

SECOND ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 86-04014

COUNSEL: NONE

SEP 03 1998

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to show that he did not complete medical school under the Uniformed Services University of the Health Sciences (USUHS); that he attended medical school at his own expense in an education delay; and that the Active Duty Service Commitment (ADSC) associated with graduating from USUHS be voided.

APPLICANT CONTENDS THAT:

While at the United States Air Force Academy (USAFA), he was counseled that he would receive four years of constructive service credit upon graduating from USUHS; that he relied on this counseling in making his decision to attend USUHS; and that, had he known of a change in constructive service policy prior to attending medical school, he probably would have foregone this opportunity and remained in the Air Force as a line officer.

STATEMENT OF FACTS:

Applicant, a lieutenant colonel, is a member of the USUHS graduating class of 1987. Prior to his entry into the USUHS, he served on active duty for four and one-half years as a civil engineer upon his graduation from the USAFA in 1979.

Prior to entering USUHS in the Fall of 1983, on May 24, 1983, he signed a STATEMENT OF UNDERSTANDING FOR AIR FORCE APPLICANTS which states, among other things, that service performed while a member of the program is not counted in computing years of service creditable for basic pay.

In an application to the AFBCMR, dated June 13, 1985, the applicant requested that he be awarded four years of constructive service credit for pay and retirement for the time spent in the Uniformed Services University of the Health Sciences (USUHS). He contended that his recruitment and counseling regarding the service credit to be awarded for completion of USUHS were erroneous because he was not advised of the changes in entitlements resulting from the

Defense Officer Personnel Management Act (DOPMA), which was effective September 15, 1981. He indicated that he was now committed to a lengthy period of active duty and believed he should be accorded the pay and benefits which were represented to him prior to making his commitment.

Applicant's case was considered and denied by the Board on January 15, 1987. The Board was not persuaded that the applicant had been miscounseled concerning the change in law that precluded constructive service credit for USUHS graduates for computation of basic pay subsequent to September 15, 1981. The Board noted that there were inconsistencies in counseling at USUHS, but believed applicant had some responsibility to ensure he had clarification of any questionable area prior to signing the contract which committed him to serve on active duty. Thus, the Board found insufficient evidence to negate the terms of the written contract applicant signed on May 24, 1983 (Exhibit AA with Attachments).

In another application to the Board of August 26, 1987, applicant requested correction of his Promotion Eligibility Date (PED) to allow full credit for prior commissioned service on active duty as a civil engineer. He contended that his experience and education in engineering warranted award of credit under the category "unusual qualifications or special education" allowed by DOD Directive 1320.7.

An advisory opinion from AFPC (formerly AFMPC) recommended denial of this application. It was indicated that while engineering experience may be beneficial for an orthopedic surgeon, it cannot be proven that the experience is needed in order for applicant to be a successful surgeon. Thus, it was indicated that granting full credit to applicant for his line officer time was not supported by the directives and would be inconsistent and unfair to others in the same situation.

This case was considered and denied by the Board on June 14, 1988, and applicant was advised accordingly. He was also advised of his right to submit new relevant evidence for reconsideration by the Board (Exhibit BB with Attachments).

By letters of August 21, 1989, and January 7, 1991, applicant requested reconsideration of both of his applications. He continued to believe that his prior service as a civil engineer warranted additional service credit under the category of "unusual qualifications or special education" allowed by DODD 1320.7. He also disputed the propriety of the DOD policy which limited the credit he received for his prior commissioned service. Lastly, he argued that his original application was similar to the case of a 1987 graduate of the Health Professions Scholarship Program (HPSP) which was recently approved by the Board.

On April 25, 1993, the Board reconsidered the applicant's request for full service credit as a line officer because of his engineering experience. However, the Board did not find his unsupported assertion sufficiently persuasive to override the

opinion of the Office of The Judge Advocate General that his entry grade credit was computed consistent with the DODD and the applicable regulation. Therefore, the Board agreed with that office and adopted its rationale as the basis for its decision that the applicant's request for reconsideration be denied (Exhibit CC).

On May 4, 1993, the Board reconsidered and again denied the applicant's request for constructive service credit for the time spent in medical school at USUHS. The Board noted that an earlier panel denied applicant's case because of insufficient evidence to show that he was detrimentally miscounseled. The panel noted that there were some inconsistencies in the information provided to the applicant by USUHS. Nonetheless, the panel believed that he had some responsibility to insure that he had clarification of any questionable area prior to signing the contract which committed him to the service.

Concerning the allegation that a similar case had been granted for another applicant, the Board noted that this individual, unlike the applicant, presented clear-cut evidence of miscounseling on the part of responsible Air Force Academy personnel. He also established to the satisfaction of the Board that it was reasonable for him to have relied on the counseling received from those individuals. On the other hand, the applicant relied on affidavits from himself and some of his USUHS classmates, statements submitted by the USUHS Registrar/Director of Admissions and the USUHS President/Dean, inaccuracies in the 1983 - 1984 USUHS Bulletin, and the absence of a specific reference to the DOPMA changes in some briefing outlines purportedly used by the individuals who briefed the program for USUHS.

The Board noted that the sworn statements from the officers similarly situated were self-supporting and, as a consequence, not sufficiently compelling. The statements submitted by the USUHS Registrar/Director of Admissions conceded that it was very possible that a given segment of the Class of 1987 could have, and probably did, receive inaccurate or incomplete information from any number of official/semi-official sources concerning the effects upon entitlements due to the DOPMA legislation; and that all this obviously had resulted in a confused and misinformed population. However, the Board noted that this official never wavered from his assertion that, when he briefed, he told applicants that due to changes under DOPMA, USUHS graduates would no longer receive longevity credit for pay purposes and the 1983- 1984 USUHS Bulletin was incorrect by stating they would.

The Board further noted that the only statement from a disinterested party that was at variance with the statements from the USUHS Registrar/Director of Admissions was the most recent statement from the USUHS President/Dean. That individual stated that based on his meetings with members of the 1987 USUHS graduating class, he concluded that at some of the briefings presented by the USUHS Registrar/Director of Admissions, specific details regarding service creditable for basic pay were not

included or that a change in this aspect was implied. The Board believed, however, that other than the fact that the USUHS President/Dean believes the students, this statement added little to the case. Consequently, the Board did not find this statement sufficient to impeach the credibility of the USUHS Registrar/Director of Admissions who unequivocally stated that his briefings were not misleading, and that he corrected the erroneous information in the school bulletin regarding service credit.

Lastly, the Board stated that the granting of requests from the majority of the 1985 and 1986 HPSP classes and the one request from the HPSP class of 1987 on the basis of miscounseling/presumptive evidence of miscounseling and/or parity within their peer group would undoubtedly precipitate similar requests from the remainder of the 1987 and subsequent medical training classes. The Board noted, however, that the plain and unambiguous language of the applicable law leaves no doubt that, for whatever reason, the Congress intended that, effective September 15, 1981, graduates of government-sponsored medical school would no longer be entitled to constructive service credit for computation of basic pay. Therefore, in the absence of clear-cut evidence of miscounseling by responsible personnel and a showing that it was reasonable for an individual to have relied on such information years after the effective date of the law, the Board found no compelling reason to recommend relief in the future. Any further relief on the basis of equity, in the Board's view, should be addressed to the Congress in the form of a request for an amendment of the statute (Exhibit DD).

In a letter, dated March 14, 1998, the applicant requests reconsideration of his earlier application for award of constructive credit for time spent at USUHS. **He now asks, however, that his records be corrected to show that he did not complete medical school under USUHS, but that he attended medical school at his own expense in an education delay. He also asks that the ADSC associated with graduating from USUHS be voided.**

Applicant states, in part, that he has recently discovered two new pieces of evidence that support his steadfast claim that he was never counseled as to a change in law (DOPMA). In the Board's previous review of his case, they noted "... some doubt is present as to whether or not all individuals in the 1987 class received complete counseling pertaining to this area...." He now has acquired new evidence to support his strong contention that he was never counseled regarding changes in constructive service credit, and it was not until the time of his original application to the Board, that he discovered this change.

The first piece of new evidence is a notarized letter from [REDACTED] that was submitted in support of [REDACTED] case. In this letter, [REDACTED] notes: "This leaves three United States Air Force Academy graduates who have not received constructive credit, even though they had the same identical counseling as the 19 graduates who have received constructive credit." He goes on to mention him by name: "Therefore to exclude Doctors [REDACTED] and

[the third graduate], who were counseled while at USAFA, out of fear of additional claims would be an egregious injustice." The point of this letter, he believes is that he was counseled at the Academy and he relied on this information. No new information was ever provided! The USUHS Bulletin (amended the following year), interviews (both in his informal interview at USUHS in the summer of 1981 and his official interview in San Francisco in December 1982), USUHS acceptance letters (amended in subsequent years), and other information did not reflect any change in policy.

The second piece of new evidence is a notarized statement by [redacted], his immediate supervisor at Los Angeles Air Force Station when he was applying to USUHS. [redacted] also an Air Force Academy graduate, strongly supports his contention that he was never counseled about any changes in service credit. He further indicates that he relied on this miscounseling (or lack of counseling) to make irrevocable career decisions early in his Air Force career. He relied on [redacted] as a career advisor, and they discussed career opportunities on a regular basis. Neither of them was aware of any policy changes at that time. His statement also addresses the USUHS contract issue. Although it is true that all of them signed this contract (including many individuals that have subsequently been awarded credit through the Board), as [redacted] points out, he had a short suspense to return the document and was not counseled that it included any changes to what he was previously told or had read.

In addition to this new evidence, he appeals to the Board to review his previous application (excerpts attached - Attachments 3 - 14). Note in particular, the school Bulletin; acceptance letter; affidavits from himself and two USUHS classmates who attended the same interview; the outline of the interview given to him and the outline of the interview given the following year; and a letter from the former USUHS Dean that states "... a percentage of members of the Class of 1987 were either not or were inaccurately informed of the impact of DOPMA on basic pay...." In a subsequent letter, he concluded:

I would urge that each petition be considered specifically as to whether the individual petitioner states he/she was either not informed or misinformed. As Air Force officers, I would accept their specific statements.

He simply asks for that courtesy. He hopes that the Board recognizes that, like others before him, he deserves this service credit. He has been an exemplary Air Force officer since entering the Air Force Academy in 1975. Despite uninterrupted service in uniform for 23 years, he has only been awarded "partial" credit for both longevity and pay purposes throughout his career. This DOPMA issue has had a very negative career impact.

In conclusion, applicant states that had he known of a change in constructive service policy prior to attending medical school, he probably would have foregone this opportunity and remained in the

Air Force as a line officer. In that case, he would be eligible to retire in May 1999. He asks that the Board provide him with that opportunity. This action would not be unprecedented. In a similar case, the Board took action to correct the military records of an applicant to show that he did not complete medical school under the Armed Forces Health Professions Scholarship Program (AFHPSP), but that he attended medical school at his own expense in an educational delay and voided all Active Duty Service Commitments (ADSCs) associated with that program. Applicant's complete statement and documentary evidence submitted in support of his request for reconsideration are included as Exhibit EE with Attachments 1 - 14.

THE BOARD CONCLUDES THAT:

1. Insufficient relevant evidence has been presented to demonstrate the existence of a probable error or injustice warranting favorable action on the applicant's request for a correction of records to show that he did not complete medical school under the Uniformed Services University of the Health Sciences (USUHS); that he attended medical school at his own expense in an education delay; and that the Active Duty Service Commitment (ADSC) associated with graduating from USUHS be voided.

2. Applicant contentions that while at the United States Air Force Academy (USAFA), he was counseled that he would receive four years of constructive service credit upon graduating from USUHS; that he relied on this counseling in making his decision to attend USUHS; and, that had he known of a change in constructive service policy prior to attending medical school, he probably would have foregone this opportunity and remained in the Air Force as a line officer are duly noted. However, because of the reasons set forth hereinafter, we do not find these assertions sufficiently persuasive so as to conclude that the relief sought should be granted. In this regard, we note that:

a. In his original application of June 13, 1985, the applicant contended that his recruitment and counseling regarding the service credit to be awarded for completion of USUHS were erroneous because he was not advised of the changes in entitlements resulting from the Defense Officer Personnel Management Act (DOPMA), which was effective September 15, 1981. He indicated that he was now committed to a lengthy period of active duty and believed he should be accorded the pay and benefits which were represented to him prior to making his commitment. This request was considered and denied on January 15, 1987.

b. In another application of August 26, 1987, applicant requested correction of his Promotion Eligibility Date (PED) to allow full credit for prior commissioned service on active duty as a civil engineer. He contended that his experience and education in engineering warranted award of credit under the category

"unusual qualifications or special education" allowed by DOD Directive 1320.7. This application was considered and denied on June 14, 1988.

c. In letters of August 21, 1989, and January 7, 1991, applicant requested reconsideration of both of his applications. He continued to believe that his prior service as a civil engineer warranted additional service credit under the category of "unusual qualifications or special education" allowed by DODD 1320.7. He also disputed the propriety of the DOD policy which limited the credit he received for his prior commissioned service. Lastly, he argued that his original application was similar to the case of a 1987 graduate of the Armed Forces Health Professions Scholarship Program (AFHPSP) which was recently approved by the Board.

d. Having been unsuccessful in his requests for reconsideration of his applications, for the first time, applicant asserts that he was counseled that he would receive four years of constructive service credit upon graduating from **USUHS** while a cadet at the USAFA. He also argues for the first time that he relied on this counseling in making his decision to attend USUHS; and, that had he known of a change in constructive service policy prior to attending medical school, he probably would have foregone this opportunity and remained in the Air Force as a line officer.

3. Since the applicant attended the USAFA during the period 1976 through 1979, any briefings he received concerning constructive service credit for attending medical school under the AFHPSP or USUHS were undoubtedly correct. Therefore, we do not take issue with his allegation that he was counseled he would receive four years of constructive service credit upon graduating from USUHS. We are not convinced, however, that he relied on this counseling in making his decision to attend USUHS. Nor are we persuaded that had he known of a change in constructive service policy prior to attending medical school, he probably would have foregone this opportunity and remained in the Air Force as a line officer. This belief is supported by the statement from his former supervisor in the Line of the Air Force. This retired major advises that the applicant applied to several medical schools, including the USUHS for the 1981 entering class, but because he did not complete the prerequisite undergraduate courses, he was not successful. Because applicant felt that it would take more than one year to complete all of the necessary courses, he set his sights for the 1983 medical school entering class for USUHS and several civilian schools. Applicant was very successful in his post-graduate work and by the Winter of "1992/1993" (sic), he had several interviews/offers for medical school. By this time, however, the Defense Officer Personnel Management Act (DOPMA) had become effective and disallowed the four years of constructive service credit for pay and retirement for those individuals who were not enrolled in medical school on or before September 14, 1981. Granted, the applicant could have been induced to pursue a medical career by the briefings received as a cadet during the years 1976 through 1979. However, by the time he met the prerequisites and

was accepted for medical school, DOPMA had changed the benefits. Therefore, absent a showing that the Air Force had a regulatory duty to apprise him of the changes in the program while he was serving in the Line of the Air Force, he had a personal responsibility to seek out any information he believed relevant to his decision to enter USUHS subsequent to the change in the law. In addition, according to the statement from his former supervisor in the Line of the Air Force, he signed a STATEMENT OF UNDERSTANDING FOR AIR FORCE APPLICANTS, which clearly placed him on notice that service performed while a member of USUHS is not counted in computing years of service creditable for basic pay, prior to obtaining approval of his request for separation in order to accept a Reserve commission to attend USUHS. If the constructive service credit for pay was crucial to his decision to attend USUHS, he had every opportunity to withdraw his resignation from his Regular Air Force Appointment and remain in the Line of the Air Force.

4. We realize that our earlier actions in approving the requests of a number of AFA graduates who graduated from USUHS or HPSP in the classes of 1987 through 1989 cause a degree of institutional inequity and, at first blush, would seem to beg for relief on the grounds of equity. As we have previously stated, however, the plain and unambiguous language of the applicable law leaves no doubt that, for whatever reason, the Congress intended that effective September 15, 1981, these graduates of government-sponsored medical training would no longer be entitled to constructive service for computation of basic pay. Therefore, we continue to believe that any relief on the basis of institutional inequity should be addressed to the Congress in the form of a request for an amendment to the statute. Such action could take into consideration the denial of 22 Air Force officers' cases who graduated from USUHS in 1987, but were not AFA graduates; the 35 similar cases denied by the Navy BCNR; and the approximately 200 like cases denied by the Army BCMR. Consideration could also be given to the 340 1987 Air Force graduates from AFHPSP and the 1988 and 1989 graduates of AFHPSP/USUHS who were apparently properly counseled or have decided to accept the terms of their signed contracts notwithstanding the fact that there are a number of AFA graduates who graduated from medical school in 1987-1989 that are entitled to the pre-DOPMA constructive service credit for pay.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 3 June 1998, under the provisions of AFI 36-2603:

Mr. LeRoy T. Baseman, Panel Chair .
Mr. Charles E. Bennett, Member
Mr. Henry C. Saunders, Member

The following documentary evidence was considered:

- Exhibit AA. Record of Proceedings, AFBCMR 86-04014, dated **1 May** 87, w/atchs.
- Exhibit BB. Record of Proceedings, AFBCMR 87-04357, dated 15 Jul 88, w/atchs.
- Exhibit CC. Addendum to Record of Proceedings, AEBCMR 87-04357, dated 3 Aug 93.
- Exhibit DD. Addendum to Record of Proceedings, AFBCMR 86-04014, dated 29 Jul 93.
- Exhibit EE. Letter from Applicant, dated 14 Mar 98, w/atchs.


LEROY T. BASEMAN
Panel Chair