

TOPIC

Applicability of accession medical standards to Air Force Reserve Officer Training Corps (AFROTC) graduates who have been commissioned.

TEXT OF THE DECISION

This opinion is in response to an inquiry regarding whether accession or retention medical standards should apply to AFROTC graduates who are injured after commissioning but prior to being issued extended active duty (EAD) orders. For the reasons set forth below, retention standards apply.

BACKGROUND

An AFROTC graduate was in a motorcycle accident, suffered a traumatic brain injury, and is recovering from this injury. He still suffers from seizures. His accident occurred soon after commissioning but prior to entering EAD. He is in Individual Ready Reserve (IRR) status.

GUIDANCE

DoDI 6130.03, *Medical Standards for Appointment, Enlistment, or Induction in the Military Services*, 28 April 2010, Incorporating Change 1, 13 September 2011, Enclosure 2, paragraph 2, states: The Secretaries of the Military Departments shall "direct their respective Services to apply and uniformly implement the standards contained in this Instruction." Paragraph 4.c. states it is DoD policy to ensure that individuals *under consideration* for appointment, enlistment, or induction into the Military Services are medically fit to serve. (*emphasis added*)

DoDI 6130.03 also lists the individuals to whom the accession standards would apply. AFI 48-123, *Medical Examinations and Standards*, 5 November 2013, paragraph 4.2, does the same, although the language and order differs slightly.¹ AFI 48-123, paragraph 4.2.7, adds an eighth criteria not contained in the DoDI: "AFROTC graduates whose AD is delayed under applicable directives."

Additionally, AFI 48-123, paragraph 10.3, states, "Each ARC individual must be medically qualified for deployment and continued military service according to Chapter 5, the Medical Standards Directory and Chapter 11." This provision states all ARC members need to be qualified according to Chapter 5, which are Retention Standards. AFROTC graduates with a commission are ARC members as part of the IRR.

¹ Individuals to whom accession standards apply include: applicants for appointment as commissioned or warrant officers in the Active and Reserve components; applicants for enlistment in the Military Services; applicants for enlistment in the Reserve Components; applicants for reenlistment in the Regular and Reserve Components; applicants for ROTC; cadets and midshipmen at the U.S. Service academies; and individuals on the Temporary Disability Retired List who have been found fit upon reevaluation and wish to return to active duty.

DoDI 1215.08, *Senior Reserve Officers' Training Corps (ROTC)*, was updated on 19 January 2017, and it discusses medical examinations. As provided in paragraph 3.10.a:

Thorough and complete medical examinations, in accordance with DoD Instruction 6130.03, will be conducted before enrollment in the scholarship program or at the time of, or immediately before, enrollment in the advanced courses of a Military Department ROTC program. Following medical qualification, these contracted cadets and midshipmen will maintain health and physical standards in accordance with DoD Instruction 6130.03 *while in the scholarship program and in contract status. (emphasis added)*

Furthermore, in January 2018, the Deputy Director, Accession Policy, at OUSD P&R/Military Personnel Policy, informed AF/JAA that *before* an officer is initially commissioned into the Regular Air Force or Reserve Component, they require an accession physical and the DoD accession standards are applied. *Once commissioned*, Service retention standards apply. If an officer volunteers for a program or an enlisted member volunteers for a commissioning program, *before* they are commissioned into that new program, they require an accession physical and the DoD accession medical standards are applied. *(emphasis added)* SAF/GCI similarly opined retention standards apply once an officer is commissioned.

DISCUSSION

The intent of the DoDI and complementary AFI provisions addressing accession standards apply to individuals who have not completed all the prerequisites for military service. It applies to applicants and cadets. AFROTC graduates with a commission are neither; they are ARC members.

The DoDI also requires the Secretaries to direct their respective Services to apply and *uniformly implement the standards contained in this Instruction.*² The Air Force is not uniformly implementing the standards contained in the DoDI. Both the policy intent and the provisions of Enclosure 4 make it clear the accession standards are to apply to those *seeking* and *applying* for appointment, enlistment, or induction, *not* to commissioned officers who have been appointed. Paragraph 4.2.7 of the AFI is contrary to DoD policy and other provisions of AFI 48-123. AFI provisions contrary to DoD policy or law should not be followed.

In 1999, an Opinion of the Judge Advocate General of the Air Force (OpJAGAF) (1999-70) addressed HPSP officers, opining retention standards apply to HPSP officers. This opinion noted:

"DODI 1332.18, Para. 1.4, clearly indicates that 'retention' standards apply to Reserve component members. Accordingly, it is our opinion that 'retention' physical standards apply to HPSP students. We note that as a result of the recent amendment, 10 U.S.C. § 2123 (e)(2), the 1998 and 1999 HPSP contracts now include the phrase 'separation because

² It is instructive, but not controlling, to see how the Army handles this situation. Army Regulation 40-501, *Standards of Medical Fitness*, 14 June 2017, Chapter 2, paragraph 2-2(c) outlines the medical standards for Enlistment, Appointment, and Induction. Its provisions also echo the provisions of the DoDI. However, this regulation does not add the provision for ROTC graduates whose AD is delayed under applicable directives. In fact, the regulation specifically states in paragraph 3-2.a. that retention standards apply to "all commissioned and warrant officers of the Active Army, ARNG/ARNGUS, and USAR."

of physical disability.' If this phrase is to have meaning, then the 'retention' standards set forth in DODD 1332.18 and DODI 1332.38 must be used. The 'accession' standards set forth in DODD 6130.3 are simply not applicable to this phrase and their use would make this contract provision a nullity."³

There is concern that applying retention standards to AFROTC graduates (who have received a commission) would create an "inequity between enlisted and officers." While true, the law and applicable instructions provide for many differences between enlisted and officer personnel; some appear to benefit officers, while others do not. For instance, letters of reprimand on officers must be filed in an unfavorable information file, whereas this is discretionary for enlisted members⁴; enlisted personnel facing discharge for fitness failure cannot receive less than an honorable service characterization when the sole basis is fitness failure,⁵ whereas officers can receive an honorable or under honorable conditions (general) service characterization for the same behavior;⁶ enlisted performance reports have static close-out dates,⁷ while officers do not; enlisted personnel are subject to the selective reenlistment program;⁸ officers are paid more, both in base pay and in basic allowance for housing,⁹ etc. Inequities between officers and enlisted exist; it does not make the inequities illegal.

The provisions in AFI 48-123, paragraph 3.1.8.3, do require Airmen entering AD following ARC tours to have an initial commission physical examination documented in the appropriate database if they have incurred a break in service for more than 6 months. According to OSD P-R, ROTC graduates are supposed to be receiving an initial physical examination *prior to* commissioning. If the physical occurs prior to commissioning, accession standards apply. If the officer is unfit to serve, he or she should not be commissioned. As stated above, once the officer has been commissioned, retention standards apply.

As to whether the time between commissioning and EAD orders constitutes a "break in service," the answer is "no." There is no break in service because the commissionees were never on active duty in the first place, so there is no "break in service." These members are commissioned and placed on the IRR, and once they receive their EAD orders, they go onto active duty – there is no "break in service."

In September 2017, AFPC/DP2NP informed ARPC/JA they would be able to process the small number of ROTC graduates who have been commissioned. If found fit for duty, AFPC would process their EAD orders. If found unfit for duty, AFPC would send the package to ARPC/JA to assemble the discharge notification package which would inform the members of their eligibility

³ This opinion is instructive, but not necessarily controlling since the provision in 10 U.S.C. § 2123 is not present in 10 U.S.C., Chapter 103, which addresses ROTC. However, the HPSP officers, like ROTC graduates who have been commissioned, are commissioned officers, so there is still a correlation.

⁴ Air Force Instruction 36-2907, *Unfavorable Information File (UIF) Program*, 26 November 2014, paragraph 4.4.

⁵ Air Force Instruction 36-3208, *Administrative Separation of Airmen*, 9 July 2004, paragraph 5.66.2.

⁶ Air Force Instruction 36-3206, *Administrative Discharge Procedures for Commissioned Officers*, 9 June 2004 (incorporating through interim change (IC) 7, 2 July 2013), AFGM2017-01, paragraph 2.1.1.1.

⁷ Air Force Instruction 36-2406, *Officer and Enlisted Evaluation Systems*, 8 November 2016, Table 4.7.

⁸ Air Force Instruction 36-2606, *Reenlistment and Extension of Enlistment in the United States Air Force*, 27 July 2017.

⁹ <https://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html>.

to enter the Disability Evaluation System for the limited purpose of a fitness for duty determination.

If other Air Force Instructions, such as AFI 41-210, *TRICARE Operations and Patient Administrative Functions*; AFI 36-3212, *Physical Evaluation for Retention, Retirement, and Separation*; and AFI 36-2910, *Line of Duty (Misconduct) Determination*, have been relying on paragraph 4.2.7 of AFI 48-123 to justify processing ROTC graduates with a commission under accession standards, those AFIs will need to be changed, either as part of the current re-write or at the very least through a Guidance Memorandum. Many of the procedural issues relating to who will prepare the Narrative Summary, brief the member on his or her rights, or prepare the commander's input memorandum, will need to be addressed, but these requirements can be added to instructions such as AFI 41-210. There are a low number of ROTC graduates with commissions to whom these processes will apply, and according to AFRC/JA, AFPC has indicated they are willing to perform the administrative responsibilities associated with these cases, since they already perform this function for officers in HPSP.

CONCLUSION

Based on the foregoing, it is our conclusion the provisions of AFI 48-123, paragraph 4.2.7, are contrary to DoD policy, and the retention standards apply to AFROTC graduates who are injured after commissioning but prior to entering EAD.