

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

---

Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2017-175**

[REDACTED]

---

**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on May 31, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 23, 2018, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a [REDACTED], requested that the Board correct his record by adjusting his date of rank from [REDACTED]. He also requested all back pay and allowances that would be due to him as a result of back dating his date of rank. He further requested that if the Board does not make a decision before the June [REDACTED] Lieutenant Junior Grade (LTJG) promotion board that his corrected record go before the next regularly scheduled promotion board in [REDACTED] and, if he is selected for advancement, that his LTJG date of rank be backdated to what it would have been had he been commissioned an Ensign on [REDACTED] and selected for promotion in [REDACTED] and that he receive back pay and allowances for this promotion.

The applicant argued that there was "no precedent to place a cadet on administrative hold for 5 months." He stated that investigations into administrative violations typically are resolved within six weeks, culminating in a non-judicial hearing. He further claimed that he was "exonerated of all accusations at the Captain's mast, which retrospectively makes the 5 month administrative hold appear excessive and [un]necessary."

With his application, the applicant provided a short written explanation of events. He stated that on [REDACTED] he was verbally informed that he was the subject of an administrative investigation and that he therefore might not graduate at all or on time from the Coast Guard Academy. His class graduated on [REDACTED]. He was assigned to work at the Academy for



The remainder of the summer while the investigation was ongoing. He stated that he testified “fully and truthfully as a witness” during a Uniform Code of Military Justice (UCMJ) proceeding. On [REDACTED] he graduated from the Coast Guard Academy and received his Bachelor’s degree and commission as an Ensign. The applicant stated that the Coast Guard Academy command recommended that he speak with this Board “in order to have [his] commissioning date moved back” to [REDACTED]. The applicant provided the name, phone number, and email address of four individuals whom he stated the Board may contact “to corroborate this synopsis [REDACTED] amplifying and unbiased information.” In addition, the applicant provided several documents which are described below in the Summary of the Record.

### SUMMARY OF THE RECORD

The Coast Guard Investigative Services (CGIS) Action Report, which [REDACTED] on date of [REDACTED], includes summaries of all of the witness statements taken regarding the investigation into the alleged sexual misconduct by Cadet [REDACTED] (nt) on [REDACTED]. The [REDACTED] was called by the local police and informed that [REDACTED] highly intoxicated at a local bar. Ms. [REDACTED] roommate, who was an employee of the bar, asked three people, including Cadet X [REDACTED] back to the apartment. After some time had passed and the friends had [REDACTED] with the roommate’s keys, the roommate went to the apartment and heard what he believed was the bed making noise. He peered [REDACTED] and saw Ms. [REDACTED] laying on the bed naked and she appeared to be unconscious. The roommate also saw Cadet X “attempting to hide by [REDACTED] the wall.” Cadet X reportedly picked up his clothing and exited the room while stating “it was consensual.” The roommate called 911 and emergency services brought Ms. [REDACTED] to the hospital.

The applicant was interviewed on [REDACTED]. The applicant [REDACTED] travelled over the weekend in question with Cadet X and several other friends. He stated that he “was unable to recall any other pertinent details about [REDACTED] weekend as it was [REDACTED].” The investigator reminded the applicant that he was considered a witness, but the applicant was still “unwilling to answer any additional questions.” The applicant expressed concerns “that any actions during the weekend could be administratively held against him by the [Coast Guard Academy] and he didn’t want to jeopardize” his Coast Guard career. The applicant [REDACTED] willingness to participate could result in being compelled to appear before a Grand Jury or other military proceedings. The interview [REDACTED] on his unwillingness to part [REDACTED].

The applicant was interviewed for a second time on [REDACTED]. The applicant stated that he and Cadet X had arrived at Cadet X’s parent’s house around 9 in the evening on [REDACTED]. Around 10 p.m. the [REDACTED] two went to a house party and began drinking beer. A few hours later, he and several people from the party, including Cadet X, went to a bar [REDACTED] distance. The applicant stated that he observed Cadet X taking shots of tequila and dancing with a female, identified previously in the interview as Ms. [REDACTED] who had possibly been seen at the house party. At “some point later” the applicant, Cadet X, Ms. [REDACTED] and two other people left the bar. The applicant stated that Cadet X and Ms. [REDACTED] were “pretty drunk ... very drunk.” The group walked to Ms. [REDACTED] apartment. Cadet X and Ms. [REDACTED] went to “a different part of the apartment.” The applicant used the restroom and when he returned he saw Cadet X and Ms. [REDACTED].



standing outside the bedroom. One of the other people who had come to the apartment with him stated that Cadet X and Ms. "are good to go." The applicant stated that he saw Cadet X and the bed in the room. He then stated that he left the apartment with the other two people.

Tught him to where the applicant was going to stay for the night. The applicant did not recall seeing or talking to Cadet X after he arrived. The applicant stated that the next day he and Cadet X did not discuss the details from the previous night. At some point that day, Cadet X and the applicant went to a friend's house to watch football. While there, Cadet X stated that Ms. had asked Cadet X al intercourse. While having sexual intercourse, there was a forceful knock at the door and after a brief interaction with the person who knocked, Cadet X left. Cadet X had believed that the person was Ms. boy-friend.

The applicant was interviewed for a third time on Man. The applicant stated that the details were the same as he had stated during his interview. He added that at the ho party he had had "maybe a shot or two." He added that he also had one or two sh at the bar. He stated that Cadet X had had "a lot of tequila at the bar." The applicant stated that he drank eight or nine drinks that night and considered himself a 7-8 on a scale of 1-10 of intoxication with 10 being bla. He stated that once the group arrived at Ms. apartment, he couldn't see where Cadet X and Ms. went so he sat on the couch and log. A short while later, the applicant used the restroom and when he came out of the restroom he saw everyone he had arrived with (two females, including Ms. Cadet X, and other male friend) in the bedroom. He be and Ms. were sitting on the bed but he was unsure of the. The other female came out of the bedroom to go to the restroom and the bedroom door was. He stated he did not. He was unsure if the other male or Cadet X shut it. He stated that before he left, he tried to open the door but was unsuccessful because it was locked. t Cadet X and Ms. al activity because "of the way they were acting toward each other during the night." The applicant stated that he had announced to Cadet X before he left that he was leaving that apartment, but he did not receive a response.

a Report of Offenses was created regarding the applicant's alleged offenses. The dates of the alleged offenses were. The applicant acknowledged a signature on, and indicated that he wished to be presented. The applicant free offenses:

**Offense I: Violation of the Cadet Regulations, Code 1218: "Intoxications, narcotics, drugs: unauthorized possession, use, abuse; including alcohol"**

In that first class [applicant], United States Coast Guard, did, on active duty, at or near... on or about, intentionally consume an excessive amount of alcoholic beverages to wit: 9 to 10 alcoholic beverages to the point where he admits that he was "pretty buzzed," and self rates his intoxication as a 7 or 8 on a scale of 1 to 10, with 10 being the highest, to the point where he could not remember tails of the evening.



**Offense II: Violation of the Cadet Regulations, Code 1233: "Judgment: failure to use good judgment"**

[redacted] class [applicant], United States Coast Guard, did, on active duty, at or near...on or about [redacted] fail to intervene, prevent or halt an incident of sexual assault, in violation of the duty imposed by ALCOAST 037/12, and that said conduct was a failure to use good judgment.

**Offense III: Violation of the Cadet Regulations, Code 1504: "Deceit: attempt to deceive"**

In that first class [applicant], United States Coast Guard, did, on active duty, at or near...on or about [redacted] with intent to deceive to make to CGIS, an official statement containing omissions of material facts in an investigation of sexual assault, including to wit: knowledge that the bedroom door was in fact locked, and admitted to CGIS in an official statement on [redacted] that the bedroom door was locked.

The applicant's class graduated and received their commissions on [redacted] but he did [redacted]

On [redacted], the applicant received a memorandum from [redacted] Academy with a subject line of "Clarification of Cadet Status." The memorandum informed the applicant that he remained a [redacted] Corps of Cadets, but due to a pending investigation he had not met graduation [redacted] ts. He was told until the alleged offenses have been disposed of he would remain subject to Cadet Regulations.

On [redacted], the command at the Coast Guard Academy ordered that the CGIS investigate "the facts and circumstances surrounding allegations that Cadet [applicant] of the Coast Guard Academy engaged in misconduct on or about [redacted]. The investigator was instructed to prepare a report by [redacted], and if more time was needed he was instructed to inform the command and state the reasons [redacted]

The CGIS investigator prepared a report dated [redacted]. In his preliminary [redacted] summarized the investigation as having concluded that the applicant "committed Class I Offenses by violating the U.S. Coast Guard Academy Cadet Regulation Code 1218: "Intoxicant, narcotics, drugs: unauthorized possession, use, abuse; including alcohol" and Code 1504: "Deceit: attempt to deceive." The findings of fact state that the applicant and Cadet X had gone to a bar on [redacted] X and the young woman in question, Ms. [redacted] were kicked out of the bar "due to excessive intoxication." The applicant and [redacted] back to her apartment. The [redacted] that Ms. [D's] [redacted] was locked with Cadet [X] and Ms. [redacted] in the room alone. On [redacted], the applicant told CGIS investigators that he was unable to remember any details of the weekend in question because [redacted] passed. During the applicant's second interview, he claimed that he did not say anything to Cadet X before he left [redacted] during the applicant's third interview, [redacted] stated something to the effect of "we're going" and he did not hear a response from Cadet X. The findings also noted that the applicant intentionally [redacted] alcohol "to the point that his self-rated level of intoxication was a '7 or 8" on a scale of 1 to 10." Lastly, the findings state that the sexual assault allegation [redacted] the subject of a pending General Court-Martial trial.

The opinions section of this report state that the investigator believed that the applicant lied and misled investigators in the following ways:

In his first interview, [the applicant] claimed that he didn't remember anything from the weekend in question as it was nearly two weeks ago. This was a lie because he did in fact remember details from the weekend in question as shown by his second and third interviews...

In his second interview, [the applicant] claimed that he did not "call out" or say anything to Cadet [X] as he ([the applicant]) was leaving the apartment... This was a lie because in his third interview [the applicant] admitted that he told Cadet [X] through the locked door something to the effect of... "we're going" or "...you coming?" [The applicant] admitted that he tried to communicate to Cadet [X], who was behind the locked door, that he was leaving, and that [the applicant] admitted that he spoke to Cadet [X] before he ([the applicant]) left.

The opinions also included that the investigator believed that the applicant irresponsibly and intentionally consumed an excessive amount of alcohol. The investigator stated that he did not believe, however, that the applicant committed a violation of Cadet Regulations 1233 "Judgment: failure to use good judgment." The sexual assault allegations were yet to be determined, and therefore the investigator felt that any nexus the applicant had regarding a failure to intervene in the sexual assault was unsubstantiated. The applicant cannot be charged with violating Cadet Regulations 1504: Deceit and Harassment, narcotics, drugs.

The applicant provided a General Court-Martial decision of the United States versus the Cadet accused of sexual misconduct, Cadet X, dated [redacted]. Cadet X had sought dismissal of the charges to unlawful command influence. The case at issue in this General Court-Martial involved one specification against Cadet X of sexual misconduct. The applicant had "witnessed many events preceding the charged sexual misconduct. However, he was reluctant to speak with the... police and the assisting CGIS agent because the initial phase of his interview felt hostile and he was concerned with becoming a 'collateral damage' - perhaps due to his own alcohol consumption that evening." The applicant was "pressured" to fully participate in the investigation into Cadet X. The General Court-Martial stated that in order for Cadet X to prevail on his motion to dismiss, he must show facts which would show unlawful command influence and he must demonstrate that the unlawful command influence had a logical connection to this particular court-martial. The court-martial found that it was "totally clear" that the alleged unlawful command influence had no negative impact on the trial because the applicant had "testified fully, honestly, and truthfully; his testimony significantly advanced the truth-finding function." Cadet X's motion was therefore denied.

On [redacted] the applicant signed a document titled "Accused Rights and Acknowledgement." The document contains the signature of a witness and of the Assistant Commandant of Cadets.

The Captain's Mast took place on [redacted]. All three charges were dismissed and the applicant received no punishment. The Hearing Officer signed the final action document and noted that [redacted] formed the application of the administrative consequences of this proceeding on the same date.



**VIEWS OF THE COAST GUARD**

On November 12, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief. The JAG noted that the applicant was involved in a criminal investigation into a sexual assault committed by another cadet and [REDACTED]. [REDACTED] stated, he was a witness subject to administrative proceedings by the Coast Guard Academy and placed on administrative hold. The three charges that arose from [REDACTED] and the proceedings were ultimately dismissed at the Cadet Mast, and the applicant was allowed to complete his degree and receive his commission as an Ensign. The JAG argued that the applicant did not provide any evidence that [REDACTED] committed an error in placing him on an administrative hold and therefore recommended that the Board deny relief.

The JAG noted that the application is timely and should therefore [REDACTED] by the Board. [REDACTED] According to the Regulations for the Corps of Cadets, the Superintendent of the Coast Guard Academy has broad discretion to determine [REDACTED] sets the [REDACTED] graduation [REDACTED]. [REDACTED] noted that during the second and third interviews [REDACTED] stated things that he had not told investigators during the previous interviews. While the applicant was set to graduate on [REDACTED], [REDACTED] was not administratively charged with violating Cadet Regulations until [REDACTED], following his third CGIS interview. The JAG argued that given the applicant's level of involvement with the alleged sexual assault, [REDACTED] his own administrative charges, the Superintendent acted reasonably in choosing to postpone the applicant's graduation until these [REDACTED] were resolved.

The JAG explained that while the CGIS investigation [REDACTED] was going, [REDACTED] the applicant was also subject to an administrative investigation [REDACTED] regarding his conduct on the date of the alleged sexual assault and regarding his lack of candor [REDACTED] investigators. On [REDACTED], the administrative investigation concluded that he had violated Cadet Regulations by trying to deceive CGIS investigators and by having abused alcohol [REDACTED] of the incident. On [REDACTED], the Assistant Commandant of the Cadets referred the case to a Class I Hearing, where the charges were dismissed. The JAG argued that there are no timeliness standards for administrative investigations as the applicant contends. The JAG stated that given the complexity of the investigation, including the applicant's lack of candor, the total time between the crime and [REDACTED].

After [REDACTED] investigation concluded [REDACTED] the applicant was allowed to graduate and to receive his commission on [REDACTED]. The JAG argued that there was no error or injustice throughout these procedures. The JAG also pointed out [REDACTED] incorrectly stated that he was exonerated at Mast because his charges were dismissed. The JAG noted that at Mast [REDACTED] was dismissed for a variety of [REDACTED] including insufficient evidence or otherwise at the discretion of the convening authority. The JAG argued that the Coast Guard Academy had the discretion [REDACTED] the applicant from graduation and commissioning as an Ensign while the investigation was pending as there was sufficient evidence to suspect that he [REDACTED] committed a violation of Cadet Regulations. The JAG therefore recommended that the Board deny [REDACTED] relief.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 22, 2017, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Board did not receive a response.

### APPLICABLE POLICY & REGULATIONS

The Regulations for the Corps of Cadets, SUPTINST M5215.2K, Article 2-4-01-a, states that the "Superintendent has the authority to terminate the appointment of a cadet." Article 2-4-01-c states that the "Superintendent may suspend a cadet for a term of up to one year for any reason that would otherwise justify termination of appointment or disenrollment." Article 2-4-02 states that a "cadet may be recommended for disenrollment or termination of cadet status for failure to maintain standards or adhere to regulations" regarding suitability of service. Article 2-4-04 discusses suitability for service deficiencies. One of the specific areas for which a cadet may be disenrolled due to unsuitability for service is conduct: "Cadets involved in one or more specific instance(s) of misconduct serious enough to warrant disenrollment."

Article 3-2-01-b of SUPTINST M5215.2K discusses degree and graduation requirements, and subsection 1.h. states that cadets must meet "all military performance standards, demonstrating all aspects of personal and professional development necessary to serve as Ensigns in the United States Coast Guard." Article 4-5-05-a discusses sexual misconduct and states that cadets "in training to become officers are expected to maintain high moral standards and to act in a decorous manner. Failure to do so can be considered serious misconduct."

### FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that the postponement of his graduation from the Coast Guard Academy and commissioning as an Ensign was erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>1</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>2</sup>

---

<sup>1</sup> 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

<sup>2</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The applicant alleged that there is “no precedent to place a cadet on administrative hold for 5 months” while an administrative investigation is ongoing. However, Article 2-4-01-c for the Regulations of the Corps of Cadets states that the “Superintendent may suspend a cadet for a term of up to one year for any reason that would otherwise justify termination of appointment or disenrollment.” According to Article 2-4-04, one reason for disenrollment is unsuitability due to serious misconduct. On [REDACTED], the applicant was charged with violating three Cadet Regulations. The Coast Guard Academy Superintendent was therefore able to suspend the applicant for up to one year. The applicant was ultimately able to graduate and receive his commission as an Ensign on [REDACTED]—less than a year later. Given the applicant’s excessive consumption of alcohol on the night in question and his lack of candor during the investigation of an alleged sexual assault by CGIS, the Board finds no error or injustice in the Superintendent’s decision to place his graduation and commissioning on hold while the administrative investigation was still pending.

4. The Board finds that the Superintendent’s decision was supported by substantial evidence. The applicant had been interviewed three times by a CGIS investigator, on [REDACTED]. During the first interview, the applicant was completely uncooperative and lied, claiming that he did not remember anything from the weekend in question because it was two weeks before the interview date. During the second interview the applicant was much more cooperative. However, during the third interview the applicant added significant details that he had neglected to provide during the second interview, such as the fact that the bedroom door had been locked. Given the CGIS Report with summaries of all witness statements and the [REDACTED], CGIS report regarding the applicant’s misconduct specifically, the Superintendent had sufficient evidence to believe that the applicant had engaged in serious misconduct for which he could be disenrolled. Therefore, the Board finds that the Superintendent’s decision to withhold the applicant’s graduation and commission was not erroneous or unjust.

5. The applicant further claimed that because he was ultimately exonerated of all three charges the administrative hold was excessive and unnecessary. However, as the JAG pointed out, the fact that the applicant was not punished at Mast does not mean that he was exonerated of the charges. No additional notes are available from the Cadet Mast, but the three charges against him could have been dismissed for any number of reasons. The convening authority may well have decided that the postponement of the applicant’s graduation and commissioning had been appropriate consequences for his misconduct and so opted not to impose punishment at Mast. The Board does not find that the administrative hold was excessive or unnecessary even though the charges were ultimately dismissed at Mast.

6. The Board finds that the applicant has not proven by a preponderance of the evidence that he was erroneously or unfairly denied his graduation and commission on [REDACTED]. At the time, he was not qualified for graduation because he had not demonstrated “all aspects of personal and professional development necessary to serve as Ensigns in the United States Coast Guard.”<sup>3</sup> Meeting all degree and graduation requirements is a fundamental criterion for an officer’s commission, and the applicant has not shown that the Coast Guard committed any error or injustice in how it handled the charges against him.

---

<sup>3</sup> SUPTINST M5215.2K, Article 3-2-01-b.



7. Accordingly, the applicant's graduation and commissioning date should not be [REDACTED] [REDACTED] should not receive associated back pay and allowances, and any subsequent promotion he has received should not be back dated. Any other requests for relief should likewise be denied.

[REDACTED]  
(ORDER AND SIGNATURES ON NEXT PAGE)

**ORDER**

The application of [REDACTED], USCG, for correction of his military record is denied.

February 23, 2018

