

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-013


ENS (Former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on November 15, 2023, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated December 12, 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applicant, a former Ensign (ENS/O-1), who received a General¹ discharge on August 3, 2023, after his Reserve Commission was revoked pursuant to 10 U.S.C. § 12681,² requested that he be restored to active duty with constructive credit for the period between his date of separation and his reentry into the Coast Guard. The applicant further requested all backpay and allowances that flow from this correction.

Through counsel, the applicant alleged that the Coast Guard committed multiple prejudicial errors when separating him. First, the applicant claimed that the alleged misconduct—that he had an affair with an enlisted member—was unsubstantiated. Second, the applicant contended that the alleged misconduct occurred while he and the enlisted member were not on active duty or reserve orders. Accordingly, the applicant contended that the Coast Guard had no jurisdiction or authority to initiate separation proceedings. Finally, the applicant alleged that through counsel he filed a request for relief based on a lack of jurisdiction, but that request was never routed past the Section

¹ There are five types of discharge: three administrative and two punitive. The three administrative discharges are honorable, general—under honorable conditions, and under other than honorable (OTH) conditions. The two punitive discharges may be awarded only as part of the sentence of a conviction by a special or general court-martial.

² 10 U.S.C. § 12681. Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

Chief for Reserve Personnel Management (RPM) Boards and Panels. The applicant contested the Section Chief's, Lieutenant (LT) C, authority to rule on the jurisdictional questions that were specifically addressed to Commander, Personnel Service Center (PSC).

The applicant explained that on February 28, 2023, he was served with a "Recommendation for Revocation of Commission," wherein he was accused of having an affair. The revocation was based on an alleged violation of Article 2.A.2.g.1.b. of the Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, that specifically prohibits romantic relationships outside of marriage between commissioned and enlisted personnel. The applicant stated that after he was notified of the recommended revocation of his commission, he was further notified on April 26, 2023, that his commanding officer had recommended a "Proposed Special Board Action" to consider whether he should be involuntarily separated from the Coast Guard. He explained that he acknowledged receipt of the notice on May 3, 2023. The applicant further explained that he provided a written response to the notice and contested the "Special Board Action." According to the applicant, he informed the Coast Guard that he had been separated from his wife of 15 years and was living in a hotel room away from his children. He stated that his divorce was heavily contested and that the stress of the divorce had an impact on all his personal and professional relationships.

The applicant explained that on August 28, 2023, his civilian counsel submitted a memorandum that was intended for the Commander of PSC wherein significant investigative and jurisdictional concerns were raised. Specifically, regarding the investigation, the applicant contested the findings that he had an affair with an enlisted member. According to the applicant, the enlisted member was interviewed and denied ever having had an affair with him, but instead stated she spoke to him as though she were speaking to her best friend. The applicant also contested that romantic text messages were sent between himself and the enlisted member. The applicant claimed that there was no evidence of romantic text messages and the enlisted member herself denied any romantic text messages were sent. Finally, the applicant contested the finding that he organized the enlisted member's Select Reserve Direct Commission (SRDC) interview board and that he participated as a board member. On the contrary, the applicant claimed that after he and the enlisted member received active-duty orders, he recused himself from all involvement in her application process. According to the applicant, the only reason he assisted the enlisted member on her application for SDRC was because he was the only officer in the command that had gone through the same process. The applicant stated that his requests for the investigative and official documents related to his separation were denied.

To support his claims of jurisdictional error, the applicant cited to Article C.3. of the Military Justice Manual, COMDTINST M5810.H, which states, "A member of the Reserves is subject to the UCMJ [Uniform Code of Military Justice] while performing Inactive Duty for Training (IDT), Active Duty for Training (ADT), or active duty. Accordingly, all offenses committed by a reservist while on active duty, IDT, or ADT may subject the reservist to discipline, including NJP. Personal jurisdiction over reservists performing IDT includes travel to and from their IDT training site, intervals between consecutive periods of IDT on the same day, and intervals between IDT on consecutive days." The applicant argued that the language in these instructions could not be clearer. He claimed that the conduct alleged by the Coast Guard did not occur while he was subject to the UCMJ. He explained that though he later recused himself from participation

in a board involving the enlisted member, the recusal does not constitute misconduct that forms a basis for separation.

SUMMARY OF THE RECORD

The applicant enlisted in the Regular Coast Guard on November 17, 2008. He remained in the Regular Coast Guard until January 1, 2015.

On August 24, 2015, the applicant enlisted in the Coast Guard Select Reserve where he continued to serve as a Storekeeper.

On April 12, 2021, the applicant signed an Administrative Remarks Page, CG-3307 Form ("Page 7"), wherein he acknowledged that he understood the Coast Guard's policies and procedures regarding interpersonal relationships. Of specific importance, the applicant acknowledged the following:

The Service prohibits romantic relationships outside of marriage between officer and enlisted personnel, including relationships with members of other military services. Officer and enlisted romantic relationships undermine the respect for authority which is essential for the Coast Guard to accomplish its mission. As per the above reference, Coast Guard Academy Cadets and Officer Candidates (both Active Duty and Reserve) are considered officers. As such, you shall be in compliance with the Coast Guard interpersonal relationship policy upon arrival to Officer Candidate School (OCS). A relationship with an enlisted member outside of marriage WILL NOT be overlooked even if the relationship was preexisting. However, the custom of The Service accepts lawful marriages between officers and enlisted which occur BEFORE the officer receives a commission. Misconduct, including fraternization, is neither excused nor mitigated by subsequent marriage (marriage after reporting to OCS).

On June 16, 2021, the applicant was commissioned as an officer in the Select Reserve after completing Officer Candidate School.

On July 2, 2022, the applicant's wife texted the applicant's immediate supervisor, Lieutenant Commander (LCDR) R, and told him that information had come to light about the applicant and an enlisted member. LCDR R called the applicant's wife who informed the LCDR that the applicant was involved in a romantic relationship with an enlisted member.

On July 6, 2022, the applicant's Sector Commander, Commander (CDR) S, issued a Convening Order, "Designation as Preliminary Inquiry Officer," wherein he appointed a single investigating officer (IO) to conduct a standard investigation pursuant to the Administrative Investigation Manual, COMDTINST M5830.1. The IO was appointed to investigate allegations of fraternization between the applicant and an enlisted Second Class Maritime Enforcement Specialist, ME2/E-5. The Convening Order mandated that the investigation be completed by July 17, 2022.

On July 13, 2022, the applicant's supervisor, LCDR R, was interviewed by the IO. The IO's summary of the interview is as follows:

LCDR [R] stated on 28 June 2022, he received a text message from [applicant's wife] stating she needed to speak with him about something important. When LCDR [R] replied, she said "never mind". On the evening of 01 July 2022 (PST), [Applicant's wife] again contacted LCDR [R], this time via an excited phone call.

She stated [Applicant] and ME2 are having an affair. She stated [th]is was known among their circle of friends. She stated it was an emotional affair, but “they would sit and kiss.” [Applicant] was also concerned about her military benefits, if she and [Applicant] were to separate. LCDR stated she eventually calmed down and ended the call.

LCDR [R] received another call from [Applicant’s wife’s] phone,³ however, it was [Applicant]. [Applicant] stated “he really messed up” and “you’re a better man than me.” LCDR [R] stated [Applicant] and [Applicant’s wife] were both crying and upset. He was concerned about [Applicant] and asked about having a safe place to go. [Applicant] said he could stay with his brother and that he had just moved back in with [applicant’s wife] 2 days ago.

When asked if he felt that ENS [Applicant] showed favor to ME2 [G], LCDR [R] stated that ENS [Applicant] took interest beyond the normal. That he accompanied her to an interview with Captain [S] for Reserve Enlisted Person of the Year (REPOY) and assisted in assembling her SRDC package. LCDR [R] went on to say, ENS [Applicant] excused himself from ME2 [G’s] SRDC interview board and he has concern that ENS [Applicant] placed himself in that difficult position.

On July 16, 2022, the enlisted member was interviewed by the IO. The IO’s summary of the interview is as follows:

Summary of interview with ME2 [G], enlisted reserve member assigned to Station [redacted], conducted on 16 July 2022.

ME2 [G] stated her relationship with ENS [Applicant] started as professional. They first worked together on the COVID Task Force. She was part of Team [redacted] and was relieved by Team [redacted], which included, at the time SK2 [Applicant].

In January of 2022, ME2 [G] considered applying for Selected Reserve Direct Commission (SRDC) program. Since ENS [Applicant] had also been selected for the program he started assisting ME2 on her application package. They spoke frequently through phone calls and text messages.

In June of 2022, ME2 [G] stated ENS [Applicant] began messaging her about “having feelings for her” and “not knowing what to do,” because “he knew it was wrong.”

When asked if she requested for him to stop, she said no. When asked why, she said she was caught off guard at first. She stated the messages and phone calls evolved into a “middle school crush”. She stated this continued for approximately three weeks. On June 25th, she was attending a wedding in California. The wedding was for friends who had moved from Guam. She states she was recorded while on the phone with ENS [Applicant]. This video was supposedly sent to [Applicant’s wife]. When asked if she saw the video or knows who took it, she said no. She said after that [Applicant] told her he couldn’t speak with her anymore because his wife found out.

When asked if she still had any of the messages on her phone, she said no.

On August 5, 2022, the IO submitted his Report on Investigation (ROI) wherein he concluded that the applicant, in violation of Article 134 of the UCMJ, did fraternize with an ME2 and that the romantic relationship was initiated by the applicant. The IO further concluded that the applicant’s conduct violated a lawful, general order or regulation that prohibited romantic relationships between officers and enlisted personnel. The IO’s conclusions came from interviews with multiple individuals, one of whom was the ME2. The applicant declined to be interviewed or to make a statement. The ME2 who claimed the applicant began sending her romantic text

³ The date of this phone call is unknown.

messages in June 2022 stated that the applicant expressed his romantic feelings for her. In addition, the applicant's wife contacted the applicant's chain of command and informed them that the applicant was having an affair with the ME2. Upon completion of his investigation, it was the IO's opinion that the applicant showed favor to the ME2 and despite knowing romantic relationships between officers and enlisted personnel was prohibited, he expressed his romantic feelings toward the ME2 via text messages. According to the IO, a reasonably prudent person would conclude that the applicant's actions surrounding the alleged conduct, including showing favor and initiating romantic text messages were prejudicial to good order and discipline. The IO recommended that the applicant's misconduct be disposed of at a Captain's Mast.

On August 5, 2022, in response to the IO's findings based on a preponderance of the evidence and pursuant to Article 5.H.1. of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3, the applicant received a Disciplinary Officer Evaluation Report (OER). The applicant received a mark of "Unsatisfactory" (the lowest possible mark) on the Comparison Scale and a mark of 1 (on a scale of 1 to 7, with 1 being the lowest mark and 7 being the highest) for "Judgment" and "Responsibility." For all other performance dimensions, the applicant received marks of N for "Not Observed." In addition to his marks, the applicant received the following pertinent comments:

Performance of Duties: Demonstrated a lapse in judgment, responsibility, & initiated romantic contact & knowingly pursued prohibited relationship contrary to regs, w/ potential to undermine mission readiness. Jeopardized junior MBR's career by creating a compromising situation. Recognized unethical behavior & withdrew from officer interview panel w/ short notice, created barrier to junior MBR's progress.

Reporting Officer Comments: ENS [Applicant] displayed willful misconduct & indifference toward USCG standards, policies, & regulations within one year of commissioning. MBR violated the trust of the CMD, peers, subordinates & USCGR. MBR violated the oath of a commissioned officer in the USCGR & jeopardized a junior member's career. MBR's behavior & actions are not conducive with the USCGR standards & has rendered this officer ineffective in a leadership role within the reserve forces. ENS [Applicant] is not recommended for positions of increased responsibilities. Recommend initiation of board to revoke temporary commission based on findings.

In response to the Disciplinary OER, the applicant submitted a Reported-on Officer Reply wherein he defended his actions of stepping down from interview panel and provided an overview of his performance within his first year of commissioning. However, of relevance to his application for relief, the applicant made the following comments:

I, along with the Coast Guard, hold myself as a commissioned officer to a higher standard. I want to take this opportunity to sincerely apologize to the wardroom, the USCG, and the USCGR. I take responsibility for my actions and concur that I should be held accountable for those actions. My recent scheduled promotion to Lieutenant Junior Grade has been delayed. I ask those involved with the review process on the next course of action for my career, to respectfully look at my 14.3-year career in its totality and not just this incident. I humbly believe that I have so much to give to the USCGR as a commissioned officer and ask that a less severe recommendation be made rather than revoking my commission.

On February 28, 2023, a Captain within the applicant's Sector, Captain (CAPT) S, submitted a memorandum wherein he recommended that a special board be initiated to revoke the applicant's commission due to acts of personal misconduct and involvement in a prohibited relationship.

On April 26, 2023, the applicant was notified that pursuant to Article 8.A. of the Reserve Policy Manual, COMDTINST M1011.28, and Article 1.J.1.a. of the Military Separations Manual, COMDTINST M1000.4A, a Proposed Special Board Action has been initiated against him with the sole purpose of recommending whether he should be involuntarily discharged from the Coast Guard Reserve. The applicant was invited to submit comments on his own behalf and those comments must be submitted within 10 calendar days from receipt of the notice. The applicant was informed that if the Board recommended him for separation, he could receive a General—Under Honorable Conditions characterization of service.

On May 3, 2023, the applicant acknowledged receipt of the notice and stated that he did not want to be voluntarily separated in lieu of further adverse administrative action. The applicant chose to exercise his rights to submit a statement on his own behalf.

On May 12, 2023, the applicant submitted his personal statement to the Special Board wherein he stated that during the time of the alleged misconduct he had recently separated from his wife of 15 years, moved out of their home and was living in a hotel or with extended family. He claimed that it was a very trying time in his personal life, including going through a messy and heavily contested divorce. He explained that during the previous year he mismanaged a professional relationship with an enlisted member, for which he took ownership of. He noted that since his failure, he had worked hard to repair relationships both on the personal and professional side.⁴

On May 25, 2023, Rear Admiral (RADM) D issued the Special Board Precepts and ordered that the Special Board convene on June 7, 2023.

On June 28, 2023, the Special Board released its “Report of Proceedings” wherein it recommended that the applicant’s commission be revoked and that he be discharged from the Coast Guard Reserve for engaging in a prohibited relationship with an enlisted member. The Board recommended that RADM D endorse the Special Board’s Report and approve the Proceedings, Findings, and Recommendations.

On July 25, 2023, the Commandant of the Coast Guard forwarded her approval of the Special Board’s recommendation to the Secretary of the Department of Homeland Security (DHS) for his approval to revoke the applicant’s commission.

On August 3, 2023, the Secretary of DHS approved the Special Board’s and the Commandant’s recommendation and revoked the applicant’s commission.

On August 8, 2023, the applicant was notified that the Special Board recommended his commission be revoked which was approved by the Commandant and the Secretary of DHS. He was told that he would be discharged no later than September 6, 2023, with a General—Under Honorable Conditions characterization of service.

⁴ The applicant’s personal statement was two pages in length and included information that is not pertinent to his claims of error before this Board, such as an overview of his accomplishments, his goals after becoming a commissioned officer, and the leaders he worked for. Accordingly, only those statements pertinent to his claims of error or injustice are summarized here.

On August 28, 2023, the applicant's counsel submitted a memorandum addressed to the Coast Guard Personnel Service Center wherein the applicant contested his separation and requested that he be permitted to remain in the Coast Guard Reserve. The applicant alleged that the Coast Guard lacked jurisdiction over the applicant relying on the UCMJ's jurisdiction found in the Military Justice Manual. The applicant further alleged that there were factual inaccuracies contained in his notices, specifically that he had an affair and that romantic text messages were sent to the enlisted member. The applicant's counsel stated that on August 28, 2023, he interviewed the enlisted member who denied that any affair took place or that any romantic text messages were sent. The applicant's counsel contended that there was no evidence in the record that any romantic text messages were sent.

The applicant was separated on September 7, 2023.

VIEWS OF THE COAST GUARD

On October 3, 2024, a judge advocate (JA) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center.

The JA argued that the applicant's claim that he is entitled to relief because his misconduct was not substantiated is unsupported by the record. The JA contended that the applicant's misconduct was substantiated by a preponderance of the evidence by the Convening Authority and the Special Board. The JA explained that the applicant was accused of misconduct by his wife and was later confirmed by an administrative investigation . The JA noted that the IO found that the applicant's misconduct met the elements of fraternization under Article 134 of the UCMJ as outlined in the Manual for Courts-Martial because he had a relationship outside of a marriage with an enlisted member while still lawfully married and showed favor toward that enlisted member. In addition, the JA noted that the IO also found that the applicant violated Article 92 when he willingly pursued a romantic relationship with an enlisted member. The JA argued that the applicant's commanding officer and Special Selection Board also found that the misconduct was supported by a preponderance of the evidence and issued the applicant a Disciplinary OER as required by policy.

The JA argued that the applicant's claim that the Coast Guard lacked jurisdiction over him because he was not on active duty orders or inactive duty for training are also erroneous. The JA contended that ultimately, the Commandant concurred with the recommendation as did the Secretary of DHS, and both used their delegated authority to revoke the applicant's Reserve commission. Furthermore, the JA argued that contrary to the applicant's claims, he was not charged with any UCMJ violations which would have required him to be on active duty or taking part in inactive duty training. Instead, the applicant was separated from the Coast Guard because his misconduct met the requirements of two UCMJ violations that were also causes for separation under the Military Separations Manual, COMDTINST M1000.4 which do apply to Reserve officers whether or not they are in an active duty status or inactive duty training.

Finally, the JA argued that the applicant's claims that a lieutenant did not have the authority to rule on his request for relief based on lack of jurisdiction are without merit. The JA again argued

that the Coast Guard did have administrative jurisdiction over the applicant. Moreover, the JA contended that the applicant's separation had already been approved by the time he submitted his objection to the separation on August 28, 2023. Therefore, the JA argued even if the Coast Guard failed to forward the memorandum, that the failure could not have been the source of error in the processing of his separation. The JA explained that the Secretary of DHS approved the revocation of the applicant's commission on August 3, 2023 and by that time, the applicant had already responded or been afforded an opportunity to respond to the underlying allegations and jurisdictional issues on three separate occasions—when the applicant declined to comment during the investigation, and when the applicant submitted a personal statement to the Special Board. According to the JA, the applicant's claim that the lieutenant allegedly failed to route a post-hoc objection to the jurisdiction of the separation cannot be considered to have been an error warranting correction by this Board, especially when the jurisdictional objection underlying the claim was itself baseless.

APPLICANT'S RESPONSE TO VIEWS OF THE COAST GUARD

On October 18, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. As of the date of this decision, no response was received.

APPLICABLE LAW AND POLICY

The Manual for Courts-Martial United States, Part IV-134, Paragraph 101, lists the following elements of the offense of fraternization:

- (1) That the accused was a commissioned or warrant officer;
- (2) That the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner;
- (3) That the accused then knew the person(s) to be (an) enlisted member(s);
- (4) That such fraternization violated the custom of the accused's service that officers shall not fraternize with enlisted members on terms of military equality; and
- (5) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

...

The Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, provides the following relevant guidance on the Coast Guard's Code of Conduct:

2.A. Interpersonal Relationships.

1.c. Leadership and Military Discipline. Professional interpersonal relationships always acknowledge military rank and reinforce respect for authority. Good leaders understand the privilege of holding rank requires exercising impartiality and objectivity. Interpersonal relationships which raise even a perception of unfairness undermine good leadership and military discipline.

...

1.e. Officers and Senior Enlisted. By long standing custom and tradition, commissioned officers, including warrant officers, have leadership responsibilities extending across the Service. Likewise, chief petty officers (E-7 to E9) have a distinct leadership role, particularly within their assigned command. Both provide

leadership not just within the direct chain of command, but for a broader spectrum of the Service. Due to these broad leadership responsibilities, relationships involving officers or chief petty officers merit close attention.

...

2.A.2.a. Professional Work Environment. Coast Guard policy is to sustain a professional work environment which fosters mutual respect among all personnel, and in which decisions affecting personnel, in appearance and actuality, are based on sound leadership principles. Commanding Officers, officers-in-charge, and supervisors are expected to provide an environment which enhances positive interaction among all personnel through education, human relations training, and adherence to core values.

...

2.A.2.d. Assessing the Propriety. The great variety of interpersonal relationships precludes listing every specific situation that members and commands may encounter. While some situations are clearly discernible and appropriate action is easily identified, others are more complex and do not lend themselves to simple solutions. Evaluating interpersonal relationships requires sound judgment by all personnel. Factors to consider in assessing the propriety of a relationship include:

...

(3) The character of the relationship; e.g., personal, romantic, marital.

...

(d) Prohibited relationship: Violates reference (a), Uniform Code of Military Justice, 10 U.S.C. § 801 – 946 (as amended). Resolution may be either administrative, punitive, or both as circumstances warrant.

...

2.A.2.g. Prohibited Relationships, Communications, Conduct, and Contact.

(1) Policy. Coast Guard policy prohibits the following relationships, communications, conduct, or contact regardless of rank, grade, or position of the persons involved:

...

(b) Romantic relationships outside of marriage between commissioned officers and enlisted personnel. For the purposes of this paragraph, Coast Guard Academy (CGA) cadets and officer candidates (both OCS and ROCI) are considered officers.

...

(2) Punitive Application. This provision is a punitive general regulation, applicable to all personnel subject to the Uniform Code of Military Justice without further implementation. A violation of this provision is punishable in accordance with Article 92 of the Uniform Code of Military Justice.

...

Article 1 of the Military Separations Manual, COMDTINST M1000.4, provides the following guidance on separating commissioned officers within the Coast Guard:

1.A.2.c. General Discharge. The Service grants a General Discharge to officers administratively separated for cause if the cause for separation or an officer’s previous record would preclude honorable discharge but is not of such a nature as to require discharge under conditions other than honorable; for example:

(1) Acceptance of resignations submitted in the form described in Article 1.A.5.b. of this Manual.

(2) Separation for cause for reasons specified in Article 1.A.14.c.(2) of this Manual.

...

1.A.8. Discharging Ready Reserve Officers on Active Duty. When it is necessary to recommend a Reserve officer serving on active duty for discharge from the U. S. Coast Guard Reserve, the following guidance applies.

...

b. Reserve officers with fewer than five years commissioned service being considered for a general discharge for reasons contained in Article 1.A.14.c.(2) of this Manual will be processed by a single, special board of officers guided by the applicable procedures outlined in Article 1.A.14.h. of this Manual. A Reserve officer shall serve as a member of the board.

...

d. Reserve officers discharged due to board action or at their request in lieu of board action receive an honorable discharge if Article 1.A.14.c.(1) of this Manual applies and a general discharge if Articles 1.A.14.c.(2) or 1.A.14.c.(3) of this Manual applies. Determine the amount of separation pay, if entitled, by computing years of service and basic pay as defined in Reference (b), Coast Guard Pay Manual, COMDTINST M7220.29 (series).

...

1.A.14.c. Causes for Separation. The causes for separations prescribed in this Section are also applicable to officers processed under Articles 1.A.7, 1.A.8., 1.A.10., 1.A.11, 1.A.19, or 1.A.20 of this Manual.

...

(2) Existence of one or more of these or similar conditions may require removing an officer for moral or professional dereliction:

...

(b) Mismanaging personal affairs detrimentally affecting the officer's performance of duty.

(c) Mismanaging personal affairs to the discredit of the Service.

...

(e) Acts of personal misconduct prohibited by military or civilian authorities.

...

(j) Involvement in a prohibited relationship. See Article 2.A. of Reference (e), Discipline and Conduct, COMDTINST M1600.2 (series), for policy guidance.

...

(3) Any one of these or similar reasons causes serious doubt as to the advisability of permitting the officer concerned to retain a commission and normally prompts a review of his or her overall record.

This review will determine if this derogatory information, when viewed in conjunction with other aspects of his or her record, warrants a recommendation for separation. Standing alone any one of these conditions may not support separation. However, any one of them when combined with other known deficiencies could form a pattern which, when viewed in relation to an officer's overall record, requires separation.

...

(d) Derogatory evaluation report.

...

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 his Coast Guard military record. The Board finds that the applicant has exhausted his 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 because 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 requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. All Board members concurred in that recommendation.⁵

4. The applicant alleged that the Coast Guard erred when it revoked his commission based on unsubstantiated misconduct. The applicant further alleged that the misconduct occurred when he and the enlisted member were not on active duty or on inactive duty drilling. According to the applicant, the Coast Guard had no jurisdiction or authority to initiate separation proceedings against him. Finally, the applicant alleged that he filed a request for relief based on a lack of jurisdiction, but that request was never routed past the Section Chief for Reserve Personnel which was necessary because the LT overseeing his Special board lacked authority to rule on the jurisdictional issue. 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.⁶ Absent evidence to the

⁵ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (Ct. Cl. 1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁶ 33 C.F.R. § 52.24(b).

contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁷

5. Unsubstantiated Misconduct. The applicant alleged that the Coast Guard erred when it revoked his commission based on misconduct that was not sufficiently substantiated. The applicant’s counsel alleged that he interviewed the enlisted member on August 28, 2023, and the enlisted member denied an affair or romantic text messages. Article 2.A.2.g.1.b. of the Coast Guard Discipline and Conduct Manual, COMDTINST M1600.2, prohibits, “Romantic relationships outside of marriage between commissioned officers and enlisted personnel.” Article 2.A.2.d.3.d. states that a prohibited relationship is one that violates the UCMJ. Resolution may be either administrative, punitive, or both as circumstances warrant. Finally, Article 134—Fraternization, of the UCMJ provides an officer is guilty of fraternization when 1) the accused was a commissioned or warrant officer; 2) the accused fraternized on terms of military equality with one or more certain enlisted member(s) in a certain manner; 3) the accused then knew the person(s) to be (an) enlisted member(s); 4) such fraternization violated the custom of the accused’s service that officers shall not fraternize with enlisted members on terms of military equality; and 5) under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

The Board’s review of the record shows that in July 2022, just one year after the applicant became a commissioned officer, the applicant’s command was notified by the applicant’s wife that the applicant was engaged in a prohibited relationship with an enlisted member. As a result of this information, on July 6, 2022, a Sector Commander, CDR S, convened an administrative investigation to investigate the alleged misconduct. On August 5, 2022, the IO submitted his report of investigation wherein he found that the applicant willingly pursued a romantic relationship with an enlisted member in violation of both the UCMJ and Coast Guard regulations. The IO’s conclusions were based on testimony from the enlisted member who stated the applicant expressed his romantic feelings for her in text messages and that a phone conversation between her and the applicant was unknowingly videoed by an unknown individual who then sent the video to the applicant’s wife. According to the applicant’s counsel, the enlisted member denied that any romantic text messages were sent or that there was an affair during counsel’s interview with her on August 28, 2023. However, the applicant’s counsel’s contentions are not supported by the record.

The Board is not persuaded by the applicant’s claims that no romantic messages were sent. First, in addition to the enlisted member’s statements, the applicant’s wife, and his immediate supervisor, both provided statements to the IO that corroborated the applicant’s romantic relationship with the enlisted member. The evidence suggests that at least some romantic communications were shared because the applicant’s wife was notified and was extremely distressed by what she learned. Finally, the applicant himself admitted that he had mismanaged a professional relationship in a personal statement to the Special Board and in his Reported-on Officer Reply, wherein he stated, “I want to take this opportunity to sincerely apologize to the wardroom, the USCG, and the USCGR. I take responsibility for my actions and concur that I should be held accountable for those actions.” The applicant has claimed to this Board that his

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

relationship with the enlisted member did not violate any Coast Guard or military regulations, yet in a personal statement he admits to “mismanaging” a professional relationship and that he should be held accountable.

Of serious concern to this Board is that the applicant’s pursuit of a prohibited romantic relationship with an enlisted member took place while he was still married and only one year after commissioning. It was not just that the relationship was prohibited because one was an officer and the other enlisted, but also because the officer was still married at the time. Finally, the records and evidence were reviewed by the applicant’s commanding officer, a Special board, and the Commandant, all of which found the evidence and record sufficient to support the revocation of the applicant’s commission. Accordingly, the Board finds that the applicant’s pursuit of a prohibited relationship was substantiated by the record through not only the testimony of others but also through the applicant’s own words.

6. Lack of Jurisdiction. The applicant alleged that the Coast Guard erred in separating him because he was not on active duty orders or on inactive duty drilling and therefore had no jurisdiction over him. To support his contentions, the applicant cited Article 2.C.3. of the Military Justice Manual. However, this article applies to members subject to NJP, but the applicant was not subjected to NJP but was instead processed for separation using administrative procedures. The applicant has failed to point to one Coast Guard regulation, and the Board could find none, that prohibits the Coast Guard from pursuing administrative actions against an officer simply because the conduct forming the basis of the action did not occur while the officer was on active duty or inactive duty drilling. The Coast Guard did not separate the applicant on the basis of Article 2.C.3. of the Military Justice Manual but separated him pursuant to Articles 1.A.8. and 1.A.14.c.2. of the Military Separations Manual, as indicated in CAPT S’s February 28, 2023, memorandum wherein he recommended the applicant’s commission be revoked.

Article 1.A.14.c.2. of the Military Separations Manual, COMDTINST M1000.4, states that if a Reserve officer has mismanaged their personal affairs that detrimentally affected the officer’s performance of duty, mismanaged their personal affairs to the discredit of the Service, committed acts of personal misconduct prohibited by military or civilian authorities may require that the officer be separated, or was involved in a prohibited relationship may require that the officer be separated. Moreover, Article 1.A.8. states, “Reserve officers with fewer than five years commissioned service being considered for a general discharge for reasons contained in Article 1.A.14.c.2. of this Manual will be processed by a single, special board of officers guided by the applicable procedures outlined in Article 1.A.14.h. of this Manual. A Reserve officer shall serve as a member of the board.”

As already outlined in Finding 5 above, the record shows that the applicant intentionally pursued a romantic relationship with an enlisted member which was prohibited by both Coast Guard and military regulations. The applicant’s prohibited relationship caused significant disruption in both his personal life and his professional life that brought discredit upon the service which exposed him to separation under Article 1.A.8. and 1.A.14.c.2. of COMDTINST M1000.4. Accordingly, because the Coast Guard did not pursue criminal charges against the applicant but instead proceeded with administrative procedures the Coast Guard did have jurisdiction over the

applicant. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard lacked jurisdiction to administratively separate him for cause.

7. Failure to Forward Request for Relief. The applicant alleged that the Coast Guard failed to forward his appeal and request for relief based on lack of jurisdiction to the appropriate official the memorandum was addressed to. According to the applicant, the LT that ultimately ruled on the request for relief did not have the authority to rule on jurisdictional issues. However, as outlined in Finding 6 above, the applicant's claims of lack of jurisdiction lacked merit. The record shows that the applicant was not subjected to criminal charges but was instead processed for separation through administrative measures. Accordingly, the regulations relied upon by the applicant were not applicable to his claims. In addition, the applicant has failed to cite to one Coast Guard regulation that prohibited the Section Chief, a lieutenant, from ruling on jurisdictional issues. The Board notes that the applicant was represented by counsel at the time his memorandum was submitted to the Coast Guard and relied only on the jurisdiction of the UCMJ, but as already explained, the applicant was not subjected to punishment under the UCMJ, but through administrative procedures.

8. The applicant made varied allegations and arguments. Those allegations not specifically addressed above are considered to be unsupported by substantial evidence sufficient to overcome the presumption of regularity and/or are not dispositive of the case.⁸

9. For the reasons outlined above, the applicant has not met his 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.⁹ He has not proven, by a preponderance of the evidence, that the Coast Guard erred when they administratively separated the applicant pursuant to Articles 1.A.8, and 1.A.14.c.2. of the Military Separations Manual. He has also failed to prove that the Coast Guard lacked administrative jurisdiction over him.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁸ 33 C.F.R. § 52.24(b); see *Frizelle v. Slater*, 111 F.3d 172, 177 (D.C. Cir. 1997) (noting that the Board need not address arguments that “appear frivolous on their face and could [not] affect the Board's ultimate disposition”).

⁹ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

ORDER

The application of former ENS [REDACTED], USCGR, for the correction of his military record is denied.

December 12, 2024

