



UNITED STATES
AIR FORCE ACADEMY

MILITARY JUSTICE TRANSPARENCY BULLETIN

APRIL 2023 — JUNE 2023

Approved by the Staff Judge Advocate

The information in this quarterly bulletin is intended to provide USAFA personnel a concise summary of discipline across USAFA and should not be interpreted as directing commanders or supervisors to take any particular action in future cases, as all cases are unique. This edition covers cases completed between April 2023 and June 2023.

Due to Privacy Act protections, names are only included for courts-martial resulting in a guilty verdict, since courts are public hearings.

If you have questions or suggestions for improvement, please direct them to your chain of command.

Sincerely,

Colonel Mike Safko
USAF Academy Staff Judge Advocate

TRAINING / TRENDS

1. A reminder to all military members that delta-8 THC, while not a scheduled substance remains illegal for military personnel. Delta-8 THC is a psychoactive substance derived from the *cannabis sativa* plant. Although it may be available at off-base stores, it has not been approved by the FDA and is illegal to use in the military. In addition, it has been found to be associated with adverse health events, some of which required hospitalization. DoD and DAF regulations prohibit the knowing use of any substance to alter one's mood or function, even if those substances are commercially available and/or legal to non-military members. Wrongful use of illegal substances triggers mandatory initiation of discharge (unless all retention factors are met).
2. Article 107, UCMJ prohibits any military member from making a false official statement. This includes statements to supervisors, commanders, or law enforcement that is intended to deceive. To be an official statement, the statement does not need to be sworn, written, or signed -- an unsworn oral statement will suffice. When questioned by law enforcement or other military members, individuals have two options: tell the truth or invoke their Article 31 right to remain silent (if answering the question would incriminate the individual).
3. The Safe to Report (STR) Policy prohibits individuals from taking disciplinary action for minor collateral misconduct committed by a victim of sexual assault. As a reminder, STR does not shield a victim from all disciplinary action – it only covers minor offenses that were directly related to the sexual assault and discovered as a direct result of the investigation into the assault. Even if misconduct is not covered by STR, commanders always have the discretion to consider the underlying assault as a mitigating or extenuating factor when determining appropriate discipline.

UPCOMING COURTS-MARTIAL

As a reminder, an accused is innocent of all charges until proven guilty beyond a reasonable doubt. All courts-martial are held in the USAFA Courtroom (2nd Floor, Harmon Hall, and are open to the public. If the courtroom is full, individuals may view the proceeding from an overflow room.

CASE NAME	CHARGES	DATE
<i>United States v. Cadet McHugh</i>	Article 120, Sexual Assault (2x)	25-29 September 2023

COURTS-MARTIAL RESULTS

United States v. A1C Hulin: On 22 May 2023, a court-martial was held to consider 1 specification of Absence without Leave (Article 86) and Failure to Obey (Article 92), 3 specifications of False Official Statement (Article 107), 1 specification of larceny (Article 121), and 11 specifications of Uttering a Check without Sufficient Funds (Article 123a).

In accordance with a plea agreement, A1C Hulin pleaded guilty to 1 specification of AWOL, False Official Statement, and Failure to Obey and 6 specifications of Uttering a Check without Sufficient Funds. The remaining specifications were dismissed. He was sentenced to 190 days of confinements, reduction in grade to E-1 and a reprimand. As part of the plea agreement, A1C Hulin also waived his right to a discharge board hearing even if an Under Other than Honorable characterization were recommended.

The charges stemmed from A1C Hulin going AWOL for 3 days and knowingly bouncing several checks to friends and local businesses.

DISCHARGE BOARD RESULTS

Although many discharges/disenrollments may occur via written notification and response, in some cases a discharge board is more appropriate. The additional due process of a board is required in cases involving non-probationary officers, NCOs, Airmen with > 6 years of service, or when seeking a service characterization of Under Other Than Honorable (UOTHC). A UOTHC characterization is reserved for serious misconduct and results in a loss of most military/VA benefits. A Board of Inquiry/Discharge Board provides additional due process, to include an impartial panel (similar to a jury), a neutral legal advisor, and the presence of counsel for the government, victim, and respondent.

In re Air Force Cadet: A Board of Inquiry convened to consider allegations of sexual assault by 3 victims against a cadet and one allegation of assault consummated by battery. The BOI consisted of 2 male officers and 1 female officer (2 O-6s and 1 O-5). After hearing testimony and reviewing evidence for 2 days, the BOI deliberated and determined that the Respondent committed all 4 acts of sexual assault, but did not commit assault consummated by battery. The BOI recommended a UOTHC characterization and monetary of recoupment. The Air Force Review Boards Agency will make the final determination regarding discharge, characterization and recoupment.

In re Air Force Cadet: A Board of Inquiry convened to consider allegations of sexual assault, assault, reckless operation of a vehicle and failure to obey a lawful order. The BOI consisted of 2 male officers and 1 female officer (1 O-6, 2 O-5s). After 2 days of testimony and reviewing evidence the BOI determined that the Respondent did not commit any of the offenses. As a result, the Respondent was retained.

NONJUDICIAL PUNISHMENT

Nonjudicial punishment (NJP) is a tool through which a commander offers an accused the opportunity to have their case decided by the commander or to demand a trial by court-martial. If the individual chooses to accept the NJP, it is not an admission of guilt, but rather a decision to have the commander decide guilt and, if appropriate, punishment. The punishment options in NJP are more limited than at a court-martial and depend on the rank of the commander and the accused. For cadets and officers, punishment is limited to forfeiture of pay, reprimand, and restriction. For enlisted, punishment may also include reduction in rank or extra duty. Punishments may also be suspended, which essentially acts as a probationary period in which the punishment will be removed after a period of time if the individual complies with the terms of the suspension.

Drug Use: Two A1Cs were issued nonjudicial punishment for dereliction of duty for their wrongful use of delta-8-THC in violation of Article 92, UCMJ. The A1Cs both tested positive for THC8 as part of USAFA's drug testing program. THC8 is a cannabinoid and originates from the same plant as marijuana and is considered illegal in the military. The punishment for both A1Cs consisted of reduction to Airman and a reprimand.

Drug Use: A cadet was issued nonjudicial punishment for wrongful use of marijuana in violation of Article 112a, UCMJ. The cadet tested positive as part of the USAFA drug testing program. The punishment consisted of restriction to USAFA for 20 days and a reprimand.

Unprofessional Relationship: A SSgt was issued nonjudicial punishment for dereliction of duty for developing a personal relationship with two A1Cs in their unit. The punishment consisted of reduction to SrA and a reprimand.

* Disenrollment/discharge action may be initiated following completion of NJP process. Those actions will be reflected in the next section (Discharges/Disenrollments), but may not appear until the next quarter.

DISCHARGE / DISENROLLMENTS

Airmen and cadets are subject to being disenrolled/discharged if they engage in conduct inconsistent with military service. As an analogy to the civilian sector, these decisions are the equivalent to an employer terminating an employee or in the case of cadets, a university removing a student. For non-committed and non-prior enlisted cadets, a disenrollment decision automatically results in discharge from the military. For committed cadets, after disenrollment the SECAF determines whether the cadet will serve their commitment via enlisted service, monetary recoupment, ROTC, or whether the service commitment is waived. All individuals discharged from the military will receive a service characterization of either Entry Level (< 180 days), Honorable, Under Honorable Conditions (General) or Under Other than Honorable Conditions (UOTHC). Cadets also receive a rating between 1 and 5, which is used to determine whether they should be considered for other commissioning programs.

The rating system is as follows:

1 – Highly recommend; **2** – Recommend as average; **3** – Should not be considered w/o weighing needs of the service against reasons for disenrollment; **4** – physical/medical; **5** – Definitely not recommend; **6** - Entry Level/Cadet not at Academy long enough for another rating.

As of the date of this bulletin, the approximate rate for monetary recoupment is \$55,000 per year of attendance at USAFA.

Academics: 3 cadets resigned in lieu of disenrollment for academic deficiency. 2 of the cadets were disenrolled with an Honorable and 3 rating; 1 of the cadets was disenrolled with and Honorable and 2 rating.

Physical Fitness: 1 cadet was disenrolled for athletic deficiency. The cadet received an Honorable and 3 rating. In addition, the Superintendent recommended the cadet for enlisted service through the Mentoring, Reevaluation, and Reappointment (MRR) Program.

Misconduct: 1 cadet was disenrolled for misconduct for being in physical control of a vehicle while intoxicated. The cadet received a General characterization and rating of 5. In addition, the cadet was recommended for monetary recoupment (approximately \$230,000).