

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2022-069**

  
BM3 (Former)

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**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 December 1, 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 February 1, 2024, 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 Boatswains Mate, Third Class, (BM3/E-4), asked the Board to correct her record by awarding her the Bachelor of Science degree she earned while in the Coast Guard Academy (“Academy”).

Through counsel, the applicant alleged that she was erroneously and unjustly disenrolled from the Academy in the Fall of 2017, just weeks before she was to graduate. According to the applicant, she had satisfied all of the academic and military requirements for graduation and commissioning but she was disenrolled as a result of misconduct that occurred during her last semester. Instead of graduating and being given a commission, the applicant explained, she had to enlist in the regular Coast Guard as a BM3, where she served honorably for three years before she was medically retired. The applicant acknowledged that her request for relief comes more than three years after the alleged error or injustice but asked the Board to consider her request for relief despite its untimeliness.

The applicant stated that her time at the Academy was not easy. She explained that shortly after applying to the Academy in the fall of 2012, her mother passed away. The applicant further explained that shortly after entering the Academy in 2013 as a member of the women’s soccer

team, in Spring 2014, she began experiencing syncope episodes,<sup>1</sup> which resulted in the applicant being referred to a medical board. The applicant alleged that shortly afterward, in October 2014, she was sexually assaulted by another cadet, which she reported via an unrestricted report in November 2014. According to the applicant, in January 2015, she was moved to another company, but in February 2015, she was hospitalized for 8 days to receive mental health treatment for the sexual assault and continued with out-patient care. The applicant stated that in April 2015, the cadet who had sexually assaulted her was taken to Captain's Mast for violating a Military Protective Order put in place after the assault.

The applicant claimed that in April 2015, an informal medical board found that due to her syncope episodes, she was not fit for full duty (FFFD), resulting in her being suspended from the Corps of Cadets, until she was returned to FFFD status in July 2015, at which point she was reincorporated into the Corps of Cadets in August 2015. As a result of her temporary medical suspension from the Corps, the applicant explained, she missed portions of her 2/C summer training, which resulted in her being moved between the 2017 and 2018 graduating classes on three separate occasions as the Academy sought to ensure she completed all required training. After she was reinstated into the Corps, her graduation date was moved from May 2017 to December 2017.

The applicant explained that during the Fall 2016 semester she began a romantic relationship with a third-class (second year) male cadet (3/C). At the time she was a second-class (third-year, 2/C) cadet, instead of a fourth-year first class cadet (1/C), due to her delayed graduation date. The applicant alleged that because the male cadet was a 3/C and she was a 2/C, the relationship was allowed under the Regulations governing the Corp of Cadets. However, the applicant stated, in January 2017, after the romantic relationship had already begun, she entered her final year at the Academy, making her a 1/C, and a romantic relationship between a 1/C and a 3/C is prohibited under Coast Guard Academy regulations. The applicant explained that in the Spring of 2017, the Academy learned she was still in the romantic relationship with the male 3/C, and she was subsequently found guilty of a Class II offense for an improper relationship between a 1/C and a 3/C. However, the Academy considered the fact that the relationship had been appropriate when it began and only became inappropriate based on her delayed graduation date as an extenuating circumstance.

The applicant stated that in August 2017, when she returned to the Academy for her final semester, she had completed 138.8 credit hours, including 40 courses of 3.0 credit hours or greater and had a cumulative Grade Point Average (GPA) of 3.63. Furthermore, she explained, she had completed all of the required summer training, which she had previously missed due to her syncope. The applicant argued that pursuant to Article 3.B.1.B. of the Regulations for the Corp of Cadets, SUPTINST M5215.5M, the following are required to obtain a Bachelor of Science degree and commission:

- (a) Pass or validate every course in the core curriculum.
- (b) Pass at least 37 courses of 3.00 credits or greater.
- (c) Complete the academic requirements for one of the majors as specified in the official Catalog of Courses.

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<sup>1</sup> The National Library of Medicine defines syncope episodes as a brief loss of consciousness resulting in fainting, sometimes from a standing position.

- (d) Attain an average of at least a 2.00 in all required upper division courses in the major, as specified in the official Catalog of Courses. This average includes Fs earned and the grades when courses are retaken. Under normal circumstances, these courses consist of those taken to fulfill major requirements after formal admission to the major.
- (e) Attain a Cumulative Grade Point Average of at least a 2.00.
- (f) Be a residence at the Academy for at least four academic years.
- (g) Successfully complete all required portions of the physical education program including meeting minimum swimming and physical fitness standards.
- (h) Meet all military performance standards and demonstrate all aspects of personal and professional development, or a commission will not be offered due to a medical disqualification.
- (i) International Cadets must meet the same standards of personal and professional development as all other graduates although they are not entitled to appointment in the U.S. Coast Guard.

The applicant claimed that when she returned to the Academy for the Fall 2017 semester, she was a 1/C cadet, but all of the cadets she had come into the Academy with had graduated and received their commissions in May 2017. She stated that at the time, she had used up all four years of NCAA eligibility and could no longer play for the team, so she began assisting the coaches in running warm-ups and drills for practices and games. According to the applicant, after practices and games she would return to the locker room with the team, go to dinner, and back to the study hall to complete homework with the players. The applicant stated that when the team traveled, she sat with the players on the bus and shared hotels with them on overnight stays.

The applicant explained that in Fall 2017, she learned that her father had been diagnosed with terminal brain cancer. She also met a new, 4/C cadet who was a rookie player on the soccer team. The 4/C was sympathetic and offered the applicant support during the difficult time and in return, the applicant assisted the 4/C with her Academy indoctrination and coursework. In addition, the 4/C would keep the applicant company as she dealt with the news of her father's condition. The applicant admitted that she and the 4/C spent time together in the applicant's room, watching movies or doing homework. The applicant claimed that in October 2017, she contacted her soccer coach for advice on how to handle the friendship with the 4/C, because the applicant believed the 4/C should be spending time with her own classmates. The applicant further claimed that in November 2017, she approached her Company Chief for advice on how to move her friendship with the 4/C to a more professional level. The applicant explained that also in November 2017, a few 2/C and 1/C cadets became aware that the applicant and the 4/C were spending time together in what appeared to be an inappropriate relationship between a 1/C and 4/C.

The applicant stated that as a result of the concerns, her relationship with the 4/C was reported to Academy Leadership and a Cadet Honor Board was convened on November 29, 2017, and she was taken to Captain's Mast in December. According to the applicant, on December 6, 2017, she was notified that she was being disenrolled from the Academy for failing to demonstrate the requisite judgment, conduct, and character essential to perform as a Service-Ready Ensign. However, the applicant stated that she completed her Fall 2017 courses and took her final exams, earning a 3.96 GPA. The applicant stated that at the end of December 2017, she appealed her disenrollment decision, but her December 2017 graduation was postponed indefinitely while her

appeal was being considered. She claimed that it was not until she returned to the Academy in January 2018, that she learned that her appeal had been denied and that she was officially being disenrolled.

The applicant stated that she understands that she bears the burden of proving, by a preponderance of the evidence, that the decision to deny her a degree was unjust, but she asked the Board to consider the exceptional circumstances of her situation in considering the evidence and her request. She explained that her time in the Academy challenged her in ways that few cadets are challenged and that at the time of her relationship, she was facing the loss of a parent for the second time in just five years. In addition, she had suffered a sexual assault, and the psychological effects that followed and her postponed graduation status prevented her from fully integrating into a class of her own. However, the applicant stated that she had a unique and preexisting relationship with the 4/C through their time together on the soccer team and that she found support through the 4/C in a very difficult time. The applicant acknowledged that she had other avenues of support, including Academy Leadership and a Chaplain, and that her personal friendship with the 4/C was inappropriate. She understands that she sought support from an improper source and that she had the responsibility as the 1/C cadet to ensure that any interactions between 4/C cadets remained professional. However, the applicant argued that given the circumstances of the misconduct, the denial of her degree was unjust.

The applicant further argued that Article 4.E.2.c.6. of SUPTINST M5215.5M states that cadets found guilty of inappropriate relationships *may* be disenrolled while upper class cadets in romantic relationships with 4/C cadets *will normally* be disenrolled. (Emphasis added.) The applicant claimed that her relationship with the 4/C was not a romantic relationship, but was a friendship that was inappropriate given the gap in class between the two friends. The applicant argued that her case is distinguishable from this Board's decision in Docket No. 2018-072, where a 1/C had a sexual relationship with a 4/C shortly before graduation. The applicant claimed that she had not flouted the rules by engaging in a casual sexual relationship with a 4/C; instead, she had developed a friendship with a 4/C who offered her support as she faced her father's medical condition.

Finally, the applicant stated that at the time of the inappropriate relationship, she had completed all of her academic and military requirements for graduation. She explained that she had served on active duty as long as she was medically able and so her debt to the Coast Guard has been repaid. She now asks only that she receive the Bachelor of Science degree that she rightfully earned.

### SUMMARY OF THE RECORD

The applicant entered the Coast Guard Academy on July 1, 2013.

On April 26, 2017, the applicant received a Class II offense for an inappropriate relationship with a subordinate cadet, in violation of the Regulations of the Corps of Cadets, SUPTINST M5215.2M. The applicant received 30 demerits and 14 days of administrative restriction. She was also ordered to complete 4 additional work hours and 2 marching hours.

On November 13, 2017, the applicant received her second infraction for an inappropriate relationship with a subordinate cadet. The detail of offenses stated:

MBR is involved in an inappropriate relationship with a 4/c both on base and on liberty. The following instances outline the extent of the relationship:

- Was found behind a closed door with 4/c [redacted] on numerous occasions;
- Was found lying on the same rack with same 4/c; and
- Was counseled about the relationship with 4/c, but was found the following Friday in an off-base social outing with the same 4/c.

*List of Offense(s):*

1214: Fraternalizing involving serious breach of discipline

1233: Judgment: failure to use good judgement

1237: Relationship: inappropriate or Improper, Involving a serious breach of discipline

On December 5, 2017, CAPT R, issued a memorandum to Academy leadership, wherein he recommended the applicant be disenrolled from the Academy for committing misconduct that highlights personal character flaws, hampering her ability to adhere to the Coast Guard's Core Values.

On December 6, 2017, the Superintendent of the Academy, RADM R, issued a memorandum wherein he notified the applicant that she was being disenrolled from the Academy and how she could fulfill her obligated service requirement. RADM R stated that he had based his decision on the applicant's failure to demonstrate the requisite judgment, conduct, and character essential to a Service-Ready Ensign, and therefore found her unsuitable for service. The applicant was informed that she had the right to appeal her disenrollment to RAMD R's superior. RADM R also found that the applicant had breached her service obligation agreement and informed her that she would have to either serve as a BM3 on Reserve Active Duty for fifty-four months or reimburse the Coast Guard for the cost of her education, which was \$279, 299.00.

On December 19, 2017, the applicant appealed her disenrollment and submitted a 4-page personal statement. The applicant discussed the unique circumstances that led to her second infraction, such as her mother's passing, sexual assault, medical issues, and father's terminal diagnosis. The applicant asked for those circumstances to be considered and allow her to continue with her career as an officer in the Coast Guard.

On February 14, 2018, RADM K issued a memorandum wherein he informed the applicant that her appeal had been denied.

Following her disenrollment, the applicant opted to serve on active duty as a Reserve enlisted member, instead of reimbursing the Government for her education at the Academy. However, she was medically retired from the Coast Guard on May 31, 2021.

### **VIEWS OF THE COAST GUARD**

On March 9, 2023, a Judge Advocate (JAG) for the Coast Guard 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 Coast Guard's Personnel Service Center (PSC).

PSC argued that the applicant did not meet the requirements of the Coast Guard Academy in order to have her Bachelor of Science awarded. According to PSC, the applicant did not "complete all of the academic and military requirements for graduating and commissioning" and therefore is not entitled to a United States Coast Guard Academy Degree. PSC argued that as demonstrated by her multiple cadet infractions, the applicant did not demonstrate the required aspects of "personal and professional development." On the contrary, PSC claimed, the applicant's repeated inappropriate relationships with her subordinates demonstrated a habitual disregard for the rules and regression in personal and professional development. Because the applicant was disenrolled for misconduct, PSC argued that she was *per se* not a cadet in good standing. Therefore, PSC stated, in accordance with Coast Guard Academy policy, the applicant was not conferred a United States Coast Guard Academy degree.

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

On May 17, 2023, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. The Chair received the applicant's response on August 31, 2023.

Through counsel, the applicant restated the difficulties she encountered after arriving at the Academy such as her mother's death, her sexual assault, and then notice of her father's terminal illness. Regarding her sexual assault, the applicant explained that after reporting her assault during her 3/C year, the Academy did not punish her attacker, but instead moved her out of her company and gave both her and her attacker an MPO. The applicant alleged that she later learned that her own doctor suggested that she was making up the assault to get attention. She further alleged that as she moved through her remaining time at the Academy, she learned that if she attempted to receive mental health treatment, her attempts would be used against her, and so she did not go through the appropriate channels to receive support.

The applicant stated that during her last semester she was truly unmoored. Her father had terminal brain cancer, her classmates, academic advisor, and company officer were all gone, and therefore her original sources of support were absent when she needed them the most. The applicant claimed that she was depressed, feeling suicidal, and abusing alcohol. It was during this time that she met a 4/C through her soccer team, an individual the applicant describes as being the reason she is alive today. The applicant contended that in this 4/C she found the understanding and help she did not find in her classmates and leadership. However, the applicant stated, her relationship with the 4/C was not romantic but was supportive and lifesaving.

The applicant claimed that the Academy had knowledge of her mental health struggles and her classmates were aware of her alcohol abuse, but instead of the Academy using the resources they had to provide the applicant with the support she needed, she was disenrolled and denied her diploma all because she had broken a rule. The applicant alleged that the facts and circumstances of the incident did not appear to have been considered. The applicant claimed that the Coast Guard's advisory opinion dismisses the relationship between the applicant and the 4/C as an

“unauthorized romantic relationship,” just as the Academy officials did, despite ample evidence that the relationship was not romantic, but was a supportive relationship between friends.

The applicant alleged that this same approach by Academy leadership is exactly why she sought out her own support system. The applicant stated that she regrets that she had to find it in the 4/C, but the fact that she could not find the same kind of support amongst her classmates or Academy leadership is much worse. The applicant contended that the issues she struggled with while at the Academy were the same issues that the military, including the Coast Guard Academy, has struggled to address: sexual assault, mental health, suicidal ideation, and alcohol abuse. The applicant claimed that the situation she found herself in in the Fall of 2017 was as much the fault of the Academy environment as it was her judgment.

The applicant acknowledged that she was not in the mental state to be commissioned an officer in the Coast Guard, which is why she is not requesting that this Board grant her a commission. She reemphasized that she completed all of the requirements to obtain a degree and asked this Board to award her that degree not because the rule that denied her a degree was unjust, but because it was unjust to deny her a diploma for breaking a rule under the conditions she faced.

### **APPLICABLE LAW AND 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.

...

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.

...

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. Fraternization 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.

...

(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.]

### 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 over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in her Coast Guard military record. The Board finds that the applicant has exhausted her administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. An application must be filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b). However, even though the applicant filed her application more than three years after her disenrollment from the Academy, it is considered timely because it was filed within three years of her separation from active duty.<sup>2</sup>

3. The applicant alleged that it was erroneous and unjust for the Coast Guard to deny her the Bachelor of Science degree that she had rightfully earned. According to the applicant, she had successfully completed all of the Academy requirements and was therefore entitled to receive the degree she worked so hard for. 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 the military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.<sup>3</sup> Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."<sup>4</sup>

4. Article 4.E.2.b.1. of the Regulations for the Corps of Cadets (RCC) defines an improper senior-subordinate relationship 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." Article 4.E.2.c.2. of the RCC states, "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 ...*** Fraternalization and/or inappropriate relationships are insidious and dysfunctional problems which

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<sup>2</sup> *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

<sup>3</sup> 33 C.F.R. § 52.24(b).

<sup>4</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

seriously disrupt good order and discipline in a military organization...” Article 4.E.2.c.2. of the RCC states, “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.” Finally, Article 4.E.2.c.6. of the RCC states, “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 record shows that during the applicant’s 2016 fall semester she began a relationship with a 3/C cadet, but because of the change in the applicant’s graduation date she was a 2/C at the time, therefore the relationship was acceptable under regulations governing the Corps of Cadets. However, in January 2017, the applicant entered her final year at the Academy, making her a 1/C and her relationship with the 3/C cadet was no longer acceptable under the RCC. When the Academy learned that the applicant was still in a romantic relationship with the 3/C, she was found guilty of a Class II offense for an improper relationship. The record further shows that upon returning to the Academy for her final semester in Fall 2017, the applicant again entered into an improper relationship, this time with a 4/C cadet who was on the Academy’s soccer team. At one point, the applicant was reportedly found in bed with the 4/C. After the applicant’s relationship with the 4/C was reported to Academy leadership, a Cadet Honor Board was convened on November 29, 2017, and the applicant was taken to Captain’s Mast on December 4, 2017. On December 6, 2017, the applicant was informed that she would be disenrolled from the Academy. She unsuccessfully appealed her decision to the Academy Superintendent.

The applicant has admitted to these relationships, and though she argued that her relationship with the 4/C was not sexual, the RCC does not require that a relationship be sexual in nature to be considered inappropriate, only that it be an “unduly familiar” relationship between senior and subordinate that could impair the ability of the senior member to exercise fair and impartial judgment over the 4/C. Article 4.E.2.c.2 states, “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 applicant admitted that her relationship with the 4/C had “wandered past” the professional in her application to this Board. Therefore, the preponderance of the evidence shows that the applicant engaged in not one, but two inappropriate relationships while she was at the Academy, was properly disciplined for both offenses, and the second such relationship led to her disenrollment. Pursuant to Academy regulations, as the senior Cadet in both relationships, it was the applicant’s responsibility to control the circumstances in both social and professional relationships, but the record shows that she failed to do so in both instances. Therefore, the preponderance of the evidence shows that the applicant engaged in two inappropriate relationships with subordinate cadets in violation of Academy regulations.

5. Article 2.D.2. of the RCC states that a member may be recommended for disenrollment due to, *inter alia*, unsuitability for service. Article 2.D.4.b. of the RCC 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.” Article 3.B.1.b.1.h of the RCC lists the requirements for a degree and graduation, which includes meeting “all military performance standards and demonstrate all

aspects of personal and professional development.” Article 3.B.1.b.2 of the RCC 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, Article 3.C.1.c. states, “Cadets must be familiar with and obey both the letter and the spirit of these Regulations.”

The applicant’s repeated misconduct made her subject to disenrollment from the Academy and the denial of a Bachelor of Science degree by the Academy Superintendent. Pursuant to 14 U.S.C. § 184 and Article 3-1-5.C. of Coast Guard Regulations, the Superintendent may confer a degree upon a graduate who completes the program and so also may *not* confer a degree. Together these statutes and regulations show that the Superintendent has the authority to issue regulations regarding who is eligible to remain a cadet and graduate with a degree and who is not and to disenroll those who are not eligible.”<sup>5</sup> The applicant has failed to prove that the Academy Superintendent lacked the authority to deny her the degree or that he committed an error or injustice by refusing to award her a degree even though she had completed all of the required courses. Article 3.B.1.b.1.h of the RCC states that to graduate a cadet must meet “all military performance standards and demonstrate all aspects of personal and professional development.” Because of her repeated misconduct, the Superintendent found that the applicant had not met those standards and/or demonstrated the required personal and professional development to receive the degree and a commission, and the Board is not persuaded that the Superintendent committed an error or injustice in reaching that conclusion. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that she was entitled to a Bachelor of Science degree from the Academy, even though she had completed the academic and training requirements to obtain the degree.

6. The applicant argued that her inappropriate relationships with subordinate cadets resulted from multiple extenuating circumstances, such as the recent passing of her mother, a sexual assault, and news of her father’s cancer. However, the record shows that the applicant was given the opportunity to appeal her disenrollment to the Academy’s Superintendent, and she was able to present these extenuating circumstances to the Superintendent. Despite these extenuating circumstances, the record shows that the Superintendent apparently found that the circumstances did not justify or sufficiently mitigate the applicant’s misconduct and denied her appeal. The Board finds that the prior death of the applicant’s mother and the cancer diagnosis of her father, while awful, did not justify or sufficiently mitigate her misconduct with subordinate cadets, especially the 4/C. With respect to the sexual assault, the applicant provided no description or evidence of it. As a sexual assault may consist of a wide range of contact, the Board can draw no conclusions from this claim. If the applicant believes that the sexual assault justified or sufficiently mitigated her inappropriate relationships with subordinate cadets, she can reapply to this Board for reconsideration with additional evidence to support her claim that the sexual assault justified or significantly mitigated her misconduct while at the Academy.

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<sup>5</sup> See *Greer v. Spock*, 424 U.S. 828, 840 (1976) (There is nothing in the Constitution that disables a military commander from acting to avert what he perceives to be a clear danger to the loyalty, discipline, or morale of troops on the base under his command.”); *Chappell v. Wallace*, 462 U.S. 296, 302 (1983) (“The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgments, subject always to civilian control of the Legislative and Executive Branches.”).

7. For the reasons outlined above, the applicant has not met her burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.<sup>6</sup> She has not proven, by a preponderance of the evidence, that the Coast Guard committed an error or injustice when they denied her a Bachelor of Science degree from the Academy.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

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<sup>6</sup> *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of former BM3 [REDACTED] [REDACTED] USCG, for correction of her military record is denied.

February 1, 2024

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