

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01043

XXXXXXXXXXXXXX

COUNSEL: XXXXXXXXXXXX

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His official military personnel record be amended to discharge the federal debt arising from his disenrollment from the Air Force Reserve Officer Training Corps (AFROTC), and all mention of the debt be removed.

APPLICANT'S CONTENTIONS

Counsel, on behalf of the applicant, contended he enrolled in the AFROTC program in Jan 16, with an expected graduation date of May 20. During the initial Department of Defense Medical Examination Review Board (DoDMERB) process, he was medically disqualified for service due to a history of Raynaud's Syndrome, Irritable Bowel Syndrome, and ear problems. He was dropped from AFROTC on 10 Jul 16 but continued to work with DoDMERB and doctors to resolve his medical issues, and submitted a waiver request for his medical conditions to the Surgeon General, Air Education and Training Command (AETC/SG).

In Sep 17, while not enrolled in AFROTC, the applicant began experiencing knee pain following a 5K run. He sought treatment and was diagnosed with patellar tendonitis of the left knee and iliotibial band syndrome of the left side. He was prescribed a cream and physical therapy.

On 5 Jan 18, AETC/SG found he met medical standards and granted his medical waiver request. The applicant was re-enrolled in AFROTC on 12 Jan 18. On 17 Jan 18, he was treated by the University Health Clinic for left knee pain. The applicant immediately provided this information to cadre to inform them of this new medical issue; however, he was still able to participate in physical training and was not placed on limited duty. During his AFROTC pre-participatory sport physical conducted on 26 Jan 18, the physician did not find any medical conditions or physical impairments that would preclude him from participating in a rigorous training program.

As a preventative measure, the applicant visited an orthopedic surgeon on 7 Mar 18, who assessed his knee and recommended physical therapy as a precaution. Accordingly, he participated in physical therapy from 29 Mar 18 through 30 May 18 for his knee.

On 25 Apr 18, the applicant contracted as a scholarship cadet. At the time, his knee pain seemed to be resolved. He no longer experienced knee pain and successfully graduated from field training; however, a year later, while at field training during the summer of 2019, he experienced pain behind his left knee after standing for over 10 hours. He was sent home from field training since he was not able to medically participate. He then submitted all documentation on his knee to AETC/SG and requested a waiver of his medical condition. On 19 Jul 19, AETC/SG medically disqualified him from service due to patellofemoral joint dysfunction and denied his request for waiver. On 13 Aug 19, the applicant was counselled on AETC/SG's determination and was notified his scholarship was inactivated and he would be disenrolled from AFROTC that same day.

Four months later, he was notified a Disenrollment Investigation was initiated on 2 Dec 19 for fraudulent enlistment due to an undisclosed medical condition. As part of the investigation, he signed a form acknowledging his rights which reflected \$44,083.00 total education costs, including subsistence allowance, tuition, fees, and books. Through counsel, the applicant submitted a written response to the Disenrollment Investigation on 30 Dec 19. On 30 Apr 20, he was notified of the final decision of disenrollment from AFROTC, effective 23 May 20. The basis for the disenrollment is "failure to maintain military retention standards (fraudulent enlistment)." The applicant completed his course of study and graduated with a bachelor's degree in May 20.

On 26 Aug 22, he received a Notice of Indebtedness to the United State Government from the Defense Finance and Accounting Service (DFAS), reflecting a total balance of \$38,067.93, stating the debt was for education tuition assistance. However, the notice stated the debt is for two different disenrollment dates, 24 Aug 20 and 24 May 20. Thereafter, the applicant made a partial payment toward the debt. On 26 Sep 22, he received another notice from DFAS reflecting a total balance of \$38,077.93. The explanation again stated the debt was for education tuition assistance with disenrollment dates of 24 Aug 20 and 24 May 20, as well as overpayment of a military pay or allowance related to entitlement from 13 Aug 19 to 20 Sep 19, from 15 Jun 19 to 22 Jun 19 and from 13 Aug 19 to 20 Sep 19. Additionally, a \$10.00 penalty fee was applied because the applicant sent a partial payment without establishing a payment plan.

Because the DFAS notices were unclear as to the basis and calculation of the debt amount, he submitted a Freedom of Information Act request to DFAS on 9 Sep 22, requesting a full accounting of the debt, and received a DFAS response on 25 Oct 22. As the Air Force and DFAS have failed to provide an accurate explanation for and calculation of the debt it alleges the applicant owes, the debt is materially erroneous and should be discharged in its entirety.

The applicant was erroneously disenrolled from AFROTC for fraudulent enlistment because he did not deliberately fail to disclose or intentionally misrepresent his medical condition. Pursuant to AFROTC Instruction (AFROTCI) 36-2011, *Cadet Operations*, paragraph 11.13., "A fraudulent enlistment exists when a cadet was enlisted who deliberately failed to report or materially misrepresented" information "that, if known at any time in the enlistment process, might have resulted in rejection." When the applicant began experiencing knee pain in Jan 18, he was evaluated by the University Health Clinic and he immediately notified his cadre, providing them with a copy of the note from the clinic. Thus, he properly disclosed the medical condition involving his left knee to the AFROTC cadre.

Although he did not provide additional documentation regarding further evaluation and treatment for pain in his left knee following the Jan 18 initial disclosure, his failure to do so was neither deliberate nor a material misrepresentation. Because his knee pain seemed to be resolved and no action was taken in response to the notification of his treatment for knee pain, and no questions or requests for further documentation were brought to him, he reasonably believed he properly notified AFROTC of the medical condition and no further information was required. He explained this to the investigating officer reasoning, "because there was no action taken or questions asked regarding the document I did submit, I understood that to mean my reporting requirement was met." The applicant further stated, "had I known I would need to submit every document moving forward, I would have been happy to do so."

Furthermore, his evaluation by an orthopedic surgeon in Mar 18 and subsequent participation in physical therapy was purely precautionary, as a means of preventing future injury. This is reflected in the orthopedist's note which stated the reason for his visit was that the applicant "does have some intense field training that he will have to do this summer and wanted to make sure if there was anything he needed to do before then." The orthopedist further indicated no problems with his participation in rigorous physical activity stating, "I don't see any reason that

he can't ramp up his activity as tolerated." Because the evaluation and physical therapy were precautionary, the applicant did not understand that it needed to be disclosed. Because he neither intentionally misrepresented nor deliberately failed to report continued treatment for this condition, his disenrollment was erroneous. He should have been retained in AFROTC and permitted to commission.

Additionally, the Disenrollment Investigation was erroneously initiated four months after he had already been disenrolled from AFROTC due to the AETC/SG's determination that he was medically disqualified from service. The AFROTC had no jurisdiction to initiate a Disenrollment Investigation of a previously enrolled and currently separated cadet. Pursuant to AFROTCI 36-2011, paragraph 16.5.4., when a cadet is found to be medically disqualified for commissioning, the effective date of disenrollment is the date of medical disqualification and per paragraph 16.5., administrative release for medical disqualification does not require an investigation. Because he was found medically disqualified for service on 19 Jul 19, the effective date of disenrollment was 19 Jul 19; however, he was not notified of AETC/SG's determination and his disenrollment until 13 Aug 19. On that date, he was notified that his scholarship was inactivated and the effective date of disenrollment from AFROTC was 13 Aug 19. Whether the effective date of disenrollment was 19 Jul 19 or 13 Aug 19, he was already disenrolled from AFROTC when the Disenrollment Investigation was initiated in Dec 19.

Requiring the applicant to repay \$38,077.93 in education costs for failing to fully comprehend all the nuances of military reporting requirements is manifestly unjust. He clearly evidenced an intent to properly disclose all medical conditions by disclosing his evaluation and treatment for left knee pain immediately. The applicant accepts that he may not meet the medical qualifications for military service; however, he should not be required to repay education costs.

Lastly, the Air Force and DFAS have failed to provide an accurate explanation for and calculation of the debt it alleges the applicant owes. Thus, requiring him to repay \$38,077.93 in education costs is manifestly unjust.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former AFROTC cadet.

From 6 Jan 16 – 19 Jul 16, according to AFROTC/CC advisory, dated 17 Aug 23, the applicant was an active AFROTC cadet.

On 19 Jul 16, according to AFROTC/CC advisory, dated 17 Aug 23, the applicant was disqualified by the DoDMERB for a history of multiple medical ailments.

On 12 Jan 18, according to AFROTC/CC advisory, dated 17 Aug 23, the applicant rejoined AFROTC.

On 17 Jan 18, according to AFROTC/CC advisory, dated 17 Aug 23, the applicant visited a doctor for left knee pain.

On 13 Feb 18, according to AFROTC/CC advisory, dated 17 Aug 23, the applicant re-accomplished a new DoDMERB evaluation and failed to disclose knee pain or doctor's visits for knee pain and physical therapy from Sep 17 – Jan 18.

On 25 Apr 18, according to AF Form 1056, *Air Force Reserve Officer Training Corps (AFROTC) Contract*, provided by the applicant, he entered the AFROTC program.

On 13 Aug 19, according to AFROTC Form 16, *Officer Candidate Counseling Record*, provided by the applicant, he was counseled regarding his medical disqualification.

On 2 Dec 19, according to AFROTC Form 10, *Disenrollment Action Worksheet*, provided by the applicant, he acknowledged receipt of the disenrollment action and made applicable elections.

According to Detachment 730, Education Officer memorandum, dated 10 Dec 19, provided by the applicant, the education officer was appointed to investigate the circumstances surrounding the applicant's disenrollment action on 2 Dec 19, and conducted an investigation with the applicant on 10 Dec 19.

On 30 Dec 19, according to counsel memorandum to the commander, AFROTC Detachment 730, provided by the applicant, on behalf of the applicant, counsel rebutted allegations of fraudulent enlistment and the applicant's proposed discharge.

On 30 Apr 20, according to an unsigned AFROTC Form 16, provided by the applicant, the disenrollment investigation was completed, and the final decision was to disenroll him from AFROTC, effective 23 May 20 for failure to maintain military retention standards (fraudulent enlistment). As a result, his membership status was amended to reflect "Loss", effective 11 Mar 20, his scholarship status was terminated, effective 12 Aug 19, he would not be called to extended active duty, and recoupment action would be initiated.

On 23 May 20, according to DD Form 785, *Record of Disenrollment from Officer Candidate – Type Training*, dated 30 Mar 20, the applicant was disenrolled from the AFROTC program, under the provisions of Air Force Manual (AFMAN) 36-2032, *Military Recruiting and Accessions*, paragraph 6.6.1.5. and AFROTC Instruction (AFROTCI) 36-2011, *Cadet Operations*, paragraph 16.6.5., failure to maintain military retention standards (Fraudulent Enlistment).

On 13 Aug 20, according to Holm Center/SDFA [Chief of Accounting] memorandum to the applicant, provided by the applicant, he was notified that he must repay his scholarship costs based upon failure to fulfill his AFROTC contract.

On 13 Aug 20, according to Holm Center/SDFA [Chief of Account] memorandum to DFAS-IN/JAACBB [Defense Finance and Accounting Service], provided by the applicant, a debt case file was forwarded for review and collection action, in the amount of \$38,068.00.

For more information, see the advisory at Exhibit B.

APPLICABLE AUTHORITY/GUIDANCE

In accordance with AFROTCI 36-2011, *Cadet Operations*:

11.13. *Fraudulent Enlistment*. Enlistments involving material misrepresentation, omission, or concealment that, if known at any time in the enlistment process, might have resulted in rejection. A fraudulent enlistment exists when a cadet was enlisted who deliberately failed to report or materially misrepresented. AFROTC/CC is the waiver authority. Fraudulent enlistments must be investigated for disenrollment. Counsel the cadet in writing that the enlistment was not a valid enlistment as it was not authorized by existing directives and service performed during the enlistment is not creditable for any purpose. Clearly identify the disqualifying factor that made the enlistment invalid. Examples of Fraudulent Enlistment:

11.13.4. Medical history or information on their physical exam.

16.5. *Administrative Release.* Does not require a disenrollment. Reasons for administrative release disenrollment includes the following:

16.5.4. *Medical Disqualification.* AETC/SGPS has medically disqualified for commissioning a cadet for reasons beyond the cadet's control and knowledge. Immediately terminate stipend upon notification that a cadet is medically disqualified for commission. The effective date is the date of medical disqualification by AETC/SGPS.

16.6. *Disenrollment Investigation.* When a cadet is being considered for disenrollment and faces possible involuntary EAD or recoupment of scholarship benefits, the disenrollment requires the appointment of an investigating officer, to review and investigate the circumstances associated with the basis for such action. The cadet will be provided 5 business days to prepare a response to the disenrollment. Reasons for disenrollment review with investigation are outlined in chapter 6 of AFI 36-2011.

16.6.2. Failure to maintain military standards necessary to become a commissioned officer.

AFMAN 36-2032, *Military Recruiting and Accessions*:

6.6. *Disenrollment, Discharge or Involuntary Call To Active Duty.*

6.6.1. AFROTC/CC may disenroll a contracted cadet for:

6.6.1.5. Failure to meet military retention standards.

AIR FORCE EVALUATION

AFROTC/CC recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice.

The applicant was an active cadet from 6 Jan 16 to 19 Jul 16. He was medically disqualified on 19 Jul 16 by the DoDMERB for a history of multiple medical ailments and a waiver from the Air Force Recruiting Service (AFRS) was denied. Between 13 Sep 17 and 16 Jan 18, the applicant, while no longer an active cadet, visited the doctor on multiple occasions for left knee pain consultations and was prescribed physical therapy.

On 12 Jan 18, he re-joined AFROTC, and a medical waiver was granted by AFRS for his previously identified conditions (not knee related), deeming him eligible for military service. On 17 Jan 18, he visited a doctor for left knee pain and provided a doctor's note to his cadre, as required by the AFROTC instruction.

On 13 Feb 18, the applicant re-accomplished a new DoDMERB evaluation as his original had expired. During this examination, he failed to disclose knee pain or any doctor's visits for knee pain and physical therapy from Sep 17 through Jan 18.

On 25 Apr 18, he contracted with AFROTC and was awarded a scholarship. In July 19, he was sent home from field training for knee pain. Subsequently, he was medically disqualified for a history of patellofemoral joint dysfunction.

In Aug 19, the applicant was briefed that his scholarship was inactivated, and he would be disenrolled from AFROTC, effective 13 Aug 19. However, while reviewing the evidence to approve a medical disenrollment, the AFROTC Northeast Region leadership ordered an investigation for fraudulent enlistment due to discovery of the applicant's failure to report the doctor's visits. It is important to note, medical disqualification does not equate to an automatic disenrollment. Only a signed DD Form 785 disenrolls a cadet, and he did not receive a DD Form 785 for a medical disenrollment in Aug 19, only a counseling based on preliminary evidence. It was not until the end of the investigation that he was disenrolled, via signed DD Form 785, for the identified fraudulent enlistment.

The disenrollment investigation was initiated against the applicant for fraudulent enlistment on 2 Dec 19. Specifically, he was investigated for a fraudulent enlistment due to a failure to disclose a medical condition on his DoDMERB. He was disenrolled from AFROTC on 23 May 20 for failure to maintain military retention standards for this failure.

Finally, DoDI 6130.03-Vol.1, *Medical Standards for Military Service: Appointment, Enlistment, or Induction*, states “information provided [on a DoDMERB form] constitutes an official statement... If [an] applicant is selected for enlistment, commission, or entrance into a commissioning program based on a false statement, the applicant can be tried by court-martial or meet an administrative board for discharge.” The applicant made a false statement on his DoDMERB form when he withheld information regarding knee pain and physical therapy, and subsequently entered into a fraudulent enlistment and accepted scholarship monies under this false pretense. Therefore, a disenrollment from AFROTC and recoupment of scholarship monies paid is appropriate.

Holm Center Staff Judge Advocate found this advisory legally sufficient.

The complete advisory opinion is at Exhibit B.

APPLICANT’S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Aug 23 for comment (Exhibit C), and the applicant replied on 15 Sep 23. In his response, counsel, on behalf of the applicant, contended the advisory opinion incorrectly stated the applicant failed to provide evidence supporting his assertion that the knee injury was not deliberately withheld. In his previously submitted brief, it is established that the applicant immediately informed his cadre of the new medical issue with relation to his knee by providing a doctor’s note; a fact that is cited in the advisory opinion. Therefore, the applicant submitted the requisite proof illustrating he did not withhold the existence of his knee injury. Because he properly disclosed all prior medical conditions and was found to be medically fit for service, his disenrollment from AFROTC for fraudulent enlistment is erroneous, and he respectfully requests his military records be corrected to discharge or reduce the federal debt owed for recoupment of advanced tuition costs.

The applicant’s complete response is at Exhibit D.

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, to include the applicant’s rebuttal, 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. While he did provide the note from his doctor’s visit on 17 Jan 18 to his cadre, the applicant failed to disclose his knee injury or subsequent treatment and physical therapy from Sep 17 through Jan 18, when he re-accomplished a new DoDMERB evaluation on 13 Feb 18. Therefore, the Board recommends against correcting the applicant’s records.

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-2023-01043 in Executive Session on 18 Jan 24:

, Panel Chair
, 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 23 Mar 23.
Exhibit B: Advisory Opinion, AFROTC/CC, w/atchs, dated 17 Aug 23.
Exhibit C: Notification of Advisory, SAF/MRBC to Counsel, dated 18 Aug 23.
Exhibit D: Counsel's Response, dated 15 Sep 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.

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Board Operations Manager, AFBCMR