

ADDENDUM TO
RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 86-04015

COUNSEL: NONE

HEARING DESIRED: NO

AUG 24 1998

APPLICANT REQUESTS THAT:

His records be corrected to entitle him, upon graduation from the Uniformed Services University of the Health Sciences (USUHS), to four years of active duty credit for the purpose of longevity pay.

APPLICANT CONTENDS THAT:

He received longevity credit counseling at the United States Air Force Academy (USAFA) relating to a medical career; that, unlike those who attended USUHS before him, with him and after him, he has not received constructive credit as counseled; and that he is the only counseled USAFA graduate not being recognized with constructive service credit in the USUHS Class of 1987.

STATEMENT OF FACTS:

In an application to the AFBCMR, dated 12 February 1985, the applicant requested, in essence, that his records be corrected to award him four years of constructive service credit for basic pay as a result of his graduation from the USUHS. He contended that his recruitment and counseling regarding the service credit to be awarded for 'completion of USUHS were erroneous because he was not advised of the changes in entitlements resulting from the Defense Officer Personnel Management Act (DOPMA).

On 15 January 1987, the AFBCMR considered and denied his application in executive session. The Board observed that the applicant was correct in that the 1983 - 1984 USUHS Bulletin contained inconsistencies in addressing creditable service. However, the Board did not view this inconsistency, in and of itself, as evidence of an error or injustice which would mandate corrective action. It appeared that USUHS made a concerted effort to modify their counseling program to include information pertaining to the DOPMA changes to the service credit entitlements. The Board noted that some doubt was present as to whether or not all individuals in the 1987 class received complete counseling pertaining to this area; however, the documentation submitted did

not convince the Board that USUHS did not fulfill their requirement to provide the information necessary for individuals to make reasoned decisions regarding entry into the program. Neither the brief outlines of counseling sessions nor the statements provided convinced the Board that miscounseling actually occurred. There were inconsistencies, but the Board believed the applicant had some responsibility to insure he had clarification of any questionable area prior to signing the contract which committed him to the service. More importantly, the Board found insufficient evidence to negate the terms of the written contract (Exhibit AA, Pages 4 & 5).

On 24 June 1992, the applicant requested reconsideration based on the fact that the Board had granted an application that he believed was similar to his (Exhibit BB with Attachments). On 30 March 1992, the applicant was advised by the Executive Director of the AFBCMR that his submission did not meet the criteria warranting reconsideration.

On 7 April 1997, the applicant again requested reconsideration based on the fact that the Board had granted several cases that he believed to be similar to his case (Exhibit CC with Attachments). On 12 June 1997, the Executive Director of the AFBCMR again advised the applicant that his submission did not meet the criteria warranting reconsideration.

On 30 June 1997, the applicant wrote a letter to the Executive Director again requesting reconsideration of his application. He argued that the statement that his case was not reconsidered because no new relevant evidence was provided was outrageous in light of what had transpired in at least five of his classmates' AFBCMR submittals during the past seven years and as reflected in his recent submittal. He set forth the reasons he believed his case should be granted and indicated that he would appreciate a response within fifteen days (Exhibit DD).

In a letter, dated 16 July 1997, the Executive Director of the AFBCMR provided the applicant a detailed response. In summary, the Executive Director stated that the applicant "may be the only USAFA graduate that was properly counseled on the pre-DOPMA constructive service credit associated with completing medical school at USUHS, but could not take advantage of this entitlement because of the exigencies of the service." He was not, however, the only 1987 graduate of USUHS or AFHPSP that had been denied constructive service credit for pay and promotion because of the failure to establish miscounseling and detrimental reliance on such counseling. Therefore, to grant his application in the absence of convincing evidence of miscounseling, would be grossly unfair to the hundreds of other officers that are similarly situated (Exhibit EE).

On 15 August 1997, the former chairman of the Health Professions Advisory Committee (HPAC) at the USAFA submitted a letter indicating that he assumed that position in the Fall Semester of

1981. During his chairmanship, they briefed the following, having received no official notification from the military personnel office to the contrary: The Health Professions Scholarship Program (HPSP) [participants] incurred an additional obligation of four years (over and above the USAFA commitment, and served sequentially, not concurrently), were paid a monthly support stipend, and were required to perform 45 days of active duty clerkship training each summer. The USUHS program [participants] incurred an additional obligation of seven years (beyond the USAFA commitment - again, served sequentially) and were on active duty receiving full 0-1 pay and allowances for their four medical school years. Upon graduation, the new physicians from both programs would be commissioned into the Medical Corps at the 0-3 rank with four years of commissioned service credited for pay purposes, and thus on par with their fellow USAFA graduates.

Applicant was previously advised by his predecessor on this policy. Naturally, any source of changes to this policy for applicant would have come from the HPAC since they maintained the relationships necessary for applicant's successful entry into medical school. Accordingly, he would have briefed applicant on the information he had available at the time, which is reflected above and was no different from how he had previously been counseled by his predecessor (Exhibit EE).

In a letter of 6 September 1997, applicant provides further clarification and states, in part, that essentially, continuity of training, e.g., direct entry from USAFA to USUHS, is a necessary element to claim constructive credit. In the USUHS Class of 1989, Dr. "V" was given constructive credit by the Board, but graduated from the USAFA in 1982 and matriculated at USUHS in 1985, some three years after graduation. During this time, this officer was assigned as a space systems project officer at [REDACTED], [REDACTED]. Like this officer, he was counseled at the Academy, was on active duty for three years as a space systems project officer at [REDACTED] and then matriculated at USUHS. Although this officer did not fulfill the necessary element of continuity to claim credit, he was granted relief by the Board. His case is identical to [REDACTED]'s case, so he requests similar treatment (Exhibit FF).

AIR FORCE EVALUATION:

HQ AFPC/JA recommends denial of the applicant's request for reconsideration. In their view, the former HPAC chairman's letter does not contain any evidence or information that was not known and available to the applicant when he filed his original application in 1985. Either he briefed him he was entitled to credit or he did not. If so, the applicant either relied upon it or he did not. This was not hidden from the applicant; by definition, he was there and he knew. Consequently, the evidence contained in the former HPAC chairman's letter cannot possibly be "newly discovered."

JA further states that a close reading of the former chairman's letter will show he never claims unequivocally to have briefed the applicant that he was entitled to the four years of constructive service credit in issue. As the Board has correctly noted on several occasions, when the applicant was a cadet and received standard HPAC cadet briefings, the law accorded such constructive service credit to medical officers. He graduated, was commissioned into the line, was assigned to a Space Command base in [REDACTED] and DOPMA took effect repealing such credit. What the letter from the former HPAC chairman establishes is that he had contact with applicant during his line of the Air Force days and assisted him with his medical school applications. He was not aware of the DOPMA changes and, thus, never informed the applicant of them. The best he can say is "I would have briefed [REDACTED] on the information I had available at the time, which is reflected above and was no different from how he had previously been counseled by Dr. [REDACTED]. In his latest letter to the Board, the applicant claims the former HPAC chairman "... states ... that he continued to advise me of the benefits of the USUHS program to include service credit." But, of course, he says no such thing; interesting, neither does the applicant. The former says I would have briefed ..."; the latter says the former chairman "... states" Why would he have briefed the applicant? Applicant was no longer a cadet sitting in his briefings. Because the former HPAC chairman did not think there had been any change in the entitlement, there would have been no reason for him to have addressed the subject with the applicant. Bottom line: There is no showing of misinformation by the former HPAC chairman to the applicant.

Moreover, until now, applicant has never mentioned being misled by the former HPAC chairman. Instead, he based his original claim of misleading information about constructive service credit for pay on briefings by the USUHS registrar and information in the USUHS Bulletin. In his request for reconsideration in 1992, he made no mention of being misled by the former chairman. Even when he submitted his request, via a new AF Form 149, on 7 April 1997, he never claimed the former HPAC chairman miscounseled him. For the first time, he did claim such from Lieutenant [REDACTED], the HPAC chairman at the USAFA during the applicant's cadet years. The point is this: The failure to mention it in his numerous demands for relief is strong evidence he never relied to his detriment on misinformation supplied by the former HPAC chairman.

In accordance with the Board's request, they have sought to determine whether [REDACTED] was the proper official to counsel the applicant subsequent to his graduation from the USAFA. They spoke with the current health professions advisor at the USAFA, Dr. [REDACTED], who stated that her position and that of the chairman of the HPAC includes assistance to former cadets similar to that detailed in [REDACTED] letter. However, there is no duty to brief such officers or seek them out for purposes of providing information. Rather, the HPAC is available for assistance as requested. Moreover, she stressed that current practice is to tell graduates that it is their individual responsibility to find out

the details of the health profession program they are interested in by contacting appropriate officials at AFIT, AFPC, USUHS, etc. Thus, they believe "C" would have been a proper official to have counseled the applicant, but have found no evidence of a duty on his part to have briefed the applicant on changes to the constructive service entitlement. A complete copy of the HQ AFPC/JA advisory opinion is at Exhibit GG.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Applicant states, in part, that the opinion provides to the Board a transient "impression" concerning this case. Furthermore, it trivializes and denigrates the statements of fact as presented by senior United States Air Force commissioned officers, Air Force Academy academic advisors, USUHS representatives and the USUHS medical school bulletins. The opinion also ignores important Board precedent. The Board has already established the pertinent facts. Colonel "C", as the Chairman of the HPAC at the Academy, was not aware of the change in the law. The Board has previously concluded that "As incredulous as it may seem that this officer was not aware of such a significant change in the law we have his unequivocal statement that he did not know." Accordingly, his HPAC briefings, advisement and answers to questions contained erroneous information. The Board has also recognized that it was not unreasonable for those advised by [REDACTED] "to have relied on the information furnished by him" in selecting career paths. The referenced HQ AFPC/JA advisory opinion clearly states that [REDACTED] would have been a proper official to have counseled..." Both HPAC chairmen have already stated that they advised him. What is established, therefore, is that Colonel "C" was a proper advisor for him and that he advised him. And, that he did not know of the change in the law. That further, it was reasonable for him to have relied on his advisement. As a result, and based on his counsel, he made career planning decisions that have adversely affected his career. Documentation of the impact of such advisement from the HPAC chairmen at the Academy in making career shaping decisions is included in the 6 September 1997 letter.

The advisory opinion restates history. The repeal of constructive credit with the passage of DOPMA is NOT in dispute. Rather, the Board has established precedent by extending credit to a group of counseled, direct entry officers, e.g., USAFA to USUHS, as well as at least one counseled, "non" direct entry officer e.g. USAFA to active duty to USUHS. More specifically, Case #95-00330 relates to an officer with the identical circumstances as himself, who was a counseled USAFA graduate and was on active duty for three years prior to matriculating at USUHS. This officer has applied for and received constructive credit. He asks for similar treatment without discrimination. HQ AFPC/JA also states that present AFAHPAC "policy" is to notify graduates *of* an "individual responsibility to find out the details...." So, even after years

of premedical counseling, briefings and advisement, the current AFAHPAC chairman advises cadets upon graduation to go discover the truth about Air Force medical training programs? Even if such a policy existed during [REDACTED] chairmanship, it has NOT been applied by HQ AFPC/JA or the Board to the previously noted identically situated officer [REDACTED]

The advisory opinion stated that miscounseling has not been previously described. AFAHPAC advisement was not relevant until 1990, when the Deputy for the Air Force Review Boards, upon BCOMR recommendation, established the counseling/detriment standard. As delineated in the 7 April 1997 AF Form 149 submittal (Section 11a) he became aware of this new standard in November 1996. Accordingly, both the April 1997 and September 1997 submittal included specific evidence satisfying the new counseling/detriment standard.

Again, he thanks the Board for their reconsideration of this case. The advisory "impression" provided by HQ AFPC/JA ignores established Board precedent, AFAHPAC chairmen statements and the weight of evidence previously presented. In contrast, Case [REDACTED] in its entirety, summarizes repeated counseling regarding constructive credit from many sources including AFAHPAC advisors, USUHS representatives and the school bulletins. Furthermore, he relied on these multiple corroborating sources to make career decisions based on these representations to his detriment. As a matter of justice and consistency with previous Board decisions, this case must be reviewed favorably (Exhibit HH).

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was timely filed.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice warranting favorable action on the applicant's request for a correction of records to entitle him to four years of constructive service credit for basic pay as a result of his graduating from medical school at USUHS in 1987. Applicant contends that he received longevity credit counseling at the United States Air Force Academy (USAFA) relating to a medical career, that unlike those who attended USUHS before him, with him and after him, he has not received constructive credit as counseled and that he is the only counseled USAFA graduate not being recognized with constructive service credit in the USUHS Class of 1987. With the exception of the latter contention, we do not disagree with the applicant that he was counseled that he would be entitled to four years of service credit upon his graduation from government-sponsored medical training. We also do not disagree that there are a number of

officers that graduated from USUHS before and after him that are entitled to the constructive service credit in question. Nonetheless, because of the reasons set forth hereinafter, we do not find these circumstances sufficiently compelling to conclude that the relief sought should be granted. In this regard, we note that:

a. In his original application of February 12, 1985, the applicant contended that his recruitment and counseling regarding the service credit to be awarded for completion of USUHS were erroneous because he was not advised of the changes in entitlements resulting from the Defense Officer Personnel Management Act (DOPMA). He conceded at the time, however, that "... My faith in the 'Great Way of Life' has been significantly damaged by the simple fact that I was not allowed to go to medical school in 1981 and later made significant career decisions based on erroneous information provided by USUHS. Decisions which were clearly to my detriment..." (Emphasis Added)

b. Having been unsuccessful in his original application, he now argues that he was miscounseled by Air Force Academy personnel and submits a statement of support from the former HPAC chairman at the Academy.

c. As noted by HQ AFPC/JA, a close reading of the former chairman's letter shows he never claims unequivocally to have briefed the applicant that he was entitled to the four years of constructive service credit at issue. When the applicant was a cadet and received standard HPAC cadet briefings, the law accorded such constructive service credit to medical officers. Applicant graduated, was commissioned into the line, was assigned to a Space Command base in California and DOPMA took effect repealing such credit. What the letter from the former HPAC chairman establishes is that he had contact with applicant during his line of the Air Force days and assisted him with his medical school applications. He was not aware of the DOPMA changes and, thus, never informed the applicant of them. The best he can say is "I would have briefed [redacted] on the information I had available at the time, which is reflected above and was no different from how he had previously been counseled by [redacted]"

d. In his latest letter to the Board, the applicant claims the former HPAC chairman "...states ... that he continued to advise him of the benefits of the USUHS program to include service credit." But, **he** says no such thing; neither does the applicant. The former says "I would have briefed ..."; the latter says the former chairman "... states" Because the former HPAC chairman did not think there had been any change in the entitlement, there would have been no reason for him to have addressed the subject with the applicant. Therefore, there is no showing of misinformation by the former HPAC chairman to the applicant.

e. Until now, applicant has never mentioned being misled by the former HPAC chairman. Instead, he based his original claim of

misleading information about constructive service credit for pay on briefings by the USUHS registrar and information in the USUHS Bulletin.

f. In his request for reconsideration in 1992, applicant also made no mention of being misled by the former chairman. Even when he submitted his request, via a new 149, on April 7, 1997, he never claimed the former HPAC chairman miscounseled him. For the first time, he now claims such from Lieutenant [REDACTED], the HPAC chairman at the USAFA during his cadet years. The failure to mention it in his numerous demands for relief is strong evidence he never relied to his detriment on misinformation supplied by the former HPAC chairman.

4. We agree with the applicant that his case is identical to the case of a fellow officer who previously received relief by another panel of the Board. This officer believed that he was entitled to the constructive service in question because he understood that a class action application had been filed on behalf of USAFA graduates who attended USUHS and who had been counseled by the former AFAHPAC chairmen, Major "W" and Lt Colonel "C." Through error, his case received a favorable recommendation from the Air Force and was routinely granted by another panel of the Board using its delegated authority without close scrutiny. This action was clearly not substantiated and, if we had the authority, we would feel compelled to recommend that the favorable directive be revoked; and that any monetary benefits received as a result of this correction be recouped. Our enabling statute (10 USC 1552) states, however, that, except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States. Since there is no indication of impropriety on the part of this officer, we are without authority to correct this error even if we were inclined to do so. It is unfortunate that the applicant is aware of this officer. Nonetheless, we do not believe that the interest of equity or justice requires us to continue to perpetuate an erroneous action.

5. In summary, we received persuasive evidence from the former chairmen of the AFAHPAC indicating that they miscounseled the cadets from the effective date of DOPMA (September 15, 1981) through the Spring of 1985. We also found that because of their positions, it was reasonable for the cadets to have relied on the miscounseling to their detriment in making their decisions to attend the government-sponsored medical training. Therefore, with the exception of the applicant and two others, we corrected the records of all but three of the Air Force Academy graduates who graduated from USUHS/HPSP in 1987, 1988 and 1989 to provide entitlement to pre-DOPMA constructive service credit. In the applicant's case, however, the evidence is persuasive that since he graduated from the AFA in 1980, any counseling received from the chairman of the HPAC was accurate. The evidence is also persuasive that, since the chairman of the HPAC who submitted the letter of support in the initial case did not know of the change in the constructive service credit until well after the applicant

matriculated into USUHS, he had no reason to further advise the applicant in this area. Moreover, we have found no evidence of a duty on his part to have briefed the applicant on changes to the constructive service entitlement. In view of the foregoing, the evidence is convincing that the applicant's dilemma stems solely from his inability to obtain permission from the Line of the Air Force to enter USUHS prior to September 15, 1981, rather than miscounseling by AFA or USUHS officials. Therefore, in the absence of clear-cut evidence that the failure to release the applicant from the Line of the Air Force prior to the effective date of DOPMA (15 September 1981) constituted an abuse of discretion on the part of responsible Air Force officials, we are constrained to conclude that the applicant has again failed to sustain his burden of establishing the existence of either an error or an injustice warranting favorable action on his request.

6. We realize that our earlier actions in approving the requests of a number of AFA graduates who graduated from USUHS or HPSP in the classes of 1987 through 1989 cause a degree of institutional inequity and, at first blush, would seem to beg for relief on the grounds of equity. As we have previously stated, however, the plain and unambiguous language of the applicable law leaves no doubt that, for whatever reason, the Congress intended that effective September 15, 1981, these graduates of government-sponsored medical training would no longer be entitled to constructive service for computation of basic pay. Therefore, we continue to believe that any relief on the basis of institutional inequity should be addressed to the Congress in the form of a request for an amendment to the statute. Such action could take into consideration the denial of 22 Air Force officers' cases who graduated from USUHS in 1987, but were not AFA graduates; the 35 similar cases denied by the Navy BCNR; and the approximately 200 like cases denied by the Army BCOMR. Consideration could also be given to the 340 1987 Air Force AFHPSP graduates and the 1988 and 1989 graduates of AFHPSP/USUHS who were apparently properly counseled or have decided to accept the terms of their signed contracts notwithstanding the fact that there are a number of AFA graduates who graduated from medical school in 1987 - 1989 that are entitled to the pre-DOPMA constructive service credit for pay.

7. The applicant's case *is* adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issues involved. Therefore, the request for a hearing *is* not favorably considered.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission

of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 3 June 1998, under the provisions of AFI 36-2603:

Mr. LeRoy T. Baseman, Panel Chair
Mr. Charles E. Bennett, Member
Mr. Henry C. Saunders, Member

The following documentary evidence was considered:

- Exhibit AA. Record of Proceedings of AFBCMR, dated 5 May 1987, with Attachments.
- Exhibit BB. Letter from Applicant, dated 24 June 1992, with Attachments.
- Exhibit cc. DD Form 149, dated 7 April 1997, with Attachments.
- Exhibit DD. Letter from Applicant, dated 30 June 1997.
- Exhibit EE. Letter from AFBCMR, dated 16 July 1997.
- Exhibit FF. Letter from Applicant, dated 6 September 1997, with Attachments.
- Exhibit GG. Letter from HQ AFPC/JA, dated 19 November 1997.
- Exhibit HH. Letter from Applicant, dated 22 December 1997.



LEROY T. BASEMAN
Panel Chair