

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 October 2023

DOCKET NUMBER: AR20220011410

APPLICANT REQUESTS: his records be corrected to remove any documentation related to or mention of his separation from the U.S. Military Academy and to issue him a diploma from the U.S. Military Academy.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Records)
- Legal Brief
- Preliminary Investigation of Cadet, 9 March 2017
- Record of Formal Proceedings Under Article 10, cadet Disciplinary Code
- Notification of Deficient in Conduct Status, 11 April 2017
- Referral to a Conduct Investigation, 11 April 2017
- USMA Academic Board Proceedings, 14 June 2017
- Conduct Investigation Recommendation for Cadet, 9 May 2017
- Investigation in accordance with Paragraphs 6-15, Army Regulation (AR) 210-26, United States Military Academy
- Summarized Record of Proceedings UP AR 201-26, Paragraph 6-15
- Findings and Recommendations - Misconduct Investigation (MI) Hearing of Cadet, 10 October 2017
- Action Taken
- Cadet Advisory Board Recommendation on Disposition of Cadet, 28 March 2018
- Summary and Recommendation Regarding the Cadet Advisory Board, (CAB) for Cadet, 18 April 2018
- Commandant Recommendation in the Honor Case of Cadet
- Approval of Separation, USMA Superintendent
- Separation Orders
- DD Form 214, Certificate of Release or Discharge from Active Duty
- Orders to Active Duty, Orders for Parachutist Badge, Promotion Orders to E-5
- College Transcripts
- Graduation Requirements
- Cadet Observation Report
- Character Reference Letters/Letters of Support
- Company Grade Plate Officer Evaluation Report

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. Counsel provides a legal brief (enclosed for the Board's review in its entirety) in which he gives a background, statement of facts, timelines, and concludes that the applicant's military records should be corrected on the basis of material error and injustice. Because Applicant completed all courses of instruction and met all requirements for graduation, the applicant requests that he be awarded the diploma he has earned. Furthermore, because he successfully completed the probationary period in accordance with the Superintendent's decision on his separation action and the Cadet Advisory Board's subsequent Summary and Recommendations memorandum to the Superintendent was factually and legally inaccurate, the applicant's separation from USMA was materially erroneous and unjust. Therefore, the applicant requests that his military records be corrected to remove any documentation related to or mention of his separation from USMA and that he be granted all the rights and privileges of a graduate of USMA, including the awarding of his bachelor's degree diploma. Counsel's argument is centered on:

- Material Error: the applicant should be awarded a diploma from the USMA; he was improperly separated from USMA
- Material Injustice: Separating him from USMA and withholding his diploma despite the fact that he earned the diploma by meeting all course requirements for graduation is disproportionate to the underlying misconduct/manifently unjust

3. The applicant signed an Oath of Allegiance, indicating he has been appointed a cadet of the United States Military Academy, and agreed to complete the course of instruction at the USMA, Class of 2017. He was assigned to Company A, Third Regiment, United States Corps of Cadets, West Point, NY.

4. On 3 March 2017, the applicant accepted punishment under Article 10 of the Cadet Disciplinary Code (CDC) for, on or about 24 January 2017, engaging in an inappropriate relationship with a female plebe and left his room after TAPs. Also, upon learning of pending investigation you attempted to circumvent fraternization. He violated:

- Article 1, CDC, Failure to Comply with Regulations, Instructions, Orders
- Article 3, CDC, Delinquency in Accountability
- Article 6, CDC, Unsatisfactory Behavior
- Article 7, CDC, Error in Judgment
- Article 9, CDC, General Article

4. The imposing officer found him guilty and punished him with reduction to private first class, 45 days of restriction, 80 extra hours, withdrawal of privileges for 60 days, and 35 demerits. The applicant elected not to appeal.

5. A Preliminary Investigation, dated 9 March 2017 of [Applicant] showed:

a. Basis: on or about the week of 24 January 2017, [Applicant] left his room after taps to visit the room of Cadet V__ M__, Class of 2020. [Applicant] is a 1st class cadet and the Cadet Battalion Commander for 1st Battalion, 3rd Regiment. The allegations of fraternization were brought forward by a yearling in his company, Cadet A__ Sc__, Class of 2019.

b. Finding: Applicant and CDT M__ "matched" on Tinder on or about 24 January 2017. After a brief exchange of messages, [Applicant] left his room to meet with Cadet M__ outside her room in Scott Barracks. [Applicant] and Cadet M__ engaged in an inappropriate relationship. Upon learning of the pending investigation, applicant contacted Cadet M__ through an anonymous texting service in order to fabricate a story in an attempt to circumvent fraternization. Through self-admission and witness statements, applicant was found to have violated the following regulations and policies:

(1) Applicant violated Policy Letter #1: TAPS Regulation and Door Lock Policies when he willingly left his room in Ei__ Barracks after TAPS and visited Cadet M__ in Sc__ Barracks on or about 24 January 2017.

(2) Applicant violated U.S. Cadet Command SOP, dated October 2016, section 1, Chapter 4.d by engaging in an inappropriate relationship with a Fourth -Class cadet (Cadet M__).

(3) Applicant violated the cadet honor code when he lied to Cadet Al__ Ra__ about the inappropriate relationship with cadet M__, cadet Ra__ is the Softball Team Captain and Cadet M__ is a plebe on the softball team

6. On 11 April 2017, by memorandum, Subject: Notification of Deficient in Conduct Status, the Regulations and Disciplinary Officer informed the applicant that as a result of exceeding six month demerit allowance, he has been determined that his Deficient in Conduct. His status is Deficient in Conduct, and he is being referred to a Conduct Investigation. This action is being taken in accordance with USCC Regulation 351-2, The Cadet Disciplinary System, dated 15 May 2001, and the status is effective immediately. He was being referred to a conduct investigation (CI) which will make findings concerning his reported conduct deficiency for exceeding the allowable demerits in a six month period for a First Class Cadet.

7. On 14 June 2017, by memorandum, Subject: USMA Academic Board Proceedings, the Associate Dean for Academic Affairs and Registrar Services informed the applicant that on 24 May 2017, the Academic Board reviewed his performance in MD402, 1st Class Military Perf II. Based upon a thorough review of his entire cadet record, the Academic Board recommended that he be conditioned in MD402 and made a December 2017 Graduate. He would remain here at West Point. He could petition the Dean of the Academic Board for reconsideration, within 10 calendar days of the receipt of this letter if he believed the Academic Board failed to consider relevant information in reaching its decision.

8. On 9 May 2017, by memorandum, Subject: Conduct Investigation Recommendation for [Applicant], the Tactical Officer informed the applicant's chain of command:

a. The purpose of this memorandum is to inform the Commandant on his recommendation for punishment for [Applicant] as a result of the Conduct Investigation completed on 26 May 2017.

b. The investigating officer recommended that the applicant be turned back one semester (AY18-1, December 2018 Graduate), enrolled in SLOP, and placed on conduct probation. This allows the applicant to remain at West Point for an additional semester to remediate his Military Development failing grade from A Y17-2 and to successfully complete his enrollment in SLOP. The applicant has begun taking an active role in seeking potential mentors for this process and will place his full effort into personal development and maturation.

c. Recommendation: He (the tactical officer) concurs with the investigator's recommendation that the applicant be turned back one semester, enrolled in SLOP, and placed on conduct probation.

9. On 7 September 2017, an investigation officer was appointed under the provisions of paragraphs 6-15, AR 210-26, United States Military Academy, to investigate the following allegation and any related misconduct.

a. In that [Applicant], did, at or near West Point, NY, on or about 14 February 2017, wrongfully endeavor to impede an investigation in the case of Cadet [Applicant] and Cadet V__ M__ by attempting to alter the testimony of Cadet V__ M__ such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. This is in violation of AR 210-26, paragraph 6-14, Other Major Misconduct Offenses (Article 134 (Wrongful Interference with an Adverse Administrative Proceeding) of the UCMJ).

b. A hearing will be held at 1300 hours, on 26 September 2017, in the Staff Judge Advocate Courtroom.

10. The Investigating Officer Findings and Recommendations – Misconduct Investigation Hearing, dated 10 October 2017 show the following:

a. Findings. On 29 September 2017, the IO conducted a misconduct hearing in accordance with USMA Regulation 1-10 into allegations of misconduct by Cadet [Applicant]. Having carefully considered all the evidence presented, he finds that the following allegations are supported by a preponderance of the evidence: In that [Applicant] did, on or about 14 February 2017, wrongfully endeavor to impede an investigation in the case of [Applicant] and Cadet V__ M__ by attempting to alter the testimony of Cadet V__ M__, such conduct being to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces. This is in violation of AR 210-26, para. 6-14, Other Major Misconduct Offenses (Article 134 (Wrongful Interference with an Adverse Administrative Proceeding) of the UCMJ).

b. Discussion: On or about 14 February 2017, the applicant did not do the right thing. He made a poor choice in fraternizing with a plebe after taps. Despite a cadet walking in on them, he chose to continue his actions. Days later, two cadets approached him about it. He was again clearly compromised, and yet he admittedly chose to make a false statement. In his own words, he then made a poor choice by colluding with a female cadet that was significantly subordinate to him in rank in order to wrongfully impede an investigation. The applicant made poor choice after poor choice. He (the IO) personally lacks confidence in his ability to lead our men and women in a few short months (i.e., December graduate). The applicant had over 100 pages of character statements and over 10 leaders in whom he (the IO) has tremendous trust and respect vouch for his character and potential. Due to their unwavering confidence in his leadership and potential, the IO recommends a full turn-back to the next lower class.

c. Recommendation for Disposition. In view of the above findings, the IO recommends that [Applicant's] graduation be delayed until May 2018.

11. On 8 November 2017, the Superintendent took the following actions with respect to the findings of the Investigating Officer in the Misconduct Investigation pertaining to [Applicant].

a. The Investigating Officer's finding that [Applicant] violated AR 210-26, paragraph 6-14, is approved.

b. Pursuant to AR 210-26, paragraph 6-4, separation from the United States Military Academy is an authorized punishment. He, the Superintendent, however, decided to exercise discretion in this matter, and suspend his recommendation to the separation authority until the applicant's graduation, contingent upon his future exemplary conduct during this probationary period. The applicant, who is currently scheduled to graduate in December 2017, will be turned back and scheduled to graduate in May 2018.

c. The Superintendent indicated that the terms of this probation will be considered violated, and the suspension of separation proceedings may immediately be vacated, if the applicant committed misconduct, violated the Honor Code, accumulates a certain number of demerits, exceeds the 6-month demerit allowance, or receives a failing grade.

12. On 28 March 2018, by memorandum to the Superintendent, Subject: Cadet Advisory Board Recommendation, members of the Cadet Advisory Board stated the board was convened on 28 March 2018. Having considered the applicant's character, resolve, potential for service as an Army Officer, and duress at the time of the violation, one board member recommended a graduation delay by 6 months and 8 members recommended no delay in graduation.

13. On 18 April 2018, by memorandum to the Superintendent, Subject: Summary and Recommendation Regarding the Cadet Advisory Board (CAB) for [Applicant], the Special Assistant to the Commandant for Honor recommended the applicant be separated from the Academy and provided a detailed summary of this recommendation:

a. Purpose. The purpose of this memorandum is to list the allegation against the applicant, provide a recommendation for the disposition this case, and numerically summarize the Superintendent's Hearing Member Worksheets. The CAB convened on 28 March 2018, and applicant admitted to violating the Cadet Honor Code by lying.

b. Finding. The Cadet Advisory Board members considered the following allegation: Violation of the Cadet Honor Code by Lying: In that [Applicant] did, at or near West Point, NY, on or about 26 January 2017, with the intent to deceive or mislead, make a statement to Cadet Ra___, to wit: "I do not know any plebes on the softball team and have not interacted or talked to any of them," or words to that effect, which statement was false and was then known by [Applicant] to be so false.

c. Facts of the Case.

(1) 26 January 2017: Cadet Ra___, the captain of the softball team, approaches Cadet [Applicant] about rumors regarding fraternization between himself and a plebe on the softball team. Cadet [Applicant] denies the rumors and states, "I don't know any of the plebes on the softball team and have not interacted or talked to any of them."

(2) 14 February 2017: Applicant reaches out to Cadet M___ (the cadet that applicant was fraternizing with) via text message. Applicant and Cadet M___ collude to lie about a time they met after TAPS.

(3) 1 March 2017: Cadet Ra___ meets with Captain Gu___ about the fraternization case between [Applicant] and Cadet M___. Cadet Ra___ states that when questioned,

[Applicant] told her he did not know any plebes on the softball team. Cadet Ra____ states that a week or so later she discovered that Cadet M____ indeed have an interaction with [Applicant].

(4) 3 March 2017: Applicant, in his sworn statement, admits that he made a false statement to Cadet Ra____ with the intent to deceive. Applicant stated that he did, in fact, know Cadet M____, a plebe on the softball team, and had interactions with her during the time in question.

(5) This matter was then brought to the attention of the Cadet Honor Committee. The Honor Committee started the investigation in AY17 but stopped when a parallel CID investigation was opened. It was not until January 2018 that the Honor Committee was given authorization to re-open the investigation.

d. Recommendation for Disposition. She (the Special Assistant to the Commandant for Honor) recommends that the applicant be separated. This case is unique, in that, the applicant was already turned back one year for the related discipline issues. She is not convinced that further time at the Academy is beneficial. She also does not believe that he should receive a with class graduation. With this option, the applicant does not have adequate time to complete SLDP-H, and she does not recommend waiving this requirement. AMP is also not an option unless [Applicant] receives a waiver due to his age. For these reasons, she makes the recommendation to separate. [Applicant] was only four months from graduation at the time of the violation. This, along with the fraternization, does not represent the character traits expected of our graduates. She (the author) recognizes that the applicant admitted to the violation. With that said, she cannot overcome the fact that the applicant was just months from graduation at the time of the violation. This recommendation is in-line with other recommendations that she has made concerning 2nd Semester, First Class violations.

14. On 30 April 2018, the Commandant of the Cadets recommended the applicant's separation from the USMA, and enlistment in the Army.

15. The USMA Superintendent forwarded the applicant's case, pursuant to AR 210-26, paragraphs 6-16 and 7-3, to the Assistant Secretary of the Army, Manpower and Reserve Affairs, indicating the following:

a. He carefully reviewed the record of proceedings and allied documents in this case and approved the findings that Cadet [Applicant] violated the Cadet Honor Code lying on or about 26 January 2017. Based upon his review of the entire case file, he recommended that [Applicant] be separated from the United States Military Academy, transferred to the United States Army Reserve in the grade of E-4 for three years, and ordered to active duty for three years, in accordance with AR 612-205, Table 3, Rule 7. In the event that he does not complete three years of active service, he should be held

responsible for repaying a proportionate amount of his education costs based on the remaining time not served. If he is not approved for active duty, the applicant should be separated from the United States Military Academy and discharged from the United States Army with an Honorable discharge certificate. I

b. The applicant entered the Academy from a civilian status. He has been suspended from the United States Military Academy until final action on his case is taken at Headquarters, Department of the Army. In accordance with 10 USC§ 702 and AR 612-205, paragraph 7a, the applicant's pay and allowances will be stopped upon his departure from West Point. His status will be authorized leave of absence without pay and allowances, pending separation.

16. The Deputy Assistant Secretary of the Army Military Personnel and Quality of Life) approved the recommendation to separate the applicant from the USMA under the provision of reference 1.a. paragraph 6-16, for violating the Cadet Honor Code. He directed the applicant be transferred to the United States Army Reserve for three years and concurrently ordered to active duty for three years in the grade of E-4, pursuant to Table 3, Rule 7 of reference 1.b.; and enclosure 3, paragraph 6 of reference 1.c.

17. The applicant was honorably released on 18 December 2018 and ordered to active duty, in accordance with AR 210-26 and AR 612-205, by reason of "conduct." His DD Form 214 shows he completed 5 years, 5 months, and 18 days of active service as a cadet.

18. On 4 January 2019, the applicant was ordered to active duty. He completed the Basic Airborne Corps on or about 17 July 2020 and he was promoted to sergeant/E-5 on 1 July 2021.

19. The applicant is currently serving on active duty and has recently completed the Special Operations Combat Medic Course.

20. in August 2023, his commander blocked his receipt of the Army Good Conduct Medal due to his off-post arrest on 30 April 2023 and pending law enforcement investigation.

21. The applicant provides many character reference letters and/or letters of support (available for the Board's review).

22. On 23 February 2023, the USMA provided an advisory opinion in the processing of this case. An advisory official recommended the Board deny the applicant's request and stated:

a. This is in response to your request for an advisory opinion from the United States Military Academy (USMA) concerning the application for correction of military record submitted by former cadet [Applicant] requesting he be awarded a diploma from USMA. The requested administrative relief is not appropriate, and USMA recommends the Army Board for Correction of Military Records (ABCMR) deny the application.

b. Background.

(1) Cadets are members of the Regular Army and subject to the UCMJ, military law, and applicable regulations and policies. Army Regulation (AR) 210-26, in effect at the time in question, authorizes USMA to establish and administer systems to address cadet misconduct. Each system is administered with independent procedures for addressing a specific type of misconduct. The Cadet Disciplinary System is used to adjudicate minor disciplinary infractions, Misconduct Investigations are used to adjudicate major misconduct offenses, and the Cadet Honor Code System is used to adjudicate lying, stealing, cheating, and toleration of the same.

(2) During Academic Year (AY) 17-2 (spring term), a preliminary inquiry found the applicant, a first class cadet (senior) at the time, violated cadet policies by leaving his barracks room after TAPS and engaging in a prohibited relationship with a fourth class cadet (freshman). The applicant subsequently lied to another cadet about the inappropriate relationship. The preliminary inquiry further revealed that upon learning of the ongoing investigation, the applicant attempted to influence the fourth class cadet's testimony in order to circumvent adverse action that could impact graduation.

(3) After reviewing the findings of the preliminary inquiry and supporting evidence, the command determined adverse administrative action was appropriate and referred the allegations to the appropriate adjudication processes. The violations of the cadet policies and Cadet Disciplinary Code (leaving the barracks room after TAPS and fraternization) were adjudicated through the Cadet Disciplinary System, the major misconduct (wrongful interference with adverse administrative proceeding) was adjudicated at a Misconduct Investigation, and the violation of the Cadet Honor Code (lying) was adjudicated through the Cadet Honor Code System. The proceedings and ensuing separation action complied with all procedural and substantive requirements.

c. Authority and Analysis.

(1) Cadet Disciplinary System (Article 10 Proceedings and Conduct Investigation).

(a) Paragraph 6-17 of AR 210-26 authorizes the Commandant of Cadets to establish, publish, and administer a cadet disciplinary system approved by the Superintendent. USCC Regulations 351-1 and 351-2, in effect at the time in question,

establish the procedures for administering the Cadet Disciplinary System. The Cadet Disciplinary Code is composed of articles defining minor misconduct and provides a mechanism to adjudicate the same under the Cadet Disciplinary System. In March 2017, the applicant received a Field Grade Article 10 Board for violating the Cadet Disciplinary Code by leaving his barracks room after TAPS and engaging in a prohibited relationship with a fourth class cadet. The proceedings complied with all procedural and substantive requirements. The punishment imposed included 35 demerits, resulting in the applicant exceeding the number of demerits allowed within a six-month period and triggering a conduct investigation to review the applicant's conduct status.

(b) Pursuant to USCC Regulation 351-2, Chapter 5, a cadet's standing in conduct is either proficient or deficient. When a cadet exceeds the six-month demerit allowance, he or she is considered deficient in conduct. A Conduct Investigation is an administrative hearing used to confirm a cadet's deficiency in conduct, make findings, and recommend a disposition. In May 2017, a Conduct Investigation found the applicant was deficient in conduct due to exceeding the six-month demerit allowance. The proceedings complied with all procedural and substantive requirements.

(c) Following a Conduct Investigation, the Superintendent may impose sanctions in accordance with AR 210-26, paragraphs 6-17 and 7-3 (including retention with probation, transfer to a lower class, suspension from USMA, and recommending separation). Final action by the Superintendent on the applicant's Conduct Investigation was delayed pending completion of the Misconduct Investigation into related misconduct (see paragraph below). In November 2017, the Superintendent took final action on the Conduct Investigation. After reviewing the entire case file and chain of command recommendations, the Superintendent determined the applicant should be separated from USMA, however, the Superintendent exercised discretion and suspended his recommendation for separation until the applicant's graduation contingent upon the applicant's future exemplary conduct during this probationary period.

(2) Misconduct Investigation (Major Misconduct Offenses).

(a) Paragraph 6-15 of AR 210-26 grants the Superintendent the authority to approve procedures for processing major misconduct offenses. USMA Regulation 1-10 establishes the procedures for processing misconduct offenses and investigations. A Misconduct Investigation is an administrative fact-finding investigation conducted by either a single investigating officer or board of officers to make findings and recommend a disposition on major misconduct offenses. In September 2017, a Misconduct Investigation found the applicant wrongfully interfered with an adverse administrative proceeding by attempting to influence the testimony of another cadet during an ongoing investigation. The proceedings complied with all procedural and substantive requirements.

(b) Following a Misconduct Investigation, the Superintendent may impose sanctions in accordance with AR 210-26, paragraph 6-4 and 7-3 (including tum-back to the next lower class, suspension from USMA, and recommending separation). In November 2017, the Superintendent took final action on the Misconduct Investigation. After reviewing the entire case file and chain of command recommendations, the Superintendent determined the applicant should be separated from USMA, however, the Superintendent exercised discretion and suspended his recommendation for separation until the applicant's graduation contingent upon the applicant's future exemplary conduct during this probationary period. Additionally, the applicant was turned back to the next lower class and scheduled to graduate in May 2018.

(3) Cadet Honor Code System (Honor Investigative Hearing).

(a) Paragraph 6-16 of AR 210-26 grants the Superintendent the authority to establish and maintain a system to administer the Cadet Honor Code. USCC Pamphlet 15-1 establishes the Cadet Honor Code system and procedures for administering the Cadet Honor Code. The Cadet Honor Code provides the foundation for character development and furthers the USMA mission to produce leaders of character. In March 2018, an Honor Investigative Hearing found the applicant violated the Cadet Honor Code by lying to another cadet about a prohibited relationship. The proceedings complied with all procedural and substantive requirements.

(b) Following an Honor hearing, the Superintendent may impose sanctions in accordance with AR 210-26, paragraphs 6-4, 6-16, and 7-3 (including recommending separation). In May 2018, the Superintendent reviewed the entire case file, including the complete procedural and substantive history of the case, and met with the chain of command and applicant prior to final adjudication. These procedural safeguards, among others, eliminate the risk of facts being misconstrued at the time the Superintendent takes final action on an Honor case. After reviewing the entire case file and meeting with the applicant, the Superintendent recommended the applicant be separated from USMA, transferred to the U.S. Army Reserve, and ordered to active duty to fulfil his service obligation. On 18 December 2018, the Deputy Assistant Secretary of the Army (Military Personnel) approved the recommendation for separation & order to active duty.

(4) Awarding Diploma and Conferring Degree.

(a) Pursuant to 10 U.S.C. § 7453, under such conditions as the Secretary of the Army may prescribe, the Superintendent of the Academy may confer the degree of Bachelor of Science upon graduates of the Academy. AR 210-26 implements the Secretary of the Army's conditions and policy for the governance and operation of USMA, to include awarding diplomas. Paragraph 5-3 of AR 210-26 provides that "[f]irst class cadets who have successfully completed the requirements of the course of instruction, including the Academic, Military, and Physical Programs, have maintained

prescribed standards of conduct, and who have demonstrated proper moral-ethical qualities, leadership, and character may receive a diploma These cadets will have earned the Bachelor of Science degree and will be designated as graduates of USMA ... A Cadet who is discharged or separated from the Academy under the provisions of [AR 210-26], or for any other good cause, will not be graduated, awarded a diploma, or commissioned." On 18 December 2018, the Deputy Assistant Secretary of the Army (Military Personnel) approved the Superintendent's recommendation to separate the applicant from USMA for violating the Cadet Honor Code. As such, the applicant is not eligible to receive a diploma pursuant to AR 210-26, paragraph 5-3.

(b) Pursuant to AR 210-26, paragraph 5-3(c), "... a cadet found by the Academic Board to have successfully completed all requirements in the Academic, Military, and Physical Programs, may receive a diploma and graduate with the Bachelor of Science degree, without being commissioned, provided the Secretary of the Army determines that it is in the best interest of the Government." On 3 April 2018, the applicant was flagged pending final action on the Honor case. Pursuant to USCC Regulation 351-2, a cadet may be flagged and ineligible for favorable action while not in good standing due to an ongoing criminal or administrative action. Pursuant to USCC Regulation 351-2, paragraph 104k, circumstances in which a flag may be initiated include a substantiated finding by an Honor Board. As a result of the flag, the applicant was not eligible to be considered by the Academic Board for awarding of a diploma and conferring a degree. As such, the Academic Board did not determine the applicant successfully completed all requirements in the Academic, Military, and Physical Programs.⁶ Furthermore, the facts do not support a determination that awarding the applicant a diploma would be in the best interest of the Government. The applicant's conduct, particularly as a first class cadet nearing graduation and commissioning, was a significant departure from the standards of conduct, leadership, and character expected of a USMA graduate. This conduct demonstrates the applicant's failure to maintain prescribed standards of conduct and improper moral-ethical qualities, leadership, and character at the time in question. As such, awarding the applicant a diploma would not be in the best interest of the Government.

d. Recommendation. Based upon the foregoing, the requested administrative relief is not appropriate, and USMA recommends ABCMR deny the application.

23. On 5 June 2023, the applicant's counsel responded to the advisory opinion and stated:

a. The advisory opinion concludes that because Applicant was separated from USMA, he is not eligible to receive a diploma. However, the advisory opinion fails to address the numerous procedural errors which resulted in Applicant's separation from USMA. But for the errors throughout the disciplinary process, including: Applicant's separation after having successfully completed the probationary period for the

suspension of the separation action; misconstruing the facts to appear as though Applicant committed additional conduct violations during a probationary period; conducting an Honor Investigative Hearing after the Superintendent took final action on the matter; and submitting a Summary and Recommendations memorandum to the Superintendent which recommended separation despite the fact that not a single member of the Cadet Advisory Board voted to separate Applicant, Applicant would not have been separated and would have been eligible for and received the diploma. Therefore, Applicant should be awarded the diploma and all documentation related to his separation from USMA should be removed from his record.

b. Additionally, while the advisory opinion concludes that “the facts do not support a determination that awarding the applicant a diploma would be in the best interest of the Government,” the advisory opinion fails to consider and makes no mention of Applicant’s more than four (4) years honorable service and the strong support of those who know Applicant and have witnessed his duty performance including three (3) officers and two (2) NCOs who submitted letters in support of Applicant’s request for the awarding of the diploma. Because Applicant has served honorably for more than four (4) years on active duty and continues to serve, demonstrating his value to the Army, it is in the best interests of the Government to award him the diploma.

c. Thus, in the interests of justice, Applicant respectfully requests his military records be corrected to remove any documentation related to or mention of his separation from USMA and that he be granted all the rights and privileges of a graduate of USMA, including the awarding of his bachelor’s degree diploma.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant’s contentions, the military record, and regulatory guidance. The Board agreed that the applicant, as a first class cadet, knew the Cadet Disciplinary Code. However, notwithstanding that knowledge, he willingly violated the code by his misconduct. Subsequent investigation of the misconduct was in accordance with applicable regulatory procedures and guidance. After due consideration of the applicant’s request, the Board determined that the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned and

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 210-26, United States Military Academy, in effect at the time, provides policy and procedures for the general governance and operation of the United States Military Academy (USMA).

a. Paragraph 4–1. Academic, military, and physical program standings: Cadet performance will be evaluated in each of the developmental programs. The Superintendent will establish procedures, as recommended by the Academic Board, for evaluating cadet performance in the academic, military science, and physical education program courses, and in military development. The Superintendent will establish procedures, as recommended by the Commandant, for evaluating cadet performance in those aspects of the military and physical programs outside the purview of the Academic Board. The Superintendent will establish procedures for determining a composite measurement of cadet performance across all three programs.

b. Paragraph 4-2, Performance Records: Program directors will maintain records of cadet performance in the Academic, Military, and Physical Programs. The Dean will grade cadet performance in the academic program. The Commandant will grade cadet performance in the military and physical programs and provide these to the Dean for recording, as appropriate, on the official record known as the Cadet Transcript.

c. Paragraph 5–3. Graduation and conferring of degree:

(1) A cadet who is discharged or separated from the Academy under provisions of this regulation, or for any other good cause, will not be graduated, awarded a diploma, or commissioned. However, when the Superintendent proposes that a cadet be separated for failure to meet medical retention standards under paragraph 4–6 of this regulation, and when the Academic Board determines that the cadet successfully completed all requirements of the Academic, Military, and Physical Programs, the Superintendent may approve graduation and the award of a diploma with a Bachelor of Science degree. Such a cadet will not be commissioned.

(2) Notwithstanding any other provision of this regulation, a cadet, found by the Academic Board to have successfully completed all requirements in the Academic, Military, and Physical Programs, may receive a diploma and graduate with the Bachelor

of Science degree, without being commissioned, provided the Secretary of the Army determines that it is in the best interest of the Government.

(3) When a cadet is separated and is not awarded a diploma, but the Academic Board determines that the cadet has successfully completed all requirements in the Academic Program, the Academic Board may authorize the award of a Certificate of Completion of the Academic Program. The Dean will sign the certificate.

(4) The Secretary of the Army has delegated to the Superintendent the authority to defer graduation of any cadet for good cause, to include cases where: (1) A cadet is under investigation for violation of the Honor Code, serious misconduct, or immorality or is the subject of an administrative action that could result in separation, or the award of extended punishment; (2) A cadet is deficient in the Academic, Military, or Physical Programs.

d. Paragraph 6-16, Section III Honor and Discipline, Violation of the Cadet Honor Code, states:

(1) The Cadet Honor Code states: "A cadet will not lie, cheat, or steal, or tolerate those who do." The Superintendent will establish and maintain a system to administer the Cadet Honor Code.

(2) Honor investigative hearings will be convened by the Commandant under the provisions of the Cadet Honor Committee Procedures. Upon completion of the record of the proceedings, including the findings and recommendations, they will be reviewed by the Staff Judge Advocate, forwarded for recommendations by the Commandant, provided to the cadet respondent for rebuttal and comment, and finally sent to the Superintendent for action pursuant to paragraph 7-3 of this regulation.

(3) Cadets who are found to have violated the Cadet Honor Code will normally be separated from the Military Academy; however, they may, at the discretion of the Superintendent, be retained or returned to the next lower class. They may also be awarded punishments under paragraph 6-4 of this regulation.

(4) Cadet Honor Committee Procedures must be approved by the Superintendent. Copies of such procedures and amendments thereto will be forwarded for information to Headquarters, Department of the Army, and will reference this paragraph.

e. Paragraph 7-3. Action by the Superintendent:

(1) The summarized record of a proceeding before a Misconduct Hearing, Honor Investigation Hearing, or Conduct Investigation will be reviewed by the Staff Judge

Advocate. A copy of the summarized record, along with the Staff Judge Advocate's review, will be forwarded to the Commandant of Cadets for consideration. Thereafter, the record, the recommendations, and comments of the Commandant, if any, and the Staff Judge Advocate's review will be provided to the respondent for consideration and an opportunity for rebuttal. The Superintendent will review the entire record, including the Staff Judge Advocate's review, the Commandant's recommendation, and any matters offered by the respondent prior to taking action on the case.

(2) Except in cases where the Superintendent is the separation authority, all documents pertinent to the separation of a cadet from the Academy will be forwarded to Headquarters, Department of the Army, for final action. The Superintendent will make recommendations concerning separation from the Academy and discharge from the Service. If discharge is recommended, the type of discharge recommended will be specified.

//NOTHING FOLLOWS//