

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-005

██████████ ██████████ ██████████
1/c (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on October 26, 2021, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated December 8, 2022, 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 former first-class cadet (1/c) of the United States Coast Guard Academy (Academy), asked the Board to correct his record by issuing a diploma for a Bachelor of Science in Naval Architecture & Marine Engineering (NA&ME).

The applicant was appointed to the Academy on June 26, 2017, and was a member of the class of 2021. The applicant majored in NA&ME. Between his enrollment in 2017 and the applicant's final semester, he was found to have committed two Honor violations. Following a Class I hearing for the second violation, the Superintendent of the Academy decided on May 24, 2021, that the applicant should be disenrolled.

The applicant, through counsel, argued that because he completed all courses of instruction and met all academic requirements for graduation, denial of a diploma from the Academy constitutes a material error and is manifestly unjust. The applicant acknowledged that he should not be commissioned as an Ensign in the Coast Guard because he breached the Honor Concept that is recognized as fundamental to the military requirement. However, he argued that he met the academic requirements to earn a NA&ME undergraduate degree. The applicant also asserted that there is no statutory bar to a cadet being awarded an academic degree when no commission is granted alongside it. He asserted that Department of Defense Instruction (DODI) 1322.22, Enclosure 3, paragraph 6.f.(2)(d), supports his argument. In its totality, the paragraph states:

(d) First Classman (Declining Appointment). Any first classman completing the course of instruction and declining to accept an appointment as a commission officer may be transferred to the respective Reserve Component in an enlisted status and ordered to active duty for 4 years and incurs a MSO in accordance with sections 4348(b), 6959(b), and 9348(b) of Reference (f) and DoDD 1235.10 (Reference (r)).¹

The applicant also argued that the academic degree and commission as an ensign should be treated separately. He argued that while a commission from a service academy cannot be earned without the degree, the degree can be earned without a commission. The applicant claimed that because he had agreed to serve on active duty in an enlisted capacity in order to recoup his educational costs at the Academy,² had completed the academic course of instruction for a NA&ME degree, and was medically and physically qualified to serve on active duty in the Coast Guard in an enlisted capacity, he should be awarded his degree.

The applicant also argued that because he consistently accepted responsibility throughout the investigation and decision and appeal process, it is “unreasonable, arbitrary, and ... ‘overkill’” to deny him a diploma. The applicant acknowledged that he committed an Honor violation and that he understood the denial of a commission as an officer in the Coast Guard to be a just punishment for the violation. However, the applicant emphasized that he was honest throughout the investigation and that he also confronted two of his peers to convince them to tell the Investigating Officer the truth. The applicant also noted that the CHB (Cadet Honor Board) voted unanimously, 11-0, for the applicant to be retained at the Academy and that the CHB recommended that one of the applicant’s peers, who he convinced to tell the truth, should be disenrolled. However, the applicant claimed, the Academy Administration overruled the CHB and retained the applicant’s fellow cadet. He argued that it was “disheartening and unjust” that at least one other cadet involved in the same incident who lied to the Investigating Officer after also making a false report was allowed to graduate from the Academy, receive a diploma, and be commissioned as an officer. The applicant noted that he acknowledged his mistake and expressed deep regret in his June 4, 2021, appeal and asserted that the CG-1 had denied his appeal without adequate explanation or rationale. He argued that the manner of the denial, which he claimed included administrative mistakes and a lengthy delay in notifying him of the decision, indicated that his appeal was not taken seriously. The applicant also noted that he completed an extensive Honor Remediation Program in the following months.

In support of his application, the applicant attached a copy of his complete transcript for the courses he completed between the fall semester of 2017 and the spring semester of 2021.

The applicant also attached letters from fellow Academy cadets, several of his Academy instructors, his Academy academic advisor, and one of the Coast Guard officers who had supervised his internship at Coast Guard Base Boston. The former Academy cadets described the applicant as a hard worker who deserved to receive his diploma and noted that his course of study was of particular value to the Coast Guard. They also asserted that the actions that resulted in the applicant’s disenrollment were separate from his academic performance and were not a reflection of his time as a student. The applicant’s instructors attested to his creativity, work ethic, and

¹ DODI 1322.22, Enclosure 3, paragraph 6.f.(2)(d).

² The applicant pointed to DODI 1322.22, Enclosure 3, paragraph 6.d., which provides that service on active duty is the primary means of recoupment for educational costs.

competence in NA&ME courses and argued that it was in the best interest of the Coast Guard to grant him his degree. They also asserted that the applicant had learned from his mistakes and emphasized the applicant's role in convincing other cadets to tell the truth. Supervisory Professor M noted that if the applicant was not awarded his diploma from the Academy, he planned to transfer as many credits as possible to a remote learning program at another institution to complete his degree. The applicant's academic advisor, LCDR C, attested to the applicant's determination, work ethic, and commitment to completing such a challenging course of study. LCDR C also argued that the applicant's actions during the investigation demonstrated the strength of his character and adherence to the Core Values and that the applicant had handled the consequences of his actions honorably. Finally, LCDR M, who worked with the applicant during his internship, attested to his respectful and professional nature and technical ability. LCDR M also noted that he was impressed with the applicant's integrity and work ethic and that he looked forward to working alongside the applicant in the Coast Guard officer corps.

SUMMARY OF THE RECORD

The applicant was appointed to the Academy on June 26, 2017, and decided to major in NA&ME.

On September 10, 2017, the applicant received three demerits for failing two weekly Indoctrination (Indoc) Tests, Offense 3850 – Indoc, Failure to know.

The applicant received 30 demerits on October 9, 2017, for arriving late from liberty, Offense Code 2602. The applicant had planned to return from a long weekend approximately 20 minutes prior to the expiration of his liberty. However, the applicant had hit traffic and arrived more than an hour and a half after liberty expired. The applicant communicated well with his chain of command during the incident and was committed to learning from the mistake. He was restricted from October 18, 2017, to November 1, 2017.

Also on October 9, 2017, the applicant received 3 demerits for failing three weekly Indoc Tests. The applicant received 3 more demerits for failing four weekly Indoc Tests on October 22, 2017.

During his first semester at the Academy in October of 2017, the applicant and his lab partner were found to have committed an Honor violation when they collaborated on a chemistry post-lab problem. On October 31, 2017, the applicant received 50 demerits for violating the general chemistry lab collaboration policy. The violation was also referred for a hearing.

The applicant received 15 demerits on November 12, 2017, for Offense 2403 – Judgement: failure to use good judgement. The applicant had failed six weekly Indoc Tests, which was elevated to a Class II offense pursuant to the established punishment system for cadets. The applicant was given restrictions from November 15 to 22, 2017.

On December 5, 2017, a Class I hearing was held for the applicant's violation of the general chemistry lab collaboration policy. The board found that the applicant had committed Offense 1503 – Honor: Cheating. Following the hearing, the applicant was also placed on suitability for

service probation and issued a letter of restriction on December 11, 2017. The letter placing the applicant on suitability for service probation notified him that he if committed another Class I offense, he would likely be disenrolled. The applicant was also placed on the Honor Remediation Program. The applicant was informed of the board's conclusion on the same day.

On January 13, 2018, the applicant received 30 demerits for Offense 2220 – Restriction: violation of constraints imposed. The applicant's restrictions required him to be awake by a certain time each morning and he was found to have violated that restriction. The applicant was again placed on restrictions from January 17 to 31, 2018.

On February 7, 2018, another hearing was held concerning the applicant's suitability for service probation and it was recommended that the applicant be removed from probation.

On July 26, 2018, the applicant received eight demerits for Offense 3207 – Conduct: unmilitary or unseamanlike. The applicant was found to have walked on the Academy campus in his operational dress uniform while holding his cell phone up to his ear and listening to music out loud. When the applicant saw a senior officer walking toward him, he immediately dropped his phone, indicating that he knew he was behaving out of regulation. When asked, the applicant claimed to be unaware that walking in uniform and holding a phone to one's ear was unauthorized. The applicant's record also noted that this was not an isolated incident.

The applicant signed a form CG-3307 on June 21, 2019, that reminded the applicant of the agreement he had entered into with the Coast Guard. One reminder was that if he was subsequently disenrolled from the Academy, he would be subject to recoupment for educational costs.

During his final semester at the Academy, the applicant was again found to have committed an Honor violation following an unauthorized bonfire on January 22, 2021. That evening, the applicant and other cadets met in the woods near the Academy where they made a bonfire, drank beer, and roasted hot dogs. The applicant falsely reported that he had signed in for the night at 2000 when he actually did not return until approximately 2330. The applicant acknowledged that doing so was a direct breach of Academy policy. The applicant also acknowledged that he had met privately with the other cadets involved in the incident four times prior to the official investigation to discuss what had happened.

On February 24, 2021, the Investigating Officer recommended that the case be referred for a Class I hearing and that the applicant be referred to a CHB. On March 22, 2021, the Company Officer concurred with the recommendations of the investigation officer. A CHB convened on March 29, 2021, which was comprised of other Academy cadets. The applicant stated that he testified before the CHB and they cross-examined him. Following the hearing, the CHB recommended that the applicant be found guilty of intentionally making a false report but be retained as a cadet at the Academy.

On April 7, 2021, the Assistant Commandant of Cadets referred the case to a Class I hearing for violation of codes 1507, 1509 – Honor: Conspiracy to Commit an Offense; 1216 – Devotion to Duty: lack of, failure of; 1101 – Absence: Unauthorized from the Academy, ship, or station; and 2234 – Judgement: Failure to use good judgement.

On April 13, 2021, the Assistant Commandant of Cadets (COC), acting as the hearing officer, held a Class I hearing. The applicant was found to have violated offense codes 1101: Absence: Unauthorized from the Academy, ship, or station; 1507: Honor: False report: intentional; 1509: Honor: Conspiracy to Commit an Offense; 1216: Devotion to Duty; lack of, failure of; and 2234: Judgment: Failure to use good; breach of discipline. The board also noted that this was the applicant's second Honor incident, and it was recommended that the applicant be disenrolled from the Academy. The applicant was again placed on suitability for service probation on April 15, 2021.

The recommendation that the applicant be disenrolled was routed to the Superintendent via memorandum on April 21, 2021. The Superintendent met with the applicant on May 7, 2021, to discuss his actions and the outcome of the Class I hearing.

On May 19, 2021, the applicant's class graduated and received their diplomas and commissions as ensigns on active duty. The applicant did not receive a diploma or a commission.

On May 24, 2021, the applicant was notified in person and in writing of the Superintendent's intent to disenroll him from the Academy. In his memorandum, the Superintendent stated that after carefully considering the applicant's entire record, including the cadet record, the cadet misconduct investigation, their May 7, 2021, discussion, and the Commandant of Cadets' recommendation, he had decided to disenroll the applicant from the Academy. The Superintendent also stated that based on the applicant's "failure to demonstrate the requisite judgment, conduct, and character essential to perform as a Service-Ready Ensign," he found the applicant unsuitable for service as an officer. The applicant was advised that he had the right to appeal the determination to COMDT(DCMS-DPR) within five working days of receipt of the memorandum. The Superintendent also determined that the applicant had breached his service obligation agreement. Accordingly, the applicant would be required either to enlist as a Boatswain's Mate 3rd Class in the Coast Guard Reserve on extended active duty for approximately 48 months or to reimburse the Coast Guard for approximately \$221,063.00 in educational costs. The applicant acknowledged receipt of the notification by signing the memorandum.

On June 4, 2021, the applicant signed a memorandum acknowledging his options pertaining to disenrollment and electing to fulfill his service obligation for recoupment of education costs through service in the Coast Guard Reserve on enlisted extended active duty. The applicant's election was positively endorsed by the Superintendent, via memorandum, on the same day.

The applicant also appealed the disenrollment decision on June 4, 2021, via memorandum to COMDT (DCMS-DPR). As an initial matter, he took responsibility for his actions on January 22, 2021. The applicant argued that there were three specific issues that should be considered in his appeal. First, the applicant asserted that the final disenrollment decision made by the Superintendent was made with full understanding of the totality of the circumstances. He claimed that the Superintendent had made several statements during their conversation on May 4, 2021, about how he was not sure he had all of the facts and that he was unsure what was going on in the matter. Second, he emphasized that the CHB had voted unanimously, 11 to 0, in favor of retaining

the applicant at the Academy. The applicant pointed out that the CHB cross-examined him for several hours during the hearing and that the CHB was a “responsible and effective way for the Corps of Cadets to police its own.” Third, he argued that he had much more to contribute as a NA&ME major to the Coast Guard. The applicant argued that he had overloaded on credits for every semester and went to summer school to fit in every available course. He also stated that the NA&ME courses had taught him technical and practical skills that could apply directly in real world situations in the Coast Guard.

The Superintendent recommended that the applicant’s appeal be denied on July 3, 2021. Less than three weeks later, on July 21, 2021,³ COMDT (DCMS-DPR) denied the applicant’s appeal. Rear Admiral N stated that prior to reaching his decision, he had reviewed and gave careful consideration to the Regulations for the Corps of Cadets, SUPTINST M5215.5N, and the Superintendent’s May 24, 2021, memorandum notifying the applicant of his disenrollment.

The applicant’s request to fulfill his service obligation through enlisted service was approved by COMDT (CG-1) on October 21, 2021. He is currently serving on extended active duty as an enlisted member.

VIEWS OF THE COAST GUARD

On May 2, 2022, a Judge Advocate (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

PSC argued that the applicant failed to prove an error or injustice with regard to his disenrollment and the withholding of the diploma and that the Board should deny relief. In response to the applicant’s assertion that his disenrollment from the Academy was erroneous or unjust, PSC argued that the applicant admitted to the misconduct for which he was disenrolled and did not challenge the Superintendent’s authority to disenroll him. PSC noted that the applicant’s record indicated that he had two Class I honor violations during his time at the Academy, and that the applicant was afforded the opportunity to present evidence before the Class I board with the Assistant COC as the hearing officer, to speak with the Superintendent, and allowed to appeal the Superintendent’s decision and submit supporting statements with his appeal.

PSC asserted that the applicant’s argument that it was erroneous and unjust for the Superintendent to disenroll him when the honor board comprised of cadets voted to retain him was flawed because he failed to appreciate that only the first board comprised of his peers voted to retain him after looking at only one charge. Instead, PSC pointed to the Class I board that recommended that the applicant be disenrolled after looking at the totality of the applicant’s misconduct.

PSC also argued that the applicant had failed to show that the Academy violated policy by disenrolling him. PSC asserted that the Regulations for the Corps of Cadets (RCC), SUPTINST M5215.2N, provides the Superintendent with the authority to disenroll a cadet and notes that the

³ The memorandum appears to contain a typographical error. In the top right corner, the memorandum is dated “15 Jul 2021” but the “15” is crossed out and “21” is written beneath it.

Superintendent normally disenrolls a cadet upon recommendation by the COC. As a result, PSC argued that the Superintendent was not bound by the first board's recommendation to retain the applicant and was free to accept the Class I board's recommendation. The PSC also argued that the applicant was provided due process since he received an CHB and a Class I board hearing.

PSC also addressed the applicant's argument that his disenrollment was an injustice because he did not lie to the investigator when other cadets did. In response, PSC stated that the fact that other cadets who engaged in similar misconduct lied to the investigator while the applicant did not was insufficient evidence to prove that the applicant's disenrollment was an injustice. Regardless of the applicant's honesty during the investigation, PSC noted that the applicant was found by a board of his peers to have intentionally lied and provided a false report as part of the underlying misconduct that was part of what initiated the investigation in the first place. Additionally, PSC argued that the applicant's case could not be compared to other cadets' because his tenure at the Academy was likely different from the others, including the fact that the applicant had more the one Class I honor code violation. The PSC pointed to RCC § 4.E.3.c.(1) which simply states that "[v]iolations of the Honor Concept are breaches of our Core Values and may result in disenrollment." PSC argued that the regulation did not include an express or implicit exception for cadets who do not also lie about their honor violation to an investigator. PSC stated that, while the applicant's honesty to the investigator, was to his credit, it did not negate the misconduct under investigation or sufficiently mitigate it to conclude that the Superintendent abused his discretion and committed an error or injustice by disenrolling the applicant.

Finally, PSC argued that the applicant had not shown that he is entitled to a diploma from the Academy even though he completed his academic courses and almost all of the requirements for a degree listed in RCC § 3.B.1.b.(1). PSC noted that the process to disenroll the applicant was initiated before graduation day, and his violations of the rules during his final semester showed that he had not met the military performance standards for graduation by failing to "obey both the letter and spirit of these Regulations"⁴ and had not demonstrated "all aspects of personal and professional development necessary to serve"⁵ as an ensign. PSC argued that the applicant received extremely valuable education and training and that as an enlisted member he has other avenues by which he can receive a Bachelor of Science degree, such as transferring his academic credits to another school. For those reasons, PSC asserted that the applicant did not prove by a preponderance of the evidence that withholding his diploma was erroneous or unjust.

PSC attached correspondence with the Academy's Staff Judge Advocate (SJA) concerning their position on refusing to bifurcate a diploma from a commission as an Ensign. The SJA stated that although a degree can be severed from the commission, "this is only done in medical cases, and it does not work in the reverse because a degree is required for a commission." The SJA appeared to distinguish medical cases from other situations where a cadet does not receive a commission by noting that the Coast Guard generally does not pursue recoupment for cadets separated by reason of a physical disability, illness, injury, or other impairment incurred in the line of duty and "not due to misconduct."

⁴ RCC § 3.C.1.c.

⁵ RCC § 3.B.1.b.(1).(h).

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 13, 2022, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Title 14 U.S.C. § 1928 states, “[t]he Superintendent of the Academy *may*, under such rules and regulations as the Secretary shall prescribe, confer the degree of Bachelor of Science upon all graduates of the Academy... .” [Emphasis added.]

Coast Guard Regulations, COMDTINST M5000.3B

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

- 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.
- ...
- 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 Certification of Release for Discharge from Active Duty, Form DD-214 must be included in the disenrollment letter from the Superintendent to the Cadet.

...

- 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 Commandant of Cadets 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 the 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 the 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.E.3.a.(3) identifies the "Honor Concept" as "Who Lives Here Reveres Honor, Honors Duty. We neither lie, cheat, steal, nor attempt to deceive." The Honor Concept is intended to provide a fundamental basis for Cadet relationships and any person whose conduct offends the concept has offended the entire Corps of Cadets. "It is for this reason that breaches of the 'Honor Concept' are considered to be Class I Offenses and are to be handled in accordance with the procedures outlined in these regulations."

RCC § 4.E.3.c.(1). provides that "[v]iolations of the Honor Concept are breaches of [the Academy's] Core Values and will normally result in disenrollment."

RCC § 4.H.1.b. states that “Class I offenses are the most severe violations of the regulations which may call into question a Cadet’s suitability for commissioned service...and Class I violations could result in a wide range of punishments.”

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

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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.

2. The applicant alleged that the Coast Guard’s refusal to grant him a bachelor’s degree constitutes an error and injustice. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed evaluation in an applicant’s military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.⁶ Absent specific 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.”⁷

3. The applicant argued that the refusal to grant him a bachelor’s degree from the Academy was unjust because he successfully completed all of the academic requirements for the degree. However, he did not dispute that the Superintendent was legally allowed to disenroll him. RCC § 4.E.3.c.(1) provides that “[v]iolations of the Honor Concept are breaches of our Core Values and may result in disenrollment.” The applicant’s record shows that he committed two Class I violations by breaching the Honor Concept while attending the Academy, as defined in RCC § 4.E.3.a.(3). The record also shows that he was afforded a hearing after each violation and allowed to present evidence; notified of the Assistant COC’s decision to recommend him for disenrollment following his second Class I violation; granted a hearing with the Superintendent; notified of the Superintendent’s decision to disenroll him; allowed to appeal that decision and submit supporting statements with his appeal; and notified of the Commandant’s decision denying his appeal. 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 1000.3A and RCC § 2.D, and that he was disenrolled absent any error.

4. The Board also finds that the applicant has not shown that he is entitled to a bachelor’s degree from the Academy, even though he completed his academic courses and had completed almost all of the requirements for a degree and graduation listed in RCC § 3.B.1.b.(1).

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

He submitted supportive letters from many individuals, including faculty and staff at the Academy, who praised his academic performance and work ethic. However, the applicant's repeated violations of the Honor Concept showed that he had not met the military performance standards for graduation by "obey[ing] both the letter and spirit of these Regulations"⁸ and by "demonstrat[ing] all aspects of personal and professional development."⁹ While the applicant is correct that there is no express statutory bar to awarding a degree when no commission is granted alongside it, the Superintendent had the discretionary authority not to graduate the applicant.¹⁰

The applicant argued that because he completed the full course of instruction, the Academy should have followed DODI 1322.22, Enclosure 3, paragraph 6.f.(2)(d), which he asserted would award him his degree and transfer him to the Coast Guard Reserve. As an initial matter, the Instruction, by its text, applies to organizational entities within the Department of Defense, not including the Coast Guard. Additionally, the citation the applicant included in his application omits a significant part of the Instruction. The Instruction clearly applies to first classman who complete the course of instruction *and* decline to accept an appointment as a commission officer.¹¹ Even if the Instruction were applicable to the Coast Guard and the Academy, it would not apply to the applicant because he did not have the option to decline an appointment as an Ensign. Furthermore, the SJA represented that Academy only bifurcates the conferral of a degree from a commission in extraordinarily rare situations when a cadet is medically unable to serve in the Coast Guard. Accordingly, the 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.

5. The applicant also argued that because he consistently accepted responsibility throughout the investigation and decision and appeal process, unlike some of his peers who were also involved in the January 2021 incident, it is "unreasonable, arbitrary, and ... 'overkill'" to deny him a diploma. The fact that other cadets were dishonest during the investigation while the applicant was admitted to his offense is not sufficient evidence to prove that the applicant's disenrollment was unjust. The applicant was still found, by a board of his peers and the Class I board, to have intentionally lied and provided a false report as part of the underlying misconduct. Additionally, it is unknown whether any of the other cadets involved in this incident had previous honor violations. The applicant admitted throughout the proceedings, and in his application, that this was not his first honor violation as a cadet at the Academy. As stated earlier, RCC § 4.E.3.c.(1) states that "[v]iolations of the Honor Concept are breaches of our Core Values and may result in disenrollment." It is commendable that the applicant was truthful once an investigation into his misconduct was initiated. However, it does not negate or mitigate that misconduct. Therefore, the applicant has not proven by a preponderance of the evidence that the Superintendent acted unreasonably or arbitrarily in deciding to disenroll the applicant.

6. The Board therefore finds that the applicant has not proven by preponderance of the evidence that his disenrollment from the Academy without a diploma or commission was erroneous or unjust. The applicant received education and training, and he may transfer academic

⁸ RCC § 3.C.1.c.

⁹ RCC § 3.B.1.(1).

¹⁰ 14 U.S.C. § 1928; Coast Guard Regulations, Art. 3-1-5.C. (stating that the Superintendent *may* confer a degree upon a graduate who completes the program).

¹¹ DODI 1322.22, Enclosure 3, paragraph 6.f.(2)(d).

credits to another school to obtain his degree. Accordingly, the Board finds that the applicant's requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former 1/c [REDACTED] [REDACTED] USCGR, for correction of his military record is denied.

December 8, 2022

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