

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-153

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Ulmer, D.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on August 4, 2006, upon receipt of the completed application and military records.

This final decision, dated March 30, 2007, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct her record by upgrading her general discharge under honorable conditions (general discharge) to an honorable discharge, with no stigmatizing separation code or reentry code. She further requested that her record be corrected by removing all references to her general discharge and the revocation of her commission.

BACKGROUND

The applicant was a Coast Guard Academy graduate who was commissioned an ensign in the Coast Guard on May 21, 2003. She was promoted to LTJG on November 21, 2004.

A special officer evaluation report (OER) for the period April 1, 2004, to May 17, 2005, was prepared and submitted for the following reasons:

This OER is submitted under Article 10.A.3.c.1.d. to document previously unknown behavior of inappropriate interpersonal, romantic, and sexual relationships with numerous crewmembers. NJP awarded at Admiral's Mast on 17 May 2005 for violations of UCMJ Article 92. [The applicant] received punishment of 20 days restriction and forfeiture of a half month's pay for two

months. This OER is a derogatory report [in accordance with] Article 10.A.4.h. due to removal from primary duty on 04Mar05.

In block 10 of the OER, the reporting officer described the applicant's potential in the following manner:

[The applicant's] discovered behavior grossly violated the [Coast Guard's] Core Values of Honor and Respect. [The applicant] was awarded NJP at Admiral's Mast on 17 May 2005 for violation of Coast Guard Regulations on prohibited relationships. Recommend immediate separation from Service; not recommended promotion; not suitable for commission in any U.S. Armed Service.

On August 19, 2005, Commander, Coast Guard Personnel Command (CGPC) informed the applicant that a special board would be convened under Article 12.A.11. of the Personnel Manual¹ to recommend whether her commission should be revoked. The applicant was granted 21 days to submit comments on her behalf.

On September 12, 2005, the applicant submitted her response to the proposed board action. She stated that she accepted full responsibility for the poor choices that she had made and requested to remain in the Coast Guard. She pointed to her excellent performance and the efforts she had made to improve herself, such as becoming active in the church, attending weekly sessions with an approved counselor, volunteering with the Humane Society of Fairfax County, and continuing to maintain a positive attitude.

¹ Article 12.A.11. of the Personnel Manual is entitled "Revoking Regular Officers' Commissions in Their First Five Years of Service." Subsection a.1. states that the Service considers the first five years of an officer's career a probationary period during which he or she demonstrates ability to adapt to the requirements of Coast Guard life and shows capability for future development. Subsection a.2. states that the authority to revoke an officer's commission is not designed for use when court-martial or separation for cause proceedings would be more appropriate.

Subsection 12.A.11.b. sets forth the procedure for revoking an officer's commission. Subsection b.1. states that a commanding officer or a superior in the chain of command may recommend revoking the commission of an officer who has fewer than five years of continuous service as a Coast Guard commissioned officer. Commander (CGPC-opm) also may initiate board action to revoke an officer's regular commission based on knowledge of adverse information about the officer. A commanding officer or superior in the chain of command shall recommend revocation in the form of a letter to Commander (CGPC-opm). Subsection b.2. states that the officer concerned shall be granted an opportunity to review the revocation recommendation and permitted to comment on it. "If commander (CGPC-c) initiates the action, the candidate shall be advised in writing of the contemplated actions and the reasons therefore and given the opportunity to communicate to the special board in writing via the chain of command. Any comments made by the members in the chain of command shall be furnished to subject officer who shall be given 10 calendar days to respond to those comments.

Subsection 12.A.11.b.3 states that a panel of senior officers with cognizance of the officer's specialty shall review the recommendation. After reviewing the officer's headquarters PDR and associated documents, the panel recommends to the Commandant either executing the revocation proceedings under this Article or closing the case. Subsection b.4. states that Commander (CGPC-opm) sends the panel's recommendations to the Commandant for approval, modification, or disapproval (14 U.S.C. 281).

On October 6, 2005, CGPC, Office of Personnel Management (CGPC-opm-1) advised the applicant that the revocation panel would convene on October 19, 2005, and that it would review her personal data record, the convening order, a copy of her September 12, 2005 statement, and sworn statements from the Coast Guard Investigative Service (CGIS) investigation into her alleged misconduct. CGPC-opm-1 also informed the applicant that pursuant to the Coast Guard Investigations Manual, she was not permitted to have a copy of the CGIS investigation, but that arrangements could be made for her to review the investigation at a local CGIS office, if she desired to do so.

On October 19, 2005, the revocation panel convened and considered the following record and documents: the precept, the August 19, 2005, letter of notification, the applicant's September 12, 2005 letter, sworn statements from the CGIS investigation dated March 2, 2005, and the applicant's personal data record. After reviewing all the evidence, the revocation panel made the following recommendation:

[I]t is the unanimous opinion of the members of the Panel that this case be closed. [The applicant] has readily accepted accountability for her significant breach of good order and discipline involving prohibited relationships. [The applicant] is performing well in her current assignment and has redirected her efforts toward self-improvement, demonstrating the potential for continued service.

On December 20, 2005, CGPC forwarded the special board report to the Commandant with an endorsement disagreeing with the board's recommendation that the applicant's commission not be revoked. In this regard CGPC stated:

[The applicant's] behavior onboard [the cutter] directly contradicts the Coast Guard's Core values. [The applicant] admitted engaging in prohibited sexual relationships with at least three enlisted crewmembers onboard [the cutter]. Although she did apologize and take responsibility for her poor judgment, it does not change the fact that [the applicant] willingly entered into such relationships despite the extensive training she received at the [Coast Guard] academy outlining appropriate and inappropriate relationships between officers and enlisted personnel.

[The applicant's] actions negatively impacted the work environment onboard [the cutter] and resulted in a loss of the crew's respect for her and other officers on board. [The applicant's] inappropriate conduct makes it difficult for her to effectively hold others accountable for indiscretions and lack of judgment in the future, which limits her potential for leadership positions in the officer corps.

Through her actions, [the applicant] brought discredit not only to herself, but to the Coast Guard and [the cutter]. [The applicant] should be held accountable for her inability to adhere to the Coast Guard's policy as set forth in the Personnel Manual.

On December 27, 2005, the COMDT (CG-1) wrote that he fully concurred that the applicant's commission should be revoked.

On January 3, 2005, the Acting Commandant took action on the revocation panel report. He noted the proceedings, findings, and recommendation of the panel and revoked the applicant's commission pursuant to section 281 of title 14 of the United States Code.

On April 3, 2006, the applicant was discharged from the Coast Guard with a general discharge due to unacceptable conduct, with the corresponding GNC (unacceptable conduct) separation code, and an RE-4 (not eligible to reenlist) reenlistment code.

ALLEGATIONS

The applicant alleged that her discharge should be set aside because the underlying proceedings were illegal or unjust. She contended that the Acting Commandant's action revoking her commission was an *ultra vires* act and of no effect because the Secretary, on whom Congress conferred the revocation power, had not delegated that power to the Commandant. She referred the Board to Department of Homeland Security (DHS) Delegation No. 0170.1 in support of her contention. (Under this delegation the Secretary specifically authorized the Commandant to carry out 102 functions, including authority to "Remove an officer from active duty under section 326, Title 14, U.S. Code, utilizing the procedures set out in 14 U.S.C. 321 through 325." The delegation did not mention the authority to revoke the commissions of officers with less than five years of service under section 281 of Title 14 of the United States Code²; nor did the Secretary expressly reserve this power unto himself.)

The applicant alleged that the Coast Guard committed a serious injustice by not giving her copies of the statements that were obtained by CGIS and considered by the revocation panel. She stated that she was only afforded 90 minutes or less to read the statements prior to the mast, which occurred months before she was required to respond to the proposed revocation.

The applicant alleged that the Coast Guard committed a further injustice by not providing her with a copy of the adverse endorsement to the revocation panel's favorable recommendation prior to action by the Acting Commandant. She argued that it was fundamentally unfair that she did not have an opportunity to comment on the matters set forth in the endorsements to the revocation panel's recommendation.

Last the applicant alleged the following:

Substantively, revocation is contrary to the limited purposes set forth in Article 12.A.11.a.2 of the Personnel Manual. [The applicant's] misconduct was addressed under the UCMJ and could have been addressed in a separation for cause proceeding. The revocation process is plainly not intended as a surrogate for

² Section 281 of title 14 of the United States Code provides that the Secretary, under such regulations as he may prescribe, may revoke the commission of any regular officer on active duty who, at the date of such revocation, has had less than five years of continuous service as a commissioned officer in the Regular Coast Guard.

those processes, with their procedural protections. Worse yet, the grounds stated in [COMDT (CG-1's)] memorandum do not fall within the purposes set forth in Article 12.A.11.a. of the Personnel Manual.

VIEWS OF THE COAST GUARD

On January 3, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request. The Coast Guard asserted that it acted within its authority to revoke the applicant's commission in accordance with Article 12.A.11. of the Personnel Manual. The JAG stated that the applicant incorrectly cited DHS Delegation No. 0170.1 as controlling in this case. The JAG noted that 14 U.S.C. § 281 grants the Secretary the power to revoke commissions of officers with less than five years of service under regulations prescribe by him. The JAG further argued that the Commandant has been delegated the power to revoke commissions by DHS Delegation No. 0160.1, which states in pertinent part, as follows:

By virtue of the authority vested in the Secretary of Homeland Security by law . . . I hereby delegate to the highest ranking official within each Organizational Element the following authorities: 1. To exercise the authority of the Secretary with respect to any personnel within his/her organizational element, including the functions associated with the selection of candidate employees, assignment, reassignment, classification, deployment, disciplining, training, EEO complaints, grievances, promotion and termination . . .

The JAG stated that Management Directive (MD) No. 3330 also delegates specific authorities for personnel action to the Coast Guard. Although it does not mention 14 U.S.C. § 281, it does list certain actions that must be approved by the Secretary, but revoking a commission under 10 USC 281 is not one of them. Therefore, the JAG argued that the Commandant retains the authority to revoke the commission of an officer with less than five years of service under the general delegation No. 0160.1.

The JAG stated that while some ambiguity exists with respect to delegations 0170.1 and 0160.1, it is the position of the Coast Guard that the authority to revoke commissions has been delegated to the Commandant by Delegation No. 0160.1. The JAG argued that an agency's interpretation of its own rules is entitled to deference and such deference is particularly appropriate where agency interpretation has been consistently applied. See *Gose v. U.S. Postal Service*, 451 F.3d 831, 836-39 (Fed. Cir. 2006). According to the JAG, since September 2004, the Coast Guard has revoked the commissions of seven officers pursuant to 14 U.S.C. § 281 and DHS delegation No. 0601.1. The JAG stated that the Acting Commandant revoked the applicant's commission in accordance with the procedures set forth in the Coast Guard Personnel Manual.

The JAG asserted that the Coast Guard properly permitted the applicant to provide comments to the revocation panel in accordance with the requirements in Article 12.A.11. of the Personnel Manual. The JAG stated that the Coast Guard's actions were not fundamentally unfair to the applicant and did not "shock the sense of justice." See *Sawyer v. Reale*, 208 Ct. Cl. 1010,

1011, *cert. denied*, 429 U.S. 854; 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976) (defining injustice, when not also error, as treatment by military authorities that “shocks the sense of justice”). In this regard, the JAG stated that the applicant was notified of the proceedings, informed that the revocation panel would consider all documents related to her special OER, and advised that she could submit comments on her behalf. The JAG further stated the following:

The applicant has further failed to show that she was prejudiced in any way by the process in which the revocation panel considered whether or not to revoke her commission. The panel recommended that her case be closed and that her commission not be revoked. There was no process that could have caused the panel to reach a more favorable determination on the applicant's case.

The JAG argued that there was no requirement that the Coast Guard notify the applicant of the revocation panel's recommendation before final action by the Commandant. The JAG stated that the Coast Guard followed the procedures for revocation outlined in the Personnel Manual by allowing the applicant an opportunity to comment on the reason for which the panel was convened. He stated that the Personnel Manual did not require the Coast Guard to further notify the applicant of the panel's recommendation and afford her an additional opportunity to comment before the Commandant's final action.

The JAG stated that the applicant's commission was properly revoked under Article 12.A.11. of the Personnel Manual despite her argument that her misconduct could have been addressed in a separation for cause proceeding. He stated that given that the applicant had less than five years of service and the reasons for the revocation panel, the revocation of her commission was clearly authorized under Article 12.A.11. of the Personnel Manual.

APPLICANT'S REPLY TO THE VIEWS OF THE COAST GUARD

On January 26, 2007, the Board received the applicant's reply to the views of the Coast Guard. The applicant offered the following:

With respect to the delegation of authority issue, it is first of no moment whatever, that the Commandant arrogated to himself the Secretary's power to revoke in a few other cases. That hardly makes it right. What is more important, as the Coast Guard acknowledges in a footnote, in other cases, the revocation power was indeed effectively exercised by the Secretary. More importantly, the Coast Guard reliance on the generic delegation (No. 0160.1) is misplaced because it expressly states that that “this delegation is not intended to supersede more specific delegations or other authorities that have been or will be issued to individual Organizational Elements.” Delegation 0170.1 plainly reflects a policy of reserving to the Secretary or a delegatee in the Secretary's Office powers with respect to involuntary separation of commissioned officers. The advisory opinion takes no account of this.

The Coast Guard's defense of the procedure employed is unavailing. An officer in [the applicant's] position should obviously have been furnished copies of the

documents on which the proposed adverse action was predicated. A revocation panel is not a "military commission" and she is not an "enemy combatant." Due process applies, and an essential element of due process is having the evidence cited against you. The advisory opinion neither explains nor justifies the Coast Guard's failure to give [the applicant] copies of all of the evidence presented to the panel so she could review it in depth and properly consult with counsel about it, and with benefit of being able to show copies to counsel. The Coast Guard never claims the statements were classified. This is simply not the kind of fair play one expects of a federal agency-- especially one that performs regulatory functions and ought to observe the highest standards for fairness. Would this pass muster in a merchant mariner suspension-and-revocation proceeding? Are commissioned officers entitled to less?

. . . Just as a member is entitled to comment on new matter raised in an SJA's (Staff Judge Advocate's) review of post-trial clemency matters, so too, [the applicant] should have been afforded a chance to comment on CGPC's first endorsement, which went way beyond the panel's brief report. The endorsement's claim that she brought discredit on herself, [the cutter], and the Coast Guard, coupled with its demand that she be "held accountable" makes it completely clear that this was viewed as a punitive matter, in blatant violation of PERSMAN 12.A.11.a.2.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.
2. The issue in this case is whether the Secretary delegated his authority to revoke the commissions of officers with less than five years of continuous service under 14 U.S.C. § 281 to the Commandant. The applicant argued that her discharge should be set aside because the Secretary has not delegated his authority to revoke commissions to the Commandant. She argues that specific DHS Delegation No. 0170.1 lists one hundred and six specific delegations to the Commandant but does not list the authority to revoke commission under 14 USC § 281. The Board notes, however, that the Secretary did not reserve this power to himself in Delegation No. 0170.1.
3. The Coast Guard acknowledged that DHS Delegation No. 0170.1 did not specifically delegate the Secretary's authority to revoke commissions to the Commandant. However, the Coast Guard argued that the Commandant has the authority to revoke commissions pursuant to 14 U.S.C. 281 under DHS Delegation No. 0160.1, which was issued on March 3, 2004. In it, the Secretary made several general delegations to the highest-ranking official within each Organizational Element of DHS. There is no dispute that the Commandant is the highest-ranking

official within the Coast Guard. In Delegation No. 0160.1, the Secretary made the following pertinent delegation to the Commandant:

To exercise the authority of the Secretary with respect to any personnel within his/her Organizational Element, including the functions associated with the selection of candidate employees, assignment, reassignment, classification, deployment, disciplining, training, EEO complaints, grievances, promotion and termination, time and attendance, leave, overtime, work schedules, and employee award/recognition programs. This authority does not include the authority to approve the retirement of O-9 and O-10 Coast Guard flag officers; such authority is reserved to the Secretary . . .

4. The Board agrees with the Coast Guard that the Commandant has the authority to revoke the commissions of officers with less than five years of service pursuant to 14 U.S.C. § 281 under DHS Delegation No. 0160.1, which to the Board's knowledge remains in effect. Although there is a specific and a general delegation under discussion in this case, they are not in conflict with each other and each stands on its own merit. In the instant case, the general delegation does not conflict with the specific one in any manner because the specific delegation neither grants nor reserves the Secretary's power to revoke an officer's commission under 14 U.S.C. § 281. Therefore, the power to revoke commissions could be granted in a general delegation. *Crowell v. IRS*, 305 F.3d 474 (6th Cir. 2002) states that the rules of statutory construction can be employed in construing delegations because delegations and statutes share similar characteristics. Normally, a specific statute would control over a general statute. *Id.* However, this rule would only be applicable if both the specific and general statute (or in this case delegations) spoke to the same issue and were in conflict. See *Halverson, et al v. Slater*, 327 U.A. App. 971 12 F.3d 180 (1997) citing *Edmond v. United States*, 137 L. Ed. 2d 917, 117 S. Ct. 1573, 1578 (1997) ("Ordinarily, where a specific provision conflicts with a general one, the specific governs"). As stated above, these two delegations are not in conflict.

5. Since there is no conflict between the two delegations, the Board looks to determine whether the general delegation to the Commandant under No. 0160.1 included a delegation of the Secretary's power to revoke an officer's commission under 14 U.S.C. § 281. In construing this delegation, the Board looks to the language of the delegation itself. The language in the Delegation is broad and far reaching. It grants to the highest-ranking official of each Organizational Element (including the Coast Guard) the power to exercise the authority of the Secretary with respect to any personnel within the organization, including the functions associated with the selection of candidate employees, assignment, reassignment, classification, deployment, disciplining, training, EEO complaints, grievances, time and attendance, leave, overtime, work schedules, employee award/recognition programs, and promotion and termination. The term "terminate" means to close, to bring to an end, or to discontinue the employment of an individual. See *Webster's Ninth New Collegiate Dictionary*, p. 1217. The term "revoke" means to annul by recalling or taking back or to rescind. *Id.* at 1010. While these two terms may not be exactly synonymous, a revocation of a commission effectively terminates the employment of a commissioned officer with less than five years of service. See Article 12.A.1.b. of the Personnel Manual (stating that the revocation of a commission causes a complete separation from the Coast Guard). Looking at the language of this delegation, the

Board is satisfied that it was the intent of the Secretary to grant the Commandant the broadest authority to terminate employees, and revoking an officer's commission is one method of terminating employment. The Board is further persuaded in this regard by the specific grant of authority to the Commandant under 0170.1 to involuntarily "[r]emove officers from active duty under section 326, Title 14, U.S. Code, utilizing the procedures set out in 14 U.S.C. 321-325." It makes no sense for the Secretary to grant the Commandant the authority to remove officers, including career officers, from active duty for cause under section 14 U.S.C. § 326, while prohibiting him from removing officers during their probationary period under 14 U.S.C. § 281. See Article 12.A.11.A of the Personnel Manual (the first five years of an officers career is considered a probationary period).

6. However, even if Delegation No. 0160.1 were ambiguous with respect to the Commandant's power to revoke commissions, the Board would defer to the agency's interpretation of that delegation. In this case, the Coast Guard has interpreted DelegationNo. 0160.1 as delegating to the Commandant the authority to revoke commissions. As the JAG argued, an agency's interpretation of its own rules is entitled to deference. See *Gose v. U.S. Postal Service*, 451 F.3d 831, 836-39 (Fed. Cir. 2006); see also *Halverson, et al. v. Slater*, 327 U.A, App. 971 12 F.3d 180, 184-85 (1997), citing *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984) (courts are precluded from picking and choosing among various canons of construction to reject reasonable agency interpretation). The JAG stated that the Coast Guard has revoked the commission of seven officers under Delegation No. 0160.1 since September 2004 based upon the recommendation of CGPC.³ The JAG argued that given the Coast Guard's consistent application of the revocation procedures, its interpretation of Delegation No. 0160.1 is reasonable and is entitled to deference. The Board agrees with the Coast Guard and finds that the agency's interpretation of Delegation No. 0160.1 is reasonable, and therefore, it is entitled to deference.

7. The applicant has presented no law or other authority that would cause the Board to reach a different conclusion on this issue. The applicant's reference to *Nolan v. United States*, 44 Cl. Ct. 49 (1999) is not applicable to this situation. The *Nolan* case decided whether the Commandant was delegated the authority to approve that officer's discharge from the Coast Guard in the wake of conflicting delegations and reservations of authority. As discussed above there is no conflict between the specific delegation and the general delegation in this case because the specific delegation does not mention 14 U.S.C. § 281 in any manner. Nor does Delegation 0170.1 state that those specific functions mentioned therein are the complete and only functions that may be delegated to the Commandant.

³ The JAG also stated that the commissions of three other officers have been revoked by the Secretary under 5.A.5.d.2 of the Personnel Manual. This provision deals with ensigns whose records were considered by selection boards on a fully qualified basis and who were determined to be performing unsatisfactorily. Although the JAG stated that the revocations were affected by signature of the Secretary approving the results of the promotion board, this provision states that the Commandant will revoke the commissions or vacate the temporary appointments of ensigns in their first three years of commissioned service regardless of Article 12.A.9 and 12.A.11. Therefore, the Board finds that the Secretary only approved the action of the selection board which included a recommendation that certain commissions be revoked. Under the regulation, the Commandant would have revoked the commissions.

8. The applicant noted that the preamble to Delegation No. 0160.1 states "this delegation is not intended to supersede more specific delegations or other authorities that have been or will be issued to individual Organizational Elements." In this regard, the applicant argues that since Delegation No. 0170.1 plainly reflects a policy of the Secretary reserving for himself the power to involuntarily separate commissioned officers, Delegation No. 0160.1 cannot not supersede it. The applicant misreads Delegation No. 0170.1. The authority to involuntarily "[r]emove officers from active duty under section 326, Title 14, U.S. Code, utilizing the procedures set out in 14 U.S.C. §§ 321-325" is delegated to the Commandant *and not reserved to the Secretary*. The only powers the Secretary expressly reserved under Delegation No. 0170.1 were those with respect to certain military justice matters under item 13. Moreover, the power to revoke commissions emanates from 14 U.S.C. § 281, a separate and independent statute from 14 U.S.C. § 326, which grants the power to involuntarily remove an officer from active duty, after meeting certain statutory due process requirements. The applicant has presented no evidence that they are interrelated or interdependent, such that they must be construed and read together. In light of the above discussion, the Board finds that the Secretary delegated to the Commandant the authority to promote and terminate employees of the Coast Guard under Delegation No. 0160.1 without limitation as to manner or method, which would include the authority to revoke the applicant's commission pursuant to 14 U.S.C. § 281.

9. Contrary to the applicant's contention, the Coast Guard did not commit an injustice by not providing her with a copy of the CGIS statements that were considered by the revocation panel. Section 281 of title 14 of the United States Code provides that "the Secretary under such regulations as he may prescribe may revoke the commission of any regular officer on active duty who, at the date of such revocation has less than five years of continuous service as a commissioned officer in the Coast Guard." The Secretary delegated this authority to the Commandant who published regulations in Article 12.A. of the Personnel Manual. Under these regulations, the applicant was entitled to written notification and the reasons for the contemplated action, and she was entitled to an opportunity to provide a written communication to the revocation panel via the chain of command, all of which were provided to her. On October 6, 2005, CGPC advised the applicant as to the date the revocation panel would meet and as to the documents it would consider. This letter also advised the applicant that while she was not permitted to have a copy of the CGIS investigation, arrangements could be made for her to review the investigation at a local CGIS office. There is no evidence in the record that the applicant availed herself of this opportunity. Accordingly, while the applicant may not have been given a copy of the CGIS investigation, she was offered an opportunity to review it, which was not required by the regulation. The Board is not persuaded that the applicant suffered an injustice, which is defined as military treatment that shocks the sense of justice. See *Sawyer v. U.S.*, 18 Cl. Ct. 860, 868 (1989), *citing Reale v. U.S.* 208 Ct. Cl. 1010, 1011, *cert. denied*, 429 U.S. 854, 50 L.Ed. 2d 129, 97 S. Ct. 148 (1976). The applicant was treated in accordance with the regulation and in the same as other members of the Coast Guard whose commissions have been revoked.

10. Similarly, the applicant's contention that it was fundamentally unfair that she was not provided a copy of CGPC's comments disagreeing with the favorable recommendation of the revocation panel must fail. Neither the statute nor the regulation required that the applicant be given an opportunity to comment on the revocation panel's recommendation. The statute and

regulation do, however, give the Commandant the authority to approve, disapprove, or modify that recommendation, and there is no prohibition in the statute or regulation on what advice, if any, the Commandant may obtain in reaching a decision on whether to revoke a commission. Accordingly, the Board finds that the applicant has suffered neither error nor injustice simply because she was not provided with a copy of or the opportunity to comment on CGPC's endorsement of the revocation panel's recommendation. She was provided with the due process established by regulation at Article 12.A.11. of the Personnel Manual.

11. Last, the applicant argues that the revocation process was not appropriate for her situation because Article 12.A.11.a.2. states that the authority to revoke an officer's commission is not designed for use when a court-martial or separation for cause proceeding would be more appropriate. She asserts that that a separation for cause proceeding would have been more appropriate in her case because it may have offered her more procedural rights. The statute and the regulation give the Coast Guard the authority to revoke the commission of an officer with less than five years of service. The applicant met this criterion. As stated above, she admitted at her non-judicial punishment that she had engaged in sexual activity with several enlisted members of her unit in violation of the Commandant's order against such activity. The Commandant determined that it was in the best interest of the Service that her commission be revoked. Her disagreement with portions of the revocation proceeding and her suggestion that some other forum was more appropriate for disposition of her case do not establish either error or injustice on the part of the Coast Guard. The applicant has failed to prove that her discharge should be set aside. The Board finds that Commandant had a sufficient basis for revoking the applicant's commission and discharging her with a general discharge under honorable conditions. Article 12.A.11.c. of the Personnel Manual states that an officer whose commission has been revoked shall be discharged from the Coast Guard.

12. Accordingly, the applicant has failed to prove error or injustice in this case and the Board finds no basis on which to upgrade her discharge, reason for separation, or reenlistment code.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is denied.

Philip B. Busch

Francis H. Esposito

Steven J. Pecinovsky