victim elects to testify), the victim has the right to be present unless the Legal Advisor determines such presence will unduly prejudice the proceedings. The right not to be excluded includes the right to participate by alternate means, such as by video teleconference or telephone, as applicable.

3.3.3.8. To be accompanied by, and reasonably be heard, through counsel. Counsel may appear in person, by telephone, or by video teleconference, and has standing to address the Legal Advisor to enforce rights and evidentiary privileges, regardless of their client's presence at the hearing. However, the board may not be unreasonably delayed for this purpose. The right to be heard in cases where the victim chooses not to participate is satisfied provided the victim and Victims' Counsel received reasonable opportunity to submit a statement for the board's consideration.

3.3.3.9. To be informed of the results of the board, as those results pertain to the victim's role or interests in the proceeding.

Chapter 4

DISCHARGE BOARD PROCESS

4.1. Oaths. The Recorder swears in the Legal Advisor, Reporter, Interpreter (if one is used), Voting members, and witnesses. A Reporter who has been previously administered a one-time oath for courts-martial need not be sworn a second time. The Legal Advisor swears in the Recorder.

4.1.1. Oaths for Board Personnel. Use the following oath for the Reporter, Legal Advisor, Recorder, and Interpreter: *“Do you [[swear]][affirm]] that you will faithfully perform the duty of [[Reporter]][Legal Advisor]][Recorder/Assistant Recorder]][Interpreter]] to this board [so help you God]?”*

4.1.2. Oaths for Voting members. Use the following oath for all potential Voting members: *“Do you [[swear] or [affirm]] that you will answer truthfully the questions concerning whether you should serve as a Voting member of this board, and that if selected, you will faithfully and impartially determine, according to the evidence presented, your conscience, the regulations applicable to this proceeding, and the instructions of the Legal Advisor, the case about to be heard [so help you God]?”*

4.1.3. Oaths for Witnesses. Use the following oath for Witnesses: *“Do you [[swear] [affirm]] that the evidence you shall give in the matter now in hearing shall be the truth, the whole truth, and nothing but the truth [so help you God]?”*

4.2. Pre-Board Sessions.

4.2.1. The Legal Advisor, Recorder, Respondent, Respondent’s Counsel, Reporter, and Victims’ Counsel (if applicable) may participate in pre-board sessions at any time before the board opens, without the Voting members.

4.2.2. Pre-board sessions generally occur in the following manner:

4.2.2.1. The Recorder offers the convening order(s) into evidence;

4.2.2.2. Counsel introduce themselves and state their qualifications;

4.2.2.3. Recorder(s), Legal Advisor, and if necessary, the Reporter are administered oaths;

4.2.2.4. The Legal Advisor informs the Respondent of his or her rights before the board;

4.2.2.5. The Recorder and the Respondent submit documentary evidence they wish the board to consider; and

4.2.2.6. The Legal Advisor takes up any additional procedural or evidentiary matters, to include the ruling on admissibility of any evidence presented.

4.3. Board Hearings.

4.3.1. Board hearings generally occur in the following manner:

4.3.1.1. After being administered the oath, voting members are subject to questioning by the Legal Advisor, Recorder, and Respondent’s Counsel.

4.3.1.2. The Recorder and Respondent’s Counsel exercise challenges for cause against potential Voting members. The Legal Advisor rules on such challenges.

4.3.1.3. The Recorder and, if not deferred, Respondent's Counsel, present opening statements.

4.3.1.4. The Recorder presents the Government's evidence.

4.3.1.5. The Respondent, alone or through Respondent's Counsel, presents the Respondent's evidence, if any.

4.3.1.6. The Recorder and Respondent's Counsel present closing arguments.

4.3.1.7. The Legal Advisor provides closing evidentiary and procedural instructions to the Voting members. The Legal Advisor provides the President with the Findings and Recommendations Worksheet.

4.3.1.8. The Voting members conduct closed session deliberations, vote on the findings and recommendations, and record the results of their vote on the Findings and Recommendations Worksheet. If necessary, the Legal Advisor (with the Reporter present) may assist the Voting members in completing the Findings and Recommendations Worksheet within the closed session deliberations.

4.3.1.9. The Legal Advisor reviews the completed Findings and Recommendations Worksheet in the open session of the board.

4.3.1.10. The President announces the findings and recommendations of the board.

4.3.1.11. The board is adjourned.

4.4. Findings and Recommendations.

4.4.1. Findings. Findings must be supported by a preponderance of the evidence, by the concurrence of a majority of the Voting members.

4.4.1.1. Boards may not enter findings contrary to matters previously adjudicated in a trial by court-martial, a civilian criminal trial, or by the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (security clearances). This does not preclude the Respondent from presenting matters in mitigation, extenuation, or explanation regarding matters previously adjudicated. The Legal Advisor may impose reasonable restrictions on evidence introduced by the Recorder and the Respondent that conflicts with previously adjudicated matters.

4.4.1.2. Findings will be stated to reflect clearly the relevant facts established by the evidence and the conclusions of the board. If the board is authorized by a publication that establishes specific requirements for findings, those requirements must be satisfied.

4.4.2. Recommendations. The nature and extent of recommendations required depends on the purpose of the board. Recommendations must be consistent with the findings and must also be supported by a preponderance of the evidence, by the concurrence of a majority of the Voting members.

4.4.3. Recoupment of Advanced Educational Assistance, Special Pay, or Bonuses.

4.4.3.1. When a member who is subject to recoupment of advanced educational assistance disputes the validity of the debt, the administrative discharge board conducts an inquiry into the facts of the case to determine the validity of the debt. The Recorder presents evidence describing the benefits or pay received, which may include the amount, frequency, the last payment received, and remaining portion to be paid.

4.4.3.2. If the basis for recoupment is misconduct, the board provides an assessment as to whether the behavior that resulted in the Respondent's separation qualifies as misconduct under 10 U.S.C. § 2005(a)(3), *Advanced education assistance: active duty agreement; reimbursement requirements*.

Chapter 5

RULES OF EVIDENCE

5.1. Admissibility of Evidence. Proceedings under this manual are administrative, not judicial. The rules of evidence for courts-martial and other judicial proceedings are generally not applicable, except as specifically noted. Oral, documentary, or other evidence that is competent, relevant, material, and not unduly repetitious may be admitted. For general guidance on relevance and its limits, Legal Advisors may consult Section 4 of the Military Rules of Evidence.

5.1.1. Standard of Proof. Preponderance of the evidence is the standard of proof to be used in arriving at all findings and recommendations. A preponderance of the evidence simply means the greater weight of credible evidence. When it is more likely than not that events have occurred as alleged, there is a preponderance of the evidence.

5.1.2. Burden of Proof.

5.1.2.1. The Government, as the proponent of an involuntary administrative discharge, has the burden to prove a basis for discharge exists, by satisfying the burden of proof for at least one factual allegation forming the basis for discharge in the original and, if applicable, any amended notification memoranda.

5.1.2.2. In the case of an enlisted member, if at least one basis for discharge is established by the Government, the Government then has the burden as to whether the Respondent should be discharged.

5.1.2.3. In the case of a commissioned officer, if at least one basis for discharge is established by the Government by a preponderance of the evidence, the burden then shifts to the Respondent to establish that they should be retained on active duty.

5.1.2.4. In some cases, if a particular basis for discharge is established by the Government, the burden shifts to the Respondent to both raise and satisfy relevant retention criteria. In these cases, the Respondent must do so by a preponderance of the evidence.

5.1.2.5. Neither the Government nor the Respondent bears the burden regarding the Respondent's service characterization, and, for enlisted Respondents, whether to offer conditional suspension of an approved administrative discharge to provide an opportunity for probation and rehabilitation. Voting members make decisions on these questions based on the totality of evidence admitted on these issues, utilizing the preponderance of evidence standard.

5.2. Hearsay Evidence. A statement made outside the board, admitted by either the Recorder or the Respondent for the truth of the matter asserted therein, is hearsay.

5.2.1. Hearsay evidence admissible in a judicial proceeding is generally admissible in administrative boards.

5.2.2. Hearsay evidence inadmissible in a judicial proceeding is not necessarily inadmissible in an administrative board solely on the basis that it is hearsay.

5.2.3. Hearsay evidence is admissible provided the Legal Advisor determines there are circumstantial indicia of trustworthiness as to the origin and content of the statement (not to the truth of the matter asserted therein), and that the evidence is otherwise admissible under these rules.

5.2.4. Factors in determining whether hearsay evidence is to be admitted include, but are not limited to, the following: the type of hearsay offered; whether the statements are signed and sworn as opposed to anonymous, oral, or unsworn; whether the statements are supported or contradicted by statements made in the hearing; whether the declarant is available to testify; whether the party admitting the hearsay statement requested the appearance of the declarant; whether the declarant is unavailable; whether the hearsay is corroborated by other competent evidence; and the independence or possible bias of the declarant. In determining whether to admit hearsay evidence, the Legal Advisor will rely on the quality, rather than the quantity, of the evidence submitted.

5.2.5. Non-Testifying Victim. A victim has an absolute right to decline to testify in an administrative proceeding. A victim who is invited but declines to testify in a discharge board shall be determined to be unavailable. A victim's unavailability does not automatically result in a prior hearsay statement's admissibility; rather, the Legal Advisor should independently evaluate any hearsay evidence purporting to come from an alleged victim using the factors noted above.

5.3. Privileges. Apply the Military Rules of Evidence governing privileged communications, excepting the psychotherapist-patient privilege for the Respondent in involuntary discharge actions where the basis for discharge involves other psychological disorders that interfere with the performance of duty and which do not fall within the purview of the medical disability process.

5.4. Polygraphs. Results of polygraph examinations are inadmissible, except when both the Respondent and Recorder consent and the Legal Advisor approves.

5.5. Additional Rules of Evidence.

5.5.1. The Government must introduce the following documents into evidence:

5.5.1.1. Any convening orders.

5.5.1.2. The notification memorandum, any amended notification memoranda, and their attachments, subject to the general rules for admissibility contained in this Manual.

5.5.1.3. The Respondent's acknowledgement of receipt of the notification memoranda.

5.5.1.4. The Show Cause Letter of Notification, including the Statement of Reasons (for BOIs).

5.5.1.5. The Respondent's performance reports.

5.5.2. The Respondent cannot be compelled to testify against himself or herself, nor may that silence be used against him or her. Involuntary confessions or admissions by a Respondent are not admissible. A failure to advise the Respondent, pursuant to Article 31, UCMJ, or the Fifth Amendment to the United States Constitution, before eliciting confessions or admissions, does not by itself make a previously made statement involuntary and thus inadmissible. The exclusionary rule applicable to courts-martial is generally inapplicable in administrative board proceedings.

5.5.3. If the Respondent elects to testify under oath, he or she will be subject to cross-examination by the Recorder, the Legal Advisor, and the Voting members.

5.5.4. At any time, the Voting members may request additional evidence for consideration. Such requests are subject to objection by the Recorder, Respondent's Counsel, and, if applicable, Victims' Counsel. Any such objections will be resolved by the Legal Advisor in accordance with these rules, applying a presumption of production and admissibility for evidence requested by a Voting member.

5.6. Resolving Evidentiary Matters. In resolving all other evidentiary matters, the Legal Advisor must consider:

5.6.1. Administrative boards are not judicial proceedings and are not bound by the formal rules of evidence prescribed for trials by courts-martial.

5.6.2. The requirement for a full and fair hearing.

5.6.3. The requirement for impartial determinations by the board.

5.6.4. The requirement that there be adequate safeguards for truth.

5.6.5. The requirement for each party to conduct such cross-examination as may be required for a full and fair disclosure of the facts.

5.6.6. The requirement that only competent, relevant, and material evidence be received by the board.

CHARLES L. PLUMMER
Lieutenant General, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Fourth Amendment, *United States Constitution*

Fifth Amendment, *United States Constitution*

10 U.S.C. § 1169, *Regular Enlisted Members: Limitations on Discharge*

10 U.S.C. § 1182, *Boards of Inquiry*

10 U.S.C. § 2005(a)(3), *Advanced Education Assistance, Active-Duty Agreement; Reimbursement Requirements*

Uniform Code of *Military Justice* (10 U.S.C. § 801, *et seq*)

Manual for Courts-Martial, *United States*, 2019 Edition

Executive Order 9397, *Numbering System for Federal Accounts Relating to Individual Persons*

Executive Order 13478, *Use of Social Security Numbers*

DoDI 1332.30, *Commissioned Officer Separations*, 11 May 2018, Incorporating Change 3, Effective 9 September 2021

DoDI 1332.14, *Enlisted Administrative Separations*, 27 January 2014, Incorporating Change 7, Effective 23 June 2022

DAFPD 36-32, *Military Retirements and Separations*, 11 October 2022

AFPD 51-5, *Administrative Law, Gifts, and Command Relationships*, 31 August 2018

DAFI 36-3211, *Military Separations*, 24 June 2022

DAFMAN 90-161, *Publishing Processes and Procedures*, 15 April 2022

Prescribed Forms

None

Adopted Forms

DAF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AFPD—Air Force Policy Directive

AFR—Air Force Reserve

ANG—Air National Guard

ARMS—Air Force Personnel Center Automated Records Management System

BOI—Board of Inquiry

DAFI—Department of the Air Force Instruction

DAFPD—Department of the Air Force Policy Directive

DAFMAN—Department of the Air Force Manual

OPR—Office of Primary Responsibility

RegAF—Regular Air Force

SCA—Show Cause Authority

UCMJ—Uniform Code of Military Justice

UOTHC—Under Other Than Honorable Conditions

USAFA—United States Air Force Academy

U.S.C—United States Code

USSF—United States Space Force

VMJD—Virtual Military Justice Deskbook

Office Symbols

AF/REP—Headquarters Air Force Reserve Personnel Directorate

AFPC/DPMSSR—Air Force Personnel Center, Military Transition Operations

ARPC/DPTT—Air Reserve Personnel Center Transitions Division

AF/JA—The Office of the Judge Advocate General

AF/JAJ—Military Justice and Discipline Directorate

AF/JAJM—Military Justice Law and Policy Division

NGB/A1PP—Natural Guard Bureau Force Management Branch

Terms

Administrative Discharge Board—A board convened to receive evidence and make findings regarding whether there is a basis to discharge an enlisted Department of the Air Force member, and if so, to make recommendations regarding whether the member should be discharged, the characterization of service to be issued for the member's current term of enlistment, and whether the member should be offered a period of Probation and Rehabilitation.

Board of Inquiry—A board of commissioned officers convened to receive evidence and make findings and recommendations as to whether a commissioned officer who is required to show cause for retention on active duty should be retained.

Exclusionary Rule—A rule in criminal proceedings, derived from the Fourth Amendment to the Constitution, that excludes or suppresses evidence obtained in violation of an accused person's constitutional rights, or evidence subsequently derived from the same.

Factual Allegation—A statement contained in the notification memorandum or Show Cause notification alleging the Respondent engaged in, or failed to engage in specific actions, and which provides a legally valid basis for discharge.

Respondent—A commissioned officer, enlisted member, or cadet who receives official notice that administrative discharge proceedings are pending against them.

Victim—An individual who has suffered a direct physical, emotional, or pecuniary harm in relation to one or more of the reasons, or basis for separation, alleged by the Convening Authority or Show Cause Authority.

Withdrawal of Federal Recognition—Air National Guard officers are discharged through the withdrawal of Federal recognition. Withdrawal of Federal recognition automatically results in discharge from a Reserve of the Air Force appointment.