

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-029


BM3/E-4

FINAL DECISION

This proceeding by the Board for the Correction of Military Records for the Coast Guard (“Board”) 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 February 1, 2024, 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 __, 2025, 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 Boatswain’s Mate, Third Class, (BM3/E-4), asked the Board to correct her record by commissioning her an Ensign (ENS/O-1) with an effective date of July 1, 2021, changing her status at the Coast Guard Academy (“Academy”) to “Graduate” with a Bachelor of Science degree, conferring upon her a diploma, and changing her transcripts to reflect these requested changes.

The applicant became a cadet at the Academy on June 26, 2017. In her January 2024 application, through counsel, she asserted that in March 2021, while she was a 1/c (fourth year cadet), an investigation was initiated into allegations that she had engaged in an inappropriate relationship with a 4/c (first year cadet). The investigation was predicated on potential violations of the Regulations of the Corps of the Cadets, SUPTINST M5215.2N (“RCC”), as follows:

- Code 1216 (Class I offense) – Devotion to Duty; lack of, failure of
- Code 1220 (Class I) – Respect; lack of, failure of
- Code 1231 (Class I) – Sexual Misconduct
- Code 1237 (Class I) – Relationship; inappropriate or improper, involving a serious breach of discipline
- Code 2114 (Class II) – Door; Gross violation of open/closed door policy

Based on the investigation's findings, the applicant was referred to a Conduct and Discipline Hearing and was subsequently disenrolled from the Academy in a decision issued on April 13, 2021. Although the applicant filed an appeal, the appeal was denied in a decision issued on June 7, 2021. The applicant was then approved to enlist in the Coast Guard Reserve in order to repay the debt incurred by her attendance at the academy. She continued to serve in the Coast Guard as of the date of her January 2024 application.

In her submission to the Board, the applicant posited that her treatment by the Coast Guard had been unfair, unjust, and inequitable. She asserted that she had not committed the offenses in question and was deserving of both graduation from the Academy and a commission. Because she believed that the "lack of devotion to duty" and "lack of respect" charges were derivative of the other charged offenses, the applicant explained that she would focus her arguments on the allegations of an inappropriate relationship, sexual misconduct, and gross violation of the open/closed door policy.

Regarding the inappropriate relationship offense, the applicant argued that the only evidence against her consisted of witness statements provided by other cadets that lacked any "direct knowledge or observation." To provide context, she explained that she and the 4/c in question were "sponsor family sisters," meaning they shared the same sponsor family. As a result, they had developed a mentor-mentee relationship where the 4/c would rely on the applicant for guidance from time to time. The applicant argued that nothing about her association with the 4/c met the Coast Guard's definition of an improper senior-subordinate relationship.¹ In support of her contentions, the applicant provided the following portion of an email submitted during the investigation by one of her "host parents":

I understand this is an active investigation, but should we be concerned? My husband and I support both cadets and haven't witnessed anything unprofessional, but with investigations like this, it makes you wonder about what you don't know. I just started teaching this past fall. I've been to a couple of masts for my advisees, but this is hitting a little closer to home if you will.

Regarding the sexual misconduct offense, the applicant stated that this allegation stemmed from a witness claiming to have "discovered [her] in a lofted rack lying down with a 4/c in a room with the door closed and the lights off." The applicant argued that her conduct did not rise to the level of sexual misconduct as defined in the RCC.² The applicant explained that although she was in a room with the 4/c with the door closed on the night in question, the 4/c had sought her out to discuss distressing personal matters, including the death of the 4/c's mother, and the applicant had closed the door out of concern for the 4/c's mental health, wellbeing, and privacy. The applicant asserted that there was nothing sexual about her interactions with the 4/c, and that there was no evidence they were lying down together. She stated that on the night at issue, she had been speaking

¹ RCC § 4.E.2.b.1. states, "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."

² RCC § 4.E.5.a.2. defines sexual misconduct to include "acts that disgrace or bring discredit on the Coast Guard or the Coast Guard Academy and are sexual in nature." Per Article 4.E.5.a.3., "lying together or lap-sitting whether clothed or unclothed" are among the activities that may constitute sexual misconduct.

to the 4/c in the 4/c's room with the 4/c's roommate present when the conversation turned to sensitive family issues, at which point they moved to sitting on the bed for more privacy. The applicant noted that the RCC specifically allows cadets to sit on their bunks together.³ In support of her arguments, the applicant submitted a portion of an email exchange between the investigating officer and who the applicant claimed was the 4/c's roommate, in which the investigator asked, "just to confirm, you could not see if they were under the covers, correct? Or you don't remember that fact?" The witness answered, "I do not remember that fact, sir." The applicant contended that this exchange demonstrated the 4/c's roommate's faulty memory.

Regarding the open/closed door offense, the applicant acknowledged that she had violated this policy, but she argued that the circumstances should be taken into account. She emphasized again that she and the 4/c were sponsor family sisters and had developed a mentor-mentee relationship. She contended that her lapse in judgment should be mitigated by her desire to console and provide guidance to a more junior cadet dealing with distressing personal issues. She further argued that mental health was very important, and the Coast Guard and Academy should foster climates where cadets will not hesitate to help each other in a moment of need.

The applicant proceeded to re-state her position that she was worthy of graduation from the Academy and of commissioning as an officer in the Coast Guard. She noted that at the time of her disenrollment, she had completed all academic and military requirements to graduate and commission, had performed well academically, and met all Regimental Cadet Duty Officer responsibilities. Despite the investigation, she had been directed to complete her coursework and take final examinations and had completed the final week of her Ensign training. She contended that her overall performance and positive attributes are evidence that she would not have committed the misconduct alleged, and that she knew better than to jeopardize her future career. Overall, she argued, her record showed that she was uniquely suited for service as a Coast Guard officer. She also pointed out the strong support she had received from members of the Academy community, including in letters submitted with her appeal describing her as a trustworthy and compassionate leader.

The application included 566 pages of lettered exhibits referred to as TABs A through I, consisting of the following:

- "A: Investigation and Evidence
- B: Notification of Disenrollment
- C: Appeal to Disenrollment
- D: Denial of Appeal to Disenrollment
- E: SUPTINST M5215.2N (Spring 2019)
- F: Approval of Request to Enlist
- G: Enlistment Documents
- H: Letters of Support
- I: Cadet Evaluation Report"

³ RCC § 12.F.7. states: "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."

The Board has reviewed each exhibit in its entirety and will reference relevant portions, as needed, in the sections below.

SUMMARY OF THE RECORD

The following is based on the Board's review of the entire record, including redacted investigation documents submitted by the applicant and the full, unredacted investigation report provided by the Coast Guard.

Investigation findings

Per a memorandum dated March 2, 2021, a Standard Investigation was conducted into the facts and circumstances concerning an alleged inappropriate relationship between the applicant, a 1/c, and a 4/c. The investigation focused on events that occurred between November 2020 and February 2021 and its purpose was to assist the Assistant Commandant of Cadets in determining the best course of action in the matter. The applicant was informed of the charges against her on February 19, 2021.

The investigation's Findings of Fact included the following. The applicant and the 4/c in question were assigned to the same sponsor family during the fall 2020 semester. According to witnesses, the relationship between them became more personal in approximately late October or early November after initially being that of a mentor and mentee. Specifically, a witness recalled that the applicant and the 4/c began to sleep with each other in the 4/c's room. The applicant's roommate, in turn, reported that around this time she noticed the applicant was often absent from their room at night, sometimes after midnight.

For the spring 2021 semester, the 4/c was assigned a new roommate, and the applicant was assigned as the 4/c's roommate's Division Officer. In the week leading up to January 19, 2021, a witness observed the applicant and the 4/c enter the back door of the chapel at night. Around this time, the 4/c's roommate observed that the applicant and the 4/c would sleep in the 4/c's bed, and the applicant would leave in the early morning hours. The 4/c's roommate reported that the applicant would occasionally ask that she make sure no one was present outside the room so that the applicant could leave undetected. Although the 4/c's roommate was uncomfortable with the situation, she stated she did not bring it up, in part because the applicant was her Division Officer.

Later in January 2021, the 4/c's roommate sought another 1/c's help in addressing the situation, and she and the 1/c went to the 4/c's room. When the 4/c's roommate entered her room, she found the applicant and the 4/c lying in bed together, and they initially looked relieved it was her and did not get up, but then they noticed the 1/c come in behind her. The 1/c proceeded to counsel the applicant about the situation, including her having made the 4/c's roommate uncomfortable. The 1/c also reminded the applicant of the relevant policies and of her responsibility as a Division Officer. The applicant and 4/c apologized and those present agreed that the situation need not be reported higher up the chain, as long as all unprofessional interactions ceased.

Following this meeting, the 4/c's roommate reported, the applicant stopped visiting the 4/c's room. She believed, however, that the relationship continued because the 4/c began to leave the room late at night, continued to Skype with a person it seemed was the applicant, had gotten a tattoo that was consistent with the first letter of the applicant's name, and ordered the applicant flowers on Valentine's Day. On February 16, 2021, the 4/c's roommate sought the help of a 2/c, and the 2/c advised the 4/c's roommate that she should provide an ultimatum to the 4/c, specifically that she must self-report or would be reported by the 2/c. In response, the 4/c met with the 2/c and stated that she was no longer involved with the applicant, and that while they had occasionally cuddled in bed behind a closed door, their initial interactions were for assistance with academics before becoming progressively more personal. The 4/c also stated that the extent of the relationship was being exaggerated.

Subsequently, a meeting occurred where the 4/c requested to switch rooms and asserted that her roommate was lying about any relationship she had with the applicant.

In the investigation report, the investigating officer recommended that the applicant be brought to a Commandant of Cadets Class I Hearing for violations of the RCC.

Written statements

The applicant submitted a written statement that, although undated, appears to have been considered by the investigator, and so likely pre-dated the March 2, 2021 report. In her statement, the applicant asserted that she saw a lot of herself in the 4/c in question, and both had experienced similar, stressful family issues over the past several years. She explained that she had been tasked by her sponsor parents to "keep tabs" on the 4/c, and she felt responsible for ensuring the 4/c had an outlet to discuss her emotions and struggles. Because the 4/c had indicated she did not like reaching out for help, the applicant explained that she had assessed that it would be better that she helped the 4/c even if help from another source might have been more appropriate. The applicant acknowledged her grave lapse in judgment, but stated the relationship was not romantic, and argued that any misconduct was mitigated by her having ensured it was the 4/c's decision to have the door closed, as it made the 4/c more comfortable. She stated that she had wanted the 4/c to be able to speak freely so she could help the 4/c through her issues. The applicant also recalled that following the meeting where she was counseled by another 1/c, as described above, she had ceased the conduct and treated the 4/c no differently from other junior cadets.

In a statement submitted by the 4/c in question on February 22, 2021, the 4/c asserted that the living environment with her roommate had been toxic. She stated that her roommate had made assumptions and was consistently upset with her for simple things, like taking out the trash. She explained that the applicant was someone she looked up to as a role model, mentor, and someone to confide in. She had been going through a lot, and the applicant supported her through it. The 4/c asserted that these were the conversations that occurred behind closed doors, and that her roommate was often present. The 4/c indicated that her roommate had a history of lying, and she provided examples. The 4/c also stated her belief that her roommate had harbored romantic feelings for her and may have been jealous, despite there being no inappropriate relationship between the applicant and herself.

The 4/c's roommate also submitted a written statement during the investigation phase. The roommate stated that she had known about the relationship between the 4/c and the applicant the previous semester, but it had not affected her because she was not yet roommates with the 4/c. When she became roommates with the 4/c, and the 4/c and applicant began to sleep together, she did not think much of it because she "just thought they were close." But then the 4/c's roommate began to compare the applicant, who was her Division Officer, to her Division Officer the prior semester. In particular, she realized that in contrast to the applicant, she had not had to worry about her prior Division Officer sneaking into her room late at night. She explained that this perspective had made her feel violated by the applicant's conduct, and made her feel uncomfortable and like she was walking on eggshells.

Hearing and discipline

The applicant's Commandant of Cadets Class I Hearing took place on March 24, 2021. The applicant was advised of the specific nature of the charges, the hearing officer questioned witnesses, and the applicant was provided a Hearing Representative and the opportunity to make a statement concerning her case. The forms submitted by the applicant with her application indicate that at the hearing, she admitted to the sexual misconduct and inappropriate or improper relationship offenses. The Commandant of Cadets awarded 200 demerits, 60 days of ADMIN restriction, 20 work hours, 40 marching hours, loss of civilian clothes privileges, placement on Suitability for Service Probation. The Commandant of Cadets also recommended disenrollment. The applicant was provided the opportunity to appeal the imposition of punishment in writing to the Superintendent of the Academy.

In a March 29, 2021 memorandum, it was noted that the applicant had accumulated over 100% of the maximum allowable demerits for the conduct year and had accumulated six Class I offenses. Accordingly, she was placed in Conduct Deficiency status. This resulted in restriction to the Academy for six months, removal from any position of responsibility, the requirement to march "two fours" for every five demerits received. It was also noted that cadets placed on Conduct Deficiency status are normally disenrolled. The memorandum also informed the applicant that she had been placed on Suitability for Service Probation on March 24, 2021, and would require quarterly interim suitability hearings prior to a final review hearing. In addition, it was noted that the applicant's recent actions called into question her ability to continue to serve. Thus, the memorandum advised, the applicant was recommended for disenrollment.

On the same date, March 29, 2021, the applicant submitted a memorandum in which she sought to appeal "certain elements" of her punishment that were awarded as a result of her hearing. In the memo, she posited mitigating factors similar to those set forth in her written statement summarized above.

Disenrollment decision

In a decision issued on April 13, 2021, the Superintendent of the Academy stated that following consideration of the entire record, including the applicant's Cadet Record, the investigation, and the Commandant of Cadets' recommendation, he had decided to disenroll the applicant from the Academy. The Superintendent noted that that the Commandant of Cadets'

recommendation had followed a Conduct and Discipline Hearing, and that the Commandant of Cadets found that the applicant had committed the following Class I and Class II offenses:

- 1216 – Devotion to Duty: lack of, failure of
- 1220 – Respect: lack of, failure of
- 1237 – Relationship, inappropriate or improper, involving a serious breach of discipline
- 1231 – Sexual Misconduct
- 2114 – Door: Gross violation of open/closed door policy

The Superintendent's decision stated that during the spring 2021 semester, the applicant engaged in an inappropriate relationship with a 4/c cadet and was warned by other cadets of the perception of inappropriate behavior but did not cease. The decision stated that the applicant was discovered in a lofted rack lying down with a 4/c cadet in a room with the door closed and the lights off by a 1/c and 4/c. It was emphasized that the applicant was assigned as the Division Officer of the 4/c cadet's roommate and had engaged in this inappropriate relationship in the presence of her division member, making her uncomfortable in her own room, and with the applicant as part of her chain of command. The Superintendent stated that based on her failure to demonstrate the requisite judgment, conduct, and character essential to perform as a Service-Ready Ensign, he found her unsuitable for service as an officer in the Coast Guard, as her actions had demonstrated a serious disregard for the Coast Guard's core values, far from what is expected within the officer corps and the Corps of Cadets.

Appeal

On May 7, 2021, through private counsel, the applicant submitted an appeal of the Superintendent's decision to the Commandant (CG-1). She began by explaining her reasons for having joined the Coast Guard. She acknowledged her lapses in judgment, but again explained the nature of the mentor-mentee relationship she had had with the 4/c and stated that much of the evidence against her was based on supposition. She maintained that she and the 4/c had not been lying down on the bed, and she argued that the 4/c's roommate had a motive to fabricate her testimony due to various disputes she had had with the 4/c and the applicant. The applicant went on to argue that the due process she was provided was not adequate. Specifically, she stated that she was only notified of her March 24, 2021 hearing five days prior, and was advised she could have a 1/c as a hearing representative but not that she had the right to seek outside counsel. She recalled she was permitted to see the witness statements and investigation findings three days before the hearing but was not allowed to make copies or properly prepare her defense. The applicant also argued that she was not properly informed of the scope of the investigation, having believed it focused only on the night of January 18, 2021. She also took issue with the manner and substance of questioning at the hearing, and she explained that she had only admitted to charges at the hearing because she did not fully understand them, wanted to get it over with, and was scared, humiliated, and intimidated. Finally, she asserted specific arguments about why the evidence against her did not meet the criteria to prove each of the offenses charged.

With her appeal, the applicant submitted numerous letters of support from Academy community members. The Board has reviewed these and will summarize several below.

In an April 6, 2021 letter, an Academy professor attested to the applicant's character and stated she was an excellent leader who did not let anyone "fall through the cracks."

In an April 18, 2021 letter, one of the applicant's supervisors during her Cadet Summer stated the applicant was an adaptable, hard-working team player, had accomplished a great deal, and had exceeded requirements. The author stated the applicant was highly motivated and physically and academically equipped to succeed in the military, while being worthy of the traditions of commissioned officers in the Coast Guard.

In a May 1, 2021 letter, the applicant's host family described her as a caring and empathetic leader who expressed her concerns about her fellow classmates and was passionate about justice. The letter called the applicant a trustworthy individual and a very hard worker, which it noted were attributes that make great officers.

A letter dated May 2, 2021 was submitted by an individual who had known the applicant since the fall of her 4/c year. The author stated that the applicant had shown great compassion for those she worked with, a quality important in an officer. The letter stated that although fraternization policies were important, having compassion and making sure mentees are personally okay are leadership abilities that are very applicable in the fleet. The letter also described what the author perceived as a malicious and inappropriate environment at the applicant's hearing, with witnesses and their friends laughing, which demonstrated a motive to slant opinions against the applicant.

In a decision issued by the Assistant Commandant for Human Resources (CG-1) on June 7, 2021, the applicant's appeal of her disenrollment was denied.

The applicant proceeded to select enlistment in the Coast Guard Reserve as the method to repay her debt to the Coast Guard that was incurred by her time at the Academy. She has continued to serve in the Coast Guard as of the date of her January 2024 application to the Board.

VIEWS OF THE COAST GUARD

On November 29, 2024, a Judge Advocate (JA) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case. The opinion adopted the findings and analysis provided in a memorandum prepared by the Coast Guard's Personnel Service Center (PSC).

The JA argued that the applicant's request for relief should be denied because the Coast Guard did not err in finding that she was ineligible for a degree from the Academy and a commission in the Coast Guard. Specifically, the JA contended that the applicant did not meet all military and performance standards necessary to graduate and was not a cadet in good standing, thus making her ineligible. The JA explained that Class I Misconduct Hearings are administrative hearings which require that the offenses be proven by a preponderance of the evidence based on personal observations, as well as verbal and documentary evidence. In the applicant's case, the JA stated that after a review of the thorough and impartial investigation, the hearing authority found, by a preponderance of the evidence, that the applicant did in fact commit the violations she was

accused of. Furthermore, the applicant was afforded all the procedural benefits allowed to her by cadet regulations, namely, the right to be present at the hearing, cross-examine witnesses, present evidence, make statements, and have a Mast Representative.

The JA argued that while the applicant may object to the findings, she has not produced sufficient evidence to overcome the presumption that the Class I Authority's administrative finding of guilt was erroneous, and therefore her request for relief on the basis of material error should be denied.

The JA further argued that the Coast Guard's decision to deny the applicant's graduation and commissioning was not unjust because it fully complied with Coast Guard policy that requires the disenrollment of cadets who are found to have committed misconduct. Regarding the applicant's claims that her disenrollment was unjust because she deserved "both graduation...and commissioning as an officer in the USCG," the JA argued that the President of the United States may appoint as Coast Guard Ensigns all cadets *who have graduated from the Coast Guard Academy* (emphasis added),⁴ and that the Superintendent of the Academy has the authority to "confer the degree of bachelor of science *upon all graduates of the Academy*" (emphasis added).⁵ Regarding the Superintendent, the JA argued that pursuant to RCC § 3.B.1.b.2., the Superintendent confers the degree of Bachelor of Science on those cadets in good standing who have met these requirements or revisions published since matriculation.

The JA explained that because the applicant was placed in a Conduct Deficiency status after her Class I hearing, she was not in good standing and was ineligible to graduate with her Bachelor of Science degree and, by extension, was ineligible for a commission as an Ensign in the Coast Guard. According to the JA, a determination like this is an administrative exercise of the relevant law and policy dictating graduation and commissioning criteria, not treatment by military officials that shocks the sense of justice. Finally, the JA argued that the Board does not have the authority to confer a degree from the Academy and a commission as an Ensign because those authorities are vested, by law, in the Academy Superintendent and President of the United States, respectively.

In conclusion, the JA argued that the applicant's Class I offenses were properly determined by a Class I Hearing and no error exists in determining that she violated cadet regulations. Because the applicant was not in good standing as a result of the findings at the hearing, there was no error in denying her graduation from the Academy or a commission in the Coast Guard. The JA argued that the applicant's disenrollment was conducted in accordance with Coast Guard regulations and does not amount to an injustice.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 20, 2024, 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 December 23, 2024.

⁴ Title 14 U.S.C. § 1929.

⁵ Title 14 U.S.C. § 1928.

Through counsel, the applicant argued that the Board should not simply defer to the advisory opinion, and should recognize the opinion for what it is, a rubber stamp for the Coast Guard's conduct. She claimed that contrary to the opinion, she had provided more than sufficient evidence to support her request for relief. The applicant further argued that the advisory opinion did not discuss the specific facts or law as applied to her case, nor her contentions that the evidence did not support a finding that she engaged in the alleged misconduct.

The applicant noted that as of October 2024 she had completed her period of enlistment required to repay the debts incurred by her time at the Academy and remained on active duty, as she intends to continue serving her country. According to the applicant, the fact that she has completed her "repayment" to the Coast Guard is additional evidence that she is entitled to the requested relief. In addition, she asserted that her continued dedication to the Coast Guard and her country, despite the way she has been treated by the Academy, underscores the Coast Guard's poor judgment in deciding to remove her from the Academy in the first place.

APPLICABLE LAW AND POLICY

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a). "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("Error" means legal or factual error."); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."). Injustice, when not also error, is treatment by the military authorities that "shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

"It is the responsibility of the Applicant to procure and submit with his or her application such evidence, including official records, as the Applicant desires to present in support of his or her case." 33 C.F.R. § 52.24 (a). "The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence." 33 C.F.R. § 52.24 (b). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

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 RCC, contained in SUPTINST M5215.2N, 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 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 Superintendent to disenroll him or her 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 the Commandant (CG-1) for final action, who may retain or disenroll the cadet.⁶ 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

⁶ Although the RCC states that cadets may appeal disenrollment decisions to “Commandant”, it specifies CG-1, which designates the Assistant Commandant for Human Resources, as the appeal authority.

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.

As noted above, RCC § 4.E.5.a.2. defines sexual misconduct to include “acts that disgrace or bring discredit on the Coast Guard or the Coast Guard Academy and are sexual in nature.”

RCC § 4.E.5.a.3. states:

“Sexual or inappropriate physical contact is prohibited on board military installations or at any Academy sponsored events/activities, even if it is between consenting cadets. The exception is rented quarters where an expectation of privacy exists (e.g. Navy Lodge or MWR Facility). Sexual or inappropriate physical contact includes, but is not limited to, the following acts if committed on board a military reservation:

- (a) Displays of affection, such as hand-holding, necking, petting, kissing, etc.
- (b) Massages and rubs.
- (c) Lying together or lap-sitting whether clothed or unclothed.
- (d) Sexual intercourse or contact.”

RCC § 12.F.7. states:

“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.”

Inappropriate or improper relationships and sexual misconduct are both Class I offenses. RCC § 12.K. Class I offenses are to be reported by completing a Report of Class I Offense and Disposition. RCC § 12.G.1.a. When an investigation of the offenses is complete, the Assistant Commandant of Cadets may dismiss the charge, hold or assign another enumerated individual to hold a Class I hearing and award penalties, hold a mast, or refer the case to the Commandant of Cadets with a recommendation for action. RCC § 12.I.1.b.(b). The accused cadet and their mast representative are allowed to read the investigation and may take notes, but may not make a copy, and the Regimental Conduct Officer or one of the Conduct Division Officers in Foxtrot Company will be present while the accused and their mast representative review the investigation. RCC § G.1.c.

The Commandant of Cadets, in turn, may dismiss the charge, hold mast, refer the case to an Executive Board, refer to the Superintendent with a recommendation for disenrollment, or remand the Cadet to the Assistant Commandant of Cadets for appropriate punishment. RCC § 12.I.1.b.(c). The Superintendent is the appeal authority for punishments awarded by the Commandant of Cadets. RCC § 12.I.5.e. Appeal of punishment awarded by the Superintendent will be addressed to the Commandant (CG-1). *Id.*

A Class I Hearing is an administrative proceeding conducted by a Class I Authority to inquire into the facts concerning a reported offense committed by a Cadet, and if appropriate, to award a penalty. RCC § 4.D.1.a. Each Hearing Authority will base their decision, action, and imposition of punishment solely on personal observations, and verbal and documentary evidence given or introduced at a hearing or hearings, in addition to prior written correspondence at the discretion of the Hearing Officer. RCC § 4.D.2. Cadet Rights at such hearings include the right to be present at the entire hearing, the right to cross-examine witnesses, the right to present witnesses and evidence on their own behalf, the right to make statements, including a closing statement, and the right to a Mast Representative, who will normally be an available 1/c cadet. RCC § 4.D.1.a-e.

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. The application is timely, as it was 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).

3. The applicant has alleged that the evidence against her was based on supposition and that witnesses fabricated their testimony. She also argues that any questionable conduct was mitigated by her intent to mentor and console the 4/c in question, and further that her strong performance at the Academy and positive attributes demonstrate her potential to be a worthy Coast Guard officer. The applicant has urged the Board to find that the decisions made by the Academy and Coast Guard after weighing these various factors constituted error or injustice.

4. It is important to note that the Board's role is not to reweigh all of the evidence or to engage in a lengthy analysis of each witness's statements and motives. The question before the Board, instead, is whether a factual or legal error occurred, or the Coast Guard's treatment of the applicant shocks the sense of justice. It is the applicant's burden to prove that such an error or injustice occurred.

5. With this in mind, the record shows that a full investigation was conducted, which incorporated witness interviews and written statements. A formal, Class I Hearing followed, during which the applicant was afforded the opportunity to counter unfavorable evidence with her own testimony and arguments. The applicant did so, and the evidence on each side was reviewed by the hearing official, who had the ability to question and assess the credibility of witnesses. Next, the Superintendent weighed the evidence, and finally, the Commandant (CG-1), after accepting additional mitigating evidence from the applicant. At each stage of the adjudication process, despite consideration of the applicant's arguments and mitigating factors, it was determined that the applicant had committed multiple Class I offenses and warranted disenrollment.

6. Importantly, while the applicant has framed her case as resting on a single evening when witnesses reported observed her lying in bed with the 4/c, the evidence presented clearly suggests that the applicant regularly slept in the 4/c's bed with her behind closed doors during a months-long period. Particularly concerning as well, as is noted in the Superintendent's decision, was evidence that the applicant involved the 4/c's roommate, a junior cadet under her command, in covering up her misconduct.

7. In her initial application, the applicant pointed to two pieces of evidence. First, a portion of an email from her host mother stating that the host family "support[s] both cadets and haven't witnessed anything unprofessional." Second, an email from a witness stating she did not remember whether the 4/c and applicant were underneath the covers on the night in question. But in the full email from the applicant's host parent, the author explains that due to COVID restrictions and other factors, neither the applicant, nor the 4/c had been at the host family's home recently. In addition, the investigation records show that the second email was sent by the 1/c who accompanied the 4/c's roommate to the 4/c's room and discovered the 4/c and the applicant in the 4/c's bed. The Board notes that whether the 4/c and applicant were under the covers is not determinative of whether they were lying down together. Furthermore, the 4/c's roommate asserted during the investigation that the 4/c and applicant slept in the 4/c's bed on multiple occasions, not just on a single evening.

8. Upon review, the Board finds that it was reasonable for each Coast Guard decision-maker to conclude that a preponderance of the evidence showed the applicant had engaged in conduct prejudicial to good order and discipline, and thus had committed the Class I offense of an

inappropriate or improper relationship with a subordinate. The Board also finds it was reasonable for the Coast Guard decision-makers to find that a preponderance of the evidence established the applicant and 4/c had laid in bed together, and thus committed the Class I offense of sexual misconduct. While the applicant has argued that the 4/c's roommate fabricated her statements and testimony, the record does not suggest that it was arbitrary or unreasonable for the relevant Coast Guard adjudicators to determine that the 4/c's roommate was credible, and the applicant was not. The Board will not substitute its own judgment for that of Coast Guard decision-makers, who were in the best position to weigh the evidence contemporaneously with the events at issue.

9. The applicant has alleged that procedural violations occurred, but the record demonstrates that the proceedings complied with the Coast Guard's regulations governing the administration of investigations and Class I hearings and appeals to the Superintendent and Commandant. At her hearing, the applicant was permitted the right to be present, to cross-examine witnesses, to present evidence and testimony, to have a Hearing Representative, and to review the investigation file. She does not contend she was deprived of these rights, or the opportunity to submit any evidence or arguments during the appeal processes. Although the applicant argued that she was not informed until the hearing that the investigation was focused on more than a single evening in January 2021, a Report of Class I Offense and Disposition signed by the applicant on February 19, 2021 informed her that the investigation was related to an improper relationship that occurred from November 2020 to February 2021. In sum, the record shows that the applicant was afforded the due process required by the relevant law and regulations.

10. The applicant argued that she did not receive meaningful due process. Specifically, that she did not receive enough time to prepare her case and was not advised she could retain private counsel. In this regard, the RCC specifies that cadets be allowed a minimum of three days and two days to prepare for an appearance before an Executive Board⁷ and a Cadet Honor Board,⁸ respectively. The RCC, however, does not require a cadet be notified a specific number of days prior to a Class I Hearing. In this case, the applicant was notified of the March 24, 2021 hearing on March 19, 2024, five days beforehand, which is more than the period required for other proceedings, like an Executive Board, that have similar potential consequences. Likewise, while cadets are permitted to consult civilian counsel, at their own expense, prior to an Executive Board⁹ no such right is included for Class I Hearings. As noted above, the rules with respect to Class I Hearings permit an accused cadet to have a hearing representative, which the applicant had in this case. Under these circumstances, the Board cannot conclude that the Coast Guard failed to follow its regulations or otherwise committed an error or injustice with respect to the procedures followed and level of due process provided to the applicant.

11. The applicant submitted evidence supporting her significant positive attributes, and the Board does not doubt its accuracy. The Coast Guard's decision was very likely a difficult one, given this evidence and the applicant's proximity to graduation. But the Academy's mission requires it to hold future Coast Guard officers to high standards of honor and obedience, and on

⁷ RCC § E.1.d.(1).(a).

⁸ RCC § E.3.e.(1).

⁹ RCC § E.1.d.(1).(c).

this issue, the Board will not substitute its judgment for that of the Superintendent or Commandant (CG-1), who retain wide discretion to graduate, or not graduate, cadets.¹⁰

12. On the record before it, the Board finds that the applicant has not proven by a preponderance of the evidence that her disenrollment from the Academy was based on error, or that it shocks the sense of justice.

13. Finally, the Board finds that it has no authority to order the tendering of a new original appointment to the applicant as a Coast Guard officer, even had it found an error or injustice in the Academy's disenrollment decision. Such authority is vested solely with the Academy's Superintendent and the President of the United States.

14. 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.¹¹ 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)

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 *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

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

February 6, 2025

