DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-150

[redacted] LT

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 application upon receiving the applicant's completed application on May 11, 2018, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 17, 2020, 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 lieutenant (LT/O-3) on active duty in the Coast Guard, asked the Board to correct her record by restoring her class rank at the Coast Guard Academy, her date of commissioning as an ensign, and her date of rank as an LTJG to what they would have been if her graduation and commissioning on May 20, 2015, had not been delayed as a result of a medical condition. She also requested the pay and allowances she would be owed as a result of these corrections. She alleged that her medical care was mishandled by medical personnel at the Academy clinic and that, as a matter of equity, the short medical delay should not affect her career.[1]

[1] Ensigns are listed on the Active Duty Promotion List (ADPL) in order of their date of commissioning. Ensigns graduating from the Academy and being commissioned on the same day in May each year are listed on the ADPL in accordance with their class rank and seniority. Therefore, a cadet graduating and being commissioned in the Fall after being found medically fit for duty is entered on the ADPL after all of their classmates. Fully qualified Ensigns are normally eligible for promotion to LTJG exactly 18 months after the date of commissioning, and LTJGs are normally eligible for consideration for promotion to Lieutenant when they have completed two years as a LTJG as of the start of the promotion year, which is July 1st of each year. Officers' placement on the ADPL also determines when they are considered "in zone" for future promotions. Each year, the Officer Personnel Management (OPM) branch of the Personnel Service Center determines who should be "in zone" for promotion to the next rank based on the expected number of vacancies at the higher rank and the desired "opportunity for selection"—i.e., the percentage of candidates who will be selected—based up Service needs, although the opportunity for selection may not be less than 60%. COMDTINST M1000.3A, Article 3.A.

The applicant stated that she excelled at the Academy and graduated with a degree in [redacted] and a [redacted] grade point average. Her class rank was [redacted]. But she was not authorized to graduate or receive a commission with 217 of her classmates in May of her final year at the Academy because six months earlier, she had been diagnosed with celiac disease,[2] an autoimmune disease that the Coast Guard considers a "disqualifying condition" for service.

The applicant explained that in the October 2014, she began to feel very tired but attributed it to hard work and a lack of sleep. However, she failed her pre-commissioning physical examination in November due to "iron deficiency anemia." She began correcting the deficiency but in December 2014, blood tests revealed her celiac disease. Her primary care provider (PCP)—a certified physician's assistant (PA) at the Academy's medical clinic—told her that the blood tests were 95% to 98% accurate and that a colonoscopy was required to be 100% certain of the diagnosis. She decided not to undergo the colonoscopy, and the PA told her to start eating a gluten-free diet. She was also told that because of the diagnosis, she most likely would not be able to graduate and receive a commission with her class in May.

Between December 2014 and January 2015, the applicant stated, the Academy clinic changed the decision, and she was ordered to undergo the colonoscopy. But she was told that there was a 99% chance that she would receive a waiver and be allowed to graduate and receive her commission in May.

In March 2015, the applicant stated, at the direction of the PA, she made an appointment for a consultation with a gastroenterologist on March 16th so that was she could undergo the colonoscopy. From the gastroenterologist, she learned that the test for celiac disease is an endoscopy (through the mouth), rather than a colonoscopy. The applicant stated if she had been correctly informed in December by her PCP that the test for celiac disease is an endoscopy, rather than a colonoscopy, she would have made the appointment for the consultation right away, instead of waiting till March. Furthermore, she learned that the test could not be conducted right away because she had been on a gluten-free diet, and the disease can only be detected by endoscopy when damage from gluten is visible. After consuming a gluten-free diet for three months, the damage would not be visible. Therefore, she had to wait and did not have an "indisputable diagnosis" with which she could request a waiver so that she could graduate with her class.

The applicant stated that her gastroenterologist nevertheless decided to conduct the endoscopy in March out of concern for her health. They informed the clinic, and no one objected to this plan. In April 2015, after the endoscopy, she was diagnosed with celiac disease "based on the results of the endoscopy coupled with lab results and improvements in my health from a gluten free diet."

On May 1, 2015, however, the Academy clinic informed her that based on the results of the endoscopy, there was "a significant possibility [she] did not have celiac disease" so she would need to undergo another endoscopy in a few months. She had received orders for her first assignment and expected to undergo the second test there. She stated that this retesting would not have been needed if she had been told in December that the proper test was an endoscopy

[2] The applicant stated that if people with celiac disease eat gluten, their body has an immune response that attacks the small intestine and a gluten-free diet is the only way to prevent the symptoms.

because she would have elected to take the test right away—before going on a gluten-free diet—and the first endoscopy would not have resulted in an uncertain diagnosis. She also stated, "it was not mandatory for me to be retested, but I was informed the Coast Guard would not acknowledge that I had celiac disease unless I was retested."

The applicant stated that learning that the Coast Guard considered her diagnosis "void" was a relief. She had tried to follow a gluten-free diet at the Academy, which was very difficult, but cross-contamination had repeatedly made her sick. Therefore, the thought of not having to follow a gluten-free diet "was inspiring" because she wanted to believe that she did not have the disease.

The applicant stated that after her appointment at the Academy clinic on May 1, 2015, she began eating gluten again to prepare for the second endoscopy. She also submitted her request for a waiver for her disqualifying condition—celiac disease—so that she could graduate with her class. However, "the Coast Guard changed the direction of my treatment due to mismatched enforcement standards of celiac disease as a disqualifying condition."

On May 19, 2015, the applicant stated, her request for a waiver was denied due to "tangible medical risks" associated with celiac disease. She was told that she would have to have a second endoscopy and remain at the Academy as a cadet for three to six months. And yet the PA again prepared a request for a colonoscopy, instead of an endoscopy.

The applicant stated that throughout May and June 2015, she ate gluten as directed and suffered the consequences, including nausea, acid reflux, fatigue, and digestive problems. When she called the clinic to report her symptoms, the head of the clinic told her that she did not have celiac disease, so her symptoms could not be caused by gluten consumption, but he offered to move up the date of her planned colonoscopy. She clarified for him that she would need an endoscopy, not a colonoscopy, but "declined the offer because it did not align with proper treatment for my disease. Instead, I saw my specialists." When she consulted her gastroenterologist at the end of June, the applicant learned that she had never been told about the Coast Guard's determination or the applicant's treatment plan after making her diagnosis of celiac disease in April. Her gastroenterologist ordered more laboratory tests and then informed the Coast Guard of her diagnosis again on July 2, 2015. That day, the applicant stated, she "realized the full extent of the injustice" because no second endoscopy was required after the gastroenterologist called the clinic with the laboratory results. She was allowed to resume a gluten-free diet.

The applicant noted that her gastroenterologist had believed that she had celiac disease "with certainty" in April and that laboratory tests ordered by her gastroenterologist at the end of June could have been conducted at any time in April or May—before graduation. She stated that if the doctors at the clinic had consulted her gastroenterologist when they began questioning the diagnosis, they would have considered her diagnosis certain before graduation; her request for a waiver would have been granted; and she would have been allowed to graduate and receive her commission on time.

The applicant stated that the doctors at the clinic had acted very unprofessionally in questioning the specialist's diagnosis of celiac disease without consulting the specialist and had not

even known the correct procedure for diagnosing the disease. If they had consulted the specialist in April, instead of waiting until the specialist contacted them again on in July 2015 with more laboratory results, the applicant would have received a commission with her class. And she would not have been directed to start eating gluten again on May 1, 2015, which adversely affected her health. She stated that the clinic's actions could be construed as medical malpractice.

The applicant stated that between December 2014 and June 2015, personnel at the Academy clinic repeatedly referred to the wrong procedure for diagnosing her condition (colonoscopy versus endoscopy); failed to regard the gastroenterologist's diagnosis; did not contact the gastroenterologist before directing the applicant to start eating gluten again; and did not reassess their determination when she informed them of her returning symptoms near the end of June. She was afforded counsel, who spoke to the command staff about her case, and she thought she would be released within four weeks. After four weeks, she inquired about her status and was told that the Academy had submitted a request for a waiver for her condition to Coast Guard Headquarters. She reviewed the waiver request and found several errors, some of which contradicted the advice of the specialist, so in August, she submitted a written appeal of the waiver request to correct the errors. The applicant stated that the waiver request was approved on the Friday before Labor Day weekend, and so she was graduated and commissioned an Ensign on the following Tuesday, September 8, 2015.

The applicant alleged that because her commissioning was delayed until September, she will be in-zone for promotion a year later than she would have been had she been allowed to graduate with her class. She claimed that she will therefore be severely disadvantaged because about 180 classmates who had ranked behind her will be "in zone" for consideration for promotion sooner than her. She alleged that all of her promotions will be delayed, that she might be passed over for promotion due to her delayed commissioning, and that she will always be behind in pay because time as a cadet does not count toward longevity. She stated that this disadvantage is erroneous and unjust because the Coast Guard "was unsure how to proceed with my condition on multiple occasions over a ten-month window and was ultimately responsible for the loss of my commissioning date and class rank." She stated that she "was not commissioned [in May] because of the risks associated with the celiac disease. Yet, when my diagnosis was further enforced, I was able to commission. The risks did not diminish. Because I commissioned after a second diagnosis, I should have commissioned after the first and even when the CGA clinic decided to discredit that diagnosis."

The applicant stated that during the summer while she waited at the Academy for the Coast Guard to commission her, she "worked a fierce multi-disciplinary schedule" and performed at a junior officer level. She received tasking from a Commander to relieve his workload, taught cybersecurity classes, and attended vessel inspections. She also worked as an Assistant Planning Officer, planning high-profile visits and traveled to a local Sector to gain experience as a Marine Inspector. But she continued to receive the stipend of a cadet, rather than the pay and benefits of an Ensign. Therefore, the applicant asked the Board to grant her requests for relief.

Applicant's Evidence

To support her request, she submitted numerous documents that are included in the Summary of the Record below and an affidavit from her assigned counsel in 2015. Her attorney stated that because he was going to be visiting the Academy regarding another cadet, he was asked to counsel the applicant about administrative matters related to her request for a medical waiver and possible discharge from the Coast Guard. After talking to the applicant, he understood that the Medical Officer had been either unaware of, discarding, or discounting the diagnosis of a specialist. He stated, "After having lost her commission and class standing, she seemed mostly concerned about receiving her bachelor's degree," which she thought might be withheld. The clinic's Medical Officer was encouraging her to submit a second request for a waiver, but "she didn't see much point" in trying again. The attorney concluded that she had "lost faith in the Coast Guard." But he spoke to the Staff Judge Advocate who arranged to meet with him, the Commandant of Cadets, and the Medical Officer regarding the applicant and the other cadet. The Commandant of Cadets stated that he would favorably endorse a second request for a waiver and that if the applicant did not submit a second waiver request, she could receive her bachelor's degree and be discharged.[3] The Medical Officer, however, seemed skeptical and "appeared to be questioning" the applicant's diagnosis.

After the meeting, the attorney said, he spoke to the Medical Officer, asked him if he thought the applicant was malingering, and did not receive a clear response. The attorney concluded that "the Medical Officer's concerns were the primary reason [the applicant's] medical challenges had not been administratively resolved." When he spoke to the applicant, she was relieved that she would receive her degree "but still had resignations [sic] about submitting a second waiver [request] due to her treatment thus far." The attorney stated that based on his "limited knowledge," he believes that the applicant "could have graduated with her class if she had been properly tested and treated for celiac disease without the unfortunate delays attributable to her medical care. I know for certain that there were other contributing factors unrelated to [her] that contributed to these delays." He stated that the delay of her commissioning "is clearly an apparent injustice from the questionable medical care [she] received."

SUMMARY OF THE RECORD

The following is a summary of the official records submitted with the application, the Coast Guard's submissions, and the applicant's responses to those submissions.

The applicant entered the Academy as a fourth-class cadet in 2011 and in Fall 2014 was expected to graduate with her class in May 2015 with a degree in [redacted].

[3] Upper-class cadets discharged from the Academy for misconduct or poor performance (academic or military, including physical fitness) do not receive degrees or commissions even if they completed all of their courses and military training. In addition, they must reimburse the Government for the cost of their education but are sometimes allowed to serve as an enlisted member in lieu of paying back the debt. Cadets separated for disqualifying medical conditions are not normally required to reimburse the government but are not commissioned and may not receive a degree.

On November 7, 2014, the applicant reported to the clinic for her pre-commissioning physical examination. The PA who was her primary care provider[4] noted that the applicant was underweight with a height of 5' 4.5" and weight of 103 pounds. She told him that she did not like the "galley food" and that she was vegetarian and so did not eat meat. She stated that her appetite had been normal and denied having an eating disorder or blood in her stools or urine. She also denied having abdominal pain, constipation, or vomiting. Her bowel sounds were normal. He attributed her low weight to her restricted eating habits but ordered laboratory tests including an iron/TIBC panel and endomysial AB screen with RF titer.

On November 21, 2015, the applicant returned to the clinic for a pap smear and because blood tests had shown that her hemoglobin was low. She reported that she had no complaints and that she had been eating a lot. Laboratory tests had shown that her fecal occult blood test had been negative, and her red and white blood cell counts were within normal limits. But her hemoglobin, hematocrit, MCV, and MCH were all below the normal range. The Medical Officer diagnosed her with iron deficiency anemia and advised her to follow a diet with foods with high iron content and to take ferrous sulfate twice a day and a prenatal vitamin daily.

On December 3, 2014, the PA received laboratory results showing that her blood had tested positive for an endomysial antibody indicative of celiac disease. On December 4, 2015, a nurse at the clinic sent the applicant an email stating that further review of the laboratory results had shown that certain results required further discussion. The nurse asked her to make an appointment with the PA.

On December 10, 2015, the applicant went to the clinic as requested. She told the PA that she was tolerating the iron supplement well, with no stomach upset or constipation, but she admitted that did not take it every day. The PA also noted the following:

> Celiac disease – pt's labs show she has a + endomesial antibody with high response. Pt states she is asymptomatic. She denies abdominal pain, BRBPR, nausea and vomiting. Pt states she has no known food allergies or intolerances. Denies FHx [family history] of celiac disease, but notes MOP [mother of patient] has very thin build as well.
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> 1. IRON DEFICIENCY ANEMIA: Continue with iron Bid [twice a day] and PNV [prenatal vitamin]. RTC [return to clinic] in January 2015 for repeat iron panel. Will draft waiver when iron stores and H/H wnl [within normal limits]. Iron def anemia most likely associated with underlying celiacs.
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> 2. NONTROPICAL (CELIAC) SPRUE: Pt has elevated endomesial Ab's, iron def anemia and is under wt. This all supports dx [diagnosis] of Celiac disease. Pt declines confirmatory c-scope for bx [biopsy]. Pt given handout describing Celiac disease and aggravating food avoidance. Pt was advised that she will also need a waiver for this. All questions answered.

On January 6, 2015, the applicant returned to the clinic for a follow-up appointment with the PA. The applicant weighed 110 pounds. The PA noted that she would need a medical waiver to receive a commission. She reported that she continued to take the iron supplement and did not have any adverse symptoms. The PA ordered more blood tests to check on the efficacy of the

[4] The PA was a LTJG who was promoted to lieutenant in October 2017 but has since left the Coast Guard.

iron supplements. He noted that if her iron was within normal limits, the waiver process could begin.

On January 16, 2015, the applicant returned to the clinic to learn the blood test results, which were about the same as the November results. She told the PA that she "doesn't have the time to take it [the iron supplement] daily." Although she took it regularly over the holiday break, she seldom had time to take it at the Academy. She denied having any symptoms of anemia, such as dizziness or excessive fatigue, and she reported that her menstrual cycles were normal. She weighed 105 pounds. The PA told her that the results were not within the standards and that she would be referred to a hematologist. The PA told her that the waiver process could not begin until the hematologist determined how to manage her anemia.

On February 4, 2015, the applicant visited the Hematology Office at a cancer center to consult a hematologist. She told the hematologist that she was taking the iron supplement once a day but not always twice a day. She reported no side effects from the iron supplement. She reported that her menstrual periods were regular and not heavy. She had felt fatigue for at least a year. Her appetite was fine, and she denied nausea, vomiting, diarrhea, constipation, heartburn, abdominal pain, jaundice, or having black or bloody stools. The hematologist diagnosed iron deficiency anemia and reported the following:

> The iron #s are as low as the bottom of the Marianas Trench. The anemia is not bad, but clearly a microcytic anemia is present. The MCHC is at the lower limit of normal. The RDW is elevated. The iron deficiency anemia did not occur overnight. It has developed over time. Interestingly, the only positive finding on ROS that patient reports to me when queried is that of fatigue. Fatigue can be caused by iron deficiency and by anemia, certainly by both. Over time, as the iron deficiency remains severe and as the anemia worsens, more and more symptomatic problems will occur. Iron is needed not only to make Hgb [hemoglobin], but also needed for non-heme purposes, such as for cardiac, muscular, and brain functioning.
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> The celiac disease finding seems real, and is a known cause of poor GI absorption of iron. It is a bit vague as to how much patient has been compliant with oral iron. Report from the USCG Primary Care Office is that she had not been consistently taking it daily, but patient reports that she has been taking it at least daily. If so with the latter, then clearly it is not being absorbed given the remaining low iron #s and the unchanged anemia. Although one could try maximal oral iron treatment with TID dosing and with vitamin C with each dose to enhance GI absorption of the iron, I don't know how easy this would be for patient to do, and I doubt given the celiac disease that it will [text not visible on fax]. A standard course of action is to use IV iron. That will bypass the GI malabsorption problem and get the iron deficiency anemia fixed. Moving forward, one would then need to monitor for future need of IV iron.
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> I talked with [the PA at the Academy]. A consideration is to be made for GI referral for scoping and consideration of bx [biopsy] to further evaluate the celiac disease diagnosed by lab testing.
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> After talking with patient today, she is not certain what she wishes to do with IV iron. I don't know if this is because going on IV iron may preclude her from being commissioned in the USCG. If her iron deficiency anemia persists, and worsens over time untreated, then I don't know if that would limit her being commissioned. From a medical point of view, the best thing for patient is to get the iron deficiency anemia treated.
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> Plan Summary

> Patient to think about proceeding with IV iron. I offered to schedule it for her, but she declined, instead wanting to think about it and to contact my office if she were to decide to proceed with it. If have d/w [discussed with] [the PA] about it.

On February 9, 2015, the applicant returned to the clinic to discuss the hematologist's report and recommendations. The PA noted that the hematologist had recommended 15 to 20 IV iron treatments. The applicant had decided to take the treatments and said she would call the hematologist's office to schedule them. The PA noted that he had agreed to be "flexible with bed rest profiles following tx [treatments]." The PA noted that the hematologist had also advised that the applicant should undergo a colonoscopy to check for inflammation and confirm celiac disease. The applicant told the PA that she had started a gluten-free diet but had not noticed any changes. She told him that she was "unsure if she will request waiver at this time." Regarding the celiac disease, the PA noted that the hematologist had recommended "GI eval for c-scope. Pt advised of this. Will refer for eval. She will f/u [follow up] with me after c-scope." On the referral form, he wrote that the hematologist "recommends colonoscopy to check for inflammation and confirm celiac disease."

On March 4, 2015, the hematologist reported that the applicant was receiving IV iron treatments for her anemia and tolerating them well. Blood tests showed that her hemoglobin had risen to the bottom of the normal range after three treatments. He noted that more tests would be done in two weeks and that the applicant would need to be monitored routinely for future need for IV iron.

On March 16, 2015, the applicant consulted a gastroenterologist to be tested for celiac disease. The gastroenterologist noted that the applicant told her that the PA at the Academy clinic had said she had celiac disease, that the applicant had been eating a gluten-free diet for about four months, and that she had been referred for a definitive diagnosis. Taking iron supplements had slightly improved her iron studies and raised her hemoglobin. She noted that the applicant

> [d]enies chronic GI sx [gastrointestinal symptoms] prior to 'dx' of celiac disease. Denies n/v/abd [nausea/vomiting/abdominal] pain/black or bloody stools/diarrhea. Denies heavy or irregular/ frequent menses. No other obvious source of blood loss (ie nose bleeds or hematuria). Only particular food intolerance prior to the gluten free diet was the "fake eggs" at the academy. Had a weight loss of about 10 pounds last semester which was unexpected. Has gained it back but not sure if solely due to gluten free diet or other factors. No known family h/o [history of] celiac.

The gastroenterologist also reported that the applicant denied having any fatigue, abdominal pain, a change in bowel habits, constipation, diarrhea, gas, heartburn, nausea, rectal bleeding, stomach cramps, vomiting, or dysphagia (trouble swallowing). She also noted that because the applicant had been on a gluten-free diet for four months,

> duodenal biopsies (gold standard) may not be diagnostic at this time since optimal time for histopathologic diagnosis is prior to starting a gluten free diet. Discussed options with patient. Given the fact that there's concomitant IDA [iron deficiency anemia], should exclude additional UGI [upper gastrointestinal] and CR [colorectal] sources of anemia. Will proceed with spin at this time with the caveat that duodenal bx [biopsy] may not be dx [diagnosis] for celiac. If patient and/or navy [sic] desire true tissue dx will need to resume non-gluten-free diet and repeat EGD [esophagogastroduodenoscopy] in approx. 6 months. (Date of onset)

> Plan: EGD with duodenal bx performed by … The indications, technique, alternatives, and potential risks and complications were discussed with the patient including, but not limited to, bleeding, perforation, missed lesions, and anesthesia complications. The patient understands the above, wishes to proceed and has given informed consent.

A "EGD-Colonoscopy Report" dated March 25, 2015, states that the "indications" for the EGD were anemia, iron deficiency, and weight loss, while the "indications" for the colonoscopy were anemia and iron deficiency. The EGD included multiple biopsies of the esophagus, stomach, and duodenum. The biopsies of the duodenum and duodenal bulb were taken "to evaluate for histologic features of celiac disease" or to "r/o [rule out] celiac." The biopsies showed noncorrosive gastritis in the stomach and an "irregularity in the area at and just proximal to the squamo-columnar junction." The colonoscopy included multiple biopsies for histology and to evaluate for or exclude microscopic colitis. The results were normal except for small, internal, nonbleeding hemorrhoids.

The pathology report on the biopsies, dated March 30, 2015, states that the biopsies of the applicant's duodenum showed "mild crypt hyperplasia, mild villous blunting and a patchy mild increase in intraepithelial lymphocytes." The report states, "These histologic changes are not entirely etiologically specific and can be seen in a variety of settings; however, so-called 'minimal deviation' celiac sprue cannot be excluded. Correlation with serologic studies is recommended." The biopsies of the stomach and gastroesophageal junction showed mild chronic inflammation (gastritis). The biopsies taken during the colonoscopy showed normal results.

On March 31, 2015, the hematologist noted that the applicant was tolerating the iron infusions well to treat her anemia but complained of chronic fatigue. She weighed 111 pounds and reported no gastrointestinal problems. Her iron levels were at normal levels, but she would need to be tested again after the last infusions so that the tests would be measuring her own iron levels instead of the iron in the infusions. The hematologist noted that celiac disease "seems real, and is a known cause of poor absorption of iron. As the iron efficiency anemia did not respond to a trial of oral iron, it is likely not being absorbed."

On April 2, 2015, the PA at the clinic noted that the applicant had received eight of ten IV iron treatments and that her iron levels were normal but that they needed to be checked two weeks after her final treatment. On April 7, 2015, he received the report of the applicant's March 16th consultation with the gastroenterologist.

On April 15, 2015, the applicant returned to the hematologist's office for her last dose of IV iron. She complained of vaginal spotting, and he noted that the IV iron might have changed her menstrual cycle. She told him that she could get a gynecological examination at the Academy clinic. He stated that she would need to return to the office for tests in four weeks to determine her iron levels and that she would "need to be monitored routinely for future need for IV iron."

On April 20, 2015, the applicant was referred to the clinic because she had lost weight again and weighed 106 pounds. The PA noted that her "possible celiac disease" might be an underlying condition causing her weight loss.

At a follow-up visit on April 21, 2015, the gastroenterologist reported the following about the applicant's "possible celiac":

> Following last visit patient underwent comprehensive celiac panel that was positive for TTG IgA and IgG, EMA previously positive. Underwent EGD and colonoscopy as part of anemia work up and to assess for Celiac. I had spoken with [the PA at the clinic] who told me that the patient had some compliance issues with recommended frequency of iron therapy and also had concerns about the patient's strict compliance with gluten free diet. EGD showed endoscopic evidence of non-erosive gastritis and some irregularity at the GE jnx [gastroesophageal junction]. Esophagus and duodenum appeared normal endoscopically. Bx [biopsy] of the stomach showed HP negative chronic gastritis, GE jnx bx showed chronic esophagogastritis. Bx of the 2nd portion of the duodenum showed villous blunting and increased intraepithelial lymphocytes consistent with celiac. Colonoscopy was normal. Gluten free diet recommended. Follow up labs on 3/31 showed normalization of H&H with normal indices. Complains today of feeling fatigued all the time (though I'm sure this is multifactorial).

The gastroenterologist also noted that the applicant continued to deny having any gastrointestinal symptoms of celiac disease, such as loss of appetite, weight loss, abdominal pain, change in bowel habits, heartburn, nausea, and vomiting.

The gastroenterologist forwarded this report and the pathologist's report to the Academy clinic the same day.

On April 24, 2015, someone at the Academy clinic initiated a request for a waiver of the medical standards for commissioning on her behalf. The description of the problem on the Medical Waiver Panel form (or "sheet") states that blood test results in November 2014 had shown

> iron deficiency anemia and the endomysial Ab panel tested positive, indicating high possibility of celiac sprue. She followed the recommendation to follow a gluten-free diet, with good results.
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> She had difficulty with oral iron replacement, so she was given IV iron treatments. She had an excellent response and now has normal iron stores and normal hemoglobin/hematocrit.
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> The patient was referred to gastroenterology for confirmation of diagnosis. Endoscopic evaluation including EGD and colonoscopy with biopsies was recommended, and the procedures were performed on 25 Mar 2015. Gross examination showed normal mucosa in the terminal ileum, right colon, and left colon. Microscopic random biopsies were obtained from the gastric area, terminal ileum, and colon, and they showed mild chronic inflammation indicating "minimal deviation" celiac sprue.
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> According to the CG Medical Manual COMDTINST M6000.1F, Chapter 3, Section D.15.c.3, current or history of intestinal malabsorption disorder including celiac sprue is disqualifying.

On May 1, 2015, the applicant underwent additional blood tests.

On May 6, 2015, the applicant was referred to the clinic for being underweight at 110 pounds. She complained of abnormal uterine bleeding between menstrual periods, stress, and lack of sleep. She stated that she had experienced bleeding between menstrual periods for about three months, but it was decreasing in severity. The PA noted that she was under stress and had

had a normal pap smear within the past year. He also noted that there were "labs pend[ing]" and that her "[p]ending celiac dx [diagnosis] may be contributing to low [weight]."

Also on May 6, 2015, the clinic received the results of the latest blood tests, which showed that an antibody for celiac disease had tested positive. The PA referred the results to the Chief Medical Officer.

On Wednesday, May 13, 2015, the applicant returned to the hematologist's office for blood tests four weeks after her final IV iron treatment. The tests again showed normal levels. The hematologist noted, "Patient reports that the head of the Coast Guard Clinic is trialing her on a diet that had gluten as per patient, per patient Endoscopy was equivocal and they aren't sure if she truly has Celiac disease. Patient reports since she has started gluten in her diet again starting May 1st she has had diarrhea." She also reported ongoing fatigue but no other gastrointestinal symptoms. The hematologist noted that her anemia had abated but that her blood levels would need to be tested again in one month. The report was not received by the Academy clinic until May 21, 2015.

On Monday, May 18, 2015, the applicant submitted her request for a waiver of the medical standards.[5] The Chief Medical Officer at the Academy clinic forwarded the waiver request to the Academy command and recommended a temporary waiver of the medical standards for commissioning "with conditions." He noted that her condition would not affect her fitness for sea duty or overseas duty, that her prognosis was good, and that the condition was unlikely to become a physical liability in the future. He noted that before November 2014, the applicant had attended the clinic infrequently and had never previously complained of symptoms associated with malabsorption. He wrote, "As long as the patient's celiac sprue does not cause other health problems (iron deficiency anemia, abdominal discomfort, diarrhea, hematochezia, etc), the patient will likely not have any issues associated with this diagnosis and should eventually be considered for permanent waiver."

The applicant's company commander strongly endorsed her request for a waiver, stating that she was one of company's strongest military performers, was one of the hardest working cadets, and had a 3.57 grade point average. The Commandant of Cadets forwarded the waiver request to Headquarters, noting that the applicant had passed every physical fitness test as a cadet, was highly intelligent, and was majoring in [redacted] He stated that she was "temporarily recommended for a waiver with conditions."

At Coast Guard Headquarters, the chief of the Review Branch at the Personnel Service Center (PSC) wrote the following, however:

> Waiver not recommended at this time. After consultation with her PCM [primary care manager] her diagnosis is uncertain and her response to IV iron is uncertain. If she continues to require IV iron she will not be waiverable. Her PCM plans to repeat a CBC [blood test] in one month and she will be off a gluten free diet for 3 – 6 [months] at which time a repeat biopsy will be done to make the diagnosis. She is invited to resubmit a waiver request at that time if her PCM deems her condition waiverable.

[5] The applicant did not submit a copy of anything she may have written in her waiver request.

The chief of OPM concurred with the chief of the Medical Review Branch, noting that the applicant's "diagnosis is uncertain at this time. Recommend further evaluation until a final diagnosis can be made. Member may reapply for a waiver in 3 – 6 months if a diagnosis is made with a waiverable condition." The denial was approved by PSC.

On May 19, 2015, the PSC informed the Superintendent of the Academy that the applicant's request for a waiver had been carefully considered by a panel of officers "but is disapproved. [She] is encouraged to undergo further evaluation and resubmit for a waiver in 3 months. … [T]he panel determined that at this time there remain tangible risks to this applicant. Similarly, there is no compelling service need that warrants waiving the medical standards and policy outlined in [the Medical Manual]."

On May 20, 2015, the applicant did not receive a degree or a commission although she participated in the graduation ceremony with her class. She had earned a 3.53 cumulative grade point average.

On May 22, 2015, the PA at the clinic sent the applicant an email stating that he would "try to answer your questions to the best of my ability." She asked if she would be tested for celiac disease during the next three months, and he replied, "Yes. PSC wants to do a repeat colonoscopy and repeat lab work." He used the term "repeat colonoscopy" in his responses to other questions as well.

On June 12, 2015, the applicant went to the clinic with questions about the waiver process and "pertaining to her disqualified [sic] medical conditions – possible celiac and iron deficiency anemia." He noted that she had another meeting with the hematologist the next week and told her to be sure that the results were faxed to the clinic. He noted that she would have more blood tests done in late July, and then they would "move forward with waiver/med board as need." In addition, the applicant "will also schedule re-eval with GI for repeat EGD." He stated that after she began eating gluten again on May 1st, "she experienced increase in fatigue, bloating, flatulence but that has resolved and now she feels as though she is back to baseline. … Pt continues to have bleeding between periods. It is decreasing in amount. Last cycle it was limited to minimal spotting." The applicant stated that she was not interest in having an additional work-up on her metrorrhagia (uterine bleeding) at the moment, but they would continue to monitor the condition. She reported having new red freckles on her abdomen but declined to be physically examined.

On June 17, 2015, the applicant visited the hematologist's office to undergo more blood tests. The results were again in the normal range. The report was received by the clinic on June 23, 2015.

At a follow-up visit on June 26, 2015, the applicant told the gastroenterologist that the Coast Guard doctors thought that she did not have celiac disease, and she was instructed to resume a normal diet with gluten as of May 1, 2015, so that she could undergo another EGD. Since then, the applicant reported, she had experienced

> increasing abdominal pain, change in her bowel habits, nonbloody diarrhea, bloating, gas, and intermittent nausea. Her weight is stable since last seen. She continues to be followed by hematology and her iron levels had H&H have returned to normal as of May 2015 following multiple iron infusions.
>
> **Assessment: Celiac disease**—with both serologic and histopathologic evidence following recent EGD (despite previously initiated gluten free diet). Recommend strict gluten free diet though, according to patient, believed by Coast Guard physicians that she does not have celiac. I'm not certain why they dispute both positive serology x2 and histopathologic findings c/w [consistent with] celiac. She has since resumed eating gluten for approximately 2 months and has developed GI sx as outlined above. Patient states that she felt better on a gluten free diet. Apparently she and/or the Coast Guard want "more proof" that she has Celiac disease. She would like to avoid repeat endoscopy if possible so I've offered to send her for Prometheus Celiac panel (serology and genetic). If that is negative or equivocal, definitive dx can only be made through repeat duodenal bx [biopsy] on a regular gluten containing diet.
>
> Iron deficiency anemia—likely 2/2 #1 [secondary to celiac disease]. Improved on more recent labs from [March 31, 2015] following infusional iron therapy. Will likely recur if full gluten diet resumed with celiac disease.
>
> Gastritis—H pylori negative. Prilosec 20 mg daily 6 weeks then PRN.

The gastroenterologist noted that the applicant's "chief complaint" was "possible celiac"; listed celiac disease, gastritis, and iron deficiency anemia as "diagnoses"; and reported that the results of the Prometheus Celiac panel tests would likely be available the next week.[6]

On July 2, 2015, the gastroenterologist's office faxed a letter to the Academy PA, stating that at the applicant's consultation on March 16, 2015, they had told the applicant that following a gluten-free diet—as the applicant had been doing—

> often renders duodenal biopsy nondiagnostic since small bowel mucosal healing starts immediately following removal of gluten. The patient underwent an EGD (in addition to a colonoscopy to exclude colorectal sources of blood loss contributing to anemia) … on 3/26/2015. Endoscopic findings included H Pylori negative esophagogastritis (mild) and biopsies of the second portion of the duodenum showed histopathologic changes consistent with celiac disease. These changes were mild and likely reflective of healing small bowel mucosa after a 4-month period of gluten abstinence. Her colonoscopy showed only mild internal hemorrhoids.
>
> I saw [the applicant] to follow up and discussed the noted findings. Specifically, I discussed with her that given her previously positive celiac serology and the changes in the duodenum noted histopathologically following a 4-month gluten-free diet, we ([the gastroenterologist] and myself [a PA]) believed with certainty that she had celiac disease. We discussed continuation of her gluten-free diet, and she was told to follow up on an as needed basis.

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[6] "The Prometheus panel, … is composed of the following markers: ASCA IgA, ASCA IgG, anti-OmpC IgA, anti-CBir1, and IBD-specific pANCA. There are 3 separate components to the pANCA testing: (1) autoantibody detection by enzyme-linked immunosorbent assay; (2) perinuclear pattern detection by immunofluorescence assay; and (3) DNAse sensitivity. The results for each of the individual tests are then analyzed in relationship to one another by using Prometheus' proprietary Smart Diagnostic Algorithm." Austin, G.L., *et al*., "A Critical Evaluation of Serologic Markers for Inflammatory Bowel Disease [Abstract]," CLINICAL GASTROENTEROLOGY AND HEPATOLOGY, May 2007, v. 5(5):545-547, *available at* https://www.cghjournal.org/article/S1542-3565(07)00244-3/fulltext (last viewed April 15, 2020).

> The patient was seen in follow up on 6/25/2015, at which time she stated she had resumed eating gluten at the advice of her physician(s) at the Academy. Since resuming gluten products in early May 2015 she has noted abdominal pain, intermittent nausea, bloating, gas, and diarrhea. Her weight has remained stable. Her last blood work in May 2015 (approximately 2 weeks after resuming gluten) showed a normal H&H but she has not had lab work since. Given ongoing question raised by the Academy physicians regarding her celiac disease diagnosis, genetic testing was performed, the results of which are consistent with Celiac disease. [The applicant] has, without question, Celiac disease which has been confirmed by genetic and serologic testing, as well as histopathology. Clinically she has improved on a gluten free diet.
>
> We find no need for additional testing and encourage [the applicant] to resume a gluten free diet at this time. Failure to comply can lead to multiple medical problems such as worsening anemia, nutritional deficiencies, osteopenia, etc.

The Academy clinic received the gastroenterologist's report with the results of the Prometheus celiac panel on July 7, 2015. The genetic testing showed markers linked to an extremely high risk of celiac disease, and serological tests showed "markers for celiac disease detected."

On July 9, 2015, the applicant returned to the clinic to follow up on the results of the Prometheus celiac panel. The PA reported the following:

> Pt recently re-evaluated by GI and was given definitive dx of celiac disease based on histopathology of biopsies, symptoms, and blood work. She reports since resuming gluten diet she is having o/s of fatigue, bloating and increased flatulence. Pt would like to separate from the CGA in lieu of MEB [medical board processing for disability rating evaluation] – req to know if this is possible. Pt most concerned with graduating/keeping degree from CGA. … HSA [Chief health specialist] advised that CG legal state that pt will potentially lose her degree if she attempts to separate from the CGA without pursuit of MEB. Advised pt of this. Will address pt concerns re MEB and her degree with CGA command and legal. Advised pt that I will f/u up [sic] with her ASAP when I get confirmation of options. Since she states she is symptomatic now, recommend she resumes gluten free diet as originally directed.

The applicant did not submit a second waiver request. Instead, at a follow-up appointment at the clinic on July 24, 2015, the applicant was advised about medical board and disability evaluation procedures. The PA noted that a medical board had been initiated and advised the applicant of the findings. She declined to submit a rebuttal.

On August 7, 2015, the Chief Medical Officer initiated a medical waiver request in the applicant's name. The Medical Waiver Panel sheet includes the following description of her condition:

> … [The applicant] was initially noted to be underweight during her pre-commissioning physical exam on 07 Nov 2015. Basic labs including TSH, CBC, iron panel, and endomysial antibody (Ab) panel were performed. The CBC/iron panel indicated that she had iron deficiency anemia and the endomysial Ab panel tested positive, indicating high possibility of celiac sprue. Although the celiac sprue may have accounted for her anemia, she has eaten a regular diet all her life and has not had any symptoms. Nonetheless, it was recommended that she follow a gluten-free diet. She had difficulty with oral iron replacement, so she was given IV iron treatments by hematology. She had an excellent response and now has normal iron stores and normal hemoglobin/hematocrit. Labs were repeated two months later to assess whether she was able to retain the iron; labs remained normal with normal hemoglobin and no loss of iron stores. The patient was also referred to gastroenterology for confirmation of diagnosis. Endoscopic evaluation including EGD and colonos-

> copy with biopsies were performed on 25 Mar 2015. Gross examination showed normal mucosa in the terminal ileum, right colon, and left colon. Microscopic random biopsies were obtained from the gastric area, terminal ileum, and colon, and they showed mild chronic inflammation in the ileum that was consistent with but not definitive for "minimal deviation" celiac sprue.
>
> A waiver was requested and denied 19 May 2015 with encouragement to resubmit the waiver request in three months. The anemia and decreased iron stores have been rectified and there are no signs of malabsorption. Although now on a gluten-free diet under recommendation of her gastroenterologist, she has been on a regular diet all her life without symptoms; this condition was found while working up her anemia. This member has mild disease. She has been FFFD [fit for full duty] throughout the process. According to the CG Medical Manual COMDTINST M6000.1F, 3.D.15.c.3, current or history of intestinal malabsorption disorder including celiac sprue is disqualifying.

The Chief Medical Officer also stated that her condition would not prevent her from performing overseas or sea duty, that her prognosis was good, and that the condition would not become a physical disability. He wrote that before November 2014, she had visited the clinic infrequently and had never complained of malabsorption problems. And "[a]s long as the patient's celiac sprue does not cause other health problems (iron deficiency anemia, abdominal discomfort, diarrhea, hematochezia, etc), the patient will likely not have any issues associated with this diagnosis. A permanent waiver is recommended."

On August 11, 2015, the Chief Medical Officer at the clinic signed a memorandum to the applicant. He stated that he had been informed that she did not wish to pursue a medical waiver request for her condition even though she had been found fit for full duty and could continue her career with a medical waiver. He stated that there were many members serving on active duty with her conditions. Therefore, he had decided to submit a waiver through the chain of command. He stated, "This is your notification and opportunity to comment on this waiver request."

On August 17, 2015, the applicant submitted a five-page memorandum with comments on the Chief Medical Officer's waiver request (the latter is not in the record before the Board). She wrote the following in pertinent part:

> 2. … In November 2014 I failed my commissioning physical because iron deficiency anemia was found. I was tested for celiac disease because it could account for my iron deficiency and anemia and the test came back positive. After being advised by the clinic, I quickly began a gluten-free diet so I could start my recovery process. I voluntarily went through all of the necessary tests and procedures despite cutting heavily into time I needed for my academics – a necessity so I could graduate and commission with the rest of my class. After having complied with the necessary treatments and tests, I submitted a medical waiver for celiac disease in May which was disapproved on 19 May 2015. Now, another medical waiver is being submitted on my behalf.
>
> 3. The following corrections and clarifications are in order …
>
> a. [concerning weight]
>
> b. … I was informed on 10 December 2014 that I had celiac disease, I was told I had two options: to get a colonoscopy to be certain of my celiac diagnosis, or to start a gluten-free diet. I was informed by the clinic that the blood work was 95% accurate, that a colonoscopy was more work than it was worth, and that I should assume I am celiac and eat a gluten-free diet. To clarify, the endoscopy is the proper procedure to test for celiac disease, not a colonoscopy.

c. The medical waiver panel states that I "had difficulty with oral iron replacement." To clarify, my lab work showed no response after taking oral iron for months. … [The hematologist] agreed that it was in my best interest to undergo the [IV iron] treatment because my iron levels were "as low as the bottom of the Marianas Trench" and I was in an unsustainable position.

d. The medical waiver panel states that I currently have "normal iron stores and normal hemoglobin/hematocrit." However, my blood levels have not been tested since 17 June 2015. Since it has been nearly two months since my levels were tested and because on 15 August 2015 it will be four months post-treatment (it takes approximately four months for red blood cells to turnover and replenish), there is a possibility that my levels have changed.

e. I had an endoscopy performed on 25 March 2015, nearly four months after starting a gluten-free diet. In order for a biopsy to come back positive of celiac disease, the irritant (gluten) must still be present in the diet. As soon as gluten is removed from the diet, the intestine starts to heal itself. The finding of my endoscopy was consistent with "minimal deviation" celiac sprue as stated in the medical waiver panel. However, it is not stated that those changes were found after nearly four months of healing – an amount of time that could have made my endoscopy reflect no signs of celiac disease at all. Thus, the amount of damage found is not consistent with the amount of damage that originally existed and the severity of my reaction cannot be interpreted from this. …

f. The medical waiver panel states that my "anemia and decreased iron stores have been rectified and there are no signs of malabsorption." To clarify, my anemia and decreased iron stores were rectified prior to my submission of the last medical waiver request. I submitted my waiver on 18 May 2015, after my blood levels were tested one month post IV iron treatments. Those labs did not show any signs of malabsorption, and they showed that I was not anemic or iron deficient. However, the medical waiver panel that was submitted with my medical waiver (I was not able to review the medical waiver panel) was not updated since 24 April 2015. Thus, the improvement was not noted and the clinic submitted information which was not current. …

g. The new medical waiver panel states that I had "been on a regular diet all my life without symptoms." However, unsustainably low iron levels and anemia are symptoms. In fact, they are the reason I was tested for celiac sprue. Other symptoms of celiac disease include digestive problems, joint pain, acid reflux, exhaustion and weakness, weight loss, and eczema. I have experienced all of these. [The hematologist] states that iron deficiency as severe as mine does not happen in a short amount of time; it takes a long time to lose the amount of iron that I did. Thus, I was having symptoms of celiac disease for quite some time without realizing. Finally, the proposed absence of symptoms does not negate the fact that I have celiac disease or the risk of long term complications.

h. To correct the fact: there is no such thing as "mild" celiac disease. The corrective action is the same for any person who has celiac disease – the person must follow a strict gluten-free diet. The long-term risks associated with continued gluten consumption are also the same – different forms of cancer, malnutrition, dementia, and osteoporosis.

i. A permanent waiver should not be recommended. I will need to continuously monitor the availability of gluten-free food in my work environment. If I continue to have problems with celiac disease, I may need to be reevaluated.

j. My ability to serve aboard a cutter and travel TDY [on temporary duty] is affected for the following reasons:

   i. … Using cookware that has previously been used to cook with gluten or even the presence of flour in the air can cross-contaminate gluten-free food.

   ii. Finding gluten-free food while travelling is difficult and near impossible. Many restaurants do not offer gluten-free options, and among those that do there is a high

probability that gluten will still be in the food. For this reason, gluten may be unavoidably consumed while travelling on orders or onboard a cutter.

iii. The cadet wardroom [cafeteria] at the Academy, though I thank them for putting forth their best effort, has been unable to provide me with healthy, gluten-free food at every meal. On occasion, I find out that the food I eat and that the wardroom staff told me was gluten-free is not gluten-free. This contamination has been revealed days, sometimes months, after eating the provided food. The wardroom as well as kitchens onboard Coast Guard cutters are not equipped to handle the delicacy of preparing gluten-free food and providing a gluten-free diet puts an undue stress on the kitchen. A kitchen which is prepared for a gluten-free diet does not contain any gluten.

iv. After my experience with the wardroom, I can positively state that I am not able to be fed onboard a cutter, or anywhere outside my own kitchen without the risk of consuming gluten. The risk of accidentally ingesting gluten is a risk that I am unwilling to take due to the possibility of developing very serious side-effects later in my life.

v. Being in an operational setting, I should be focused solely on the job at hand. However, my focus will be on maintaining my health, instead of accomplishing my duties. Therefore, it is realistic that my performance will be negatively impacted.

k. To correct the fact: celiac sprue disease does not have a cure. The only thing that will keep me from becoming ill is a continued gluten-free diet for the rest of my life. Thus, the prognosis for changes in my condition (celiac disease) will not get better over time.

l. The medical waiver panel states that I "will likely not have any issues associated with this diagnosis." To clarify, I should not have issues as long as I am guaranteed a gluten-free diet …

m. To clarify, I have definitive celiac disease. … [The gastroenterologist] believed I had celiac disease "with certainty" in April, 2015 when they advised me to continue a gluten-free diet. Their professional opinion, for some reason, has been questioned by the clinic. One instance is explained below. [The applicant stated that in late April, she was told by the PA that she "would not be considered celiac by the Coast Guard" unless she ate gluten to undergo more testing even though she "had many symptoms from eating gluten including loss of appetite, upset stomach and painful cramping, acid reflux, and digestive problems." She stated that she told the clinic that she did not want to eat gluten again, but the Chief Medical Officer "told me that I would continue a gluten-full diet against my will." Therefore, she consulted her gastroenterologist to get them to give the Coast Guard a definitive diagnosis, and she did not have to eat gluten or undergo an endoscopy again.]

n. In the medical waiver request, it is stated that [the Chief Medical Officer] was informed that I "do not wish to pursue a medical waiver." However, … I stated that I was still deciding if I was going to submit a medical waiver or not because I already voluntarily submitted a medical waiver request for the same condition (celiac disease) and it was denied. There has not been a significant change in my case since my first waiver was submitted.

4. There are two potential reasons explaining why celiac disease is found in adults and not only in children: stress and the use of antibiotics. I experienced both of these at the Academy, and believe they are the reason for my being diagnosed. …

5. In the event a medical waiver is approved, I am requesting a BCMR to correct my commissioning date and rank. My first medical waiver was denied on May 19, 2015. If it was approved I would have commissioned with the rest of my class on 20 May 2015. However, my waiver was denied to I could get two tests done which I have not taken: an endoscopy and a blood test 120 days post IV iron injections. Thus, the only two reasons I was kept here have not been fulfilled. … Furthermore, my first waiver was submitted with information which was not updated to show

> the true status of my condition. If I am commissioned now, there is no reason for me to have been kept here for three additional months, losing my class rank, months of officer pay and leave accrual, and becoming less healthy [eating gluten]. The loss of my class rank will affect a career, as I am not as high on the promotion list as I should be.
>
> 6. I have complied with everything that has been asked of me, doing my part to become healthy so my first waiver would be approved and I could commission. Since then I have realized how little control I have over my diet and thus my health while I am a member of the military. If I could condition and know without a doubt that I would not be subjecting myself to severe side effects, then I could in good conscience proceed with this waiver. Since I cannot, I will not break my honor and integrity by saying I am fine and there are not any potential hazards to my immediate and long-term health when that is not true. … I have the knowledge of my condition and its limitations and that knowledge is what compels me to say that this medical waiver request is being sent without my consent.

On August 21, 2015, the Commandant of Cadets (CoC) recommended that the second waiver request for the applicant be granted. He noted that he had consulted the Chief Medical Officer and the Academy, met with the applicant, and reviewed her comments about the waiver request. He highly praised her academic and military performance and physical fitness. The CoC stated that the applicant had been underweight throughout her four years at the Academy, which was "attributed in her medical record to genetics." After her pre-commissioning physical examination on November 7, 2014, laboratory results revealed iron-deficiency anemia. In addition, the "antibodies for celiac disease were tested and found to be present." The Chief Medical Officer had stated, however, that the tests revealed "at most minimal celiac disease, as evidenced by consuming a regular diet for 21 years without any symptoms of malabsorption and no documented visits to the clinic for symptoms of celiac disease for the four years as a Cadet."

The opinions of the reviewers at Headquarters was not submitted to the Board. But on Friday, September 4, 2015, PSC granted a permanent waiver for the applicant's "history of celiac disease."

The applicant was commissioned an Ensign on September 8, 2015, and was promoted to LTJG on March 8, 2017. She was promoted to Lieutenant while this case was pending on September 8, 2019.

VIEWS OF THE COAST GUARD

On February 1, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG stated that in accordance with the Medical Manual, cadets must be examined to determine whether they meet the physical standards for commission, and a waiver is required if the cadet does not meet the standards. Both celiac sprue and anemia that has not been corrected by therapy are listed as disqualifying conditions for commission. Waivers are decided on a case-by-case basis but waivers are normally granted if the cadet is reasonably expected to remain fit for duty despite the condition and if the waiver is in the best interest of the Coast Guard. To receive a waiver, the Coast Guard noted, there are many levels of review. First, the Medical Officer who considers a condition disqualifying under the standards but not disabling shall describe the condition, indicate whether a temporary or permanent waiver is recommended, and

forward the report to the command. The command informs the cadet, who informs the command whether he or she desires a waiver. The Medical Officer then provides a recommendation about whether a waiver is appropriate and whether the cadet is fit for duty despite the condition. The CO forwards this information to PSC with a cover letter containing a summary of the cadet's performance and the CO's recommendation regarding the waiver. In deciding whether to grant a waiver, PSC relies on the information forwarded, the opinion of the Chief of the Commandant's Office of Health Services, and the needs of the Service.

Denial of First Waiver Request Justified

The JAG stated that the record shows that after four months of testing and treatment, Coast Guard medical officers were not fully convinced that the applicant was fit for duty given her disqualifying conditions. Contrary to her claims, there is no evidence—except what the applicant herself told the gastroenterologist on June 26, 2015—that either the PA or the Chief Medical Examiner told the applicant that she did not have celiac disease. They told her that the test results had been equivocal and that the diagnosis was pending. In addition, as of April 2015, whether the applicant had fully responded to her iron replacement therapy was unknown and the nature and limitations of her celiac disease diagnosis were unclear. Therefore, the JAG argued, the Coast Guard appropriately denied the applicant's first waiver request in May 2015, but she was encouraged to continue treatment, receive new tests, and reapply for a waiver. The JAG noted that the consequences of an outright denial of the waiver request would have been much more severe, as the applicant would have received neither a degree nor a commission.

The JAG stated that the fact that the Coast Guard chose to proceed with caution and deliberation by waiting for additional testing was not erroneous or unjust. "There were significant implications for the future medical care of Applicant if either her celiac disease or anemia were not stabilized based upon treatment." It was not unreasonable for the Coast Guard to have concerns about the efficacy of her treatment in April 2015. The JAG noted that in her own comments on the second waiver request, written in August 2015, the applicant stated that she continued to have problems with celiac disease and might need reevaluation.

The JAG stated that although the applicant attributed the denial of the first waiver request to a "misdiagnosis," no single factor caused the denial, and the Coast Guard had valid reasons to deny the waiver request "that had nothing to do with a delay in diagnosis or treatment." She also noted that the applicant had failed to consider her own responsibility for the delay in her receipt of a waiver in that she had refused testing in December 2014 and had not followed the oral iron therapy plan provided by the Academy clinic.

Timely, Quality Medical Care Provided

The JAG stated that the applicant was initially found to be disqualified for commissioning because of iron deficiency anemia, not celiac disease. She did not respond well to oral iron therapy, however, and so she was referred to a hematologist in January 2015. The hematologist recommended IV iron therapy, which was provided. And as the hematologist noted on March 31, 2015, delayed re-testing is required following IV iron replacement therapy to determine whether the elevated levels are due to the transfusion itself or to actual recovery.

The JAG stated that contrary to the applicant's claim that no colonoscopy was required and only an endoscopy was needed, the Coast Guard had a legitimate medical reason for advising her to undergo a colonoscopy. The JAG stated that the clinic staff consulted the hematologist who met with the applicant on February 4, 2015, after the oral iron therapy did not work, and it was the hematologist recommended the colonoscopy to exclude the possibility that colorectal sources of blood loss were contributing to her anemia. She concluded that there "were multiple legitimate reasons for the colonoscopy and there was no error on the part of the USCG in relaying upon the expert advice of outside specialists to help determine the best diagnostic options and treatment for Applicant."

The JAG argued that the applicant's complaints rely "on a post hoc review of her treatment and does not account for the natural progression of the medical diagnostic process." The JAG stated that the record shows that she was provided quality medical care, including repeated consultations with medical personnel at the clinic and referrals to outside specialists for IV iron therapy, digestive disease treatment, and laboratory tests. The applicant did not receive an "immediately confirming diagnosis of celiac disease, [but] at all times the Coast Guard was actively engaged in trying to determine how best to treat Applicant." The JAG stated that nothing in the applicant's medical records shows that the specialists concluded that the Coast Guard had erred in her treatment. The JAG also noted that the applicant's medical treatments were voluntary and so she chose to undergo the "gluten challenge" to increase the likelihood of receiving a definitive diagnosis of celiac disease and a medical waiver.

SUMMARY OF APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 7, 2019, the applicant submitted a response to the views of the Coast Guard. She repeated most of her allegations and disagreed with the views of the Coast Guard. The applicant submitted substantial new evidence, including copies of emails she exchanged with personnel at the Academy clinic.

The applicant admitted that waivers are required for both anemia and celiac disease but argued that the Board should grant relief because her anemia was corrected before the day of graduation, because she had already definitively been diagnosed with celiac disease by that date, and because the gastroenterologist reconfirmed that diagnosis with only blood tests and genetic testing, which could have been done before graduation. The applicant stated that the Coast Guard's numerous errors "delayed my commission, cost me my health, leave and earnings, and class rank, and harmed my future career." She listed seven specific errors:

1. The PA at the clinic "informed me of the incorrect medical procedure to test for celiac disease – a colonoscopy instead of an endoscopy."
2. The PA recommended a gluten-free diet without first requiring her to undergo the confirmatory biopsy for celiac disease.
3. After recommending the colonoscopy and gluten-free diet, the clinic changed her treatment plan and required confirmatory testing since the diet had made a biopsy, "the gold standard of testing for celiac disease … unattainable."

4. The clinic disregarded the medical conclusion of the gastroenterologist and failed to make proper use of the endoscopic results, the gastroenterologist's recommendation, and the laboratory results when it denied her waiver request and delayed her commissioning by requiring her to eat gluten and be retested.
5. Her medical waiver was reviewed internally in April 2015—before the final lab results "cleared my anemia"—but her anemia was no longer an issue by May 20, 2015, the date of graduation.
6. The PA "was unable to identify the correct procedure" to confirm a celiac diagnosis and repeatedly referred to it as a colonoscopy, yet "still went against the medical direction of my specialist."
7. The Coast Guard justified the denial of the medical waiver based on her requiring further testing—an endoscopy—but never conducted the test, which was not actually needed.

Additional Allegations of Fact

The applicant alleged that she declined to undergo further celiac testing in December 2014 not only because the PA stated that the test was a colonoscopy but also because the PA recommended that she not undergo the test because the blood test was so accurate.

The applicant complained that because she followed the PA's advice, when she consulted the gastroenterologist on March 16, 2015, she was told that

> the 'gold standard' of testing for celiac disease was no longer available due to the Coast Guard's direction to start a gluten-free diet without first having an endoscopy. Because [the gastroenterologist] was concerned for my health, [she] recommended to continue my gluten-free diet leading up to the endoscopy. The plan was to pursue an endoscopy specifically to test for celiac disease and a colonoscopy as secondary testing to exclude other sources of my anemia.

The applicant stated that at her appointment with the gastroenterologist on April 21, 2015, she learned that the biopsies from the endoscopy had shown changes "consistent with celiac." She alleged that this was a confirming diagnosis and that no additional endoscopy was necessary. Instead, "correlation with serologic studies [was] recommended." When her first waiver request panel was initiated on April 24, 2015, she alleged, the Chief Medical Officer agreed with the gastroenterologist and recommended approval of the waiver. She alleged that the waiver was only required for celiac disease by that time because her iron stores were normal. The applicant noted, however, that she was unaware that the Academy clinic had initiated the waiver request at the time.

The applicant stated that the Chief Medical Officer sent her an email about the waiver on April 27, 2015. She thought it was inappropriate to initiate a waiver before her final hematology appointment, which was scheduled for May 13, 2015. She thought the blood tests were crucial to the waiver because her anemia was secondary to celiac disease. The Chief Medical Officer told her that she would not need a waiver for the anemia if her iron levels remained normal. On April 29, 2015, she was told that the Chief Medical Officer wanted to see her to discuss their email correspondence (shown below). At the meeting, he stated that her anemia was a symptom of celiac disease and that a prior history of anemia would not require a waiver. But, she alleged,

this advice contradicted that of the PA, the gastroenterologist, and the hematologist, so she told him that she wanted to wait until after her appointment with the hematologist to request a waiver.

The applicant stated that on April 30, 2015, the Chief Medical Officer decided, contrary to the gastroenterologist's report, that the biopsy results were not definitive and that more testing was required. She alleged that this decision contradicted what he had written on the waiver request panel report just six days earlier. But in accordance with his decision, she had blood drawn that day for a celiac sprue panel. When she saw the Chief Medical Officer afterward, he told her that she should start eating gluten again in order to have another endoscopy. So she started eating gluten again.

On May 14, 2015, she emailed the PA to ask about the waiver request and was told that he did not think that one was necessary for anemia, only celiac disease, but he also said that the celiac panel conducted on the blood drawn on April 30, 2015, did not show "definitive celiac." The applicant claimed that a celiac panel can show a "false negative" result once gluten has been removed from the diet and so is unreliable. She claimed that the Coast Guard nevertheless based her treatment for the next two months on the results of this test.

On May 15, 2015, the applicant stated, she sent an email to the Chief Medical Officer because she was worried that she would get in trouble for eating gluten after being told not to by the gastroenterologist. The Chief Medical Officer told her that the gastroenterologist "had mentioned undergoing a three month long gluten challenge for a definitive test of celiac disease," that the note was in her medical record for her to see, and that she could also "google gluten challenge" to learn more about it. But she argued, the Chief Medical Officer should not have relied on the gastroenterologist's note about a three-month "gluten challenge" being the "gold standard" because it was dated March 16, 2015—before the endoscopy was conducted.

The applicant stated that she "called legal" and left a voicemail that day because she had had numerous meetings and communications with medical personnel that had not been entered in her record and she had received different instructions about her treatment at each meeting. She alleged that her degree had "been used as ransom to encourage me to comply with each change in treatment." So she called the legal office to find out if the medical personnel were "acting within their legal bounds." But the JAGs in the legal office could not represent her, and she was later told that clinic personnel and her chain of command could answer her questions.

The applicant stated that on May 18, 2015, just two days before graduation, she told her PA that she was drafting a waiver request. He told her to bring it to the clinic to "get the wheels moving." On May 22, 2015, she inquired about the waiver and was told that it had been denied on May 19, 2015. The PA also repeatedly used the term "colonoscopy" when referring to the testing for celiac disease. He also told her to eat gluten so that they could see the "effect" it would have but could not tell her what "effect" the Personnel Service Center would want to see to grant a waiver. But the desire to see this "effect" caused the clinic staff to ignore the concerns the gastroenterologist had for her health.

On June 12, 2015, the applicant stated, she told the PA that since starting to eat gluten again, she had felt increased fatigue and bloating and had returned "back to baseline." The

applicant claimed that "back to baseline" actually meant that she "felt terrible on a daily basis." When she saw the Chief Medical Officer that day, he denied that gluten could "cause her gastritis to worsen," even though the gastroenterologist had told her that, if left untreated, gastritis could lead to esophageal cancer. He offered her another colonoscopy even though that was not the proper procedure to confirm celiac disease.

On June 26, 2015, the applicant pointed out, she described her symptoms from eating gluten to the gastroenterologist, including abdominal pain, change in bowel habits, and intermittent nausea," The gastroenterologist did not understand the Coast Guard's determinations, noted that the anemia would likely recur if the applicant continued eating gluten, and ordered a "Prometheus panel as a genetic test for celiac disease." Then after receiving the results of the Prometheus panel, the gastroenterologist advised the Coast Guard that she had believed with certainty in April 2015 that the applicant had celiac disease and that there was no need for more testing.

Arguments Regarding Advisory Opinion

The applicant stated that, contrary to the claim in the JAG's advisory opinion that there is no evidence that the Coast Guard ever contested her celiac diagnosis, she has emails she exchanged with the PA and the Chief Medical Officer proving that they did contest the diagnosis. She submitted the following series of emails to prove this point:

- April 24, 2015: The Clinic Administrator told the applicant that the PA had noted that a medical waiver would have to be submitted to allow her to be commissioned. He "provided a generic sample memo for you to edit. You can make the changes to reflect the disqualifying condition, and send it back to me for my review prior to you signing." She also noted, "Please make sure to send me your version by Tuesday at the latest, as we need to move quickly with getting your waiver package up to opm." Later the same morning, the Clinic Administrator sent the applicant another email noting that she needed to stop by the clinic to sign her physical examination, which would be part of the waiver package."
- April 27, 2015: The applicant replied, "At this time, I do not feel it is appropriate to submit a waiver. … the fact is I will not know the extent to which my condition is affecting my health until receiving results from a follow-up exam scheduled for 13 MAY 2015. Until I know the results from that exam, I do not feel I can appropriately or correctly fill out the third paragraph of the medical waiver memo."
- April 27, 2015: The Clinic Administrator forwarded the applicant's email to the Chief Medical Examiner. She stated that the applicant was not required "to include paragraph 3 about her condition, or she could change it up and still request the waiver and mention she has a follow-up exam." She stated that the waiver request should be submitted promptly if the applicant wants to be commissioned, even to get a temporary waiver: "The appointment being 13 May (one week prior to commencement) – and then getting results, and her memo will delay out days even more to get it to opm." She asked whether she should reply to the applicant or whether he would.
- April 27, 2015: The Chief Medical Officer forwarded the Clinic Administrator's email to the applicant and noted that she had both celiac sprue and iron deficiency anemia to be

addressed. He stated, "We would like to get the waiver for the celiac sprue through now, and if your blood count holds, you will not have iron deficiency anemia any longer and therefore would not need a waiver for that. Because it takes a while to get waivers through, we want to get this to OPM ASAP."

- April 30, 2015: The Chief Medical Examiner advised the applicant that her "biopsy results were not definitive for celiac" and that he wanted to do more blood tests before she began a "gluten challenge" by eating gluten again." He also noted that he would be meeting with the Command and the Staff Judge Advocate that afternoon "to determine our way forward" and asked her to stop by later to discuss it. They also arranged for her to have blood drawn.
- On Thursday, May 14, 2015, the applicant advised the PA that she had been told at the hematologist's office the day before that she was not anemic anymore. She stated that her "blood levels" should be available the next day. She asked what sort of waiver request she would need to submit if they were normal. She stated, "Celiac isn't confirmed, so I'm wondering if I need to submit a waiver for it. If I do need to, should I be submitting a waiver for possible celiac or should I title it something different?" She also asked about the April 30, 2015, blood test results. The PA replied, "The celiac panel came back as probable, but not definitive celiac. This is quite common. Basically, some of the labs were positive and some were negative. A waiver is need for probably celiac, but it will almost certainly be granted. As [the Chief Medical Examiner] expressed, a waiver will be endorsed here and processed quickly if you agree to sign it. Since the anemia seems normal now, I don't think [the Chief Medical Examiner] expressed an interest in requesting a waiver for it. Please advise how you'd like to proceed."
- On Friday, May 15, 2015, a yeoman at the Academy's legal office asked the applicant to call her "to discuss your request for legal assistance."
- Later on Friday afternoon, May 15, 2015, the applicant sent the Chief Medical Officer an email stating that she was worried about whether she would get in trouble for eating gluten again "when the tests show probable Celiac Disease and the specialist recommended that I continue a gluten free diet." She requested a doctor's order stating that she should eat gluten again to prepare for a future endoscopy. The Chief Medical Officer replied, "It was in the specialist's note. He [sic] is the one that said that if we really needed to know whether you had celiac or not, that you return to a regular diet and then repeat the EGD in 3 months. This is called a 'gluten challenge.' You can come to the Clinic and ask for a copy of his note; it is in your chart." In a follow-up email, he noted that the gastroenterologist had actually said six months, but that many specialists said that three months was adequate, so they would go with three months if her gastroenterologist agreed. He noted that she could "google gluten challenge and read more about it."
- Also later on Friday afternoon, May 15, 2015, the applicant advised the PA that she was drafting a waiver request based on the sample provided earlier and she would bring it to the clinic on Monday.

- Early Monday morning, May 18, 2015, the PA advised her in an email to give her waiver request to the Clinic Administrator to "get the wheels moving."[7]
- On Friday, May 22, 2015, the PA replied to an email from the applicant with the subject line "Timeline" (which she did not submit). The PA stated that the waiver request she had submitted on Monday was quickly routed for review but the Personnel Service Center had not approved it. He forwarded a copy of the memo denying the waiver request and told her that they wanted to make sure she remained healthy for another three months and would repeat the evaluation then. She sent him a list of questions about being tested for celiac disease in three months, which he answered, again using the term "colonoscopy." He stated, "If blood counts still indicate anemia or if they deem the celiac disease to be detrimental to military suitability, you may not get the waiver granted. If everything continues to be in remission, then a waiver may be granted."

The applicant stated that contrary to the JAG's claim, she was directed to start eating gluten again; she did not elect to. She alleged that she was directed to do so "after bringing up multiple symptoms to the CGA Clinic."

The applicant stated that because she waited until May 18, 2015, to submit her waiver request, she did not have to submit one for anemia. Instead, the request could state that her anemia had been corrected. Therefore, the JAG's claim that her anemia could have justified the denial of a medical waiver for celiac disease is an error, as no waiver for anemia was required. She also stated that the JAG's claim that the medical personnel might not have had a full understanding of the nature of her celiac disease in April 2015 was just "conjecture" and "based on a possibility which was not justified with facts." She alleged that the Coast Guard could not explain or justify why her request for a waiver was denied.

The applicant alleged that the JAG's idea that she might not have received her degree at all if the Coast Guard had denied her request for a waiver outright is unfounded because she knows of two cadets who received their degrees but did not get commissions because of disqualifying medical conditions. She stated that the JAG's claim that the Coast Guard properly "proceed[ed] with caution and deliberation, waiting for addition testing to confirm the diagnosis and success of treatments" could not "be further from the truth." She stated that eating gluten is not treatment for celiac and that the Chief Medical Examiner relied on outdated information in recommending a "gluten challenge." She stated that he ignored the fact that she had been diagnosed with celiac "with certainty" after the endoscopy. His decision to ignore the results of the endoscopy was "indisputable error." Then, he put her health in danger by directing her to eat gluten again for a "gluten challenge." She argued that the Coast Guard thus "jeopardized [her] health to attempt to correct their mistakes."

The applicant stated that the JAG's argument that her own arguments against the permanent waiver in August 2015 "were even more applicable at the time of the initial denial and further justify the Coast Guard's actions" is not factually supported. She noted that the Coast Guard considered her diagnosis to be certain and she had reported several symptoms by the time of the

[7] The applicant apparently did submit a waiver request on May 18, 2015, but she did not submit a copy of her request.

second waiver request. Therefore, her health had declined between May 19, 2015, and September 4, 2015, and yet her request for a temporary waiver, which had been denied in May, was again denied on September in favor of a permanent waiver despite the decline in her health. Logically, she argued, her waiver request should have been approved in May.

The applicant also denied the JAG's claim that her request is based on a "post hoc review of her treatment and does not account for the natural progression of the medical diagnostic process." She claimed that she was concerned about the treatment she was receiving all along, that she was told different things at each of her appointments in April and May 2015, and that that was why she tried to consult a legal officer in May. Moreover, she argued, the "possibility for me to be diagnosed in a natural progression disappeared when [the PA] informed me of the wrong test to take and directed me to begin a gluten-free diet without having first had an endoscopy." She also argued that her "specialists' recommendation to have a colonoscopy to exclude a source of blood loss for my anemia cannot justify [the PA's] incorrect recommendation to have a colonoscopy to confirm celiac disease." She emphasized that a colonoscopy cannot be used to confirm celiac disease and she underwent one in March to rule out other reasons for her anemia. She again stated that she would have undergone testing for celiac disease in December had she known that a colonoscopy was not necessary. And by telling her that she should try a gluten-free diet, the PA went against standard medical practice, which is not the quality care that the JAG claimed she received. She also argued that the PA's failure to recommend that she undergo a colonoscopy in December 2014 to rule out other causes of the anemia "could even be seen as delayed treatment for my anemia."

The applicant also alleged that the PA told her in December 2014 that if she chose not to undergo further testing for celiac disease, the Coast Guard "would respect that decision and move forward with a medical waiver." And no clear treatment plan for celiac disease was established even though he told her that the blood tests indicated that there was a 95% possibility that she had it. But she was later told that the Coast Guard would not consider that she had celiac disease until she underwent diagnostic testing. She argued that this, too, is evidence of a lack of quality care.

The applicant stated that the Coast Guard's reliance on blood tests taken on May 1, 2015—after she had been on a gluten-free diet for months—to find that she did not have a definitive diagnosis was erroneous. She argued that the lack of antibodies in her blood after months on a gluten-free diet should have been considered additional evidence that she had celiac disease instead of evidence that she did not have it. She also complained that the Chief Medical Examiner told her that he wanted the blood tests done before she resumed eating gluten but then instructed her to commence eating gluten before the test results were received. She stated that this was a medical error, too.

The applicant stated that the Academy's medical personnel had insufficient understanding of celiac disease and never consulted her gastroenterologist before denying her the waiver in May 2015. And their lack of understanding and failure to consult the gastroenterologist caused her commissioning date to be delayed unnecessarily.

The applicant also submitted a 2019 article about celiac disease from the website of the Celiac Disease Foundation, which includes the following information in pertinent part:

- "People with celiac disease who eat gluten have higher than normal levels of certain antibodies in their blood. These antibodies are produced by the immune system because it views gluten (the proteins found in wheat, rye and barley) as a threat. You must be on a gluten-containing diet for antibody (blood) testing to be accurate."
- "All celiac disease blood tests require that you be on a gluten-containing diet to be accurate. … The tTG-IgA test will be positive in about 98% of patients with celiac disease who are on a gluten-containing diet…. The same test will come back negative in about 95% of healthy people without celiac disease. …There are other antibody tests available to double-check for potential false positives or false negatives, but because the potential for false antibody test results, a biopsy of the small intestine is the only way to diagnose celiac disease."
- "If you are currently on a gluten-free diet, your physician may recommend a gluten challenge to allow antibodies to build in your bloodstream during testing."
- "While a genetic test cannot diagnose celiac disease by itself, it can all but rule it out if neither of the genes are present, and a genetic test can be done at any age. ,,, People with celiac disease carry one or both of the HLA DQ2 and DQ8 genes, but so does up to 25-30% of the general population. … However, if you carry [either gene], your risk of developing celiac disease is 3% instead of the general population risk of 1%. … Since celiac disease is genetic, this means it runs in families. … [Genetic testing should be done] when diagnosis of celiac disease is not clear … [or] equivocal intestinal biopsy results."

SUPPLEMENTAL VIEWS OF THE COAST GUARD

On August 6, 2019, the JAG submitted a supplemental advisory opinion and again recommended that the Board deny relief.

First, the JAG noted the applicable law. She stated that under 14 U.S.C. § 2101(b), "No person shall be appointed a commissioned officer … 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." And 32 C.F.R. § 66.6(b)(5) states, "In accordance with DoD Instruction 6130.03, 'Medical Standards for Appointment, Enlistment, or Induction in the Military Service' …, "the pre-accession screening process will be structured to identify any medical condition … that disqualifies an applicant for military service" and that cadets "who fail to meet established medical standards … may be considered for a medical waiver. Each Service's waiver authority for medical conditions will make a determination based on all available information regarding the issue or condition. Waiver requirements are outlined in § 66.7," which states that a medical waiver is required to access anyone with a disqualifying condition. And finally, DoD Instruction 6130.03, which applies to the Coast Guard, states that each Service "may initiate and request a medical waiver … based on all available information regarding the issue or condition."

Regarding the applicant's new evidence, the JAG noted that in the email exchange dated April 27, 2015—in which the Chief Medical Examiner stated that a waiver would not be required if her anemia resolved and the applicant replied that she did not want to submit a waiver request until it was—supports the Coast Guard's position that when the applicant's first waiver request was considered by the Chief Medical Examiner, both her celiac disease and anemia were at issue even though ultimately a separate waiver was not required for anemia. The email dated April 30, 2015, shows that he decided to do blood tests before the applicant began the "gluten challenge" and underwent another endoscopy. He stated that the tests were needed because the results of the biopsy were "not definitive for celiac." The JAG noted that in her email to the PA in May 2015, the applicant herself referred to her condition as "probabl[e] celiac" and then "possible celiac."

Regarding the applicant's arguments, the JAG stated that the medical waiver process is independent of the medical diagnosis and treatment processes for a disqualifying condition. Her claim that her diagnosis had been confirmed or should have been confirmed by early May, even if proven, would not be conclusive as to whether her waiver request should have been approved in May 2015. A diagnosis *per se* does not mean that the Coast Guard had all information necessary to review an application for a temporary or permanent medical waiver. Instead, the Coast Guard considers all available medical information, as well as other factors, and decides whether to grant a waiver on a case-by-case basis. The applicant had no "right" to a waiver, and in granting waivers, the needs of the Service prevail. As noted on the memorandum denying the waiver, in May 2015, there was no pressing need to grant a waiver instead of waiting to gather more information. The JAG stated that the duties of an officer at an operational unit are "vastly different" from those of a cadet, and the Coast Guard had the right to gather more information before deciding whether her condition would prevent her from performing her new duties. The JAG noted that Coast Guard officers are often deployed to locations with little access to medical care, and the applicant was not found fit to perform the duties of an officer by the Chief Medical Officer's until August 11, 2015, and final authority to grant or deny the waiver lay not with the Chief Medical Officer at the Academy, but with medical and administrative personnel at Coast Guard Headquarters.

The JAG stated that contrary to the applicant's claim, her first waiver request was not denied because the Coast Guard wanted "more proof" that she had celiac disease; it was denied based on a perceived need to gather more information regarding the severity and stability of the applicant's condition, as shown in the memorandum denying the waiver but encouraging the applicant to try again in three months. Although the applicant complained about inconsistencies in the Chief Medical Officer's entries on the wavier panel sheet, the JAG noted that there are fields that allow the medical officer to answer only "yes" or "no" or "good" or "guarded" and do not allow for nuanced responses such as "likely" or "unknown." The JAG asserted that it was "within the discretion of Coast Guard medical and administrative personnel to determine what additional information may be necessary to make a fully informed decision as to the member's ability to continue serving." And although a "probable" celiac diagnosis had been received when the applicant submitted her waiver request on May 18, 2015, the clinic staff had expressed uncertainty about the severity of her condition. The JAG noted that the Coast Guard had only learned about the applicant's possible condition six months earlier, and both medical and administrative personnel had decided that more time and information was needed. And it was reasonable for

the Coast Guard to determine that more information was needed in case the applicant would require special accommodations or treatment in the future. Although her anemia had abated with IV iron treatments, it could recur and four weeks was the "minimum amount of times necessary to obtain accurate results regarding the iron content of [her] blood." The JAG noted in this regard that the chief of PSC's Medical Review Branch wanted to know "whether her iron absorption issues had been remedied and the extent to which a gluten containing diet would worsen [her] condition." Therefore, more blood tests of the applicant's iron levels were conducted on June 17, 2015. And those blood tests showed that her iron levels had continued to improve even though she had been eating gluten for several weeks.

The JAG noted that although the applicant accused the Coast Guard of delaying her treatment, the record shows that she failed to take iron supplements as prescribed and then hesitated to start IV iron treatments. And although the clinic staff recommended that the applicant initiate the waiver request process sooner, she opted to wait until May 18, 2015, to submit a waiver request. Her emails show that she recognized that the May 13, 2015, blood tests would be important in the evaluation of her waiver request and that the stability of her condition was unknown. Moreover, the Coast Guard acted quickly once she submitted her waiver request. The review of her request was expedited at all levels, which shows that "the Coast Guard made best efforts *not* to delay [her] commissioning and instead expedited a process which normally takes months to come to resolution," as indicated in the Chief Medical Officer's email to her on April 27, 2015.

The JAG again alleged that the applicant's treatment reflected "an iterative diagnostic process" rather than evidence of errors or injustice. The JAG stated that celiac disease "exists on a spectrum of varying severity," and its diagnosis "is not a precise process and can be arrived at in many different ways." She stated that applicant was being evaluated for two conditions—anemia and celiac disease—that were possibly linked. Regarding the colonoscopy, the JAG noted that it and some of the blood tests were performed to provide "information primarily regarding one condition [the anemia] but also to amplify the understanding of another [celiac disease]," and so recommendations for a colonoscopy were not erroneous. And while the applicant complained about the lack of a specific "treatment plan" for celiac disease while she was a cadet, her diagnosis was still unsettled at the time. Nor did she complain of any symptoms of celiac disease until well after the results of the blood test were received in December 2014. The JAG also stated that the course of action (iron supplements and a gluten-free diet) recommended by the PA in December 2014 "is commonly accepted within the medical community."

The JAG argued that even if the Board found, based on a post-hoc review, that a diagnosis could have been made more expediently, that would not constitute an error warranting relief in this case. She argued that there is no evidence that the Coast Guard's medical providers caused delays in the applicant's treatment or diagnosis. The Coast Guard promptly referred her to both a hematologist and gastroenterologist after learning of her conditions, followed their recommendations, and did not interfere with their treatment plans. And when the gastroenterologist informed the Coast Guard in July 2015 that she did not agree with the plan to continue evaluating the severity of the applicant's condition, the Coast Guard quickly ceased further evaluative efforts. The JAG stated that even if the Board concludes that there was a delay, it would be attributable to a difference in medical opinions and would not constitute an error or injustice

warranting the requested relief. She argued that a short delay caused by a difference in medical opinions does not "shock the sense of justice." She stated, "While it is unfortunate that Applicant was unable to commission alongside her classmates, the delay in her commissioning occurred as a result of the natural progression of the iterative medical diagnostic process and was neither intentional nor so shocking as to rise [to] a level of injustice to warrant the relief requested by Applicant."

The JAG also noted that the Coast Guard's medical officers were not required to defer to the opinion of the applicant's gastroenterologist or to rely upon her diagnosis to determine the suitability of granting a medical waiver. But they did defer to the gastroenterologist's opinion once she submitted a definitive diagnosis based on genetic testing in July 2015. In response to the gastroenterologist's letter, the PA met with the applicant on July 9, 2015. When she told him about her gastrointestinal symptoms, he instructed her to begin eating a gluten-free diet. The PA noted in the record on July 9, 2015, that the applicant was given a "definitive [diagnosis] of celiac disease based on histopathology of biopsies, symptoms, and blood work."

The JAG argued that there is no evidence that the Coast Guard advised the applicant to go against the advice of her gastroenterologist. The latter had written, "if patient and/or [Coast Guard] desire true tissue [diagnosis] will need to resume non gluten free diet and repeat EGD in approx. 6 months." Therefore, by instructing the applicant to eat gluten for a "gluten challenge," the Coast Guard was pursuing a course of further diagnostic treatment that had been suggested by the specialist. The JAG concluded that the applicant has not proven by a preponderance of the evidence that the Chief Medical Officer's requirement that she undertake a "gluten challenge" to provide more information about her condition was erroneous or unjust.

Finally, the JAG noted that both waiver requests were submitted by the clinic staff against the applicant's objections. The record shows that she had significant concerns about the stability and severity of her condition on both occasions. Therefore, "it was completely reasonable for the Coast Guard to have similar concerns" and to have denied the first waiver request in favor of gathering additional information before ultimately granting a permanent waiver.

APPLICANT'S RESPONSE TO THE SUPPLEMENT VIEWS OF THE COAST GUARD

On September 5, 2019, the applicant submitted her response to the JAG's supplemental advisory opinion. She stated that it contains numerous errors.

The applicant stated that there is no evidence supporting the JAG's claim that she had ongoing absorption issues because her response to the IV iron had been excellent, as the hematologist reported and her medical records show. She stated that at the time of the denial of her waiver in May 2018, "all medical documentation pertaining to my anemia had a positive outlook." She alleged that the results of the blood tests on May 13, 2015, were "adequate to prove that my iron absorption issues had resolved." Because her anemia had been corrected, she argued, no waiver was required for that condition, and her waiver for celiac disease "should not have been denied, in whole or in part, due to anemia."

Regarding her celiac diagnosis, the applicant argued, "[w]hile the gold standard of testing for celiac disease is straightforward, deviations should be minimized due to complications and delays that may arise." She argued that the JAG's claim that diagnosing celiac disease "is not a precise process" is erroneous. She alleged that "once blood tests have come back positive for celiac disease, the diagnostic process is straightforward. Diagnosis is made by evaluation of the biopsy obtained via endoscopy." She argued that the diagnosis only becomes complicated when the patient begins a gluten-free diet before the endoscopy, as she was instructed to do.

The applicant reiterated her argument that since an endoscopy is used to diagnose celiac disease, it was wrong for the Coast Guard to repeatedly recommend a colonoscopy even though one was later used to identify the cause of her iron deficiency. By erroneously recommending a colonoscopy and gluten-free diet in December 2014, she argued, the Coast Guard "made recommendations which prevented the gold standard of medical testing." She stated that contrary to the JAG's claims, these early errors caused delays in her diagnosis and medical treatment that caused her not to be commissioned with her class on May 20, 2015.

The applicant argued that, contrary to the JAG's claim, the denial of her May 18, 2015, waiver request was erroneous and unjust. She stated that the PA and the Chief Medical Officer had written "a sound recommendation for my temporary medical waiver to be approved," noting that she had had an excellent response to the IV iron, had a "good" prognosis, and would "likely not have any issues associated with this diagnosis" in the future. She stated that their comments are inconsistent and "contrast gravely" with those made by Headquarters personnel. She stated that the comment of the chief of the Medical Review Branch that she should reapply for the waiver in the future if her "PCM deems her condition waiverable" contradicts the first page, which shows that the PA and the Chief Medical Officer already considered her condition to be waiverable. But the JAG erroneously stated that her PCM agreed with the Headquarters staff that more information was needed before a waiver could be approved.

The applicant also claimed that the following statements by the JAG in the supplemental advisory opinion were erroneous:

- Contrary to the JAG's claim there was no evidence that the Coast Guard advised her to go against the advice of her gastroenterologist, she was specifically told to resume eating gluten for a "gluten challenge," even though her gastroenterologist had recommended that she eat a gluten-free diet.
- Contrary to the JAG's claim that the PA changed her treatment plan as soon as she reported having adverse gastrointestinal symptoms in July 2015, the applicant had already reported gastrointestinal symptoms on June 12, 2015, and yet was not advised to resume a gluten-free diet. She stated that the PA changed the plan because of the gastroenterologist's letter dated July 2, 2015, not because of her symptoms.
- To contradict the JAG's claim that the initial denial of the waiver was proper because officers are often appointed to locations with little access to medical care, the applicant noted that she had already received orders to her next unit, which had access to a Naval medical center and numerous other medical facilities. Therefore, she argued, "[u]sing medical availability as a reason to deny my initial waiver is both unsubstantiated by sup-

porting policy and illogical based on the prevalent availability of medical services at my subsequent duty assignment."

- Contrary to the JAG's claim that her own responses to the Medical Waiver Panel sheets submitted by the Academy clinic acknowledged the grounds for the denial of her first waiver request, the applicant stated that she did not object to the first waiver request, only the timing of it. And she objected to the second waiver request because her condition had gotten worse since the first waiver request was denied and because she "was shocked that the Coast Guard was able to order me to become sick from consuming gluten, even after bringing up my symptoms and voicing the advice of the specialist the Coast Guard sent me to see." She argued that the "tonal resignation" in her memorandum dated August 17, 2015, "should be used as further testimony that my case was not handled justly."

The applicant stated that the JAG "has not been able to discount my claim," and she wholeheartedly believes that her treatment was erroneous and unjust. She noted that a member of the medical waiver panel in May 2015 wrote that her diagnosis was "uncertain" and argued that if her diagnosis was uncertain, then she had no diagnosis for celiac disease at the time, and she did not need a medical waiver at all. She also argued that the difference in the decisions on her two medical waiver requests is evidence that, as her attorney alleged, the concerns of the Chief Medical Officer (who recommended waiver both times) were the primary reason her first waiver request had been denied. She argued that either she had no disqualifying diagnosis in May 2015 or she had a waivable diagnosis for celiac disease, since thereafter her condition only got worse since they made her start eating gluten again. Either way, she should have been allowed to receive a commission with her class.

The applicant concluded that she has shown that the decision-making and recommendations of the PA, the Chief Medical Officer, and other members of the waiver panel were erroneous, illogical, and unjust. They cost her the position on the ADPL she had earned based on her class rank; nearly four months of pay and allowances as an officer; and timely future promotions. She stated that their mistakes had already cost her more than $22,000 and 10 days of accrued leave, "in addition to the time and emotion that has been expended attempting to rectify the error. All in all, I find everything I've endured to be quite shocking."

APPLICABLE LAW AND POLICIES

Coast Guard Regulations, COMDTINST M5000.3B

Article 3-1-5 of Coast Guard Regulations states the following about the Superintendent of the Academy:

> A. The Superintendent of the Coast Guard Academy shall be assigned by the Commandant from the list of officers whose assignment to duty is not restricted by law. The Superintendent shall be responsible for the education and training of cadets; shall promulgate regulations for the Coast Guard Academy, with those regulations pertaining to the discipline and course of instruction of cadets being subject to the approval of the Commandant.

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> C. The Superintendent of the Coast Guard Academy is authorized to confer the degree of Bachelor of Science on all cadets who satisfactorily complete the entire course of instruction prescribed in the regulations for the Coast Guard Academy.

Regulations of the Corps of Cadets, SUPINST M5215.2K

Chapter 2-4-01 states that the Superintendent normally terminates the appointment of a cadet upon the recommendation of the Chief Medical Officer. If the cadet does not meet the medical retention standards, the Superintendent may review the record and notify the cadet by letter of his or her disenrollment. Chapter 2-4-02 states that a cadet may be recommended for disenrollment for failing to meet the medical standards. Chapter 2-4-05 states that "Chapter 3 of these regulations contains the required action when, at times other than involving the initial entry medical examination, a cadet does not meet the medical standards for a cadet or to be commissioned in the Coast Guard."

Chapter 3-6-01.a. states that under 10 U.S.C. § 1217, a cadet who acquires a physical disability may be processed for a medical discharge or retirement in accordance with the rules for active duty members under 10 U.S.C. §§ 1201 *et seq.*, and that former cadets may apply to the Department of Veterans' Affairs for disability benefits.

Chapter 3-6-01.d. states that during the first-class (fourth) year, each cadet must pass a pre-commissioning physical examination, and the commissioning standards in the Coast Guard Medical Manual apply. Chapter 3-6-01.e. states, "Those cadets not meeting the prescribed standards will have their cases processed in accordance with the Cadet Regulations, Coast Guard Medical Manual, and/or Coast Guard Physical Disability System as appropriate."

Chapter 3-2-01.b. states that the following are requirements for graduating and receiving a bachelor's degree from the Academy:

> 1. The following are required for the degree of Bachelor of Science and a commission:
>
> (a) Pass or validate every course in the core curriculum.
>
> • • •
>
> (h) Meet all military performance standards, demonstrating all aspects of personal and professional development necessary to serve as Ensigns in the United States Coast Guard, unless a commission will not be offered due to a medical disqualification.
>
> 2. The Superintendent confers the degree of Bachelor of Science on those cadets in good standing who have met these requirements or revisions published since matriculation.

Coast Guard Medical Manual, COMDTINST M1000.6

Chapter 3.D. of the Medical Manual contains the physical standards for appointment as a commissioned officer. Chapter 3.D.2. states that the standards in Chapter 3.D. apply to both the retention of cadets and to applicants for a commission. Chapter 3.D.3.c. states, "Unless otherwise stipulated, the conditions listed in this section are those that would be disqualifying by virtue of current diagnosis, or for which the candidate has a verified past medical history."

Chapter 3.D.17.c. lists, among conditions of the "small and large intestine" that are disqualifying for commission, "Current or history of intestinal malabsorption syndromes (579.9), including but not limited to celiac sprue, pancreatic insufficiency, post-surgical and idiopathic (579)."

Chapter 3.D.27.a. lists "[c]urrent hereditary or acquired anemia, which has not been corrected with therapy before appointment or induction."

Chapter 3.E.2. states the following about cadets:

> Commissioning of Cadets. The pre-appointment physical examination of cadets in the graduating class should be held at least 6 months prior to acceptance of the commission. This physical examination should be conducted to determine physical fitness for commission in the Regular Service (Section 3-D and 3-E) with recommendations made accordingly. Cadets should not be summarily disqualified for commissioning merely because they do not meet the standards for appointment as cadets provided that they may reasonably be expected to be physically capable of completing a full and effective CG career. In general, relatively minor defects that would be disqualifying for original commission direct from civilian life are not disqualifying for commission of a cadet in whom the Government has a considerable investment.

Medical Waiver Rules

Chapter 3.A.8.a.(1) of the Medical Manual states that "[n]ormally, a waiver [of the medical standards] will be granted when it is reasonably expected that the individual will remain fit for duty and the waiver is in the best interests of the CG." Chapter 3.A.8.b. provides the following authorities for granting waivers:

> Commander PSC-epm (enlisted), PSC-opm (officers), PSC-rpm (reserve), and CGRC (enlisted accessions) have the sole authority to grant waivers. The decision to authorize a waiver is based on many factors, including the recommendations of the Chief, Office of Health Services, Commandant (CG-112); the best interest of the Service; and the individual's training, experience, and duty performance.

Chapter 3.A.8.c. states provides for temporary and permanent waivers, either of which "can be terminated if there is appropriate medical justification." It states that a "temporary waiver may be authorized when a physical defect or condition is not stabilized and may either progressively increase or decrease in severity. These waivers are authorized for a specific period of time and require medical reevaluation prior to being extended." A permanent waiver "may be authorized when a defect or condition is not normally subject to change or progressive deterioration, and it has been clearly demonstrated that the condition does not impair the individual's ability to perform general duty, or the requirements of a particular specialty, grade, or rate."

Chapter 3.A.8.d. states that a "Medical Officer who considers a defect disqualifying by the standards, but not a disability for the purpose for which the physical examination is required, shall" complete a Report of Medical Examination and recommend either a temporary or permanent waiver. Upon receipt of this report, the unit command informs the member and asks the member to submit a letter stating his or her intentions to pursue a waiver. The Medical Officer provides a separate written recommendation regarding the waiver, and the command forwards

the information to the Personnel Service Center with a statement regarding the member's performance and the appropriateness of a waiver.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter under 10 U.S.C. § 1552. The application was timely filed.[8]

2. The applicant alleged that her placement on the ADPL after cadets who had lower class rank, her date of rank as an Ensign, subsequent promotion dates, and corresponding loss of pay and allowances are erroneous and unjust because she should have been authorized to receive her commission with her class on May 20, 2015. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in an applicant's military record is correct and fair, and the applicant bears the burden of proving by a preponderance of the evidence that it is erroneous or unjust.[9] Absent specific evidence to the contrary, the Board presumes that Coast Guard and other government officials have acted "correctly, lawfully, and in good faith" in preparing their evaluations.[10]

3. **Findings of Fact**: The preponderance of the evidence in the record supports the following chronology:

a. During her pre-commissioning physical examination in November and December 2014, the applicant was underweight and blood tests showed that her iron levels were "as low as the bottom of the Marianas Trench," which could lead to heart problems.[11] The PA at the Academy clinic diagnosed her with iron deficiency anemia and ordered more blood tests, which showed that it was highly likely that she had celiac disease. However, the applicant reported that she was vegetarian, which can cause anemia,[12] and that she was not suffering any of the gastrointestinal symptoms usually caused by celiac disease. Therefore, in December 2014, the PA knew that it was possible that the applicant had—

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

[9] 33 C.F.R. § 52.24(b).

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

[11] Silverberg, D.S., *et al*., "The role of anemia in the progression of congestive heart failure. Is there a place for erythropoietin and intravenous iron? [Abstract]," JOURNAL OF NEPHROLOGY, 2004 Nov-Dec, v. 17(6):749-61, *available at* https://www.ncbi.nlm.nih.gov/pubmed/15593047 (last viewed on April 15, 2020)..

[12] Pawlak, R., *et al*., "Iron Status of Vegetarian Adults: A Review of Literature [Abstract]," AMER. JOURNAL OF LIFESTYLE MEDICINE, 2018 Nov-Dec, v. 12(6):486-498, *available at* https://www ncbi nlm nih.gov/pmc/articles/ PMC6367879/ (last viewed on April 15, 2020).

- Severe anemia caused by unknown factors and no celiac disease;
- Severe anemia caused by one or more unknown conditions and celiac disease, which was otherwise asymptomatic; or
- Severe anemia secondary only to celiac disease, which was otherwise asymptomatic.

b. The record shows that on December 10, 2014, the PA told the applicant that there was a strong likelihood that she had celiac disease, which might be causing her anemia. He offered her a referral for a biopsy to confirm the diagnosis. The PA used the term "colonoscopy" when referring to the biopsy. The applicant "decline[d] confirmatory c-scope" and agreed to continue taking iron supplements to try to resolve her anemia. The PA noted that she would need a medical waiver to receive a commission, and he gave her a "handout describing Celiac disease and aggravating food avoidance."

c. By mid-January 2015, the applicant's severe anemia had not improved because she failed to take the iron supplements twice a day as prescribed (she told the PA that she did not have time to take them) and/or because celiac disease was inhibiting iron absorption. The PA referred the applicant to a hematologist.

d. On February 4, 2015, the hematologist recommended that the applicant receive weekly IV iron treatments and offered to schedule them, but she stated that she was not certain that she wanted to have them. The hematologist also recommended a "GI referral for scoping and consideration of bx [biopsy] to further evaluate the celiac disease diagnosed by lab testing."

e. On February 9, 2015, the PA noted that the hematologist had recommended that the applicant undergo a colonoscopy to check for inflammation and confirm celiac disease. He referred her to a gastroenterologist. The applicant told him that she had started a gluten-free diet but had not noticed any changes and that she did not know if she would request a medical waiver for the condition. But she agreed to take IV iron and began receiving the treatments a week or two later.

e. On March 16, 2015, the gastroenterologist noted that the applicant denied having any of the usual gastrointestinal symptoms of celiac disease or heavy menstrual bleeding that might cause her anemia. She also noted that the applicant had been eating a gluten-free diet for four months, and so duodenal biopsies—the "gold standard"—"may not be diagnostic at this time." She stated that biopsies of the colon and upper gastrointestinal tract were needed to rule out other possible sources of the applicant's anemia. She recommended doing the biopsies even though the duodenal biopsy "may not be dx [diagnostic] for celiac" and, for a "true tissue dx [diagnosis,] [the applicant] will need to resume non-gluten-free diet and repeat EGD [esophagogastroduodenoscopy]" in a few months.

f. On March 25, 2015, the applicant underwent both an EGD and a colonoscopy and numerous biopsies were taken to investigate the causes of the applicant's anemia, iron deficiency, and weight loss. Biopsies of the duodenum were taken to rule out (determine whether she had) celiac disease. The pathologist's report stated that the duodenal biopsies showed "histologic changes [that] are not entirely etiologically specific and can be seen in a variety of

settings; however, so-called 'minimal deviation' celiac sprue cannot be excluded. Correlation with serologic studies is recommended." On April 21, 2015, the gastroenterologist wrote a report about the applicant's "possible celiac." She stated that the duodenal biopsies had shown signs "consistent with celiac" but did not expressly diagnose the applicant with celiac disease. However, she recommended that the applicant eat a gluten-free diet and noted that the applicant continued to deny having any gastrointestinal symptoms of celiac disease.

g. On April 15, 2015, the applicant received her last IV iron treatment. The hematologist noted that her iron and hemoglobin levels were normal but that they would have to be tested again in four weeks to see if they remained normal. On May 13, 2015, her iron and hemoglobin levels were still normal, but the hematologist noted that her blood levels would have to be tested again in another four weeks to see if they remained normal. When her levels were again normal on June 17, 2015—about a month after graduation day and the denial of her first waiver request—the hematologist did not require her to return.

h. On April 30, 2015, the Chief Medical Examiner advised the applicant that the results of the biopsies had not been "definitive" for celiac disease. He instructed her to take a blood test and then start eating gluten again for the "gluten challenge" that the gastroenterologist had recommended for a definitive diagnosis on March 16, 2015. At that point, the applicant had not yet reported any gastrointestinal symptoms from eating gluten.[13] On May 6, 2015, the PA noted that the applicant's celiac diagnosis was "pending" and that they were awaiting the results of the latest blood test. Later that day, the clinic received the results, which showed a positive result for one antibody associated with celiac disease. In an email dated May 14, 2015, the PA told her that "[t]he celiac panel came back as probable, but not definitive celiac. This is quite common. Basically, some of the labs were positive and some were negative."

i. The applicant's interest in receiving a medical waiver varied over time. On February 9, 2015, she advised the PA that she was not sure whether she wanted to request one. On Friday, April 24, 2015, the Clinic Administrator advised the applicant that she would need a medical waiver and sent her a template. He wrote, "Please make sure to send me your version by Tuesday at the latest, as we need to move quickly with getting your waiver package up to opm." The applicant replied on Monday, April 27th, "At this time, I do not feel it is appropriate to submit a waiver. … the fact is I will not know the extent to which my condition is affecting my health until receiving results from a follow-up exam scheduled for 13 MAY 2015. Until I know the results from that exam, I do not feel I can appropriately or correctly fill out the third paragraph of the medical waiver memo." The applicant's email was quickly forwarded to the Chief Medical Officer with the comment that she did not have to fill out the third paragraph and that if she delayed submitting her waiver request until after the May 13, 2015, appointment, that would be just one week before graduation day, and it would take time to get the waiver request processed. The Chief Medical Officer forwarded the Clinic Administrator's email to the applicant the same day and told her, "We would like to get the waiver for the celiac sprue through now, and if your blood count holds, you will not have iron deficiency anemia any longer and therefore would not need a waiver for that. Because it takes a while to get waivers through, we want to get this to OPM ASAP." The applicant did not promptly submit the waiver request

[13] The applicant alleged to the Board that she was directed to start eating gluten "after bringing up multiple symptoms to the CGA Clinic."

as the Clinic Administrator and the Chief Medical Officer had requested because she decided to wait for the results of the May 13, 2015, blood tests. And after learning those results on May 14, 2015, she still did not submit her waiver request until May 18, 2015, just two days before graduation. The applicant did not provide the Board with a copy of her submission, and by giving the Coast Guard two days or less to evaluate her waiver request—despite the warnings of the Clinic Administrator and the Chief Medical Officer—she left little, if any, time for discussion or reconsideration. Finally, the applicant did not initiate a second waiver request after the Coast Guard received the gastroenterologist's July 2, 2015, letter and told her that the diagnosis was definitive.

j. The Chief Medical Officer favorably endorsed the applicant's May 18, 2015, request for a medical waiver for "current or history of intestinal malabsorption disorder including celiac sprue," a disqualifying condition under the Medical Manual. He described the discovery and treatment of her iron deficiency anemia (the result of intestinal malabsorption of iron) and the pathologist's finding of minimal deviation celiac sprue. He stated that her prognosis was good and commented, with circular logic, "As long as the patient's celiac sprue does not cause other health problems (iron deficiency anemia, abdominal discomfort, diarrhea, hematochezia, etc), the patient will likely not have any issues associated with this diagnosis." At Headquarters, however, the chief of the Medical Review Branch recommended denying the request because the applicant's diagnosis and response to the IV iron treatments were still uncertain. The applicant's request was denied on May 19, 2015.

k. According to the evidence of record, at her appointment with the hematologist on May 13, 2015, the applicant reported having a gastrointestinal symptom of celiac disease for the first time. She stated that she had had diarrhea since she began eating gluten again on May 1st. The applicant also reported having had gastrointestinal symptoms from eating gluten to the PA on June 12, 2015. He noted that after starting to eat gluten on May 1st, she had "experienced increase in fatigue, bloating, flatulence but that has resolved and now she feels as though she is back to baseline."[14] Then, two weeks later, on June 26, 2015, the applicant reported numerous gastrointestinal symptoms to the gastroenterologist, including "abdominal pain, change in her bowel habits, nonbloody diarrhea, bloating, gas, and intermittent nausea," although her weight had remained stable. She also erroneously told her gastroenterologist that Coast Guard medical personnel were denying that she had celiac disease. The gastroenterologist wrote that she was not sure why the Coast Guard would deny the diagnosis given the results of the EGD and the blood tests. But to provide "more proof" of the diagnosis, she sent the applicant for a Prometheus Celiac panel, including serologic and genetic tests. She noted that if the results of the panel were "negative or equivocal, definitive dx [diagnosis] can only be made through repeat duodenal bx [biopsy] on a regular gluten containing diet"—i.e., the "gluten challenge" for the "gold standard" biopsy that she had recommended on March 16, 2015, and that the Coast Guard has asked the applicant to undertake before submitting a second waiver request.

l. In a letter dated July 2, 2015, the gastroenterologist informed the Coast Guard that the EGD had shown "histopathologic changes consistent with celiac disease. These changes were mild and likely reflective of healing small bowel mucosa after a 4-month period of

[14] The applicant alleged to the Board that "back to baseline" actually meant that she "felt terrible on a daily basis."

gluten abstinence." She stated that at the follow-up appointment on April 21, 2020, they had told the applicant that they "believed with certainty that she had celiac disease." She further stated that because of the Coast Guard's doubts about the diagnosis, they had conducted genetic testing, and the results were consistent with celiac disease. She stated that the applicant had celiac disease "without question" and that there was no need for additional testing.

m. In August 2015, after the clinic had received the applicant's June 17, 2015, normal iron and hemoglobin levels; the results of the Prometheus panel; and the July 2, 2015, letter from the gastroenterologist stating that the applicant had celiac disease "with certainty" and that no further tests were necessary, the Chief Medical Officer submitted another waiver request without requiring the applicant to undergo another EGD. This time, the chief of the Medical Review Branch recommended approval of the request and it was approved.

4. **Initial Gluten-Free Diet**: The applicant argued that the PA erred by giving her the option of starting a gluten-free diet, instead of requiring her to undergo a diagnostic biopsy in December 2014, and that this error caused delays that prevented her from receiving her commission in May 2020. The record shows that the applicant's most urgent condition in December 2014 was severe iron deficiency anemia because she was suffering no gastrointestinal symptoms of celiac disease. The cause of the anemia was unknown, but the PA knew that celiac disease might be causing or contributing to the anemia. The PA recommended a biopsy, which she declined, and he prescribed twice daily oral iron supplements and, presumably, a gluten-free diet (because he offered her information about it). Unfortunately, the applicant's anemia did not improve. She did not take the oral iron supplements as prescribed, and celiac sprue must have inhibited the absorption of whatever iron supplements she did take. Although this treatment did not succeed in eliminating the anemia, that does not mean that the PA erred by not persuading her to have the diagnostic biopsy in December 2014. A cadet's medical treatment is voluntary, and the record shows that the PA recommended the biopsy, but for her own reasons, she declined to have it. In addition, there is no evidence that, had the oral iron supplements succeeded and her anemia abated in January 2015, the applicant would not have been able to receive a medical waiver for completely asymptomatic celiac disease before May 2015.

5. **Colonoscopy vs. EGD**: The applicant argued that the PA erred by telling her that the diagnostic biopsy would be or include a colonoscopy in December 2014 and that, if he had told her that it was just an endoscopy, she would have elected to undergo the biopsy right away and would have been able to receive a medical waiver by May 2015. These arguments are not persuasive. First, even though his use of the term "confirm" was wrong, the PA was not wrong when he advised the applicant in December 2014 that a specialist would have her undergo a colonoscopy. A common diagnostic strategy for unexplained iron deficiency anemia—the applicant's most urgent problem at the time—includes serological studies for celiac disease plus both an EGD and a colonoscopy.[15] Second, the EGD is not a simple endoscopy as the applicant suggested. Like a colonoscopy, it normally requires general anesthesia because numerous biop-

[15] "The following diagnostic strategy is recommended for unexplained anemia with iron deficiency: conduct serological celiac disease screening with transglutaminase antibody (IgA type) and IgA testing and perform bidirectional endoscopy (gastroscopy and colonoscopy)." Dahlerup, J.F. *et al*., "Diagnosis and treatment of unexplained anemia with iron deficiency without overt bleeding [Abstract]," DANISH MEDICAL JOURNAL, 2015 April, 62(4):C5072, *available at* https://www ncbi.nlm.nih.gov/pubmed/25872536 (last viewed on April 15, 2020).

sies (tissue samples) are taken, and the after-effects include nausea, bloating, and a very sore throat.[16]

6. **Celiac Diagnosis**: The applicant argued that Coast Guard medical personnel erred by not considering her gastroenterologist's diagnosis definitive after she underwent the EGD and colonoscopy in March 2015 and that their uncertainty and failure to "regard" her gastroenterologist's diagnosis caused the denial of her first waiver request. The clinic's medical records dated before May 18, 2015, show the following, however:

- Blood tests in November 2014 indicated that it was highly likely that the applicant had celiac disease.
- The applicant had not complained of the common gastrointestinal symptoms of celiac disease before or since November 2014.[17]
- The gastroenterologist reported on March 16, 2015, that the "gold standard" for making a definitive diagnosis of celiac disease was an EGD conducted after the patient had been eating a diet with gluten for about six months. The applicant had been on a gluten-free diet for four months. The gastroenterologist stated that she would do the EGD, but it might not be diagnostic.
- The pathologist reported on March 30, 2015, that the biopsies revealed "histologic changes [that] are not entirely etiologically [source/cause] specific and can be seen in a variety of settings; however, so-called 'minimal deviation' celiac sprue cannot be excluded. Correlation with serologic studies is recommended."
- The gastroenterologist's report about the applicant's "possible celiac" dated April 21, 2015, states that the biopsy "of the 2nd portion of the duodenum showed villous blunting and increased intraepithelial lymphocytes consistent with celiac. … Gluten free diet recommended." Although the gastroenterologist recommended that the applicant continue her gluten-free diet, she did not include a clear diagnosis in this report, and celiac disease is not the only possible cause of villous blunting or increased intraepithelial lymphocytes.[18]
- The results of blood tests taken before the applicant started the "gluten challenge"—which the gastroenterologist had said was the "gold standard" for a definitive diagnosis—were unclear, presumably because she had been following a gluten-free diet.[19]

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[16] *See* U.S. Dept. of Health and Human Services, National Institutes of Health, at https://www.niddk nih.gov/health-information/diagnostic-tests/upper-gi-endoscopy (last viewed on April 16, 2020).

[17] The Coast Guard did not receive the hematologist's full report dated May 13, 2015, with the applicant's first complaint of diarrhea, until after the first waiver request was denied.

[18] Jansson-Knodell, C.L., *et al*., "Not All That Flattens Villi Is Celiac Disease: A Review of Enteropathies ," MAYO CLINIC PROCEEDINGS, April 2018, v. 93(4):509-517, *available at* https://www ncbi.nlm.nih.gov/pubmed/29622097 (last viewed on April 16, 2020); Chang, F., Mahadeva, U., and Deere, H., "Pathological and clinical significance of increased intraepithelial lymphocytes (IELs) in small bowel mucosa," APMIS, June 2005, v. 113(6):385-99, *available at* https://www.ncbi.nlm.nih.gov/pubmed/15996156 (last viewed on April 16, 2020).

[19] The applicant told the Board that the blood tests should only have been conducted after she had been eating gluten for a while, but that would have been after graduation day, and the Chief Medical Officer might have planned to compare test results from before and after the "gluten challenge."

Based on the records dated before May 18, 2015, the Board cannot conclude that Coast Guard medical personnel erred in retaining some doubt about the applicant's diagnosis after the EGD results were received. Even on June 26, 2015, the gastroenterologist considered the possibility that the results of the Prometheus panel might be negative and that a "gluten challenge" and another EGD would be necessary. Her letter dated July 2, 2015, about her "certainty" in April 2015 does not prove by a preponderance of the evidence that the Coast Guard's prior uncertainty about the diagnosis was erroneous or unjust.

7. **No Waiver Required**: The applicant argued that if her diagnosis was uncertain, then no waiver should have been required because she had not been definitively diagnosed with celiac disease. However, Chapter 3.D.17.c. of Medical Manual states that "[c]urrent or history of intestinal malabsorption syndromes (579.9), including but not limited to celiac sprue, pancreatic insufficiency, post-surgical and idiopathic (579)" is disqualifying for a commission. And the applicant had clearly had "intestinal malabsorption" because the oral iron supplements had not succeeded in improving her iron and hemoglobin levels at all. The applicant has not proven by a preponderance of the evidence that she should have been allowed to receive a commission without a medical waiver in May 2015.

8. **Anemia Resolved**: The applicant alleged that the chief of the Medical Review Branch erred by considering her prior anemia when he recommended denying the first waiver request because a prior history of anemia does not require a medical waiver and because her anemia had resolved by May 18, 2015. As the applicant herself noted, however, the anemia was a symptom of her celiac disease, and the waiver reviewers were certainly entitled to consider all of the symptoms and potential symptoms of her celiac disease and the future risks they might pose. In addition, although the applicant's iron and hemoglobin levels had tested in the normal range on May 13, 2015, the hematologist required her to return for more blood tests another four weeks later, on June 17, 2015, to be sure that her levels remained normal. While the Chief Medical Officer at the Academy decided that she did not need a medical waiver specifically for anemia because of the May 13, 2015, test results, the hematologist and the chief of the Medical Review Branch at Coast Guard Headquarters clearly wanted more proof that this serious symptom of her celiac disease had resolved.

9. **Prometheus Panel**: The applicant alleged that the denial of her waiver request in May 2015 was unjust because a waiver was ultimately approved without another EGD and after the Coast Guard had received the results of a Prometheus panel that could have been conducted in April. However, the Prometheus panel was not the "gold standard" for a definitive diagnosis recommended by the gastroenterologist in March 2015, and the Coast Guard was entitled to rely on the gastroenterologist's statement about what the "gold standard" for diagnosis was. The fact that the Coast Guard did not require the applicant to continue the "gluten challenge" and have another EGD after the gastroenterologist informed the clinic that the applicant had received a definitive diagnosis even without an EGD does not prove that the Chief Medical Officer committed an error or injustice in asking the applicant to undergo a "gluten challenge" and second EGD when the gastroenterologist had called that the "gold standard" for diagnosing celiac disease.

10. **Arbitrary Denial**: The applicant alleged that the denial of her May 18, 2015, waiver request was erroneous and arbitrary. But 14 U.S.C. § 2101(b), 32 C.F.R. § 66.6(b)(5), Chapter 3-6-01.e. of the Regulations of the Corps of Cadets, and Chapter 3.D.2. of the Medical Manual required the applicant to either meet the medical standards or be granted a medical waiver to receive a commission. She did not meet the standards, and medical waivers are granted only when the Personnel Service Center determines that it is in "the best interest of the Service" to retain the member.[20] To be granted a waiver, a cadet must "be expected to be physically capable of completing a full and effective CG career"[21] Given what the Coast Guard knew about the applicant's medical condition as of May 18, 2015—including iron levels that had recently been "as low as the bottom of the Marianas Trench," had required IV iron to fix, and needed retesting, plus a less than definitive celiac diagnosis—the Board finds that the applicant has not proven by a preponderance of the evidence that the Personnel Service Center erroneously or arbitrarily denied the first waiver request.

The applicant also alleged that the approval of a permanent waiver on September 4, 2015, proves that the denial of the temporary waiver on May 19, 2015, was erroneous and arbitrary because her condition worsened during that period and no second EGD had been conducted. The applicant submitted no medical records to show that after she resumed a gluten-free diet on July 9, 2015, she continued to suffer gastrointestinal symptoms through August 2015. Her lack of complaints of continuing gastrointestinal distress in August 2015 could be considered diagnostic and probative of her ability to complete a military career. And as noted above, between May 19 and September 4, 2015, the clinic had received the applicant's June 17, 2015, normal iron and hemoglobin levels; the results of the Prometheus panel; and the July 2, 2015, letter from the gastroenterologist stating that the applicant had celiac disease "with certainty" and that no further tests were necessary. The approval of the permanent waiver on September 4, 2015, does not prove that the denial of the temporary waiver on May 19, 2015, was erroneous or unjust.

11. **Standard of Care**: The applicant alleged that Coast Guard medical personnel overall provided months of substandard medical care, committed malpractice, and showed disregard for her health in asking her to undertake a "gluten challenge" to improve her chance of receiving a waiver. As explained in the findings above, the preponderance of the evidence does not support these claims.

12. **Attorney's Statement**: The applicant submitted a statement from her attorney who wrote that the Chief Medical Officer had expressed doubt about her diagnosis during a meeting and did not "directly" answer the attorney's question about whether he thought the applicant was "malingering." The attorney also claimed that he "know[s] for certain that there were other contributing factors unrelated to [the applicant] that contributed to these delays." This is not persuasive evidence of error or injustice.

13. **Equity**: The applicant noted that her severe anemia and celiac disease, the Coast Guard's hesitance to find her medically fit for a career as a military officer, and the laws requir-

[20] COMDTINST M1000.6, Chapter 3.A.8.b.

[21] COMDTINST M1000.6, Chapter 3.E.2.

ing that a cadet be found medically fit for such a career before receiving a commission have had a significant adverse impact on her career. The delay of her commissioning caused her to lose the benefit of her class rank and to be placed on the ADPL after all of her classmates, which has delayed her subsequent promotions and cost her a great deal of money. The Board is sympathetic to the applicant and the unfortunate timing of these health concerns, but we are not persuaded that these laws are *per se* erroneous or unjust or that the particular circumstances of her case make them erroneous or unjust as applied to her. These laws are longstanding, are not arbitrary, and have been consistently upheld by the Board.[22]

14. The applicant has not proven by a preponderance of the evidence that the delay of her commissioning due to the lack of a medical waiver constitutes an error or injustice in her record. Therefore, her requests for relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[22] *See, e.g.,* BCMR Docket Nos. 1997-177 (upholding the delay of a cadet's commissioning date following a knee injury) and 2008-153 (upholding the delay of a cadet's commissioning because of an ophthalmic medication he had been taking following laser eye surgery, which was disqualifying).

ORDER

The application of LT [redacted], USCG, for correction of her military record is denied.

April 17, 2020

[redacted]