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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

Work-Product

DOCKET NUMBER: BC-2022-00571

COUNSEL:

Work-Product

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He be reinstated as a United States Air Force Academy (USAFA) cadet.
2. He be allowed to obtain his degree and commission with back pay and promotions commensurate with his peers from his USAFA class.
3. In the alternative, his Secretarial Order be changed from monetarily recoupment by the government for his educational debt to an order allowing him to fulfill his active duty service commitment (ADSC) by serving as an enlisted active duty member for a period of three years.

APPLICANT'S CONTENTIONS

He successfully completed all requirements to graduate from the USAFA and to obtain a commission. He did not commit any offense that would warrant a disenrollment. His disenrollment for his involvement in a USAFA swim team hazing event and his subsequent order to monetarily reimburse the government for the cost of his USAFA education is the result of an injustice. He received disparate treatment for a relatively minor offense. Not all cadets involved in the incident were disenrolled; they were more or at least as culpable and were allowed to graduate. He was punished twice for the same incident. He was issued a Letter of Reprimand (LOR) and was punished under the cadet disciplinary system for his actions and other actions he did not commit.

He accepted and completed all punishments given for the situation at the time. Despite completing those punishments and tasks, he was punished once again with disenrollment. If this situation warranted the severity of disenrollment and recoupment of thousands of dollars, he should have been subjected to a court-martial. If that had happened, he could have shown that many of the allegations against him were false. From his immediate commander to his peers and the enlisted members that worked closely with him, this case is an injustice. They all knew what happened and strongly recommended his retention, but that did not happen.

To support his request, the applicant submitted a personal statement, the LOR and his response, the Letters of Notification (LON) for his disenrollment and recoupment and his response, his transcripts, and a character reference letter.

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The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former Air Force Academy Cadet.

On 20 Jun 18, a LOR, provided by the applicant, was issued indicating an investigation was conducted that found he planned and participated in a team hazing ritual known as the "Chunker" which included verbal threats of sexual assault and exposing genitals, eating large portions of pasta, having the freshman act like pigs and eat from trays of unappetizing food, and conduct relays down a hill and chug milk which resulted in some vomiting. The investigation also disclosed he participated in other unauthorized actions against his fellow freshmen teammates by enforcing undue fines and penalties. Lastly, the investigation disclosed he conspired with other teammates to obstruct justice by preventing the agents from discovering information relating to the incidents above.

Dated 3 Jul 18, the applicant provided his response to the LOR which indicated all parties involved voluntarily decided to participate in the "Chunker" ritual. The specific allegations regarding the verbal threats of sexual assault were not witnessed by him nor did he participate in this misconduct. Furthermore, he goes on to explain the forced eating and drinking milk phase of the ritual. As to the unauthorized fining allegations, he contends the fines were only enforced for being called sir and saying no and were meant to focus the team on swimming. Lastly, he and his teammates did have a meeting to discuss the investigation; they decided to tell the truth and guide the freshman through the process.

Dated 1 Aug 18, the applicant provided the LON for disenrollment. This letter indicates his commander recommended disenrollment from the USAFA with a general service characterization in accordance with USAFAI 36-3504, *Disenrollment of United States Air Force Academy Cadets*, paragraph 18, for deficiency in conduct, minor misconduct, and/or failing to conduct probation. The specific reasons for the action were due to the involvement in various hazing events and obstruction of justice.

Dated 5 Aug 18, the applicant provided his response to the LON for disenrollment which he further explained the events to which he was being disenrolled for and highlighted his achievements during his time at the USAFA. He stated he foolishly followed a longstanding tradition and had learned his lesson and asked that he be allowed to graduate and receive his commission.

On 28 Aug 18, USAFA Form O-299, *AOC Evaluation of Cadet*, provided by the applicant, indicates his Air Commanding Officer (ACO) recommended he be retained and placed on conduct and aptitude probation for his role in conducting multiple hazing activities noting the events were significant and egregious; however, felt he had the foundation to recover and ultimately be commissioned in the USAF.

On 2 Jul 20, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged from the USAFA after serving six years and seven days of

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active duty. He was discharged, with a separation authority and narrative reason for separation of “Disenrollment of USAFA – Secretarial Authority.”

On 4 Sep 20, a Notification of Reimbursement, provided by the applicant, indicates he acknowledged receipt of this document which indicated the Secretary of the Air Force directed he be required to monetarily reimburse the government for the cost of his USAFA education.

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

USAFA/JA recommends denying the applicant’s request to be reinstated as a USAFA cadet or allowing him to serve in the military as an enlisted member to satisfy his obligation finding no evidence of an error or injustice. The applicant asserts he has suffered an injustice because his disenrollment and order to monetarily reimburse the government for the cost of his USAFA education were the result of his having played a “relatively minor” role in the swim team hazing incident and he believes he “did not commit any offense that would warrant [his] disenrollment.” The applicant attempts to compare his case to other cadets involved in the swim team hazing incident and by comparing hazing cases from the USAFA lacrosse team to those on the USAFA men's swim team. The applicant's involvement in hazing and obstruction of justice were supported by evidence from a criminal investigation that resulted in a Report of Investigation (ROI).

Hazing, as defined in DoDI 1322.22, *Service Academies*, and Air Force Cadet Wing Manual (AFCWM) 36-3501, *United States Air Force Academy Operations*, is considered a presumptive disenrollment offense per paragraph 3.5.3 of the Air Force Cadet Wing Instruction (AFCWI) 51-201, *Administration of Cadet Discipline*. The guidance directs that USAFA cadets found to have committed acts of hazing will face presumptive disenrollment unless there are extreme mitigating circumstances. Hazing as defined in DoDI 1322.22 states it is any unauthorized assumption of authority by a cadet or midshipman whereby another cadet or midshipman suffers or is exposed to any cruelty, indignity, humiliation, oppression, or the deprivation or abridgment of any right. AFCWI 36-3501, *Cadet Standards and Duties*, paragraph 1.3.4 acknowledges that hazing need not involve physical contact among or between military members as it can be verbal or psychological in nature and that any actual or implied consent to acts of hazing do not eliminate the culpability of the perpetrator. The applicant also signed a USAFA Athlete Code of Conduct agreement prior to the swim hazing incident where he acknowledged he would not engage in such hazing behaviors. USAFAI 36-3504, paragraph 17.4.1 clearly states that the standard of proof used in all USAFAI 36-3504 disenrollment proceedings is the preponderance of the evidence. Interestingly, this is the same standard used for a LOR. It is noteworthy that even though the applicant's AOC supported the applicant being retained and allowed to graduate and commission from USAFA, the AOC also considered all of the misconduct in the applicant's LOR and elected to uphold that LOR after weighing all of the evidence supporting the LOR against the applicant's LOR response.

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Finally, the applicant's attorney attempts to argue the applicant was punished twice for the same actions and relates that to a "double jeopardy" type scenario. The applicant, as a USAFA cadet in an officer training program, can be placed on a probation commensurate with cadets who have committed similar misconduct and/or displayed conduct and/or aptitude deficiencies. The applicant's LOR and USAFA Form 10, *Report of Conduct*, with the subsequent probation terms is not punishment nor is the resulting USAFAI 36-3504 LON action for the applicant having engaged in presumptive disenrollment misconduct. The applicant's attorney goes on to imply that if USAFA deems a cadet's actions severe enough to warrant disenrollment, that a court-martial should be convened. This is an absurd position. USAFA cadets take an honor oath that they will not steal, cheat, lie, nor tolerate among them anyone who does. USAFA cadets get administratively disenrolled for committing honor code violations, and upper-class cadets with an ADSC could receive monetary recoupment for those honor infractions. Again, it would be absurd to send all USAFA cases of honor violations to a court-martial for their disenrollment consideration. From the time the applicant was issued a LOR through the LON action by the superintendent, the applicant received the same rights and opportunities to respond to these administrative actions as established in the applicable regulations, and as any other similarly situated cadet would have under the circumstances. In light of this procedural history, the applicant had several opportunities to respond to the evidence against him and make the same arguments he makes in his current application. He attempts to avoid disenrollment for his presumptive disenrollment misconduct which were not successful; however, the applicant was able to persuade the USAFA superintendent on some of the mitigating factors as the applicant was disenrolled with the most favorable, honorable discharge, rather than a general discharge and the superintendent was convinced the applicant could still be considered for enlisted service in fulfillment of his ADSC.

The applicant asserts he should be reinstated as a USAFA cadet and allowed to graduate and commission into the Air Force. DoDI 1322.22, Enclosure 3, paragraph 7(a) along with paragraph 2.1 of USAFAI 36-3533, *Requirements for Graduation*, requires that in order to graduate from USAFA and be awarded a Bachelor of Science degree, a cadet must demonstrate an aptitude for commissioned service and leadership, be satisfactory in conduct, and meet all military training, physical education, and academic requirements. In addition to these authorities, Section 1-5 of the USAFA Curriculum Handbook states, "[t]o graduate from the USAFA, a cadet must demonstrate an aptitude for commissioned service and leadership, display acceptable conduct, maintain proficiency in physical education and the commissioning education program, and meet all requirements for an academic major unless approved for the Bachelor of Science Program." Although the applicant may have passed his classes, coursework is only one part of the overall requirements for graduation and the privilege of being awarded a service academy degree. The applicant failed to maintain high standards of character and officership as outlined in DoDI 1322.22 and USAF AI 36-3533 making him ineligible for a USAFA degree.

While the applicant was not awarded a degree from the USAFA, the credits the applicant earned while a cadet at the USAFA can be transferred and applied to another institution of higher learning. In the event the applicant has not already done so, he can contact the Registrar for the Dean of Faculty at the USAFA to make a request to have his transcripts submitted to any civilian college and/or university he wishes to apply credit towards a degree; however, it is up to that civilian

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college and/or university to decide what USAFA credits would transfer and be applied to their institution. The applicant's records request can be submitted to the USAFA, Student Affairs and Registrar's Office.

As an alternative to being permitted to graduate and commission, the applicant requests the order of monetary recoupment be replaced with an order to allow him to serve three years enlisted in fulfillment of his ADSC. As stated above, the USAFA superintendent did essentially give the applicant consideration for what the applicant and his attorney describe as the applicant having played a "relatively minor role" in the swim team hazing incident when he gave the applicant an honorable discharge rather than a general discharge and when the superintendent recommended the applicant for three years enlisted service in fulfillment of his ADSC rather than monetary recoupment. Given the determination by the Air Force Review Boards Agency ordering reimbursement to the government for the cost of the applicant's education, USAFA personnel are not best positioned to address the applicant's request to have his monetary recoupment action changed from monetary recoupment to enlisted service. The Board at the Air Force Review Boards Agency considered the applicant's entire disenrollment case file and ultimately the Director of the Air Force Review Boards Agency, decided to order monetary recoupment and non-concurred with the USAFA superintendent's recommendation the applicant serve three years of enlisted active duty.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 4 Apr 23 for comment (Exhibit D) and the applicant replied on 3 May 23. In his response, the applicant disagrees with the statement from the advisory opinion that he played an active role in the hazing events. He never exposed his genitals or made verbal comments regarding oral sex. Furthermore, he did not threaten to throw a teammate's gear out if he failed to pay a fine or insinuate, he would obstruct justice in any way during the investigation. While he agrees that hazing is a presumptive disenrollment offense, his role in the events was relatively minor compared to other cadet's actions who were not disenrolled. He was placed on probation and took responsibility for his actions. He was punished twice for the same offense. He successfully served probation which was meant to overcome presumptive disenrollment but was still disenrolled. Both the squadron and group commanders wrote letters of recommendations for retainment.

His counsel also submitted a response contending the advisory opinion makes the same mistake as the investigating officer when it lumped all members of the swim team together and refused to consider the evidence for each individual on a case-by-case basis. The investigation into the alleged obstruction of justice interrogated the underclass cadets into making unreliable statements. These cadets came back from the interviews stating they were coerced and threatened during these interviews. Only one cadet identifies the applicant as an active participant in the sexual acts. Even with the coerced statements, no other cadet identifies the applicant as having done the acts for which he was discharged. Furthermore, the events regarding the fining system were taken out of context. The applicant never threatened to throw a cadet's gear out but just answered a cadet's

question explaining what would happen if a cadet did not pay a fine. Again, it is an injustice when the applicant was ultimately discharged. He completed his probation period giving him reason to believe he would be retained.

The applicant's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of USAFA/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board takes the allegations of hazing very serious and does not find the evidence presented by the applicant sufficient enough to warrant relief. The Board did look at the applicant's case individually and accessed all of the evidence presented; however, the Board did not find the applicant's conduct in the events minor. The Board finds the events to be significant and egregious to which the applicant knew he should not engage in such hazing behaviors and finds this reason enough for disenrollment without finding extreme mitigating circumstances. Furthermore, the Board does not find that the applicant was punished twice for the same behavior nor did his behavior warrant a court-martial. Therefore, the Board recommends against correcting the applicant's records.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2022-00571 in Executive Session on 24 May 23:

Work-Product [Redacted] Panel Chair
[Redacted], Panel Member
Work-Product [Redacted] Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 14 Mar 22.

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Exhibit B: Documentary evidence, including relevant excerpts from official records.

Exhibit C: Advisory Opinion, USAFA/JA, w/atchs, dated 13 Mar 23.

Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 4 Apr 23.

Exhibit E: Applicant's Response, dated 3 May 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

1/2/2024

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*