

DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of the Coast Guard Record of:

BCMR Docket No. 2018-072

██████████
██████████ BM2

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 January 25, 2018, and prepared the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 15, 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 is a former first-class cadet (1/c)¹ of the Coast Guard Academy and current enlisted member (BM2) of the Coast Guard. He asked the Board to correct his record by removing the order of the Superintendent to disenroll him from the Academy in 2017, awarding him a bachelor's of science degree, commissioning him as an officer, and granting any other relief that justice requires. The applicant stated that he completed all of the academic and fitness requirements for graduation but was denied graduation, a degree, and commissioning based on the opinion of the Superintendent. He alleged that the Superintendent failed to consult certain Academy officials before making the decision and that his disenrollment is erroneous, unjust, and a disservice to the Coast Guard as well as himself.

The applicant explained that he was disenrolled from the Academy on May 12, 2017, just a few days before graduation, because he had consensual sexual intercourse with a fourth-class (first year) female cadet (4/c). He stated that he holds himself accountable, but it was a "minor lapse in judgment" and "not definitive of his character or his legacy as a cadet," as shown by the many statements he submitted supporting his request. He pointed out that he had been a member of the Regimental Planning Staff in the fall of 2016, the only cadet on the Academy Leadership Diversity Advisory Council, and a member of the varsity soccer team. He was considered a leader among his peers and, as the Regimental Workplace Climate Officer on the planning staff, he was "one of nine 1/c cadets in overall command for the entire Corps of Cadets." After completing his service on the planning staff, he returned to Foxtrot Company in January 2017 and, as a Division

¹ A first-class cadet is a cadet in his or her fourth and final year at the Academy (senior).

Officer, “was responsible for supervising a small group that consisted of 2/c, 3/c, and 4/c cadets.” He met the female 4/c, who was also in Foxtrot Company, at a birthday party, where they discovered they were both environmental science majors. He gave her his phone number so she could contact him with any questions. He alleged that she subsequently texted him and asked for his help in setting up a new monitor in her room, and he complied. He alleged that he was about to leave her room when she asked him to stay and watch a movie with her, and he agreed. They “became intimate but did not engage in sexual intercourse.” When she invited him the next day to watch another movie with her, he accepted, and on that occasion they engaged in “protected consensual sexual intercourse.” After that, she continually texted him and invited him to her room, but he declined and told her “he felt uncomfortable with the situation.” He gradually stopped communicating with her although she continued to text him with invitations.

The applicant stated that his relationship with the 4/c subsided and he was studying for his final examinations on May 3, 2017, when he was asked to attend an interview for an investigation. He was asked many “questions involving his experience and relationship with” the 4/c and was advised that he would be punished at mast on May 12, 2017. Two other cadets—another 1/c and a 2/c—were also punished that day for “relationships and contact” with the 4/c. At mast, Captain Rivera, who was the Commandant of Cadets (COC), reviewed his record, asked him questions about his relationship with the 4/c, and told him “in essence that he had no respect for women, that he took advantage of a young woman, that he was a methodical and predatory monster, and that he had no place in her Coast Guard.” The mast resulted in the COC recommending that he be disenrolled from the Academy. The other two male cadets were also recommended for disenrollment. On May 15, 2017, the applicant was notified that the Superintendent, Rear Admiral Rendon, had approved the COC’s recommendation to disenroll the three of them. Therefore, he did not graduate and was not commissioned with his class on May 17, 2017.

The applicant submitted a copy of his appeal of his disenrollment, dated May 22, 2017. In the appeal, he acknowledged that he had done wrong and stated that he had no excuse. He acknowledged that as an officer he would “have an immense amount of responsibility for my subordinates” and that as the superior, it was his obligation to hold himself and his subordinates accountable and to maintain a professional environment. He stated that he understood that he had lost the trust of the Academy and his shipmates and that he was willing to do whatever it would take to demonstrate that he could be trusted with the responsibility that comes with a commission. The applicant noted that he had held positions of responsibility as a cadet, he had attained a GPA of at least 3.15 over the last four semesters, he had participated in significant research, and he had attained important qualifications and helped others to attain qualifications. He stated, “Progress and development cannot be made without mistakes, and I know that I have learned from this. ... I know that I am better than this.” He asked to meet with the Superintendent and attached statements supporting his appeal.

The applicant stated that he did meet with the Superintendent on May 31, 2017, to discuss the decision to disenroll him, but the Superintendent was “not helpful in clarifying” why he had disenrolled the applicant. While awaiting the outcome of his appeal, he worked for the Academy Planning Officer and helped out with projects on the Academy waterfront. When his appeal was denied, he was offered the option of serving as an enlisted member, which he accepted. The applicant stated that he has performed exceptionally well as a BM3 and has treated his disenrollment as a learning experience “to prevent incidents like this from occurring again.”

The applicant argued that his disenrollment was a result of gender discrimination by the COC. The COC recommended the applicant, the other 1/c, and the 2/c—who were male—for disenrollment while she gave the female 4/c—who had been involved with all three of them—just two weeks of restriction with 10 marching hours, 10 work hours, and 40 demerits and placed her on “suitability for service” (a type of probation). The applicant argued that the clear disparity in punishment for the male cadets and the female cadet is a great injustice. The applicant stated that like the female 4/c, but unlike the other two male cadets, he never lied about their sexual encounter and so he should not have received the same punishment as the two cadets who lied, especially because those two had been previously punished for misconduct.

The applicant stated that because § 2-4-01 of the Regulations for the Corps of Cadets (RCC) states that the Superintendent may disenroll and discharge a cadet “and normally does so upon a recommendation from an Executive Board, the Dean of Academics, the Commandant of Cadets, Chief Medical Officer, or the Director of Health and Physical Education,” it would have been appropriate for the Superintendent to consult other leaders, in addition to the COC, before deciding to disenroll him.

To support his requests, the applicant submitted the following letters of support, which he received pursuant to the NJP and disenrollment proceedings. He argued that the letters show that his disenrollment for a minor lapse in judgment was a great injustice to both him and the Coast Guard:

- The commanding officer (CO) of the cutter on which the applicant served during his 4/c summer stated that his performance and behavior were exemplary and complimented his work ethic, skills, knowledge, and attitude. He stated, “I’m hoping this youthful indiscretion doesn’t negatively impact his chances of getting commissioned. I believe that would be a serious loss to the Coast Guard.”
- The executive officer (XO) of the cutter stated that the applicant had done a very good job; had demonstrated the core values of Honor, Respect, and Devotion to Duty; and had stood out as a leader of the cadets assigned to the cutter, managing and organizing their projects. He stated that the applicant had worked hard toward qualifications and was enthusiastic and passionate about the Coast Guard.
- The lieutenant who served as the applicant’s research advisor called him enthusiastic, hard-working, driven to serve, intelligent, competent, trustworthy and honorable. He stated that he did not know all the details of the incident but hoped that the applicant would be allowed to graduate and receive a commission.
- The applicant’s soccer coach stated, “While we cannot ignore the charges, I truly believe [the applicant] can learn and grow from this incident.” He complimented the applicant’s positive outlook, “solid character and genuine concern for others.”
- A lieutenant who had played on the soccer team stated that the applicant “bubbled over with excitement to serve” and that his “gregariousness and upstanding nature were readily apparent, as was his discipline.” He stated that the applicant had the humility to learn from a painful lesson and that the Coast Guard “cannot afford to lose him.”

- A lieutenant stated that as part of his work as the Workplace Climate Officer on the Regimental Staff, the applicant had developed a “Respect Campaign” to use “a fresh way to get everyone thinking about respect.” He stated that he was shocked when he learned “what [the applicant] was being masted for” and that the applicant would jeopardize his career. He stated that the applicant’s “actions are undoubtedly inexcusable, but I also have complete confidence that he learned an incredible amount from this experience, and if given the chance to become a Coast Guard officer, he will excel.” He stated that the Coast Guard would lose an exceptional officer if the applicant was not allowed to graduate.

The applicant also submitted November 2017 statements from his current Officer in Charge (OIC), from the female c/4 with whom he had been sexually involved, and from his Company Officer at the Academy:

- The OIC stated that the applicant is “an extremely valuable addition to my crew” with a great deal of potential as a leader in the Coast Guard. He stated that the applicant was earning qualifications very quickly, had displayed outstanding initiative, and had “contributed valuable insight to both operational planning and personnel management.”
- The 4/c stated that she was a good student, making all As and Bs at the Academy. She stated that the applicant held “a high position in command as Workplace Climate Officer during the first semester of my 4/c year, but he never used his rank to influence me.” She stated that they were in the same Company during her second semester, when they had sexual intercourse, but he was not her supervisor within the Company. The 4/c argued that the policy at the Academy prohibiting fraternization should be amended to prohibit it only when it “is directly related to a cadet’s chain of command.” The applicant stated that the three cadets with whom she had been romantically involved were all recommended for disenrollment, but she was placed on suitability for service (probation) and given 10 marching hours, 10 work hours, and 40 demerits. She stated that she received less punishment because of her subordinate rank and honesty when questioned. The applicant stated that while the other two cadets initially lied about their sexual encounters with her, the applicant had remained silent, which should not have been used against him. But he received the same punishment as the other two male cadets. She also stated that she believed that the applicant was more successful academically than the other two and had an otherwise unblemished record, unlike the other two. Therefore, she believes that the applicant was punished unfairly.
- The applicant’s Company Officer, who had represented him at mast and served as an assistant soccer coach, stated that many of the applicant’s teammates and other cadets had looked up to the applicant as a leader and role model. He stated that the applicant had sound character and showed “the utmost respect to everyone.” He stated that the applicant had made a “grave mistake” but that his record up to that point had been unblemished. He stated that the applicant should receive his degree and commission.

VIEWS OF THE COAST GUARD

On June 20, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief and adopted the findings and analysis in

a memorandum on the case submitted by Commander, Personnel Service Center (PSC).

PSC noted that § 4-E-02.6. of the RCC states that “Cadets who are found guilty of inappropriate relationships may be disenrolled” and “an upper class cadet in an upper class–fourth class romantic relationship will normally be disenrolled.” PSC stated that the applicant’s character references and achievements “are noteworthy but do not outweigh the issue of establishing an inappropriate senior-subordinate relationship” in accordance with the RCC.

PSC stated that the Superintendent has the authority to terminate a cadet’s appointment upon the recommendation of the COC. The applicant appealed the Superintendent’s decision to disenroll him to CG-1 in accordance with the rules, and CG-1 denied the appeal but authorized the applicant to fulfill his service obligation by enlisting. PSC stated that because the applicant engaged in a prohibited relationship as a 1/c, he failed to meet all of the requirements for graduation in the RCC, specifically § 3-2-01.b.h., which requires the cadet to “[m]eet all military performance standards, demonstrating all aspects of personal and professional development necessary to serve as Ensigns in the United States Coast Guard.” PSC concluded that the COC and Superintendent “acted within their authority and policy by recommending disenrollment of the applicant.”

PSC submitted a copy of CG-1’s notification to the applicant that his appeal was denied, dated July 12, 2017. CG-1 wrote, “After carefully reviewing your appeal package, the Superintendent’s recommendation, your record of performance, and your conduct, I have denied your appeal of the Superintendent’s decision to disenroll you from the Coast Guard Academy.” However, CG-1 authorized the applicant to enlist so that he would not have to pay back the cost of his tuition.

Declaration of the Commandant of Cadets

PSC also submitted a declaration from the COC, who is the CO of the cadets. She stated that following an investigation, the investigating officer recommended that the applicant be taken to mast for violations of the RCC, including engaging in an inappropriate relationship and sexual misconduct. At mast on May 12, 2017, the applicant admitted to these Class One offenses under the RCC: “1237: Relationship: inappropriate or improper, involving a serious breach of discipline” and “1231: Sexual Misconduct.” Given the specifics of the applicant’s misconduct and the policy in RCC § 4-5-02.6., she recommended to the Superintendent that he be disenrolled.

The COC provided copies of pertinent regulations in the RCC concerning cadet relationships and explained that the rules are designed “to deliberately train the cadets, first to be followers learning to ‘lead self,’ then to be leaders learning to ‘lead others.” The 4/c cadets “are trained as ‘followers’ and are exceptionally vulnerable as they learn to adapt not only from high school to college, but to adapt to the expectations of the military and a military academy.” She stated that “4/c cadets fulfill a role similar to junior enlisted personnel in the operational service. 1/c cadets (seniors), however, fulfill a role similar to junior officers in the operational service. This structure teaches and reinforces appropriate relationships within our service and establishes a culture of appropriate senior-subordinate relationships that cadets carry into the operational service as officers. That is why the Cadet Regulations contain such detailed policy regarding senior-subordinate relationships.”

The COC stated that the application is “filled with misstatements and mischaracterizations,” which downplay the seriousness of his misconduct and contradict his claim that he takes full accountability for his actions.” She noted that he was not charged with fraternization, as he claimed, but with “inappropriate relationship,” which is defined as “an unduly familiar association or dealing between seniors and subordinates, which prejudices good order and discipline, either by compromising regard and respect for authority, or by impairing the ability of the senior member to exercise fair and impartial judgment.”

The COC stated that the investigation showed that in January 2017, the applicant had approached the female 4/c, who was a member of his Company and fellow environmental science major. He offered to help her obtain qualifications aboard the Academy’s research vessel, and while aboard the vessel, he obtained her phone number and initiated a social relationship. He “gained access to [her] barracks room, behind closed doors, onto her bed, and, ultimately, into a sexual relationship.” She stated that the applicant

was an initiator and pursuer who returned with protection when [the 4/c] declined having sex without a condom. When the 4/c expressed that she was conflicted over what was happening, [the applicant] pressed forward with the relationship, a relationship that continued in person (in the cadet barracks and on liberty) and via text messages. [The applicant] was also seen by other cadets paying inappropriate attention to [the 4/c] at military formations, which was disruptive to good order and discipline. [The applicant] abused his position and power to take advantage of a 4/c in his company. We teach our 4/c to trust their upper class and their chain of command. [The applicant] used their common major and desire to get qualifications to get close to a female 4/c cadet, then drew her in and established an inappropriate relationship with her over an extended period of time. Such behavior reflects a series of deliberate choices and actions, not “a minor lapse in judgment.”

Contrary to the applicant’s claim that she told him that he had no respect for women and was a methodical monster, the COC stated that she “based all of [her] comments at the mast proceedings on Cadet Regulations policy regarding senior-subordinate relationships.” Specifically, she covered the relevant paragraphs in RCC § 4.E.2. as quoted below and made comments similar to the following showing how they applied to his misconduct:

- § 4.E.2.b.(1): “An improper senior-subordinate relationship is defined as: An unduly familiar association or dealing between seniors and subordinates, which prejudices good order and discipline, either by compromising regard and respect for authority, or by impairing the ability of the senior member to exercise fair and impartial judgment.”

The COC stated that the applicant had admitted to the investigator that he was familiar with and understood the policy on senior-subordinate relationships, which would include this definition of an improper senior-subordinate relationship.

- § 4.E.2.c.(1): “Senior-subordinate relationships among Cadets must be conducted in a professional manner so as to foster mutual respect and to maintain proper professional relationships. A distinct separation among all four classes must be maintained. Association between Cadets and enlisted must be conducted in a like manner, bearing in mind that Cadets are in training for positions as commissioned officers. Cadets must not engage in an overly familiar personal relationship with other Cadets.”

The COC stated that offering to mentor and help a subordinate attain qualifications is good,

but “twisting such professional mentor-mentee relationships into social and sexual relations takes advantage of the subordinate. Within the military and military training environment, such undue familiarity in the guise of mentorship is wholly unacceptable.”

- § 4.E.2.c.(2): “The four class system at the Academy serves as a very important training environment, and interclass distinctions must therefore be maintained at all times in a professional manner. It is the responsibility of the upper class Cadet to control the circumstances in both social and professional relationships. ...”

The COC stated that the applicant leveraged his social relationship with the 4/c “to become aware of her receipt of a computer monitor, then invited himself to her room, behind closed doors, on a long weekend. Such actions were known by [him] to be in violation of multiple cadet regulations. [He] then got onto [her] bed and solicited sexual intercourse. When [she] declined to have unprotected sex, [he] departed, then returned with a condom. This behavior reflects a methodical, deliberate failure to uphold a proper relationship with a subordinate cadet.”

- § 4.E.2.c.(2): “[I]nappropriate relationships are insidious and dysfunctional problems which seriously disrupt good order and discipline in a military organization.”

The COC stated that the applicant did not just socialize, interact with, and have sex with the 4/c on a single occasion; he “pursued a relationship over text messages and while on liberty. As a 1/c cadet (senior) in [the 4/c’s] company with authority and leadership responsibilities over her, [the applicant] was seen by other cadets flirting with her at military formations. Such behavior was not only disruptive, but degraded good order and discipline.”

- § 4.E.2.c.(3): “Associations of any kind not required in the course of duty and not maintained strictly on a professional basis are prohibited between members of the 4/c and Cadets of the upper three classes.”

The COC stated that 4/c cadets are adjusting to the military and college, have very few privileges, and “are highly vulnerable. Upper class cadets are obligated to help them integrate into our Corps of Cadets in a professional manner.” Therefore, interactions between upper-class and 4/c cadets that are not professional are prohibited.

- § 4.E.2.c.(6): “Cadets who are found guilty of inappropriate relationships may be disenrolled. A Cadet in a Cadet and Enlisted romantic relationship or an upper class Cadet in an upper class and 4/c romantic relationship will normally be disenrolled.”

The COC stated that her recommendation for disenrollment was based on her conclusion that the applicant had violated clear policies and was not ready to be a Coast Guard officer. She stated that he made a deliberate decision to take advantage of a subordinate and he knew he was prohibited from having a relationship with her. “These actions were not confined to a singular occurrence, but reflect a course of misconduct. With his misconduct occurring in close proximity to graduation, [he] did not have time to recover from his misconduct and demonstrate his readiness to be an officer. [He] is solely responsible for the timing of this misconduct and the subsequent disenrollment.”

In response to the applicant’s allegation that his disenrollment was unfair and showed gender bias on the part of the COC because he received much more severe punishment than the

4/c, who had engaged in three inappropriate relationships, and the same punishment that two other cadets received even though he had not lied to the investigator, the COC stated that as COC, she exercised most authority over the 1/c cadets only, and so did not determine the punishment given to the male 2/c or the female 4.c. The Assistant COC had conducted those two masts. She also noted that as a 4/c, the female cadet had been “a victim of inappropriate and unprofessional advances of three upper-class cadets,” and one of the advances had begun during the 4/c cadet’s swab summer, which is the Academy equivalent of boot camp for new cadets before their first academic classes begin. Moreover, the COC noted that in December 2017, she had adjudicated the case of a female 1/c who, like the applicant, had engaged in an inappropriate relationship with a 4/c in the barracks and while on liberty. The mast was held less than two weeks before the female 1/c was to graduate; the COC recommended her disenrollment; the female 1/c was disenrolled; and her appeal was denied. In addition, the COC noted, the punishment awarded to the male 4/c involved in that incident by the Assistant COC was similar to the punishment he imposed on the female 4/c in this case.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 26, 2018, the applicant submitted his response to the advisory opinion. He argued that the COC’s declaration shows that she is defensive, has “made herself the focal point,” and is only concerned with clearing her name and is not concerned with the applicant’s remorse and attempts to prove that he has learned from his past mistakes. He alleged that she refused to consider his supporting statements and “is only concerned with destroying and burying the promising future of a talented, intelligent, and committed you Cadet and service member who made a mistake for which he takes full responsibility.”

The applicant stated that “[a]lthough it might be true that [he] did not have time to recover from his misconduct before graduation, he has proven to others that his prior misconduct was an anomaly and that he is in fact ready to be a commissioned officer for the Coast Guard.” He argued that his readiness is shown in the affidavit of his current OIC, who has been his supervisor for the past year, and by the fact that he has performed so well that he advanced to BM2 on August 1, 2018. He argued that the affidavits he submitted show that his “readiness to be an officer has never been in question, neither before nor after his misconduct, to any except [the COC].”

The applicant argued that contrary to the COC’s claim that his statements to the BCMR tried to downplay the gravity of his misconduct and shift the blame to the 4/c, he has repeatedly stated that he takes full responsibility and holds himself accountable. He alleged that he has never tried to downplay the significance of his misconduct or to deny personal accountability.

The applicant also claimed that the COC’s characterization of his conduct is inconsistent with the findings of the investigation, but he did not submit a copy of the investigation. He alleged that she twisted the facts to negatively impact his BCMR application and that her statement shows that “she had a pre-conceived notion that the male cadet is to blame while the female cadet is always the victim.” He quoted two paragraphs of the investigation, which state that when the 4/c received a new monitor, the applicant offered via text message to help install it, went to her room late that evening, and was alone with her in the room because her roommate was gone for the weekend. “Door closed, he installed the monitor” for the 4/c and then asked her what she was

doing that evening. She told him she was going to watch a movie, and the applicant “then offered to load his Netflix account onto her computer. After loading the account onto her computer, he stated that he was going to find a movie for her to watch. However, while searching, he found a movie that he stated that he wanted to watch and [the 4/c] allowed him to stay in the room to watch together.”

The applicant argued that the excerpt of the investigation he quoted does not show an abuse of power or an attempt to leverage his seniority to have a sexual relationship with the 4/c. He argued that the excerpt proves that the COC mischaracterized the events. He argued that the 4/c cadet’s statement that the applicant never used his rank to influence her also shows that the COC mischaracterized his conduct as an abuse of power, which is unsupported by the facts. He stated that while the COC mischaracterized him as the initiator and pursuer, the investigation never used those terms. He argued that the fact that the 4/c stated in a text that she did not know how to install her new monitor should be viewed as an invitation, and the 4/c knew her roommate was away when she accepted his offer of help. The applicant stated that he is not shifting the blame onto the 4/c, but her actions “could easily be looked at, through an unbiased lens, as a means for [the 4/c] to get closer” to him. The applicant claimed that instead, the COC characterized him “as a predator, practically describing him as a rapist.”

The applicant stated that while the investigation reported that the 4/c felt “conflicted over what was happening” with the applicant, it did not say what she was conflicted about and so this phrase is not evidence that he was the initiator. He claimed that one witness for the investigation claimed that the 4/c had boasted about her sexual relationship with the applicant, which “is hardly an indication that she was conflicted” or that he was the pursuer or initiator. Her repeated transgressions with upper-class cadets, he argued, “do not show that she was exceptionally vulnerable or a victim, but rather demonstrate that she knowingly, deliberately, and repeatedly participated in such sexual misconduct.” He stated that he is not shifting blame but pointing out that it was a mutual, consensual relationship and that he did not take advantage of a “vulnerable” cadet.

The applicant concluded that the COC’s statement proves her bias against him and that he has proven by a preponderance of the evidence that he deserves to receive his degree and be commissioned as an officer. He stated that although the Coast Guard was legally allowed to disenroll him, denying relief would be unjust not only to him but to the Coast Guard.

SUMMARY OF APPLICABLE POLICY

Coast Guard Regulations, COMDTINST M5000.3B

Article 3-1-5 of Coast Guard Regulations states the following about the Superintendent of the Academy:

A. The Superintendent of the Coast Guard Academy shall be assigned by the Commandant from the list of officers whose assignment to duty is not restricted by law. The Superintendent shall be responsible for the education and training of cadets; shall promulgate regulations for the Coast Guard Academy, with those regulations pertaining to the discipline and course of instruction of cadets being subject to the approval of the Commandant.

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C. The Superintendent of the Coast Guard Academy is authorized to confer the degree of Bachelor of

Science on all cadets who satisfactorily complete the entire course of instruction prescribed in the regulations for the Coast Guard Academy.

Officer Accessions, Evaluations, and Promotions, COMDTINST M1000.3A

Article 1.E.1.a.(1) of COMDTINST M1000.3A states the Superintendent of the Academy is authorized to tender appointments to cadet candidates. Article 1.E.4.h. states the following about terminating a cadet's appointment:

h. The Superintendent, Coast Guard Academy has the authority to terminate a cadet's appointment on the recommendation of an Executive Board, the Dean of Academics, or the Commandant of Cadets. The decision by the Superintendent, Coast Guard Academy to dismiss a cadet may be appealed to Commandant (CG-1). The Superintendent, Coast Guard Academy shall prescribe the appeal procedures.

Regulations for the Corps of Cadets

The Regulations for the Corps of Cadets (RCC), SUPTINST M5215.2M contains the policies that govern cadets at the Coast Guard Academy. RCC § 2.D.1. includes the following policies about terminating a cadet appointment:

a. The Superintendent has the authority to terminate the appointment of a Cadet and normally does so upon a recommendation from an Executive Board, the Dean of Academics, the Commandant of Cadets, Chief Medical Officer, or the Director of Health and Physical Education.

b. The Superintendent may effect a separation and characterize a discharge as either Honorable or General as circumstances dictate and in accordance with the Military Separations, COMDTINST M1000.4 (series). The actual separation code that will be listed on the Certificate of Release for Discharge from Active Duty, Form DD-214 must be included in the disenrollment letter from the Superintendent to the Cadet.

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d. Cadets will normally be afforded a hearing before the Superintendent makes a decision to terminate a Cadet's appointment. The hearing may be achieved by a personal appearance before the Superintendent, an Executive Board, a Suitability for Service Hearing, a Commandant of Cadets Class I Hearing or a Cadet Honor Board. The hearing is not required before the Superintendent takes action to disenroll a Cadet whenever the Cadet fails to maintain published minimum standards (e.g. academic standards, physical fitness score, medical standards, excessive demerits, body weight, marriage, same-sex domestic partnership, pregnancy, etc.). In these cases, the Superintendent will examine the record and effect the disenrollment by letter if, in the Superintendent's opinion, the Cadet does not meet the retention standards of the Academy.

RCC § 2.D.2. states that a member may be recommended for disenrollment due to, *inter alia*, unsuitability for service. RCC § 2.D.4.a. lists the actions that the Superintendent may take when a cadet is recommended for disenrollment due to unsuitability, including disenrolling the cadet, placing the cadet on probation, and remanding the case to the COC for punishment. RCC § 2.D.4.b. states that a cadet may be disenrolled due to unsuitability based on misconduct: "Cadets involved in one or more specific instance(s) of misconduct serious enough to warrant disenrollment or those who have exceeded the maximum permissible number of demerits for a conduct year will be examined for disenrollment."

RCC § 2.D.6. states that a cadet may appeal the decision of Superintendent to disenroll him within five working days of receiving the notification. The cadet may include letters of recommendation from faculty, staff, and coaches with his appeal. Based on the appeal, the Superintendent may modify his decision or forward the appeal to Commandant (CG-1) for final action, who may retain or disenroll the cadet.

Under RCC § 2.F.2., disenrolled cadets must complete their military service obligations or their tuition may be recouped.

RCC § 3.B.1.b.(1) lists the requirements for a degree and graduation, and the list includes subparagraph (h): “Meet all military performance standards and demonstrate all aspects of personal and professional development.” RCC § 3.B.1.b.(2) states that the “Superintendent awards the degree of Bachelor of Science to those Cadets in good standing and who have met these requirements.” Regarding the military performance standards, § 3.C.1.c. states, “Cadets must be familiar with and obey both the letter and the spirit of these Regulations.”

RCC § 4.A.9.a. states, “All Cadets must have the right to remain silent with respect to alleged offenses involving themselves.”

RCC § 4.E.2. provides the following regarding “Senior-Subordinate Relationships” among cadets:

a. General.

(1) The Commandant of Cadets must develop and maintain an entry level training program to be administered to the new 4/c during the summer training program. This training must promote individual awareness of appropriate and inappropriate personal relationships.



b. Definition.

(1) An improper senior-subordinate relationship is defined as: An unduly familiar association or dealing between seniors and subordinates, which prejudices good order and discipline, either by compromising regard and respect for authority, or by impairing the ability of the senior member to exercise fair and impartial judgment.



c. Policy.

(1) All Cadets. Senior-subordinate relationships among Cadets must be conducted in a professional manner so as to foster mutual respect and to maintain proper professional relationships. A distinct separation among all four classes must be maintained. Association between Cadets and enlisted must be conducted in a like manner, bearing in mind that Cadets are in training for positions as commissioned officers. Cadets must not engage in an overly familiar personal relationship with other Cadets, Coast Guard Academy Scholars, members of the military, or members of the faculty or staff which impacts the good order and discipline of the Corps of Cadets. Any concern must be immediately addressed to the Company Officer or Company Chief.



(2) The four class system at the Academy serves as a very important training environment, and interclass distinctions must therefore be maintained at all times in a professional manner. It is the responsibility of the upper class Cadet to control the circumstances in both social and professional relationships. This does not, however, relieve underclass Cadets of their responsibility to conduct themselves in an appropriate manner. The goals of the training program are to learn how to effectively develop and maintain professional working relationships with seniors, peers, and juniors and between officers and enlisted personnel. Fraternalization and/or inappropriate relationships are insidious and dysfunctional problems which seriously disrupt good order and discipline in a military organization. It is essential for all Cadets to learn how to set the tone and professionally manage this

process in a variety of work-related and social settings prior to earning their commission. Personal relationships will be carried out in the following manner at the Academy:

(a) Off-base social relationships are permitted between members of adjacent classes except for the 4/c. These relationships, however, must conform with Coast Guard policy.

(3) 4/c Cadet. Associations of any kind not required in the course of duty and not maintained strictly on a professional basis are prohibited between members of the 4/c and Cadets of the upper three classes.

(a) The policy is in no way intended to prohibit or inhibit training, intercollegiate athletics, counseling, tutoring or other advisory functions expected of seniors in their association with subordinates.

(b) To lessen the many outside influences and corresponding demands upon 4/c Cadets and to facilitate the implementation of this policy, Cadets of the 4/c may only participate in those supervised Cadet activities (clubs, groups, etc.) authorized by the Commandant of Cadets which are primarily service, religious or educationally oriented, as opposed to socially oriented.

(4) Romantic relationships as defined in the Discipline and Conduct Manual COMDTINST M1600.2 (series):[²]

(a) Romantic relationships are permitted between members of adjacent classes. However, 4/c Cadets are only permitted to have romantic relationships with their classmates. A romantic relationship between a 4/c and upperclass Cadet is strictly prohibited.

• • •

(6) Cadets who are found guilty of inappropriate relationships may be disenrolled. A Cadet in a Cadet and Enlisted romantic relationship or an upper class Cadet in an upper class and 4/c romantic relationship will normally be disenrolled. [Emphasis added.]

(7) Unless in a common area or sporting event, 4/c Cadets should come to attention when being addressed by any upper-class Cadet, officer, or enlisted member. When an upper-class Cadet, officer, or senior enlisted member (chief and above) enters a room (non-common area), 4/c Cadets will call "Attention on deck." (and come to attention). Out of respect for civilians, 4/c Cadets should stand when being addressed by a civilian.

(8) 4/c Cadets should knock and ask permission to come aboard (even if a 4/c Cadet thinks no one is in the room) whenever s/he wishes to enter an upper-class Cadet's room or the office of a senior enlisted member or officer.

(9) 3/c Cadets are role models and are there to help 4/c Cadets. 3/c Cadets and 4/c Cadets are not friends; therefore, 4/c Cadets should address 3/c Cadets by Mr. or Ms. and their last names.

(10) 2/c Cadets and higher may grant full carry-on in rooms, but 4/c Cadets must wait until given the instruction to carry-on before doing so. Furthermore, the door must remain open. If 4/c Cadets wish to work with a 3/c Cadet for help or other purposes, both Cadets must move to a common area (i.e. dayroom, breakout room) or receive permission from the company OOD for the 4/c Cadet to have full carry-on in the 3/c Cadet's room.

(11) In all matters, 4/c Cadets must remember to use the chain of command.

(12) If 4/c Cadets choose to date/start a romantic relationship with another Coast Guard Academy Cadet, both parties must be 4/c Cadets.

RCC § 4.F.3.a. states that a cadet must follow all lawful orders from an officer or senior cadet "quickly and without question."

² Article 2.A.2.d.3.(b) of COMDTINST M1600.2 defines "romantic relationship" and a "sexual or amorous relationship."

RCC § 6.D.6. concerns the organization and structure of the Corps of Cadets:

The Corps will generally be structured as follows: Structure is subordinate to function. Perennial fluctuations in staffing preclude establishing an inflexible structure below the department level. Company Officers will develop Fall and Spring Cadet Organizations for Commandant of Cadets approval.

- a. Regiment. Eight Companies will form the Regiment.
- b. Company. Three Departments will form a Company.
- c. Department. Several Divisions will be organized into a Department. The number of Divisions is a function of available people and the purpose of the Department.
- d. Division. Divisions will normally be supervised by one 1/c Cadet and contain a number of underclass appropriate to supporting the work assigned to the Division.

RCC § 6.D.9.h. states that when assigned as a Division Officer, a 1/c is responsible for the following:

- (2) Lead the Division. Maintain the good order, discipline, and welfare of the Division.
- (3) Ensure compliance by the Division to the Regulations for the Corps of Cadets and policies established by the Superintendent and Commandant of Cadets.
- (4) Conduct material and personnel inspections of the division in accordance with directives prescribed by the Superintendent.
- (5) Coordinate execution of functions assigned to the Division.
- (6) Oversee continued indoctrination of underclass Cadets into the Cadet Corps and Coast Guard.

RCC § 6.E.3. states that the Foxtrot Company is responsible for regimental operations, including organizing watches and military evaluations and feedback, and for organizing conduct and disciplinary matters, including mast proceedings.

RCC § 8.D.7. states that leadership development at the Academy involves training cadets in “the role of a 1/c leader, 2/c cadre, 3/c role model, [and] 4/c follower.”

RCC § 12 concerns the duties of and rules enforced by the Foxtrot Company. RCC § 12.E.1. states the following regarding the duties of cadets.

- a. Since Cadets are training to become commissioned officers, the duty of being a Cadet encompasses a broad range of tasks. Cadets will be required to follow orders, exercise authority, and practice using leadership, discipline, counseling, and interpersonal skills in carrying out their duties.
- b. Cadets will familiarize themselves with the Regulations for the Corps of Cadets and the Regimental Commander’s Supplement to the Cadet Regulations, and are required to both follow and enforce these regulations.
- c. 1/c, 2/c, and 3/c Cadets are authorized to place any other Cadet on report (whether senior, same class, or junior) for Class II and III infractions of the regulations. Third and 4/c Cadets should advise Second or 1/c Cadets of any infractions of the regulations which they observe.
- d. All Cadets have a military duty to report Class I Offenses they observe or have knowledge of. Failure to do so could result in disciplinary action.

RCC § 12.F.7 states the following regarding “bunks/racks”:

- a. Cadets will sleep in or lie on only that rack to which they are assigned.
- b. Cadets may sit on another Cadet’s rack.
- c. Cadets will not lie on racks any time that their door is required to be open.

RCC § 12.F.10. includes the following rules about the use of electronic media by 4/c cadets:

- e. 4/c Cadets must ask command staff or company OODs for permission to watch television.
- f. 4/c Cadets must not watch on any device videos, movies, shows, and sports programs downloaded or streamed from the internet.
- g. If a 4/c Cadet is sent a video clip by an upper-class Cadet or superior (enlisted or commissioned officer, Academy instructor), that video may be watched within limits: if the video is for entertainment, that video may only be watched once; if for academic or professional development purposes, it may be watched several times within a reasonable period of being sent the video. With approval from the company guidon or MAAs, 4/c Cadets may watch videos sent by civilian friends and family.
- h. 4/c Cadets must not store and watch videos, movies, and TV show files on their personal laptops, external storage devices, and all other electronic devices. i. j. 4/c Cadets are prohibited from playing games (software or via the internet) on computers and personal electronic devices while onboard Academy grounds.

RCC § 12.F.15. includes the following “Open/Closed Door Policy”:

- a. An open door is defined as a door being open at least 90 degrees. ...
- b. Cadets may not be behind a closed door in Chase Hall at any time except when:
 - (1) The Cadets are roommates, or
 - (2) There are three (3) or more Cadets in the room.
 - (3) Cadets, other than roommates, may not be behind closed doors from the hours of 0200 until reveille.
- c. Cadets of different classes may not be behind a closed door in Chase Hall at any time unless the following criteria are met:
 - (1) The Cadets are members of adjacent classes (except 4/c under fraternization policy), and
 - (2) A closed door is necessary for official business, and
 - (3) The Company Commander or OOD has authorized a special occasion.

RCC § 12.I.1.b. states that when informed that a cadet has committed a Class I offense, the COC may dismiss the charge, hold mast, refer the case to an Executive Board, recommend disenrollment, or remand the case to the Assistant COC for punishment.

RCC § 12.K. lists the Class I offenses for cadets. The list includes 1231: “Sexual Misconduct”; and 1237: “Relationship: inappropriate or improper, involving a serious breach of discipline.”

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 filed within three years of the applicant's discovery of the alleged error or injustice.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.³

3. The applicant alleged that the Coast Guard's refusal to grant him a bachelor's degree and officer's commission in May 2017 constitutes an injustice to both him and the Coast Guard. 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.⁴ 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."⁵

4. The applicant admitted in his response to the Coast Guard's advisory opinion that the Superintendent was legally allowed to disenroll him, and the Board agrees. RCC § 4.E.2.c.(6) states that an upper-class cadet who engages in a romantic relationship with a 4/c "will normally be disenrolled." The record shows that during his final semester at the Academy, the applicant engaged in a "romantic relationship" with a 4/c, as defined in COMDTINST M1600.2, because he engaged in a sexual relationship with her. The record also shows that he was taken to mast and allowed to present evidence; notified of the COC's decision to recommend him for disenrollment; notified of the Superintendent's decision; granted a hearing with the Superintendent; allowed to appeal that decision and submit supporting statements with his appeal; and notified of CG-1's decision denying his appeal. The applicant alleged that the Superintendent relied on the recommendation of the COC and did not consult other faculty and staff before deciding to disenroll him. Assuming *arguendo* that this allegation is true, it would not be erroneous under RCC § 2.D.1.a, which provides that the Superintendent may and "normally does" disenroll a cadet upon the recommendation of the COC *or* of certain other members of staff or an Executive Board. Therefore, the Board finds that the preponderance of the evidence shows that the applicant received the due process required for disenrolling a cadet under COMDTINST M1000.3A and RCC § 2.D. The applicant has not proven by a preponderance of the evidence that his disenrollment constituted an error.

5. The applicant has not proven by a preponderance of the evidence that the COC recommended disenrollment for him, but not the female 4/c, because of any gender bias. The record shows that the applicant and other upper-class male cadets who had engaged in a romantic relationship with the female 4/c were recommended for disenrollment in accordance with the

³ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁴ 33 C.F.R. § 52.24 (placing the burdens of production and persuasion on the applicant).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

policy in RCC § 4.E.2.c.(6), which states that an upper-class cadet who engages in a romantic relationship with a 4/c “will normally be disenrolled.” That policy does not say that a 4/c involved in such a romantic relationship is normally disenrolled. Nor has the applicant shown that upper-class female cadets engaged in romantic relationships with 4/c cadets have been treated differently. In fact, the COC noted in her declaration that she also recommended disenrollment for a female 1/c who had engaged in a romantic relationship with a male 4/c in 2017. The preponderance of the evidence shows therefore that in accordance with policy, upper-class cadets involved in romantic relationships with 4/c cadets are, like the applicant, normally held accountable for these violations by being disenrolled regardless of the cadets’ gender.

6. As the COC explained in her declaration, the different treatment of upper-class cadets and 4/c cadets in the RCC is based on the cadets’ different ranks and training. A 4/c cadet is new to military life and Academy rules and so may more easily be led or fall into transgression than an upper-class cadet. To prepare for military careers, 4/c cadets are trained to be followers and are subject to numerous special restrictions, while 1/c cadets are familiar with military life and the required separation of ranks/classes, are trained to be leaders, have significant responsibilities and privileges, and exercise significant authority over other cadets, particularly those in their own company or division.⁶ Thus pursuant to RCC § 4.E.2., 1/c cadets are required to maintain professional relationships with 4/c cadets and bear the responsibility for controlling the circumstances of the relationship—for example, by not being alone with a 4/c in her bedroom with the door closed. Therefore, the applicant has not shown that his disenrollment was unjust because the 4/c was not also disenrolled, even though two other upper-class cadets also engaged the 4/c in a romantic relationship.

7. The applicant has not proven by a preponderance of the evidence that the COC’s recommendation for disenrollment was caused or influenced by his gender, instead of by his class and conduct. In enforcing the gender-neutral rule in RCC § 4.E.2.c.(6), the COC is afforded a presumption that she acted “correctly, lawfully, and in good faith.”⁷ The applicant alleged that her characterization of his misconduct as pursuing the 4/c and abusing his authority was inaccurate and shows gender bias, but he submitted only a short excerpt of the report of the investigation into his misconduct that semester. Neither the excerpt nor the 4/c cadet’s statement that he did not use his rank to influence her persuades the Board that the COC’s characterization of his conduct with the 4/c during his final semester is inaccurate or unjust. Even considering just the night that the applicant connected the 4/c cadet’s monitor, he abused his authority and committed numerous violations of Academy rules with the 4/c—rules that he was supposed to remind her about and enforce as a 1/c in her Company.⁸ For example, he engaged her in a social relationship, contrary to RCC § 4.E.2.; he was alone with her in her bedroom with the door closed, contrary to RCC § 12.F.15.b.; he agreed to download Netflix—which as a 1/c he was allowed to have on his laptop—to her laptop to watch a movie with her, contrary to RCC § 12.F.10; and he sat and/or lay down on her rack, contrary to RCC § 12.F.7. Subsequently, he repeated these offenses and, more egregiously, sought sexual intercourse with her, contrary to numerous paragraphs of RCC § 4.E.2. And when she objected to the lack of protection, he left and returned with a condom to persuade her to

⁶ See, e.g., RCC §§ 1.E.3.f.3.; 3.C.3.b.; 4.G.5.; 4.E.2.c.; 5.E.4.; 6.D.9.; 8.D.7.g.; 12.F.10.; 12.F.11.; 12.F.18.g.; 12.F.27.e.; 12.F.35.b.; 12.F.37.b.; 12.F.38.; 12.F.43.b.; and Tables 5-1 through 5-6.

⁷ *Arens*, 969 F.2d at 1037; *Sanders*, 594 F.2d at 813.

⁸ RCC § 6.D.9 h.(6).

have sexual intercourse with him. The language in the applicant's short excerpt from the investigation; the fact that the 4/c thinks the applicant did not abuse his rank; and the fact that two other upper-class cadets also engaged the 4/c in unprofessional, romantic relationships do not persuade the Board that the COC inaccurately or unjustly characterized the applicant's conduct as initiating and pursuing a sexual relationship with the 4/c and abusing his authority.

8. The fact that two other upper-class cadets who engaged in romantic relationships with the 4/c initially lied about it to the investigator, while the applicant did not lie, is not evidence that it was unjust for all three to be disenrolled from the Academy. RCC § 4.E.2.c.(6) states that an upper-class cadet who engages in a romantic relationship with a 4/c "will normally be disenrolled," and there is no express or implicit exception for upper-class cadets who do not lie about the romantic relationship when it is discovered and investigated. Not lying about his misconduct to the investigator is definitely to the applicant's credit, but it did not negate his misconduct with the 4/c cadet or sufficiently mitigate it for the Board to find that the COC and Superintendent abused their discretion and committed an injustice by disenrolling the applicant in accordance with § 4.E.2.c.(6).

9. The applicant argued that his disenrollment was unjust because it was based on a "minor lapse in judgment" that was "not definitive of his character or his legacy as a cadet." He submitted supportive letters from many individuals, including faculty and staff at the Academy and his current OIC, who highly praised his performance, enthusiasm, and integrity. The applicant's lapse in judgment with the 4/c, however, was neither minor nor of short duration. In engaging in a "romantic relationship" with the 4/c, the applicant repeatedly committed gross violations of numerous sections of the RCC, and the COC's declaration shows that his misconduct was not limited to one or two nights: He exchanged numerous personal text messages with the 4/c during the semester; "established an inappropriate relationship with her over an extended period of time," including while on liberty; and "was seen by other cadets flirting with her at military formations." Thus, he also showed disloyalty by endangering the 4/c's future as a cadet and officer, instead of demonstrating leadership and helping to indoctrinate her into the Corps of Cadets as he was supposed to.⁹ Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that his disenrollment from the Coast Guard Academy was unjust.

10. Nor has the applicant shown that he is entitled to either a bachelor's degree from the Academy or an officer's commission, even though he was allowed to complete his academic courses and had completed almost all of the requirements for a degree and graduation listed in RCC § 3.B.1.b.(1). The applicant was disenrolled from the Academy before graduation, and his gross violations of the rules that semester showed that he had not met the military performance standards for graduation by "obey[ing] both the letter and the spirit of these Regulations"¹⁰ and by "demonstrat[ing] all aspects of personal and professional development."¹¹ The Superintendent had the authority not to graduate the applicant and not to recommend him for a commission.¹² The

⁹ RCC § 6.D.9 h.

¹⁰ RCC § 3.C.1.c.

¹¹ RCC § 3.B.1.(1).

¹² 14 U.S.C. § 184; Coast Guard Regulations, Art. 3-1-5.C. (stating that the Superintendent *may* confer a degree upon a graduate who completes the program); RCC § 2.F.1. (stating that the cadets "who will be awarded the Bachelor of Science degree and whose character, general fitness, and physical condition are satisfactory, shall be recommended to the Commandant for a commission as an Ensign in the United States Coast Guard.").

Board finds that the applicant has not proven by a preponderance of the evidence that the Superintendent committed an error or injustice by refusing to award him a diploma and commission even though he was allowed to complete his final classes.

11. The Board concludes that the applicant has not proven by a preponderance of the evidence that his disenrollment from the Academy without a diploma or officer's commission was erroneous or unjust.¹³ The applicant has received extremely valuable education and training free of charge; as an enlisted member there are other avenues by which he might receive a commission;¹⁴ and he may transfer academic credits to another school. Accordingly, the Board finds that the applicant's requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹³ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that for the purposes of the correction boards under 10 U.S.C. § 1552, "injustice" is "treatment by the military authorities that shocks the sense of justice but is not technically illegal.").

¹⁴ COMDTINST M1000.3A, Art. 1.B.5.a.(1) ("Officer Candidate School (OCS) is a major source of newly commissioned Coast Guard officers. The service selects candidates based on a competitive system. Upon satisfactorily completing 17 weeks of training, graduates are appointed as commissioned Coast Guard ensigns or lieutenants (junior grade) under the provisions of Article 1.A.3. of this Manual or commissioned Coast Guard Reserve ensigns under this Article's provisions.").

ORDER

The application of BM2 [REDACTED], USCG, for correction of his military record is denied.

November 15, 2018

