



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02209

Work-Product

COUNSEL: Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His DD Form 785, *Record of Disenrollment from Officer Candidate – Type Training*, Section IV, *Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training*, be marked as a 3 (Should not be Considered without Weighing the Needs of the Service Against the Reasons for this Disenrollment) or higher.
2. The debt he incurred while participating in the Air Force Reserve Officer Training Corps (AFROTC) program be terminated.

APPLICANT'S CONTENTIONS

Because of non-clinical but debilitating personal factors in his Fall 2020 semester; being quarantined away from his university, family, and society at large, he experimented with marijuana and cocaine in an extremely limited way to cope. Once he returned to campus, he ceased using drugs. On 19 Oct 21, he submitted his application for his secret security clearance where he admitted to the drug use; however, his detachment took no action, and he continued in the AFROTC program. On 10 Oct 22, he submitted his application for his top-secret security clearance where he again admitted to the drug use; however, this time his detachment took action issuing paperwork for his disenrollment for failing to maintain military retention standards.

Because he was allowed to continue to receive scholarship monies after his first admittance to drug usage in 2021, the Air Force misled him into believing he would continue in the program. The detachment commander had within his authority to take actions against him at this time; however, he relied on his commander's inaction and accepted the scholarship money and continued his AFROTC and Air Force career path and made career and financial decisions based on his continuation in the program. Had his leadership acted promptly on his first drug use admission, he could and would have undertaken an alternative career path and financial planning that would have put him in a much more advantageous position regarding his future education, career, and financial planning.

Doctrine of Waiver as found in Black's Law Dictionary (5th Edition 1983) applies to his case. One of the basic principles applicable to the doctrine of waiver is to provide some measure of

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certainty to parties who assert the doctrine. A party should know where they stand vis a vis another party so as to order their lives and make informed decisions regarding their future without the threat of an adverse action being taken based on stale information that was well known to the other party. Additionally, the common law doctrine of laches is applicable whereas the lackadaisical attitude and prejudicial delay in pursuing a disenrollment caused him to incur further debt and denied him access to other financial planning and potential career paths. Furthermore, the common law doctrine of Ratification is applicable whereas any act based on a recognition of a contract as subsisting or any conduct inconsistent with an intention of avoiding it has the effect of waiving the right of rescission. He entered into a contract and was continued for more than a year after his drug admission before his disenrollment; therefore, AFROTC ratified the continuation of the contract. Lastly, the doctrine of Estoppel is applicable which prevents one party who has induced another to act in a particular way from adopting an inconsistent position, attitude, or course of conduct that will cause loss or injury to the other person. AFROTC for over a year actually or constructively took a position that his admission of drug use would not adversely impact his continuation with his AFROTC program and acceptance of scholarship funds and it would be unconscionable to recoup scholarship funds after he has detrimentally foregone other planning choices.

If an undertaking of recoupment of scholarship money is now permitted, this will cause him significant financial hardship in addition to his forced, sudden, and unforeseen change in his career path. He acknowledges it was wrong to do what he did, but there is actually a much greater wrong for the AFROTC to have facilitated, in fact precipitated, in his continued journey on a career path to nowhere and to now attempt to saddle him with a crushing personal debt for that journey. Additionally, his DD Form 785 should be corrected as this will most likely have a long-lasting negative career and personal impact. If he were applying today for officer training, his disclosure of experimenting with drugs would not preclude him from this career path and it is unjustifiable to deny him an opportunity for future officer training,

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former AFROTC cadet.

On 31 Aug 19, the applicant signed a Memorandum of Understanding (MOU) regarding the drug testing policy for AFROTC cadets, provided by the applicant. This MOU outlines the requirement for random urinalysis drug testing and the disenrollment or dismissal from the program if refusal of drug testing or testing positive on a urinalysis test.

On 10 Nov 20, AF Form 1056, *Air Force Reserve Officer Training Corps (AFROTC) Contract*, indicates the applicant signed a contract for a Type 1 scholarship for a 3-year period in the field of mechanical engineering with a 2023 commission year. In Part I, Section 1a, *Agreement of Cadet*, the drug screening program is outlined as stated above.

Dated 12 Nov 22, the Disenrollment Report of Investigation (ROI), provided by the applicant, indicates he was recently selected for Space Operations which elevated a need for a top-secret clearance. He stated he used the information from his previous security clearance application where he admitted to drug use, stating small/infrequent/experimental use of marijuana and cocaine as well as providing a small amount of monetary allowance to a friend to purchase marijuana. On his second security application, the personnel non-commissioned officer in charge (NCOIC) reviewed his form for accuracy and noticed the applicant stated he used illicit drugs in Jun 18, Oct 20, and Dec 20 and this information was brought to the attention of his detachment commander which prompted a disenrollment investigation. The evidence presented against him included the MOU drug test policy, his acknowledgement at commander's calls which included illicit drug usage briefings during his enrolled semesters, Spring 2020 through Fall 2022, his term counseling sessions which included the policy on illicit drug usage, and his recertification of AF Form 2030, *USAF Drug and Alcohol Abuse Certificate*, on 6 Nov 20. The ROI goes on to state the applicant was upfront and honest and acknowledged he broke his contract when he used illicit drugs; however, when the COVID-19 pandemic hit, he was coping with numerous stressful situations which led to his drug usage to cope with depression. When he admitted to illicit drug usage on his initial security clearance application, he expected his answers would be reviewed and remedial action would be taken. After he received his secret clearance, he understood this action to be an implied approval of his continuation in the program.

On 28 Dec 22, DD Form 785, *Record of Disenrollment from Officer Candidate – Type Training*, indicates the applicant was disenrolled, effective 25 Jan 23, for failure to maintain military retention standards when he admitted to post-orientation drug use. In Section IV, *Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training*, it is noted he is definitely not recommended. It is further noted in the remarks section he had a grade point average (GPA) of 3.84.

Dated 30 Mar 23, Reserve Order Work-Product indicates the applicant was honorably discharged from the Air Force Reserve (AFR), effective 25 Jan 23.

Dated 23 May 23, a letter from the AFROTC Commander, provided by the applicant, indicates his appeal was denied for a waiver of funds recoupment and change to his AF Form 785 noting he signed the AF Form 2030 and within two months, used marijuana and cocaine, knowing this made him ineligible for service; however, he continued to accept benefits under this false pretense.

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

The AFROTC/CC recommends denying the application finding no evidence of an error or injustice. The applicant's records should remain unchanged, indicating a failure to maintain military retention standards and an ineligibility for Department of the Air Force service. Additionally, all federal debt associated with his disenrollment should continue to be recouped.

The applicant was an active cadet and during his AFROTC orientation he was briefed on the Air Force policy for alcohol and drug abuse. He acknowledged understanding of this training which stated any drug use (including marijuana) or any alcohol abuse as described above, from this date forward, renders me ineligible for the Air Force. His signature demonstrates understanding of this requirement. In Oct 20, the applicant gave money to a friend to purchase marijuana and in Nov 20, he used marijuana. On 6 Nov 20, he recertified the AF Form 2030, stating there has been no change in his status since he originally provided this information on the date on front of this form and he hereby certified he did not use any drugs, including marijuana... since he originally completed this form. He then signed the AF Form 1056, and entered into a contract with the Air Force and received a Type I scholarship (full tuition). After signing this contract, he used cocaine in Dec 20. All scholarship monies received by the applicant were knowingly fraudulently accepted, as documented by his signature of understanding on these documents. In Oct 21, he submitted an SF 86, *Questionnaire for National Security Positions*, for a secret security clearance. In the questionnaire, he marked "yes" to illicit drug use and provided the instances. In Oct 22, he submitted an SF 86 for a top-secret security clearance, again checking "yes" to illicit drug use.

All United States security clearances are determined by the Department of State, and the review of SF 86 applications are accomplished by that governmental agency. Detachment cadre are only required to review SF 86's for completion; however, review of content is authorized. Upon review of the SF 86, detachment cadre at the applicant's detachment discovered the drug usage. An investigation into the drug use was launched and it was determined the applicant illegally consumed drugs and was no longer eligible for service in the Air Force and was disenrolled.

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 13 Feb 24 for comment (Exhibit D), and the applicant replied on 22 Feb 24. In his response, the applicant contends, through counsel, the advisory opinion lacks analysis and fails to address the relevant issues and errors surrounding this case. The advisory opinion cites the statutory and regulatory procedures to be followed regarding illegal drug use; however, proper procedures were not followed when he was misled by his detachment to his financial detriment. The advisory opinion does not address the COVID 19 lockdown, the hardships he faced, or the actions he took to obtain mental health help through the university to no avail. His detachment either negligently or purposefully allowed him to continue in the program. Recoupment of scholarship funds under the facts of this case is neither required nor justified.

His AF Form 785, marked to the lowest category, is wildly incongruous with the facts of his case and the fact the Air Force has a return to duty program which is occasionally used for active-duty airmen who illegally use drugs or commit other offenses. He is amenable to Air Force service and displayed honesty and character; for approximately 15 months after his initial admission, he performed in his usual outstanding manner and deserves a much higher rating than a "5" on his AF Form 785. Such a markdown on the AF Form 785 is nothing short of a full betrayal of the Air

Force's maxim of "Integrity First." He should not be functionally barred from the possibility of ever serving his country in the future just because he was honest about a mistake.

In his initial personal statement, he believes his case merits a waiver of his scholarship funds and a change to his AF Form 785. He had to make an abrupt change to his career path in his senior year because he did not have the opportunity to do long range planning and was saddled with a huge debt. He was coping with numerous stressful events in 2020 which led to his drug usage. He attempted to get non-clinical mental health counseling through his school on a few occasions but was never able to get through to a counselor. His school's problem with these unavailable services led to an overhaul of the entire system when a student committed suicide after not getting the needed care. Once he returned to campus, he was better able to cope and returned to a sound emotional state. He did everything in his power to be the best cadet he could be and successfully prepared himself for a career of leadership in the United States Space Force. He is proud of what he achieved during his time in AFROTC; his integrity in disclosing his post-orientation drug use and his rededication to service and excellence as evidenced in his records, is a testament to the Air Force Core Values.

In his second personal statement, he notes the advisory opinion does not comment on any of the common law doctrines which demonstrate AFROTC's prejudicial delay in its disenrollment and recoupment action. The principles of Waiver, Laches, Ratification, and Estoppel all preclude AFROTC from recouping his final four semesters of tuition. Furthermore, the requirement for detachment cadre to review SF 86s for completion does not explain how one can review an application for completion without reviewing each response.

The applicant's complete response is at Exhibit E.

ADDITIONAL AIR FORCE EVALUATION

The Staff Judge Advocate (SJA) from the Holms Center recommends denying the application finding the applicant fails to show how his own dishonesty and inaction entitles him to special treatment. He was not treated unfairly in anyway and has suffered no injustice. He never once attempted to clarify his position with AFROTC after his untimely disclosure of drug abuse, knowing full well the consequences of using cocaine and marijuana, having been briefed on the AFROTC drug policy several times, signing AF Form 2030 twice, and understanding his drug abuse breached his contract with the Air Force. He received full and fair due process in his disenrollment and his category 5 designation not recommending him for future service is completely appropriate.

The legal advisory opinion addresses each of the arguments made by counsel to include common law doctrines of Waiver, Laches, Ratification, and Estoppel and finds these arguments are misapplied and do not prove an error or injustice was made in the applicant's case. Equitable estoppel would more appropriately be applied to his application to the AFBCMR. First, the applicant made a false representation, concealing his drug use, when he recertified AF Form 2030 on 6 Nov 20. Second, he knew it was a false representation. Third, he knew his false representation would allow him to receive scholarship funds, whereas the truth would prevent his contracting

with AFROTC. Fourth, the Air Force had no means of knowing the applicant had been using marijuana in Oct and Nov 20 and could only rely on the applicant's assertions. Fifth, the Air Force detrimentally relied on his recertification of the AF Form 2030 by contracting with him and awarding and paying him a scholarship. This resulted in the Air Force losing the opportunity to award a scholarship to a worthy candidate. Thus, he should not now be able to make a claim against the Air Force to terminate the recoupment action.

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 8 Jul 24 for comment (Exhibit G), and the applicant replied on 29 Jul 24. In his response, the applicant contends, through counsel, the advisory opinion's legal analysis is misplaced. The legal principles used by counsel were to show how common sense and fairness-based principles have found a home even in formal court proceedings. These principles evolved in an attempt to seek fairness and provide relief to claimants when a complaint of wrong does not fit neatly within some other legal principle or existing law and should be used similarly in this case. For three semesters after officially being notified of his drug use, the AFROTC advanced him scholarship funds. He is now liable for a significant amount of money because the Air Force either did not want to disenroll him or in their negligence did not initiate a timely disenrollment action. Either way, he was actively misled by the Air Force's actions to his financial detriment.

In his personal statement to the Board, the applicant contends, the advisory opinion portrays an inaccurate understanding of the timeline of events in Fall 2020 and states his drug use did not occur until after he signed the AF Form 2030.

The applicant's complete response is at Exhibit H.

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 the SJA from the Holms Center and the AFROTC/CC and finds a preponderance of the evidence does not substantiate the applicant's contentions. Specifically, the Board finds the applicant never officially notified his leadership of his drug usage. The fact that the applicant disclosed this information on his security clearance application is not an official notification to his leadership. Furthermore, the applicant never attempted to clarify his position with the AFROTC after his untimely disclosure of drug abuse knowing full well the consequences of using cocaine and marijuana as evident in the AFROTC drug policy. He was fully made aware any drug abuse would be a breach in contract with the Air Force. Lastly, the Board finds no error or injustice occurred during his disenrollment

process, and not recommending him for future service and recoupment of scholarship money is appropriate. The many law doctrines cited by counsel do not change the fact the applicant breached his contract with the AFROTC by using illegal substances and accepting scholarship money afterwards without properly informing his leadership. 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-2023-02209 in Executive Session on 12 Sep 24:

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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 1 Jul 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFROTC/CC, dated 1 Dec 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Feb 24.
- Exhibit E: Applicant's Response, w/atchs, dated 22 Feb 24.
- Exhibit F: Advisory Opinion, Holms Center/SJA, dated 13 Jun 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 8 Jul 24.
- Exhibit H: Applicant's Response, dated 29 Jul 24.

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.

9/19/2024

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Board Operations Manager, AFBCMR
Signed by: USAF

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