

RECORD OF PROCEEDINGS
AIR FORCE **BOARD** FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-03098

HEARING DESIRED: NO

OCT 27 1998

APPLICANT REQUESTS THAT:

The reason for his disenrollment from the United States Air Force Academy (USAFA) be changed to resignation for personal reasons.

His officer training evaluation be changed to read "highly recommended."

His two-year active duty service commitment be nullified.

Any and all other records be changed as necessary to reflect that he was not disenrolled for an honor violation.

He be provided any and **all** other or alternative relief, remedies, compensation, benefits, and actions that the Board deems necessary and appropriate in its sound discretion within the limits of its authority, including expenses and representation fees incurred in pursuing this matter if authorized by law or regulation.

APPLICANT CONTENTS THAT:

He was disenrolled from the Air Force Academy **for** an honor code violation while a very similarly situated black cadet received only six months honor probation for virtually the same honor breach; that is, cheating on a homework assignment.

In support of his appeal, the applicant provided a statement from counsel, a DD Form 785, Record of Disenrollment from Officer Candidate - Type Training, and other documents associated with the matter under review, including a letter from the Deputy of Equal Opportunity, and a memorandum from the Director, Air Force Review Boards Agency.

Applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant was formerly a cadet first class (senior).at the Air Force Academy.

Available documentation reflects that, on 8 May 96, the applicant was notified of an investigation into allegations that he violated the Air Force Academy Honor Code for cheating by copying last semester's Civil Engineering (CE) 362 work and properly documenting that he used that assistance for this semester's assignment #5.

On 20 Jun 96, an Admitted Honor Investigation Panel (A-HIP) found that, on 18 Apr 96, the applicant had violated the Honor Code.

On 25 Jul 96, the Commander, 34th Training Wing, recommended that the applicant be disenrolled from the Air Force Academy.

In a Disenrollment Notification Letter, dated 4 Sep 96, the Superintendent, Headquarters United States Air Force Academy, indicated that the applicant was unqualified as a candidate for graduation and commissioning. He recommended that the applicant be honorably discharged from the Air Force. The applicant acknowledged receipt on 5 Aug 96.

The Secretary of the Air Force Personnel Council received the case on 16 Sep 96. On 20 Sep 96, the Air Force Personnel Board (AFPB) considered the case and voted to return the case to the Air Force Academy for further review. While the Board recognized that disenrollment may have been appropriate, the Board was concerned with the appearance of inconsistent treatment in the apparently similar cases of the applicant and another cadet. On 3 Oct 96, the Secretary of the Air Force returned the case to the Air Force Academy to give the Superintendent the opportunity to review the cases together.

On 16 Oct 96, the Superintendent responded to the Secretary's inquiry and adhered to his original recommendation. On ~~6~~ Nov 96, the AFPB again considered the case. The Board could find no persuasive basis for distinguishing between the two cases and concluded the minor differences in the cases did not warrant the very different outcomes. In order to promote consistency of treatment and to protect the Air Force's best interest, the Board unanimously voted to retain the applicant, with honor probation. The Director, Air Force Review Boards Agency disagreed and recommended that the applicant be disenrolled.

A DD Form 785 indicates that the applicant was disenrolled from the Air Force Academy, on 12 Nov 96 for a breach of the Cadet Honor Code.

AIR FORCE EVALUATION:

The Office of the Staff Judge Advocate, HQ USAFA/JA, reviewed this application and recommended denial. According to JA, there was neither discrimination nor inconsistent treatment involved in the applicant's honor case. The case was decided independently upon its own merits by the highest levels of command at the Academy and the Air Staff, including the Secretary of the Air Force. The applicant committed a violation of the Honor Code that was deserving of disenrollment, and none of his arguments can change that fact. To grant the applicant the relief he seeks would cheapen the code of the honor under which all cadets live and tie the hands of commanders when hard decisions need to be made.

A complete copy of the HQ USAFA/JA evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

In his response, counsel indicated that they have no quarrel with the Honor Code and its principles. If a violation of any nature resulted in automatic disenrollment, there would be few questions. Since it does not operate in this manner, the Academy must do its best to ensure comparable punishment for substantially equal breaches. In counsel's view, the Board must decide whether the stated and few differences between the two cases justify the different results, or whether the overwhelming similarities and more serious misconduct of the other cadet mandate a decision favorable to the applicant.

Counsel's complete response and additional documentary evidence are at Exhibit D.

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. The applicant's complete submission was thoroughly reviewed and his contentions were duly noted. However, we do not find the applicant's assertions sufficiently persuasive to override the rationale provided by the Air Force office of primary responsibility (OPR). The evidence of record reflects that the applicant was disenrolled from the Air Force Academy for an honor code violation. We further note that the Air Force Personnel Board, concerned about the appearance of inconsistent treatment

regarding the applicant's case and a similar case of another cadet, returned the applicant's case to the Superintendent of the Air Force Academy for a further review. However, the Superintendent adhered to his original recommendation that the applicant be disenrolled from the Academy. Notwithstanding their similarities, in our view, the Superintendent was in the best position to assess the merits of each case. Furthermore, the Secretary of the Air Force agreed with the recommendation of the Superintendent and disenrolled the applicant from the Academy. We are not inclined to disturb his discretionary judgment absent a strong showing of abuse of that authority. Therefore, in the absence of evidence which shows to our satisfaction that the information used as a basis for the applicant's disenrollment from the Air Force Academy was erroneous, or that there was an abuse of discretionary authority, we agree with the recommendation of the OPR and adopt their rationale as the basis for our decision that the applicant has failed to sustain his burden of establishing that he has suffered either an error or an injustice. Accordingly, we find no compelling basis to recommend granting the relief sought in this application.

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 9 Jul 98, under the provisions of AFI 36-2603:

Mr. Thomas S. Markiewicz, Panel Chair
Mr. Jackson A. Hauslein, Member
Mr. Michael P. Higgins, Member

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 5 Oct 97, w/atchs.
Exhibit B. HQ USAFA/JA, dated 3 Dec 97.
Exhibit D. Letter, SAF/MIBR, dated 5 Jan 97.
Exhibit E. Letter, counsel, dated 16 Jan 98, w/atch.


THOMAS S. MARKIEWICZ
Panel Chair



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE ACADEMY
USAF ACADEMY, COLORADO



3 December 1997

MEMORANDUM FOR SAF/MIBR REVIEW BOARDS OFFICE

FROM: HQ USAFA/JA
2304 Cadet Drive Suite 231
USAF Academy CO 80840 - 5050

SUBJECT: [REDACTED]

1. I have reviewed the application of [REDACTED] to your Board and submit the following as the Academy's response. The documents contained in [REDACTED] package sufficiently recite the facts of this case, so the general background will not be repeated here.
2. [REDACTED] arguments are essentially based upon either an idea of discrimination or inconsistency. Both arguments are intertwined to such a degree that they will be answered together in the following paragraphs. The Air Force Academy's bottom line is that [REDACTED] committed a violation of the Cadet Wing Honor Code (Honor Code) which, all things considered, made him a poor candidate for graduation and commissioning from the Academy. He was disenrolled for this violation in accordance with long-standing regulations. The mission of the Air Force Academy is to produce the highest quality officers to take the lead in tomorrow's Air Force. All levels of command at the Academy take this mission very seriously and make disenrollment decisions with great care. [REDACTED] did not live up to the high standards expected of officer candidates at the Academy, and he was therefore denied the privilege of becoming a graduate of this institution.
3. [REDACTED] application frequently mentions the similarity between his case and that of [REDACTED]. However, a close look at the facts, especially in light of the Academy's mission, reveals that the cases are not as similar as [REDACTED] would like them to appear. While it is true that [REDACTED] and [REDACTED] were both in their second class year when their violations occurred, [REDACTED] attended the Air Force Preparatory School, which also has an Honor Code modeled after the Academy Honor Code. This gave [REDACTED] an additional year of experience with the Honor Code. Experience under the Honor Code is an important factor in determining whether or not a cadet is internalizing the ideals of the Honor Code. Furthermore, [REDACTED] approximately one month before [REDACTED]

committed his Honor Code violation, he was present when [REDACTED] was confronted about his [REDACTED] Honor Code violation. [REDACTED] sat through that confrontation and knew clearly what [REDACTED] had done. This confrontation is a serious event that should have been an eye-opening event for [REDACTED] and certainly was an experience he should not have forgotten. One month later, [REDACTED] cheated on an assignment. This failure to use an extra year of living under the Honor Code as a guide or to benefit from his direct knowledge of [REDACTED] case says much about how well [REDACTED] had internalized the ideals of the Honor Code.

4. The more important issue in this case concerns the ability of a commander to make decisions based upon his or her assessment of a situation. The resolution proposed by [REDACTED] would force commanders to create an overwhelming decision matrix and to make each case fit into that matrix. If this were possible (and I don't believe it is) it would remove all discretion from a commander's decision-making toolbox. As I stated in paragraph 2, the Academy's purpose is to train future officers to lead the Air Force. It is not possible to set out a group of purely objective standards to use to decide who is and who is not qualified for graduation and commissioning. Each cadet disenrollment case is considered on its own merits, and all factors concerning that cadet, both objective and subjective, are considered by the several commanders involved. To do otherwise would deprive each cadet of a thorough review of his or her individual situation. [REDACTED] case was considered by a different commander than was [REDACTED] case. That commander made an independent decision on [REDACTED] honor violation, considering [REDACTED] complete cadet record. The Superintendent of the Academy supported that decision, also making an independent decision based upon [REDACTED] record alone. The Secretary of the Air Force, who disenrolled [REDACTED] ultimately supported the Academy's recommendation.

5. [REDACTED] requests that the Board grant him relief in the form of changing the reason for his disenrollment, changing his officer training evaluation and eliminating his active duty service commitment. However, if the Board decides [REDACTED] was unjustly disenrolled from the Academy the only proper relief is to reinstate [REDACTED] as a cadet. The relief he requests would be improper because even if a cadet resigns for personal reasons in his senior year, he leaves the Academy with an active duty service commitment of three years. [REDACTED] marriage plans should not be the driving factor in what, if any, relief is granted. Furthermore, [REDACTED] overall record at the Academy indicates he was an average cadet, and had he resigned for personal reasons his officer training evaluation would have been what it is now. It would be improper to change that evaluation to read "highly recommended" when the Academy would never have made that recommendation for [REDACTED] under any circumstances..

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6. There was neither discrimination nor inconsistent treatment involved in ——— honor case. The case was decided independently upon its own merits by the highest levels of command at the Academy and the Air Staff, including the Secretary of the Air Force. ——— committed a violation of the Honor Coda that was deserving of disenrollment, and none of his arguments can change that fact. To grant ——— the relief he seeks would cheapen the code of honor under which all cadets live and tie the hands of commanders when hard decisions need to be made. The Academy respectfully requests that this board deny ——— request for relief.


Assistant Staff Judge Advocate

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