



Work-Product

UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-02680

Work-Product

COUNSEL:

Work-Product

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His debt from the United States Air Force Academy (USAFA) be dismissed.

APPLICANT'S CONTENTIONS

He was wrongfully forced out of USAFA through the unfair targeting from his Air Officer Commanding (AOC), as well as anti-Semitism. The abuse he suffered at USAFA traumatized him and directly resulted in Post-Traumatic Stress Disorder (PTSD) and other mental health repercussions. The United States Government wrongfully forced him out of USAFA through traumatizing, humiliating acts, and is now asking him to pay over six figures for that abuse. It is unconscionable to continue to collect this debt or to allow it to negatively impact his life and livelihood. His experiences at USAFA led to trauma and PTSD. Due to the trauma he suffered, he was unable to talk about his experiences until recently. The evidence shows his AOC unfairly targeted him through a dedicated, and ultimately successful, campaign to force him out of USAFA. Rather than nurture or mentor him, his AOC refused to allow him an intake interview and never acknowledged any progress he made. Verbal abuse formed another prong of his AOC's campaign and through this abuse, his AOC ensured he could not simply overcome his failures with the mindset the challenging environment of USAFA would inevitably lead to some failures. His AOC made life under this microscope unbearable by ensuring he knew there was no relief from this environment. In addition to the abuse suffered by his AOC, he was religiously discriminated against both from an institutionalized processes at the USAFA as well as from higher leadership. The Air Force investigated the religious climate at the USAFA and concluded there were issues with anti-Semitism, which shows the problems he experienced with religious discrimination were real and have been acknowledged by the Air Force through a neutral investigation. Lastly, the evidence shows his debt is unjust due to the negative psychological impact he suffered at the USAFA. This psychological impact continued for years after he left the USAFA as he suffered from anxiety, excessive worry, guilt feelings, stress, transient sleep impairment/nightmares, depressed mood, fear of failure, impaired concentration, and trouble sustaining attention. Additionally, the USAFA has not maintained the DD Form 785, *Record of Disenrollment from Officer Candidate-Type Training*, which has unfairly hindered his ability to earn a living (as indicated in his request for records through the USAFA Registrar's Office). The Air Force is

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POC: SAF.MRBC.Workflow@us.af.mil

missing out on leveraging his talent; this debt makes it difficult for him to get government contracts or necessary clearances. It is in the best interest of the government to remit his debt.

To support his request, he submitted letters from two of his fellow cadets acknowledging the unfair treatment he received from his AOC targeting him for expulsion. He further submitted a personal statement, medical documentation, his academic transcripts, articles in regard to religious discrimination at the USAFA, two character statements from his spouse and a friend/work colleague, and other documentation while he was at the USAFA.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a former USAFA cadet.

Dated 24 May 04, a letter from the Deputy Chief of the Administrative Law Division, USAFA regarding the applicant's recoupment reconsideration opinion from 16 Jan 04, states a reassessment of the conclusion was asked to be done by HQ USAF/JAA because the investigating officer (IO) must consider the applicant's claim he did not commit the misconduct that formed the basis of his discharge. The USAFA/JA office opined it is not the role of the IO to relitigate a previously adjudicated matter that served as the basis for the cadet's disenrollment; the IO's role is limited to making an informed decision as to whether the cadet's behavior that caused the separation equates to misconduct.

On 2 Mar 06, AF Form 3070, *Record of Nonjudicial Punishment Proceedings*, indicates the applicant received nonjudicial punishment (NJP), Article 15 for dereliction of duty when he departed the USAFA while on probation and without approval. An investigation revealed the applicant requested to participate in a Scheduling Committee Action function during the weekend of 4-5 Feb 06. His request was denied by his AOC, and he was informed as such; however, the applicant elected to depart the area without signing out and traveled to Keystone, CO. As a cadet who has been on academic, conduct, and aptitude probation simultaneously for four straight semesters, the applicant knew full well he was restricted to the cadet area and required AOC approval to leave the area. He received a reprimand and was restricted to the limits of the USAFA for 30 days.

On 30 May 06, the applicant acknowledged he received a memorandum notifying him of the involuntary disenrollment action under AFI 36-2020, *Academic Disenrollment Process*, for a review in lieu of honor/Military Review Committee (MRC) and elected to voluntarily resign instead of undergoing further action believing it to be in his best interest. He further states he was not threatened, coerced, or induced to sign due to made promises and he consulted an Air Force judge advocate to learn of his rights and privileges, the terms of his resignation, and the various forms of separation or disenrollment. Additionally, he states he fully understands he has an Active-Duty Service Commitment, and his separation may subject him to a reimbursement requirement; however, if the government elects reimbursement, he wishes to dispute the validity of the debt.

On 21 Jun 06, DD Form 785, indicates the applicant was disenrolled from the USAFA and administratively separated from appointment due to a voluntary resignation in lieu of involuntary disenrollment for failing aptitude and conduct probation and in lieu of disenrollment for violating the Cadet Wing Honor Code. In Section IV, *Evaluation to be Considered in the Future for Determining Acceptability for Other Officer Training*, the applicant was marked definitely not recommended noting his cumulative grade point average (CGPA) was 1.88, cumulative military performance average was 2.28, and his cumulative physical education average was 2.25. It was further noted he incurred a two-year Active-Duty Service Commitment for his time at the USAFA.

On 7 Jul 06, the Chief of Cadet Adverse Actions accepted the applicant's tender of resignation and directed he be given an honorable discharge and was ordered to monetarily reimburse the government for the cost of his education. On 14 Jul 06, the applicant disagreed with the decision to reimburse the government for the cost of his education.

On 25 Aug 06, a Report of Recoupment Hearing found the applicant's USAFA education in the amount of **Work-Product** was correctly calculated based on completion of three full academic years at the USAFA and further noted the MRC package contained various documented instances of misconduct deeming the monetary recoupment appropriate. The MCR package contained the following formal disciplinary actions; (1) a Letter of Counseling (LOC) for sleeping and missing a mandatory military test on 15 Apr 05 and failing to go to an appointed place of duty (previously verbally counseled on this); (2) a Letter of Admonishment (LOA), dated 11 Sep 05, for wearing unauthorized attire and missing a mandatory meeting; (3) a LOC, dated 21 Oct 05 for failing to maintain his uniform (previously verbally counseled on this); (4) a LOA, dated 17 Feb 06 for failing to sign out before leaving the area and signing in; (5) an Article 15, dated 2 Mar 06 for leaving the USAFA to attend a religious retreat which he organized after his request was denied by his AOC due to his academic, conduct, and aptitude probations; and (6) a LOR, dated 17 Apr 06 for leaving the cadet area while on academic, conduct, and aptitude probations and for making a false official statement. In his response to this hearing, the applicant contended the MRC package did not sufficiently convey his positive contributions to the USAFA and suggested the many administrative actions taken against him were based on incorrect information or he was singled out. However, it is noted the applicant failed to respond to any of the administrative actions taken against him at the time they were issued.

On 6 Oct 06, the Secretary of the Air Force (SAF) reviewed the applicant's case of military misconduct and directed he be disenrolled from the USAFA, given an honorable discharge, and financially reimburse the government for the cost of his education.

On 30 Oct 06, DD Form 214, *Certificate of Release or Discharge from Active Duty*, reflects the applicant was honorably discharged as an Air Force cadet from the USAFA noting he attended the USAFA in cadet status from 26 Jun 03 to 30 Oct 06 with service not creditable for any purpose in commissioned officer status. He was discharged, with a narrative reason for separation of "Secretarial Authority."

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

APPLICABLE AUTHORITY/GUIDANCE

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness issued supplemental guidance, known as the Wilkie Memo, to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to paragraphs 6 and 7 of the Wilkie Memo.

On 16 Aug 23, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit C).

AIR FORCE EVALUATION

The AFRBA Psychological Advisor completed a review of all available records and finds insufficient evidence to support the applicant's request to remit the full remaining amount of his educational debt he incurred after disenrollment from the USAFA from a psychological perspective. Furthermore, there is insufficient evidence to suggest the applicant had any mental health condition that would mitigate his misconduct.

The Psychological Advisor's role is not to relitigate the misconduct that was the basis for the applicant's disenrollment but to determine if his misconduct may have been mitigated or excused by any mental health condition. While counsel contends the applicant suffered PTSD/trauma from his USAFA experience, there is no evidence he was ever diagnosed with PTSD or a mental health condition related to trauma. The applicant was diagnosed with adjustment disorder with mixed anxiety and depression in 2008. At that time, he did not meet the criteria for PTSD or other related trauma disorders, as the provider documented that as a condition to be ruled out. His mental health diagnosis of adjustment disorder with mixed anxiety and depression was confirmed again in 2012 when he had a Compensation and Pension (C&P) examination. The examiner specifically noted the applicant did not meet the diagnostic criteria for PTSD. While counsel contends the applicant was unable to talk about his experiences until recently, his mental health encounter from 30 Jul 08, documents he raised the issue of harassment, approximately two years after disenrollment from the USAFA.

While a document from W----- F----- Psychologists, dated 1 Mar 12, indicated it may be more than likely his reported mental health symptoms are the direct result of his experiences in military service, his mental health condition does not mitigate or excuse his misconduct. The applicant was diagnosed with adjustment disorder with mixed anxiety and depression. His misconduct of the following offenses is not part of the sequelae of symptoms associated with adjustment disorder; willfully departing the USAFA while on probation and without approval; violating Cadet Wing Honor Code by lying and failing aptitude and conduct probation; leaving the cadet area while on probation and altering the sign-out log; being out of uniform standards on various occasions; failing to go to appointed place of duty; leaving the squadron without properly signing out; and wearing improper attire. Except for failure to go, the majority of his misconduct appears to be willful, conscious behaviors, perpetrated over time that have no nexus with his mental health diagnosis. Even if the applicant had been diagnosed with PTSD or other related trauma disorders, his misconduct would not be excused or mitigated for the mental health reasons stated above except for failure to go which can be associated with PTSD (avoidance). But again, this applies to a PTSD diagnosis, of which the applicant was never diagnosed, and only for that offense, not the majority of his misconduct.

Liberal consideration is applied to the applicant's request due to the contention of a mental health condition. The following are responses to the four questions in the policy based on the available records for review:

1. Did the applicant have a condition or experience that may excuse or mitigate the discharge/disenrollment?

Counsel contends the applicant's experiences at USAFA led to trauma and PTSD.

2. Did the condition exist, or experience occur during military service?

There is no evidence the applicant had any mental health diagnosis or condition while enrolled at the USAFA. The applicant was diagnosed in 2008 and later in 2012 with adjustment disorder with mixed anxiety and depression. He was never diagnosed with PTSD. The examiner during the applicant's C&P examination (2012), reported he did not meet the criteria for PTSD.

3. Does the condition or experience excuse or mitigate the discharge/disenrollment?

While a document from a psychologist indicated it may be more than likely that his reported mental health symptoms are the direct result of his experiences in military service, his mental health condition does not mitigate or excuse his misconduct. The applicant was diagnosed with adjustment disorder with mixed anxiety and depression. His misconduct of the following offenses is not part of the sequelae of symptoms associated with adjustment disorder. Except for failure to go, the majority of his misconduct appears to be willful, conscious behaviors, perpetrated over time that have no nexus with his mental health diagnosis. Even if the applicant had been diagnosed with PTSD or other related trauma disorders, his misconduct would not be excused or mitigated for the mental health reasons stated above except for failure to go which can be associated with PTSD (avoidance). But again, this applies to a PTSD diagnosis, of which the applicant was never diagnosed, and only for that offense, not the majority of his misconduct.

4. Does the condition or experience outweigh the discharge/disenrollment?

Since the applicant's mental health condition does not excuse or mitigate his disenrollment, the applicant's condition also does not outweigh the original disenrollment.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 1 Feb 24 for comment (Exhibit D), and the applicant replied on 1 Mar 24. In his response, the applicant contends, through counsel, the advisory opinion is flawed because it erroneously treats his PTSD diagnosis as determinative on whether his debt should be remitted. It is clear he experienced significant and persistent mental health issues as a result of the mistreatment he received at the USAFA. Whether these symptoms constitute PTSD or whether they constitute adjustment disorder, or anxiety, or depression is irrelevant to the ultimate question of whether his debt should be remitted. The reasoning in his petition is his mental health issues, regardless of what, if any, diagnosis they constitute, were caused by mistreatment by his AOC at the USAFA. The basis for his request to remit his debt is the debt was incurred when he voluntarily resigned due to being targeted and mistreated by his AOC and suffering religious discrimination. The mental health issues he suffered are part of his petition to prove he was subject to the mistreatment and shows remission is in the best interest of the government because of the ongoing suffering it has caused him. The advisory opinion reasons

his mental health status does not excuse his misconduct while at USAFA, thus his debt should not be remitted; however, this conclusion incorrectly treats the mental health diagnosis as dispositive on the question of his misconduct and remission of his debt. It is not, as his petition does not rely on the conclusion his misconduct was the result of mental health conditions he had; rather he argues his misconduct was the result of unfair targeting by his AOC. Furthermore, the advisory opinion states he was disenrolled from USAFA due to misconduct; however, he resigned from USAFA due to mistreatment from his AOC. He was not involuntarily disenrolled. The advisory opinion is limited and provides a single opinion regarding his PTSD. His petition and evidence support he was forced out of the USAFA through mistreatment and religious discrimination, and he should not have to pay for his victimization.

The applicant's complete response is at Exhibit F.

ADDITIONAL AIR FORCE EVALUATION

USAFA/JA recommends denying the applicant's request to waive his order to monetarily recoup the government for his educational debt accrued at USAFA. The applicant claims the waiver of the three-year statute of limitations is appropriate in this case given the unfair and traumatic abuse by his AOC and the institutionalized religious discrimination at USAFA, which directly resulted in his mental health symptoms that created his inability to discuss these matters and bring this request for remission earlier than now, 17 years after his recoupment hearing where he was informed of his debt and 14 years after the expiration of the statute of limitations. The applicant visited with Doctor [Work-Pro...] on three occasions, twice in 2008 and once in 2012, where his symptoms were discussed and an additional 11 years thereafter in which he could have sought redress. The applicant left the USAFA in Jun 06 and received a recoupment hearing on Aug 06 where he was informed of his debt. The applicant did not file an application with the SAFRB until Mar 22, 15 years after his recoupment hearing, 13 years after his first visits with Doctor [Work-Pro...], and 10 years after his last visit with Doctor [Work-Pro...]. Per AFI 36-3034, *Remission of Indebtedness*, a remission cannot be filed when it has been more than three years since applicant was notified of the debt. The SAF/RB Chairman has extended that time to six years; however, applicant in this case is still far outside this window. The applicant then filed this application to the AFBCMR in Jul 23. Again, an application to the AFBCMR should be filed within three years after the error or injustice was discovered or should have been discovered by due diligence, in this case, before Aug 09. The AFBCMR has the authority to waive untimely filing if it is in the interest of justice, but this rarely happens. In this case, the applicant visited Doctor [Work-Pro...] within the three-year window and reported during his initial diagnostic interview his symptoms might be connected to his past military experiences. His own application for remission states his mental health records note as late as 2008, he was still suffering from anxiety, excessive worry, guilt feelings, stress, transient sleep impairment/nightmares, depressed mood, fear of failure, impaired concentration, and trouble sustaining attention secondary to his experiences at USAFA. Arguably, the applicant could have also filed a remission request after his 2012 visit with Doctor [Work-Pro...], which is five years after his recoupment hearing and still would have been within the window extended by the SAF/RB Chairman. Thus, the factual basis for applicant's request was known to him arguably prior to the three-year requirement and certainly prior to the six-year extended window and the applicant was afforded the ability to appeal the decision previously and certainly sooner than now 17 years after he was informed on his debt.

Furthermore, and critical in this case, the delay in applicant's remission request is so significant such that the USAFA no longer has any USAFA records on the applicant as a former cadet, nor would they have any associated or related records or resources to investigate and compare his allegations surrounding his time at USAFA between 2003 and 2006. Therefore, there is no legal basis to waive the statute of limitations requirement for the applicant denying the applicant's request.

It is worth noting the applicant was disenrolled with an honorable characterization. The applicant argues he now faces a potential obstacle to jobs, clearances, and contracts; the United States will continue to miss out on leveraging his talents; this debt could make it difficult for him to get government contracts or necessary clearances; and the debt should be remitted because the United States has unfairly hindered his ability to earn a living. However, the applicant also notes he completed his degree; has been to around 30 countries as brand ambassador and a cultural ambassador for a start-up; has trained over 1,000 people; and, in 2020, started his own company, which contradicts his argument he has been unfairly hindered in his ability to be successful professionally due to the circumstances surrounding his disenrollment from USAFA.

The complete advisory opinion is at Exhibit G.

APPLICANT'S REVIEW OF ADDITIONAL AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 10 May 24 for comment (Exhibit H), and the applicant responded on 9 Jun 24. In his response, the applicant contends, through counsel, the legal advisory opinion fails to address the waiver of the statute of limitations and fails to address his treatment at the USAFA. The opinion argues the statute of limitations should not be waived; however, a petition filed outside the statute of limitations is not a reason to deny waiver of statute of limitations. The statute must be waived where it is in the interest of justice to do so. He did not realize he had mental health impacts or PTSD from his experiences at USAFA within the timely filing window. He has suffered significant negative effects on his mental health and emotional well-being due to his experiences at the USAFA that deterred him from filing his petition earlier and in doing so, would have exacerbated the mental and emotional injury created by his time at the USAFA. He has been diagnosed with PTSD and experienced PTSD symptoms and other mental illnesses that are connected to the misconduct that led to his departure from USAFA. His treatment at USAFA caused PTSD symptoms and ultimately a diagnosis of PTSD which contributed to his inability to succeed at USAFA and created his debt. The advisory opinion also suggests his petition should not be considered because his records were not maintained by the USAFA; however, it is the responsibility of the USAFA to maintain records. Lastly, the government debt has endangered his ability to win government contracts and obtain necessary security clearances. Just because the debt has not hindered every aspect of his professional life, does not indicate it did not hinder his professional life or that remission is not justified.

The applicant's complete response is at Exhibit I.

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 recommendations of the AFRBA Psychological Advisor and USAFA/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. It appears the disenrollment was consistent with the substantive requirements of the regulation and was within the commander's discretion. Nor was the disenrollment unduly harsh or disproportionate to the offenses committed. The Board took note of the applicant's submission from himself and his fellow cadets claiming he was discriminated against due to his religious beliefs which caused PTSD and other mental health conditions related to trauma; however, the Board does not find the preponderance of evidence supports this contention. There is no indication he had a mental health condition while at the USAFA. Liberal consideration was applied to the applicant's request due to the contention of a mental health condition; however, since there is no evidence his mental health condition had a direct impact on his behaviors and misconduct resulting with his disenrollment, his condition or experience does not excuse, mitigate, or outweigh his disenrollment. The Board finds the majority of his misconduct was willful, conscious behavior which was perpetrated over time. Therefore, the Board recommends against correcting the applicant's records. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Department of the Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. The Board does not find it in the interest of justice to waive the three-year filing requirement and finds the application untimely.

The Board took note of the applicant and the USAFA's claim the applicant's records from his time at the USAFA are no longer available; however, the applicant's military records are available, and he can obtain a copy via a request to the National Personnel Record Center (NPRC).

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; 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-2023-02680 in Executive Session on 5 Jun 24 and 2 Sep 24:

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Panel Chair
Panel Member
Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Aug 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Letter, SAF/MRBC (Liberal Consideration), dated 16 Aug 23.
- Exhibit D: Advisory Opinion, AFRBA Psychological Advisor, dated 31 Jan 24.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 1 Feb 24.
- Exhibit F: Applicant's Response, dated 1 Mar 24.
- Exhibit G: Advisory Opinion, USAFA/JA, dated 30 Apr 24.
- Exhibit H: Notification of Advisory, SAF/MRBC to Applicant, dated 10 May 24.
- Exhibit I: Applicant's Response, dated 9 Jun 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.

10/2/2024

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Board Operations Manager, AFBCMR
Signed by: USAF