



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-2022-01928

Work-Product

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. He be reimbursed attorney fees in the amount of \$68,706.45 for fighting the wrongful disenrollment from the Air Force Reserve Officer Training Corps (AFROTC) program.
2. He receive salary increases for years of service and receive the retroactive back pay, effective May 13.
3. All documents in his records pertaining to the investigation leading to his disenrollment, to include the 30 Oct 09 counseling form be removed from his records.

APPLICANT'S CONTENTIONS

The AFBCMR determined on 24 Jun 18 his disenrollment from the AFROTC program was wrong (BC-2016-04066). The only corrective action was the removal of the DD Form 785, *Record of Disenrollment from Officer Candidate-Type Training*. However, this did not remedy the compounding nine years of damages he incurred. The AFBCMR's notification memorandum stated a copy of the decision would be provided to the Defense Finance and Accounting Service (DFAS) to determine any monetary benefits. He contacted DFAS in the fall of 2021 and they advised they had no record of receiving the AFBCMR decision.

He should have been commissioned from the AFROTC in May 13 but instead was eventually commissioned in the ANG on 18 Nov 16. As a result, he missed out on being able to transfer his Post-9/11 GI Bill benefit to his dependents, he was denied pay increases for years of service and was unable to get a Veterans Affairs (VA) home loan for a home purchase in Nov 20. He also accrued significant attorney fees spanning over six years to fight the wrongful disenrollment. The documents pertaining to the investigation are no longer valid because of the AFBCMR decision in his prior request and should be removed from his records.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a captain (O-3) in the ANG.

The applicant's automated records management system (ARMS) record includes DD Form 785, *Record of Disenrollment from Officer Candidate-Type Training*, dated 2 Jul 09. It shows on 26 Jun 09, the applicant was disenrolled from the AFROTC program for failure to maintain academic retention standards. The applicant failed to maintain standards during the spring term when he

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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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earned a 1.15 term and a 1.65 cumulative grade point average (GPA). Cadets were required to maintain a GPA of 2.50 to be in good standing. The applicant subsequently elected to withdraw under the freshman option. Section IV, *Evaluation to be Considered in the Future for Determining Other Officer Training*, reflects that the applicant should not be considered for other officer training without weighing the needs of the service against the reasons for the disenrollment.

On 5 Dec 15, the applicant enlisted in the Puerto Rico ANG (PRANG) for a period of six years and was assigned to the student flight.

Per Special Order dated 8 Jun 17, the applicant was appointed a second lieutenant (O-2) in the PRANG, effective 18 Nov 16.

In an AFBCMR application dated 4 Oct 16, the applicant requested his DD Form 785 dated 2 Jul 12 be modified to remove references to the multiple alcohol-related incidents and failure to maintain military retention standards and only indicate his disenrollment. He also requested Section IV be changed to read "Highly Recommended" for future consideration in determining acceptability for other officer training. On 7 Mar 18, the Board directed the DD Form 785, dated 2 Jul 12, be declared void and removed from his record. The Board noted AFROTC's recommendation to deny the request; however, the Board believed corrective action, rather than disenrollment, was warranted. Moreover, given the applicant commissioned in the ANG on 18 Nov 16, the Board believed justice would be best served by removing the DD Form 785 from his record. The AFBCMR Directive is contained in the applicant's ARMS record and ARMS does not include a DD Form 785 dated 2 Jul 12 referencing the multiple alcohol related incidents

On 21 Aug 19, the applicant was discharged from the PRANG and transferred to the Kentucky ANG (KYANG).

On 3 Feb 21, the AFBCMR responded to the applicant's questions regarding monetary benefits based on the correction of his record in BC-2016-04066 for removal of the disenrollment, it appeared he was not entitled to receive any monetary benefits.

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

APPLICABLE AUTHORITY/GUIDANCE

DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 7.2.4., Payment of Expenses. The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. § 1034 or § 1552. This includes attorney's fees or other costs related to an AFBCMR application.

AFI 33-332, *Records Management and Information Governance Program*, Table 6.1., Retention and Retirement Standards for Air Force Activities (Records not in Electronic Form). Rule 13. Records collected are destroyed after 3 years.

AIR FORCE EVALUATION

AFROTC/CC recommends denial. The evidence reveals the applicant was disenrolled from the AFROTC program in 2012. He did not complete all requirements to commission on his projected May 13 timeframe. Additionally, the records management guidance authorized the destruction of disenrollment documents in Jul 15.

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The applicant is a former cadet from the University of Kentucky. He was disenrolled from the AFROTC program on 12 Jul 12. His initial AFBCMR application was processed during 2017-2018. In his initial application, he did not seek to overturn his disenrollment. His specific request was to change his DD Form 785 dated 2 Jul 12 to remove references to the multiple alcohol related incidents and failure to maintain military retention standards, and only indicate his disenrollment. He also requested that Section IV be changed to read "Highly Recommended." The Board determined that removal of the record was full and fitting relief. He now asserts the Board determined evidence of wrongful disenrollment. The applicant did not meet standards for commissioning and was therefore disenrolled from the program in 2012. His disenrollment remained a matter of his record until he later commissioned through officer training school (OTS). There is no justification to backdate his commission to reflect May 13 as he did not fulfill the requirements necessary to meet the commissioning date.

The complete advisory opinion is at Exhibit E.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 11 Oct 22 for comment (Exhibit F). In a response dated 10 Nov 22, the applicant states the AFROTC/CC advisory is not accurate. The facts are misstated to cover up the initial intent to disenroll over a false sexual assault allegation. He was never timely provided the notices of the alcohol related incidents. Had he been notified; he would have easily refuted the allegations and his disenrollment would have promptly stopped. The failure to provide the notices of the alcohol related incidents impacted his ability to fight the false allegations and the disenrollment. The advisory states he did not meet the standards for commissioning and was therefore disenrolled. This flies in the face of the Board's findings to remove the disenrollment and the DD 785. He did not continue to take AFROTC courses after the wrongful disenrollment was allowed and received his degree in May 13, on time with his fellow cadets. AFROTC states his disenrollment was appropriate even when the Board clearly stated there was an injustice and removed the disenrollment.

The applicant's complete response is at Exhibit G.

FINDINGS AND CONCLUSION

1. The application was not 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 AFROTC/CC and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the correction of the applicant's records in BC-2016-04066 removing the applicant's DD Form 785 dated 2 Jul 12 is insufficient to conclude the applicant's disenrollment for any other reason or on another date would be invalid or improper. While the applicant contends the disenrollment was to coverup a false sexual assault allegation and he was not afforded an opportunity to refute the false allegations and disenrollment, other than his own uncorroborated assertions he has provided insufficient evidence to substantiate his contentions. The Board notes the applicant was subsequently commissioned in the ANG in 2016 upon completion of OTS; however, this is not justification to warrant backdating the applicant's commissioning and service dates with retroactive back pay. With respect to the applicant's request for removal of the AFROTC investigation and counseling dated 30 Oct 09, the Board finds the applicant's records do not include an investigation or a 30 Oct 09 counseling. Accordingly, there is no action for the Board

pertaining to the removal of these documents. With respect to the applicant's request, he be reimbursed attorney fees, per AFI 36-2603, the Board, which serves on behalf of the Secretary of the Air Force in the correction of military records, is without authority to reimburse the applicant attorney fees. 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 Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.5, considered Docket Number BC-2022-01928 in Executive Session on 30 Nov 22 and 30 Mar 23 :

Work-Product [Redacted], Panel Chair
Work-Product [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 13 Jun 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Record of Proceedings, w/Exhibits, (BC-2016-04066), dated 24 Jul 18.
- Exhibit D: Letter, SAF/MRBC, dated 3 Feb 21.
- Exhibit E: Advisory Opinion, AFROTC/CC, w/atchs, dated 12 Sep 22.
- Exhibit F: Notification of Advisory, SAF/MRBC to Applicant, dated 11 Oct 22.
- Exhibit G: Applicant's Response, dated 10 Nov 22.

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

5/3/2023

[Redacted Signature]

Work-Product [Redacted]
Board Operations Manager, AFBCMR
Signed by: USAF