



CUI//SP-MIL/SP-PRVCY

**UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS**

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01358

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: YES

APPLICANT'S REQUEST

His DD Form 785, *Record of Disenrollment from Officer Candidate – Type Training*, be amended as follows:

a. Section III, *Reasons and Circumstances for Disenrollment*, be corrected to omit any reference to sexual misconduct.

b. Section IV, *Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training*, be marked as 1 (Highly Recommended) or 2 (Recommended as an Average Candidate) and all records inconsistent with the request be destroyed.

APPLICANT'S CONTENTIONS

The applicant through counsel, states he was engaged in sexual relations with three different individuals. When this was revealed, he was wrongly accused of sexual assault and was disenrolled from the Air Force Reserve Officer Training Corp (AFROTC) program for sexual misconduct. AFROTCI 36-2011, *Cadet Operations*, paragraph 16.8, requires an oath before taking testimony. The investigating officer failed to give this oath to any of the witnesses that were interviewed. The applicant's DD Form 785, dated 17 May 21, states he was disenrolled for failing to maintain military retention standards and demonstrated undesirable character traits when he was investigated for sexual misconduct. Nowhere in the investigating officer's report does it discuss, define, elaborate upon, or state the elements of sexual misconduct. His school's Equal Opportunity and Compliance office reviewed the evidence provided by the witnesses and decided against pursuing a formal investigation against the applicant. The applicant was given a "Conditional Event" when he was wrongly accused of violating a "no individual alone situation" order; there was no evidence he violated this order. Furthermore, the order given to the applicant not to share text messages or witness statements with anyone outside the investigation was an unreasonable restriction on his rights to prepare his defense. The applicant appealed his disenrollment in Nov 22 and was granted partial relief by waving the recoupment of his educational debt.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former AFROTC cadet.

Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

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Dated 17 May 21, DD Form 785, provided by the applicant, indicates he was disenrolled from AFROTC for failure to maintain military retention standards and demonstrated undesirable character traits when he was investigated for sexual misconduct. Section IV, block 5 is checked which denotes definitely not recommended for future acceptability for other officer training.

On 15 Jun 21, according to Reserve Order Work-Product dated 1 Jun 22, the applicant was honorably discharged from the Air Force Reserve and disenrolled from AFROTC.

Dated 16 Nov 22, the applicant provided a response to his disenrollment appeal which upgraded his DD Form 785, Section IV, changing from a 5 to a 3, which denotes his future acceptability for other officer training should not be considered without weighing the needs of the service against the reasons for his disenrollment. Additionally, the recoupment of his scholarship funds was terminated. In this appeal response it is noted his disenrollment was based on perceived undesirable character traits associated with the allegations of sexual misconduct; however, he provided evidence in his appeal of absolution of the investigation by his school's hearing office for the allegations made against him.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and F.

AIR FORCE EVALUATION

AFROTC/CC recommends partially granting the application finding evidence of an error on the DD Form 785. Since the new evidence provided in his appeal resulted in no action and no further investigation by his school for the alleged sexual misconduct, reference to the investigation should no longer be included in the language of the DD Form 785 and should be removed. However, a change in Section IV is not supported by the signatory, the AFROTC commander. The events surrounding the applicant's disenrollment and the decision to maintain the disenrollment warrant an evaluation of a "3" and should not be considered without weighing the "needs of the service" against the reasons for this disenrollment. Finally, AFROTC/RRFD will keep the disenrollment case files in accordance with the Air Force Record Disposition schedule. AFI 33-322, *Records Management and Information Governance Program*, Table 6.1, states Headquarters Air Force offices will maintain records for three years, after which they are destroyed. Therefore, the applicant's disenrollment investigation documents will be destroyed in Jun 24.

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 21 Feb 23 for comment (Exhibit D), and the applicant replied on 27 Feb 23. In his response, the applicant's counsel contends neither the applicant's school's investigatory process nor the Report of Investigation uncovered any documented sexual misconduct; therefore, any reference to this on his DD Form 785 must be removed and Section IV should be marked as a 1 or 2. The AFROTC commander did not provide a clear rationale for which military retention standard the applicant failed to meet or why a 3 is warranted in Section IV. The applicant was consensually sexually active with several different women, which is not a crime and does not rise to the level of any kind of sanction or punishment. Furthermore, the investigation did not show any deliberate misconduct typically associated with a failure to maintain military standards as he was a superior performer in the AFROTC program.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

AFROTC/CC administratively corrected the applicant's DD Form 785 removing any language referencing sexual misconduct; however, the Section IV rating remains the same. The applicant was disenrolled from AFROTC for failure to maintain military retention standards. It is the authority of the AFROTC commander to disenroll any cadet at any time with or without cause. Additionally, the AFROTC commander is the approval authority for the DD Form 785, which is completed on all individuals disenrolled from the program. This case has been reviewed and the DD Form 785 has removed reference to sexual misconduct while the Section IV rating remains the same in accordance with Air Force Manual 36-2012, *Record of Disenrollment from Officer Candidate-Type Training*, paragraphs 1.2.1 and 4.4.3.

The complete advisory opinion is at Exhibit F.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 12 Apr 23, for comment (Exhibit G), however, the applicant has not replied.

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. Specifically, the Board finds no error with the discharge process finding the applicant's behavior does not warrant a change to Section IV and the relief he was granted by the appeal board was sufficient. In addition, according to AFI 33-322, *Records Management and Information Governance Program*, Table 6.1, Headquarters Air Force offices will maintain records for three years, after which they are destroyed. Therefore, the applicant's disenrollment investigation documents will be maintained until Jun 24. Therefore, the Board concurs with the rationale and recommendation of AFROTC/CC and finds a preponderance of the evidence does not substantiate the applicant's contentions. Therefore, other than the administrative correction made to the applicant's DD Form 785, Section III, which removed all references to sexual misconduct, the Board recommends against correcting the applicant's record.
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-2022-01358 in Executive Session on 15 Jun 23:

Work-Product

Panel Chair

AFBCMR Docket Number BC-2022-01358

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Work-Product

Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 12 Dec 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFROTC/CC, w/ atchs, dated 16 Feb 23.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 21 Feb 23.
- Exhibit E: Applicant's response, w/atchs, dated 27 Feb 23.
- Exhibit F: Advisory opinion, AFROTC/CC, w/atchs, dated 16 Mar 23.
- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 12 Apr 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.

8/18/2023

Work-Product

Board Operations Manager, AFBCMR

Signed by: *Work-Product*