

JUL 22 1998

RECORD OF PROCEEDINGS  
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: ~~97-02842~~

~~COUNSEL:~~ NONE

~~HEARING DESIRED:~~ NO

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APPLICANT REQUESTS THAT:

His Active ~~Duty~~ Service ~~Commitment~~ (ADSC) ~~incurred~~ as a result of his completing the T-38 Pilot ~~Instructor~~ Training (PIT) ~~is~~ deleted.

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APPLICANT CONTENDS THAT:

When he was ~~notified~~ of his current ~~assignment~~, he was not counseled on the 36-month ~~commitment~~.

Applicant's statement and ~~documentary~~ evidence ~~submitted~~ in support of his ~~application~~ are included as Exhibit A with Attachments 1 through 6.

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STATEMENT OF FACTS:

Applicant completed T-38 PIT at ~~Wright-Patterson~~ AFB on 20 March 1996, incurring a three-year ADSC of 19 March 1999.

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AIR FORCE EVALUATION:

HQ AFPC/DPPRS explains the reasons for establishment of ADSCs for flying training and ~~recommends~~ that ~~the~~ application be ~~denied~~. It is ~~indicated~~ that applicant does not claim "no ~~knowledge~~" of the ADSC; rather, he cites simply the lack of documentation of his ~~acceptance~~ of the ADSC. By the documentation ~~assignment~~ notification "report on individual ~~personnel~~" (RIP), he himself provided with this application, which he would have signed ~~verifying~~ the ~~assignment~~ ~~information~~ as correct, it is ~~evident~~ he should have been fully ~~aware~~ of the three-year ADSC ~~associated~~ with completion of T-38 PIT (the RIP's reference in Part 5 to AFI 36-2107, Table 1.5, ~~Rule~~ 7, directs the member and MPF to the authoritative cite of the ~~three-year~~ ADSC).

Additionally, applicant was provided a quota for attending T-38 PIT through the Air ~~Force~~ Training Management System (AFTMS). AFTMS, when generating a ~~training~~ quota, refers to a computer table which

contains the ADSCs for every training course administered in AFTMS, and then produces a training allocation RIP which is presented to the member for signature. This RIP contains detailed course information and the ADSC to be incurred as a result of attending the training. Applicant had to sign this RIP in order to attend the course, and therefore was additionally advised of the ADSC to be incurred. Unfortunately, AFTMS training allocation RIPs were, at that time, temporary documents filed in relocation folders which were then destroyed a few months after the member's departure, and are therefore no longer available for them to attach to this advisory. They have confirmed that AFTMS contained the correct, three-year, ADSC for T-38 PIT at the time applicant was selected for and then attended the training.

ADSCs for flying training are normally updated automatically upon graduation from the training course, via the training management system (TMS). In applicant's case, he was reported as a graduate via TMS, and the ADSC was updated in April 1996 through the personnel data system (PDS). Update of that ADSC was what generated the ADSC establishment/change notification RIP which applicant attached to his application (the production of this RIP is further evidence that the AFTMS operated correctly and therefore can be reliably presumed to have produced the aforementioned training allocation RIP). He is correct that the MPF should have discovered the absence of an AF Form 63 in his records upon receipt of that RIP; however, that is irrelevant to the issue that he incurred the ADSC. It is interesting that he waited over a year after receipt of that notification before he appealed the ADSC (Exhibit C with Attachments 1 through 7).

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APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant continues to maintain that he accepted the T-38 training under the assumption that he would incur a 24-month ADSC; and, that had he been, properly counseled, he may have declined the assignment. His complete response to the Air Force advisory opinion is included as Exhibit D.

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THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting favorable action on the applicant's request that his ADSC incurred as a result of his completing the T-38 Pilot Instructor Training (PIT) be deleted. In this regard, we note that:

a. Applicant contends that when he was notified of his current assignment, he was not counseled on the 36-month commitment.

b. The Air Force states that its policy is that officers receive these ADSCs voluntarily; if they are unwilling to accept the ADSC, they are to elect separation from the Air Force in lieu of undergoing the training. Officers are normally advised of these ADSCs in writing and their acknowledgment of their understanding and acceptance of the ADSC is normally documented in writing, on AF Form 63. Occasionally, this procedure is not followed in exact accordance with delineated procedures. In those cases, the Air Force still awards the ADSC, as the vast majority have been incurred with the officer's full understanding and willing acceptance. The onus is on the officer to prove that he unwittingly incurred an ADSC for training he would not have accepted had he been aware of the ADSC prior to entering the training.

c. In the most recent court decision involving an ADSC (U.S. District Court, Eastern District of California), the Court noted that although the governing regulation, AFF 36-51, requires that ADSC counseling be provided, the regulation also stated that the fact advance ADSC counseling did not take place or if the officer was miscounseled does not negate an ADSC. The Court then determined that given this proviso, the Air Force's apparent failure to provide the petitioner with ADSC counseling does not permit the invalidation of the extended commitment he incurred by accepting C-14i training. In sustaining the constitutionality of the regulation, the Court commented that the regulation "is unremarkable in placing an ultimate duty of inquiry on the officer who accepts training while at the same time enjoining the Air Force to provide counseling."

d. In interpreting this court decision, AFPC/JA has stated that the decision must be followed only in the district where it was rendered. Moreover, this court decision is not binding on us in any manner. Nevertheless, in their view, the case may be cited as persuasive authority (that is, the reasoning is sound and emanates from a distinguished federal court) for two basic propositions:

(1) Pursuant to AFR 36-51/AFI 36-2107, the absence of an Air Force Form 63 and even the absence of evidence of ADSC counseling do not compel the invalidation of an ADSC.

(2) Evidence that an officer benefited from training and acted unreasonably in failing to investigate the length of his ADSC are valid reasons for denial of an ADSC appeal.

in deference to the opinion of the Staff Judge Advocate, AFPC, the applicant does not appear to have a legal right to the relief being sought notwithstanding the absence of proper counseling by responsible Air Force Officials. However, since we are empowered

to recommend relief based on our perception of an injustice, the lack of a legal entitlement is not dispositive of the merits of the applicant's case.

4. Applicant's contentions are duly noted. However, we do not find his uncorroborated contentions, in and by themselves, sufficiently compelling to conclude that he unwittingly incurred an ADSC for training he would not have accepted had he been aware of the ADSC prior to entering the training. Therefore, we agree with the recommendation of the Air Force and adopt its rationale as the basis for our conclusion that the applicant has failed to sustain his burden of establishing the existence of either an error or an injustice.

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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.

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The following members of the Board considered this application in Executive Session on 26 June 1998 under the provisions of AFT 36-2603:

Mr. LeRoy T. Baseman, Panel Chair  
Mr. Benedict A. Kausal IV, Member  
Mr. David W. Mulgrew, Member

The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 20 Sep 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPRS, dated 23 Apr 98, w/atchs.
- Exhibit D. Letter, SAF/MIBR, dated 18 May 98.
- Exhibit E. Letter, Applicant, undated



LEROY T. BASEMAN  
Panel Chair