

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2023-041


LTJG

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 May 18, 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 October 17, 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, an active duty Lieutenant Junior Grade (LTJG/O-2),¹ asked the Board to correct his record by changing his commissioning date from December 16, 2022 to May 18, 2022, having his record reviewed by the 2023 Lieutenant Junior Grade (LTJG/O-2) promotion board, and provide all backpay and allowances that flow from this correction.

The applicant explained that this error was the result of the Coast Guard Academy withholding his commissioning date and his degree after an unsubstantiated accusation was made which resulted in a minor cadet infraction that did not justify withholding a commission or degree. The applicant stated that in his application he has raised important due process issues as to how his situation was managed throughout the disposition of his case.

The applicant explained that approximately 27 days prior to his scheduled commissioning date, he was approached by Lieutenant (LT) R, an Academy Company Officer, who told the applicant that he would need to come with him to discuss something of high importance, but LT R did not tell the applicant what the high importance matter was. However, because the applicant was leaving to undergo a medical procedure, LT R stated he would speak to the applicant the following Monday. The applicant stated that on May 3, 2022, about fifteen days before his

¹ When the applicant initially applied to the Board, he was an Ensign (ENS/O-1). In the interim, he has since been promoted to LTJG/O-2.

commissioning date and almost two weeks after LT R first approached him, he received an email from LT R stating that he needed to meet with the applicant the following day, May 4, 2022. The applicant claimed that during the meeting LT R informed him that he would not be graduating on May 18, 2022 due to an allegation that had been raised against the applicant and was being investigated by Coast Guard Investigative Services (CGIS). The applicant claimed that LT R escorted the applicant to the interview and apologized for waiting twelve days to schedule the interview because it delayed the process. According to the applicant, during the interview LT R stated that if the applicant was found innocent his graduation and commission date would be backdated to May 18, 2022 and he would receive all backpay and allowances.

The applicant explained that during the course of the investigation he was given a temporary duty assignment to a cutter and during his 137 days aboard the cutter, no one from the academy ever reached out to him. He alleged that there was no attempt to inquire about his wellbeing, qualifications or professional training status, or provide updates on his case or commissioning status. The applicant claimed that the only correspondence he received from his chain of command during this were responses to his unsolicited requests for updates.

The applicant explained that on October 13, 2022 he received word from Coast Guard legal that the Coast Guard would not be taking any military justice action against him and that the Academy should be reaching out to him shortly. According to the applicant, it was not until sixteen days later when he returned to the academy after receiving orders that LT R informed him that he was to be commissioned with a backdated rank because the investigation cleared him of all legal and non-judicial charges. According to the applicant, LT R told the applicant he would be commissioned within the coming weeks. The applicant claimed that following this meeting with LT R, he received no correspondence from any members of his chain of command other than responses to his requests for updates on his commissioning date. The applicant alleged that LT R's response to his many requests was "No action required on your end; LT [B] or I will advise if we require action on your part. These things take time and there is no prescribed timeframe, which I know makes it frustrating on your end, but from my knowledge, a lot of paper has to get done and then there is the planning side."

The applicant explained that on November 18, 2022, nineteen days after LT R told the applicant he would not be facing any charges and would be commissioned within the coming weeks, he was called back into LT R's office where he was told that he was being charged with two class one offenses: "Respect, lack of or failure of," and "Relationship: inappropriate or improper, involving a serious breach of discipline." The applicant claimed that during this same meeting he was told that a closed Class 1 hearing would be scheduled for November 29, 2022 that would include members of the Coast Guard Academy chain of command, the applicant's representative, and the accuser and her Special Victim's Counsel solely for the purpose of providing a victim impact statement.

The applicant alleged that during this November 18, 2022 meeting he was strongly advised several times during the course of conversation not to contest the charges because it would make a difference in the outcome. According to the applicant, LT R assured him that he was 99% sure no punishment would be awarded and that the applicant should expect to show up and say "Yes, Sir," "Yes, Captain." The applicant claimed that LT R also stated that Captain (CAPT) R would

probably “chew my ass” but that the applicant would graduate on the 16th of December 2022 with the other mid-year graduates. The applicant stated upon hearing this news he asked LT R how it was possible that he would be told he was not being charged and then charged with two Class 1 offenses, to which LT R replied that the Academy Command “on this deck” were all in agreement with the applicant’s graduation and commissioning but they received pushback for fear “if a congressional inquiry happens and we did not adjudicate this in some way...”

The applicant alleged that LT R assured him that if the applicant would “Go in there” and say “Yes, Sir,” “Yes, Captain,” he would graduate on December 16, 2022. The applicant further alleged that LT R stated that he did not think that even if the applicant “present[ed] evidence in mitigation or extenuation, if it would even matter. [Applicant was] still going to graduate on the 16th,” that “the Admiral has declined to take any military justice action against you,” and now the applicant was being charged “through the cadet conduct system, which is a much lower threshold of 51% with no elements to the offenses.” According to the applicant, LT R told him that he should just take his licks so that he could graduate in 28 days. The applicant allegedly responded with, “The fact that I did not do something and I was told that nothing was going to come of it, and now I am being told basically to stand up and say ‘yes I did it,’ ‘yes I did it,’ ‘yes I did it,’ to graduate is just like, it’s astounding to me.” A second Lieutenant with the same initials who was also in this meeting, allegedly responded to the applicant’s statement by claiming that even if the applicant presented evidence in extenuation, mitigation, or evidence to support his innocence, the applicant would still be charged if CAPT R thought there was a 50.001 % chance that the applicant was guilty. The applicant strongly felt that this was implying that the applicant would be found guilty regardless of what evidence he provided.

The applicant alleged that during this conversation he informed LT R that after his graduation was postponed and after he contacted attorneys, he became aware of evidence that the only reason the girl accused the applicant of wrongdoing was because she feared the applicant knew of the inappropriate relationship she was in with an upper classman and was afraid the applicant would report her. The applicant claimed that LT R was aware of the relationship the applicant was referring to. LT R told the applicant that he would be sending the applicant an email summarizing the counseling session that had just occurred and that the applicant would need to come by later to review the CGIS report and to submit any additional evidence he wanted considered. The applicant explained that he received the email which included his alleged offenses: (1) 1220 Respect: lack of, failure of; and, (2) 1237 Relationship: inappropriate or improper, involving a serious breach of discipline.

The applicant alleged that when he arrived at LT R’s office to review the CGIS report, before he could even open the report LT R asked the applicant whether or not he planned on contesting the charges, to which the applicant replied, “yes.” The applicant claimed that at the point, LT R told the applicant that the charges in his case has been changed from “1220: Respect, lack of, failure of” and “12307: Relationship: inappropriate or improper, involving a serious breach of discipline” to “1203: Assault” and “12307: relationship: inappropriate or improper, involving a serious breach of discipline.” The applicant stated that immediately after LT R handed over the investigation, he sent the applicant with an email that stated, “Please see below for updated charges, (1) 1203 assault; and (2) 1237 relationship: inappropriate or improper, involving a serious breach of discipline.” The applicant claimed that when he asked LT R why the charges had been

changed, LT R could not provide an answer but stated he was very sorry this was happening to the applicant but that the entire command was in agreement that he should graduate and that the only reason the case was being adjudicated was in case of Congressional Inquiry.

The applicant claimed that throughout his conversations with both lieutenants, it was implied that the applicant would be found guilty regardless of his plea or the evidence he submitted due to the low threshold of guilt and lack of elements to the offenses. The applicant alleged that LT R made it seem as though the Academy's chain of command needed to ensure that it appeared as though the Academy provided adequate disciplinary action in the event of a Congressional Inquiry.

The applicant argued that under the Cadet Conduct and Discipline Manual, SUPTINST M5215.3A, "The accused cadet must elect whether they will contest the charges at the Class 1 Hearing or admit to the charges at the conclusion of the five day review period. This election is made via the Accused Acknowledgment of Review form. Every cadet has the right to contest the charges, whether they were committed or not. Not admitting to the offenses charged when one did in fact committed the offense is not an honor violation. *Cadets shall never be pressured to admit an offense.* If a cadet fails to make a decision about whether to admit, it shall be treated as a desire to contest the charges. An accused cadet may change his or her decision to admit to charges at any time prior to the Class 1 Hearing Authority determining that an offense has been committed at the Class 1 Hearing. If a cadet contests some charges and admits to others, the Class 1 Hearing Authority will consider only that evidence relevant to the charges that are being contested by the cadet."

The applicant claimed that after signing an acknowledgement form wherein he pleaded innocent, LT R again reiterated the applicant's need to provide evidence he wanted considered by the end of the day and that it would be unwise to present the evidence during the hearing. The applicant stated that on November 21, 2022, after he had compiled all compelling evidence, he submitted a 45-page document to his chain of command, which included LT R. The applicant claimed that despite being told in person and in email that the Class 1 hearing would be a closed hearing, the other LT R sent an email stating that the hearing would be open to the public and provided a Microsoft Teams livestream link.

The applicant explained that on November 29, 2022 the Academy Commandant of Cadets, CAPT R, adjudicated his case and found him not guilty of violating "1203: Assault" and "12307: relationship: inappropriate or improper, involving a serious breach of discipline," but was found guilty of violating "1233: Judgment: failure to use good" despite these charges never having been included in the initial accusation or charges. The applicant alleged that the reasoning for being charged with judgment was not explained during the Class 1 hearing and the punishment, adjudicated 210 days after being notified he was under investigation, was outlined in an email as:

You must write a 2000-word essay, via properly formatted Coast Guard memorandum, from you, Thru: CDR [C], To: CAPT [R], regarding junior officers' roles in managing senior-subordinate relationships, perception when working with junior/subordinate personnel in order to avoid inappropriate relationships and fraternization, and the need to always demonstrate sound judgment.

The applicant contended that this was the Academy's attempt to mitigate any potential risk of a Congressional inquiry, as was previously disclosed to him.

The applicant alleged that despite being told that the Special Victim's Counsel would be invited to the hearing explicitly to provide an impact statement, this attorney was permitted to remain in the room after providing an impact statement and participate in the deliberation of the outcome of his case. The applicant claimed that he was denied the opportunity to have the command of the cutter to which he was temporarily assigned present. The applicant further claimed that he was also not given adequate time to find a Class 1 hearing representative as he was informed the day prior to the Academy's scheduled Thanksgiving leave that he was being charged and there was only one business day upon his return to the Coast Guard Academy prior to the scheduled hearing date of November 29, 2022. The applicant contended that in fact, due to the expedited hearing, and the inability to provide a hearing representative, BMC D was assigned as his hearing representative moments before the hearing began. The applicant alleged that BMC D was not familiar with his case, and was unable to speak to the applicant's character due to the lack of a prior relationship. The applicant contended that ultimately, he was not provided with the ability to have adequate representation acting or speaking on his behalf during this hearing.

The applicant argued that the timeline and supporting documents demonstrate a lack of due process related to significant time delays, a lack of communication from the Academy command, and a lack of representation during the Class 1 hearing. According to the applicant, this was a sequence of events that ultimately resulted in a minor cadet administrative infraction that does not justify the withholding of a commission and degree.

SUMMARY OF THE RECORD

The applicant entered the Coast Guard Academy as a cadet on July 2, 2018.

On April 19, 2022, the Academy received an unrestricted report of sexual assault against the applicant which resulted in a CGIS investigation being initiated. Specifically, the applicant was accused of inappropriately touching a female cadet when he kicked her "right in the ass crack" with his flip flop.

On May 4, 2022, the applicant was informed that an allegation was made against him by a fellow cadet and that the allegation was being investigated.

On May 13, 2022, CGIS forwarded its Report on Investigation to the Academy for review.

On May 18, 2022, the applicant was set to graduate but his graduation and commission was postponed due to the investigation.

On August 5, 2022, the Academy requested prosecutorial support from the Legal Service Command (LSC) to review and evaluate the investigation for potential criminal action.

On September 28, 2022, LSC recommended that the Academy not seek prosecution under the Uniform Code of Military Justice (UCMJ).

On September 29, 2022, the Academy received the alleged victim's input as to the disposition of the case. The alleged victim claimed that the applicant's actions had an immediate and ongoing effect on her personal, mental, and emotional state, and in particular the relationships she had with other people. She further claimed that the emotional toll of the applicant's actions had detrimentally affected her grades, mental health, and performance in sports and the affects continue every day. She also claimed that the applicant's alleged actions affected her sleep behaviors causing her to struggle with falling asleep or waking throughout the night by memories and fear. She requested that the Coast Guard discharge the applicant from the service.

On October 13, 2022, the Coast Guard Academy Superintendent, as the Sexual Assault Initial Disposition Authority (SA-IDA), declined military justice action and instead referred the matter for administrative, non-criminal adjudication, if any, by the Commandant of the Academy.

On November 29, 2022, the Commandant of Cadets found the applicant not guilty of the charges laid against him, but found him guilty of violating Article 1233: Judgment: failure to use good.

On December 7, 2022, the Academy notified Coast Guard Personnel Service Center (PSC) that the applicant had met commissioning requirements.

On December 16, 2022, the applicant received his degree and was commissioned. The applicant's graduation and commission were delayed by 212 days as a result of the allegations made against him.

VIEWS OF THE COAST GUARD

On April 11, 2024, a judge advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

PSC argued that cadets have limited rights at Class 1 hearings and consistent with Academy regulations, the applicant was represented at the hearing by a representative and had notice of two offenses that were being considered against him. PSC contended that the fact that he was not provided actual notice of the "failure to use good judgment" charge, which he was ultimately found guilty of, is irrelevant because he had constructive notice of this offense based on the notice he was provided of the two related offenses targeting the same conduct.

PSC argued that the applicant's "due process" claims surrounding the Class 1 hearing had no bearing on the applicant's date of commission. According to PSC, the applicant's alleged misconduct needed to be adjudicated pursuant to the SA-IDA's disposition determination, resulting in the Commandant of Cadets ordering a Class 1 Hearing. PSC argued that regardless of what procedural rights were afforded to the applicant at that Class 1 Hearing, the timing of the adjudication—not any procedures, punishment, or findings—is what impacted his commissioning date. Accordingly, any procedural errors in adjudicating the applicant's case under the Cadet Regulations would not have impacted or prejudiced his commissioning date.

Finally, PSC argued that the administrative delay in adjudicating the applicant's case was not unreasonable. PSC stated that the timeline provided in their memorandum and included in this decision specifies key milestones in the processing of the applicant's case. PSC explained, importantly, the Academy received the CGIS report of investigation five days prior to graduation—an insufficient amount of time to properly adjudicate an alleged sexual assault in compliance with statutory and policy requirements. PSC stated that the matter was then reviewed for potential criminal action by the LSC and adjudicated administratively during the Summer and Fall of 2022 semester—in time for the applicant to graduate and commission at the next available mid-year graduation in December 2022.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 4, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response on July 28, 2024. The applicant repeated many of the same arguments in his response to the advisory opinion as he did in his original memorandum to the Board. For efficiency, only those arguments not already summarized or not directly related to the advisory opinion will be summarized here.

Addressing the Coast Guard's argument that, "the applicant's alleged misconduct needed to be adjudicated pursuant to the SA-IDA's disposition determination, resulting in the Commandant of Cadets ordering a Class 1 hearing," the applicant contended that the Class 1 hearing was held, and the two Class 1 offenses were dismissed, with CAPT R concluding that "the circumstances surrounding the allegations raised against ENS [Applicant] were fully investigated and determined to be unfounded." The applicant noted that CAPT R also clarified that the failure to use good judgment charge was "unrelated to the Class 1 hearing charges." The applicant argued that while PSC focused its argument on the timing of the adjudication which ultimately impacted his commissioning date, not the punishment or the findings (page 3 of their response), the findings and Class 1 hearing outcome are relative in his case. The applicant stated that the original accusation made against him was thoroughly reviewed and declined for military justice action. Subsequently, the two Class 1 offenses were fully adjudicated and determined to be unfounded.

Regarding the Coast Guard's claim that the timing and adjudication of the accusations did not amount to an administrative delay, the applicant contended that PSC confirmed in its advisory opinion that the Academy received an unrestricted report on April 19, 2022 of sexual assault, prompting CGIS to investigate. The applicant stated that despite being documented in his original submission to the BCMR, PSC did not acknowledge that he was approached by LT R regarding the unrestricted report until April 22, 2022. Moreover, LT R did not notify the applicant of the nature of the charges only that he wanted to speak on a matter of importance. The applicant alleged that LT R stated that he would speak to the applicant on Monday April 25, 2022 but failed to do so. According to the applicant, it was not until 10 days later, on May 3, 2022 that LT R emailed him to follow up regarding the unrestricted report. The applicant stated that in LT R's email, LT R stated, "I completely forgot to text you back earlier last week and that's on me." The applicant contended that PSC confirmed that he finally received notification of the unrestricted report and the allegations on 4 May 2022 when he met with CGIS.

The applicant argued that LT R's failure to follow up timely resulted in a thirteen day delay in his notification of the allegations made against him and the unrestricted report being investigated by CGIS. The applicant claimed that LT R's delayed the CGIS investigation by almost two weeks and noted that the only item needed to be completed by CGIS was obtaining his statement. The applicant alleged that unknown to him, until he reviewed PSC's timeline of events PSC confirms that on May 13, 2022 CGIS forwarded the completed Report for Investigation to the Academy for review, yet despite the Report for Investigation being forwarded to the Academy for review on May 13, 2022, PSC confirmed that it was not until August 5, 2022, 84 days later, that the Academy requested prosecutorial review from the LSC. The applicant contended that 84 days is not a reasonable delay.

The applicant further contended that despite the Academy knowing on September 28, 2022 that the case was not going to be prosecuted, he remained on temporary duty for another 34 days before being called back to the Academy. The applicant argued that 34 days was more than enough time for the Academy to know how they were going to proceed. The applicant noted that from September 28, 2022 through November 18, 2022, when he was notified that there would be a Class 1 hearing held, was 52 days, which created additional administrative delays and contributed to due process errors. The applicant noted that the advisory opinion states, "The Applicant did not meet the commissioning requirements until 16 December 2022, in time for the next available mid-year graduation in December 2022," but ignores that fact that avoidable administrative delays by the Academy significantly contributed to a delayed graduation in his case. The applicant argued that the advisory opinion grossly oversimplifies the Matters of Record and the arguments and conclusions submitted by PSC ignored the clear administrative processing delays that occurred by the Academy in adjudicating this case.

The applicant stated that he understands the allegations that were made by the alleged victim and that there are statutory requirements that needed to be adhered to when adjudicating these types of cases, but his case was fully adjudicated according to the Military Justice Manual and Corps of Cadets Regulations by then Commandant of Cadets, CAPT R, and the initial and follow-up charges were dismissed. The applicant argued that two hundred and forty-two days to resolve a case that had only one witness statement, the alleged victim, and taking CG legal only fifty-four days to determine that CG Legal would not take any military justice does not align with the Coast Guard's advisory opinion that there was not an unreasonable delay in adjudicating his case. The applicant contended that he would be doing himself a disservice if he did not express the immense personal toll this horrific experience has had on him.

The applicant stated that CAPT R attested to the fact that he "was a commendable cadet," both at the Academy and away from the Academy, and was "highly praised" and "performed admirably" in his company duties." The applicant claimed that during his entire career as a cadet, "[I] accrued only 5 demerits, showcasing an exemplary conduct record" while eventually graduating with academic honors. The applicant stated that the false allegations made against him tarnished his service reputation, created an incredible burden, resulted in him missing out on his class graduation ceremony, cost him valuable time in service, a decrease in rank in the Registry of Officers, lost pay, continued inquiries from current service members despite being cleared of all charges, and the potential impact to his competitiveness for future opportunities regardless of his past, current and future performance as an officer.

The applicant asked the Board to take all of these factors into consideration when making a decision regarding his case. He contended that an accused individual should have the right to full reinstatement when the accusations are fully vetted according to the established laws and are determined to be “woefully unfounded.” He concluded by citing a letter from CAPT R, “In justice to [Applicant], he deserves the chance to move on from this issue and focus on seizing future opportunities that align with his merits, free from the burden of baseless accusations that have now been thoroughly examined.”

To support his application, the applicant submitted a letter of support from CAPT R. The content of that letter are as follows:

1. I am writing to endorse the appeal of Ensign [Applicant] regarding the decision made by the Board of Corrections for Military Records. Additionally, I find it imperative to furnish a short summary of the Class I hearing, where I served as the hearing official and administered the consequent disciplinary measures, in order to elucidate the justification and basis for my support of ENS [Applicant’s] appeal.

2. Overview of Cadet [Applicant’s] Class I Hearing:

a. A CGIS investigation was initiated to probe the circumstances surrounding an unrestricted report filed concerning cadets [Applicant], reported assailant, and [redacted], reported victim. Following this, an initial crime report was submitted. Upon the advice of the CGA SJA and in alignment with the CGHQ recommendation, the convening authority, CGA Superintendent, opted not to take military justice action. Nonetheless, the matter was forwarded to our Cadet Division for suitable disciplinary measures under the Cadet Conduct and Discipline System. Subsequently, Cadet [Applicant] was accused of breaching Cadet Regulations sections 1203 (Assault) and 1225 (Relationship: Inappropriate or improper), which constitute a serious breach of discipline. Furthermore, as the Commandant of Cadets, I served as the presiding officer of the investigative Class I Hearing.

b. After assessing all the circumstances, I decided to dismiss the two offenses for they were woefully unfounded. Additionally, there was circumstances presented during the hearing indicating that the reported victim may have had a malicious intent when submitting an alleged report against Cadet [Applicant]. I took all into account and carefully considered the financial impact of his loss of revenue and significant decline in class rank caused by the administrative process, which consequently led to a delay in his graduation/promotion. Moreover, ENS [Applicant] was a commendable cadet who excelled on CGC [temporary], his last temporary assignment at an operational CG unit prior to his subsequent graduation where he was highly praised by the cutter’s command cadre (summer of 2022) and, as reported by his former Company Officer, performed admirably in his company duties. Throughout his cadet career, he accrued only 05 demerits, showcasing an exemplary conduct record.

c. During the hearing, then Cadet [Applicant] shared poignant instances of personal loss through suicide, which have deeply affected him and strengthened his commitment to providing exceptional support to others, particularly cadets whom he perceived to be facing mental struggles. In my assessment, based on the information I reviewed and presented during the hearing, his error in judgment was in positioning himself as the primary resource instead of directing the reported victim, Cadet [redacted], to the numerous resources available within our community and among active-duty CG members. Furthermore, it was apparent that as a 1/c cadet (college senior) and one of the leaders of the Corps of Cadets, he failed to establish clear professional boundaries in his interactions with a subordinate. Given that all cadets are in training, I viewed this incident as a valuable teaching moment for this aspiring officer. I emphasized that he possesses immense potential to become an outstanding officer and leader in our Service. In short, while a cadet, ENS [Applicant] assisted

several cadets who struggled while at the academy who were under his leadership, to include the reported victim, and, in turn, placed himself in a vulnerable position.

3. I have had the privilege of working closely with ENS [Applicant] during his final year as a cadet at the Coast Guard Academy and can attest to his character and dedication. While the administrative delay in adjudicating the Applicant's case may not have been unreasonable, the circumstances surrounding the allegations raised against ENS [Applicant] were fully investigated and determined to be unfounded. As stated above, ENS [Applicant] was held accountable at a Class 1 Hearing for an error in judgment, unrelated to the initial allegation, and unrelated to the Class 1 Hearing charges of Assault, and Inappropriate Relationship.

4. ENS [Applicant] missed out on the graduation experience with his class, suffered a substantial decline in rank in the Registry of Officers, lost valuable time in service and sea time, experienced a decrease in associated pay, and saw his service reputation tarnished as he continues to face inquiries about the allegations from members of all ranks. He performed well at the academy and has received outstanding feedback from multiple Coast Guard Units he operated alongside both prior to, during and after the investigation. In justice to [Applicant], he deserves the chance to move on from this issue and focus on seizing future opportunities that align with his merits, free from the burden of baseless accusations that have now been thoroughly examined. I firmly believe that he merits a reconsideration of his case, and I wholeheartedly endorse his appeal to rectify his military records.

5. Thank you for your attention to this matter. Please feel free to contact me if you require any further information or clarification regarding ENS [Applicant's] service record.

APPLICABLE LAW AND POLICY

Federal Statutes

Title 14 U.S.C. § 1901 (Administration of Academy) states, "The immediate government and military command of the Coast Guard Academy shall be in the Superintendent of the Academy, subject to the direction of the Commandant under the general supervision of the Secretary."

Title 14 U.S.C. § 1928 (Cadets; Degree of Bachelor of Science) states, "The Superintendent of the Academy may, under such rules and regulations as the Secretary shall prescribe, confer the degree of bachelor of science upon all graduates of the Academy and may, in addition, confer the degree of bachelor of science upon such other living graduates of the Academy as shall have met the requirements of the Academy for such degree."

Title 14 U.S.C. § 2101 (Original Appointment of Permanent Commissioned Officers) states:

(a)(1) The President may appoint permanent commissioned officers in the Regular Coast Guard in grades appropriate to their qualification, experience, and length of service, as the needs of the Coast Guard may require, from among the following categories:

A. Graduates of the Coast Guard Academy.

...

(b) No individual shall be appointed a commissioned officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a commissioned officer has been established under such regulations as the Secretary shall prescribe.

(c) Appointees under this section shall take precedence in the grade to which appointed in accordance with the dates of their commissions as commissioned officers in such grade. Appointees whose dates of commission are the same shall take precedence with each other as the Secretary shall determine.

Coast Guard Regulations

Article 3 of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, provides the following guidance on Ensign promotions:

3.A.5. Selecting and Promoting Ensigns to Lieutenant (Junior Grade).

a. Eligibility for Promotion. An ensign on the ADPL is eligible for promotion to lieutenant (junior grade) after:

- (1) Completing 12 months of active service as defined in 10 U.S.C. § 101, computed from date of rank as an ensign on the ADPL,
- (2) A board recommends them as fully qualified for promotion, and
- (3) The Commandant has approved the board's recommendation.

...

e. Non-Consideration Due to Administrative Error. An ensign does not fail selection for promotion if a board does not consider them because of administrative error. If the next succeeding board considering ensigns for promotion recommends that ensign for promotion, they hold the date of rank and position on the ADPL as a lieutenant (junior grade) which they would have held had the first board recommended them.

f. Promotion.

- (1) After Selection by First Board. An ensign eligible for promotion may be promoted to lieutenant (junior grade) without regard to vacancies on the day after they complete 18 months of active service.

...

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 was 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.²

4. The applicant alleged that the Coast Guard erroneously and unjustly postponed his graduation and commissioning from May 18, 2022 to December 16, 2022 despite being cleared of the charges. The applicant claimed that it was unjust for the Coast Guard not to backdate his graduation date and commission date after he was found innocent. 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.³ 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."⁴

5. Error. According to the applicant, it was erroneous for the Coast Guard to delay his graduation and commissioning because, after a thorough investigation, he was found innocent of the charges made against him. The Board's review of the record shows that on April 19, 2022 the applicant was alleged of committing sexual misconduct from another cadet. These allegations occurred approximately one month out from graduation which resulted in the applicant's graduation and commissioning being delayed to ensure the allegations were properly investigated.⁵ On May 13, 2022, the CGIS submitted its report to Academy officials for review and recommended that the allegations not be referred for criminal prosecution and that no punitive actions be taken under the UCMJ. The record indicates that on August 5, 2022 the Academy forwarded the CGIS report to Legal Service Command to review and evaluate the investigation for potential criminal action and received a recommendation from legal on September 28, 2022 that the Academy not pursue criminal prosecution under the UCMJ but that the Academy pursue administrative measures.

Title 14 U.S.C. § 2101(b) states that, "No individual shall be appointed a commissioned officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a commissioned officer has been established under such regulations as the Secretary shall prescribe." Although the applicant was eventually cleared of the charges against him, the Academy Superintendent had a duty to ensure that the allegations were thoroughly investigated and that the applicant fully met the guidelines outlined in the aforementioned statute. These allegations and the

² *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

³ 33 C.F.R. § 52.24(b).

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

⁵ 14 U.S.C. § 2101(b) ("No individual shall be appointed a commissioned officer under this section until his mental, moral, physical, and professional fitness to perform the duties of a commissioned officer has been established under such regulations as the Secretary shall prescribe.").

need to investigate gave the Superintendent no choice but to delay the applicant's graduation and commission to ensure that he was fit to be a commissioned officer. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard erred when it delayed the applicant's graduation and commission date to investigate the allegations made against him.

6. Injustice. Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."⁶ The Board has authority to determine whether an injustice exists on a "case-by-case basis."⁷ Indeed, "when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,"⁸ and "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious."⁹ Therefore, the Board must determine if the applicant's delayed commissioning and graduation constitutes an injustice. For the following reasons, the Board finds that the delay was an injustice:

a. Graduation and Commission. The record shows that after completion of the investigation into the allegations of alleged sexual misconduct by the applicant, it was determined that the allegations were unsubstantiated and that the alleged victim had malicious intent in filing the allegations. Moreover, the record shows that the Academy delayed processing the allegations—LT R learned of the allegations on April 19, 2022 but did not notify the applicant of the totality of the allegations until May 4, 2022 when he was interviewed by CGIS. Subsequent to the applicant's interview, CGIS submitted its report of investigation on May 13, 2022 yet the Academy did nothing with the report until August 5, 2022, an almost two month delay. Once the report was submitted to LSC for review and recommendation, the applicant's case was delayed an additional 52 days waiting for legal's review of the evidence and CGIS's report. Ultimately, LSC agreed with CGIS's recommendation and concluded that the evidence did not support criminal charges under the UCMJ. In the end, despite the Academy knowing on May 13, 2022 that the allegations made against the applicant were unsubstantiated and knowing the applicant's graduation and commissioning were being delayed, the Coast Guard does not appear to have made an effort to dispose of the case as expeditiously as possible to ensure that the applicant did not encounter any further harm to his career. With respect to the Coast Guard's position that cadets are afforded very few rights and that any procedural errors or delays that took place are not enough to entitle him to relief, the Board finds the Coast Guard's position unpersuasive.

The unfounded allegations made against the applicant resulted in the applicant losing the privilege of taking part in the graduation ceremony with his peers—a celebration and honor he had rightfully earned—and having his commission and degree delayed for another six

⁶ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att'y Gen. 94 (1952), 1952 WL 2907 (finding that "[t]he words 'error' and 'injustice' as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the 'error' or 'injustice' need not have been caused by the service involved.").

⁷ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

⁸ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

⁹ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

months. The Board noted that the Commandant of Cadets, who was the Class I Hearing presiding officer, dismissed the original offenses as being “woefully unfounded” stating that “circumstances presented during the hearing indicat[ed] that the reported victim may have had a *malicious intent* when submitting an alleged report against [the applicant]” (emphasis added). The Board is persuaded that regardless of whether the delay in adjudicating the applicant’s case was unreasonable, the circumstances surrounding the alleged offenses made this delay unjust. Accordingly, the Board finds that the Coast Guard should back the applicant’s date of graduation from December 16, 2022 to reflect his original graduation date of May 18, 2022 and backdate his commission date to reflect the same.

- b. Promotion to Lieutenant Junior Grade. The applicant alleged that because of the unjust delay in his commissioning, he is further prejudiced because he will not be eligible for promotion in line with his peers who he should have graduated with in May 2022. As a result, he requested that he be considered by the same LTJG board that considered his peers for promotion to LTJG. Article 3.A.5.a.1. of the Officer Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, states that an Ensign is eligible for promotion to LTJG after completing 12 months of active service which is computed from the date of his/her rank as an Ensign. Article 3.A.5.f.1. of the same manual states that an Ensign is eligible for promotion may be promoted to LTJG without regard to vacancies on the day after they complete 18 months of active service.

Since the applicant’s application to the Board, the applicant was selected for promotion to LTJG and was promoted to LTJG on June 16, 2024. Pursuant to Article 3.A.5.a.1. of COMDTINST M1000.3A, the applicant was eligible for promotion to LTJG after having completed 12 months of active service. This means that had the applicant been given the graduation and commission date he rightfully earned, May 18, 2022, he would have been eligible to promote on May 19, 2023. Article 3.A.5.f.1. of the same manual further states that after the applicant is selected for promotion, he may be promoted to LTJG, without regard to vacancies, on the day after he completes 18 months of active service. In the applicant’s case, that means he should have promoted to LTJG on November 20, 2023. The unjust graduation and commission date meant that the applicant lost out on approximately six months of pay as a LTJG. Therefore, the Board finds that it is in the interest of justice for the Coast Guard to backdate the applicant’s date of rank to LTJG from June 1, 2024 to November 20, 2023, or whatever promotion date his Academy peers were promoted.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall backdate the applicant's graduation date from December 16, 2022 to May 18, 2022 and his date of commission from December 16, 2022 to May 18, 2022. Furthermore, as a result of these corrections, the Coast Guard shall also backdate the applicant's Lieutenant Junior Grade date of rank to what it would have been had he been promoted with his Academy peers.

October 17, 2024

