DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-172

[redacted]

FINAL DECISION

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the applicant's request for reconsideration on May 20, 2015,[1] the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 8, 2016, 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, who was honorably discharged for the convenience of the government due to weight control failure on March 3, 2014, asked the Board to award him separation pay and to reinstate his eligibility to transfer his Post-9/11 GI Bill educational benefits.[2] The applicant alleged that he was erroneously and unjustly denied separation pay and the ability to transfer his educational benefits to his dependents upon his discharge from the Coast Guard. In support of his allegations, the applicant submitted a copy of his DD 214 and other documents, including medical records, which are included in the Summary of the Record below.

The applicant stated that the denial of his separation pay was erroneous and unjust because on his date of discharge, March 3, 2014, he had served more than eighteen years on active duty. He alleged that he was legally entitled to separation pay under Chapter 10.H. of the Pay Manual, COMDTINST M7220.29B, but never received it. In this regard, he noted that weight control failure is not listed as one of the circumstances precluding payment of separation pay under Chapter 10.H. He noted that to receive separation pay, a member must be willing to

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[1] Reconsideration *de novo* is required because an administrative error prevented the Board from reviewing the applicant's response to the advisory opinion before issuing the decision on the original application. Accordingly, the Board has not reviewed the original decision on this case in reaching this new decision.

[2] 38 U.S.C. § 3319 (authorizing the Secretary of Defense, as a recruitment and retention tool, to prescribe regulations allowing service members to transfer their educational benefits to their dependents in exchange for additional years of active service).

sign a statement agreeing to serve in the Reserve for three years[3] if eligible to do so and that he is willing to sign such a statement. In fact, he included with his application a signed declaration stating that he is "willing to serve in the Coast Guard Reserves for 3 years and willing to sign any documentation in any format to memorialize [his] willingness to serve in the USCG Reserves."

Regarding the transferability of his educational benefits, the applicant stated that in January 2013 he transferred all of his educational benefits to his daughter. However, his early discharge for weight control failure on March 3, 2014, prevented him from completing the years of additional service required of members to transfer their benefits, and so his transfer of his educational benefits to his daughter was reversed.

The applicant argued that under applicable rules, his involuntary discharge for weight control failure should not have terminated his eligibility to transfer his benefits because his excess weight was caused by severe obstructive sleep apnea, a medical condition. The applicant stated that obstructive sleep apnea is known to cause weight gain and to make it hard to lose weight. Therefore, he argued, his diagnosis met the terms of an exception under the benefit-transfer rules because he had a "physical condition … that did not result from the member's own misconduct but did interfere with the performance of his duties." The applicant argued that because his apnea was not caused by misconduct but prevented him from completing his active service requirement, he should have remained eligible to transfer his educational benefits despite his discharge.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard in 1994 and served on active duty until March 29, 2001, when he was voluntarily discharged. He reenlisted on October 8, 2002, and served on continuous active duty until his discharge for weight control failure on March 3, 2014.

About four years before his discharge, on June 10, 2010, the applicant received a Page 7 stating that with a height of 68 inches and weight of 191 pounds, he was 11 pounds overweight and that if he failed to reach compliance by the end of the probationary period, August 17, 2010, he would be recommended for separation. He was required to complete a wellness profile and fitness plan, to participate in a fitness activity for at least an hour three days per week, and to undergo a monthly fitness assessment while on probation. The applicant acknowledged the entry by signature. Another Page 7, dated September 23, 2010, states that he weighed 180 pounds and achieved 24% body fat and so he had met the required standards and his probationary period ended.

On November 2, 2012, the applicant received a Page 7 stating that at 187 pounds, he was 7 pounds overweight and had 29% body fat. He was placed on probation until February 2, 2013, at which time he was required to have lost the excess weight. The Page 7 further states that this

[3] 10 U.S.C. § 1174(e) states that "[a]s a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty."

non-compliant semi-annual weigh-in would be considered the applicant's "first strike"[4] and that he would be recommended for separation if he was not compliant by February 2, 2013. The applicant signed and acknowledged the Page 7. Another Page 7, dated January 31, 2013, states that he had met the required standards and so his probationary period had ended.

On October 4, 2013, at age 41, the applicant received a Page 7 stating that at 189 pounds, he was 9 pounds overweight. He was placed on probation until January 4, 2014, at which time he was required to have lost the excess weight or reduced his body fat percentage from 29% to 26%. He was advised that if he was not compliant by January 4, 2014, he would be processed for separation. The applicant signed and acknowledged the Page 7.

On December 2, 2013, a physician certified on a Command Medical Referral Form that there was "no underlying medical condition for the member's excess weight"; that it was safe for the applicant to lose the excess weight and comply with standards; that the member had declined nutritional counseling; and that there was no medical condition that would make fitness activities detrimental to the applicant's health.

On January 4, 2014, the applicant weighed 197 pounds and had 30% body fat. He was notified on a Page 7 that that he had not achieved his maximum allowable weight and percent body fat by the end of his probationary period and he would therefore be recommended for separation. The applicant signed and acknowledged the Page 7.

Also on January 4, 2014, the applicant underwent testing for sleep apnea and was diagnosed with obstructive sleep apnea.[5]

On January 6, 2014, the applicant was notified by memorandum of the intent to discharge him for failing to comply with the maximum allowable weight or body fat standards set forth in Coast Guard policy. The applicant signed a form acknowledging the notification, waiving his right to submit a statement, and indicating that he did not object to being discharged.

On January 14, 2014, a physician certified on another Command Medical Referral Form that there was "no underlying medical condition for the member's excess weight"; that it was safe for the applicant to lose the excess weight and comply with standards; that the member had declined nutritional counseling; and that there was no medical condition that would make fitness activities detrimental to the applicant's health.

On January 27, 2014, a Separation Authorization was entered into the applicant's record with an effective date of March 3, 2014. The authorization noted that a Page 7 entry was to be

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[4] COMDTINST M1020.8H, Article 4.A., states that members must be processed for separation if they are non-compliant at the end of weight probation, fail to make progress during weight probation, are placed on weight probation for a third time in 14 months, fail a third consecutive semiannual weigh-in, or have so much excess weight and body fat percentage that their probationary period (calculated at a rate of one pound per week or one month per one percent body fat, whichever is greater) would exceed 35 weeks.

[5] Sleep apnea is caused by the obstruction of the airway during sleep, and obesity is the most common "predisposing factor" for the condition. A diagnosis of "obstructive sleep apnea/hypopnea syndrome" requires "unexplained daytime sleepiness with at least five obstructed breathing events (apnea or hypopnea) per hour of sleep." HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, 18th ed. (McGraw-Hill, 2012), p. 2186.

entered into the applicant's record stating the following with regard to the applicant's possible future reenlistment:

> Active duty enlisted members discharged for exceeding the maximum allowable weight or for appearance shortcomings may request reenlistment to their former rate provided member is within the maximum allowable weight, meets appearance standards and has been out of the service no longer than 24 months. The service's decision to authorize reenlistment will be based on its needs and the member's past performance.

The applicant was honorably discharged on March 3, 2014, at the rate of OSC/E-7, pursuant to Article 1.B.12. of the Military Separations Manual, COMDTINST M1000.4.[6] The applicant's DD 214 shows a separation code of JCR (weight control failure) and a reentry code of RE-3F (exceeds weight standards). He had completed a total of 18 years, 8 months, and 9 days of active duty.

ORIGINAL ADVISORY OPINION OF THE COAST GUARD

In response to the applicant's original application, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board deny relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC).

PSC stated that the applicant's discharge for failure to meet the maximum allowable weight standards does not warrant separation pay. PSC stated that under Article 4.d.(8) of Commandant Instruction 1910.1, *Eligibility of Regular and Reserve Enlisted Personnel for Separation Pay*, members who are separated for "failure to meet the maximum allowable weight standards" are not eligible for separation pay. PSC further stated that while the applicant claimed that sleep apnea contributed to his weight gain, it is insufficient evidence to cause a change to the classification of his discharge because his physician did not identify sleep apnea as an underlying medical condition that caused his excess weight.

With regard to the applicant's Post-9/11 GI Bill benefits, PSC stated that the applicant's discharge for failure to meet weight standards prevented him from meeting the obligated active duty service requirement for transferring the benefits, and so he is no longer entitled to transfer them. PSC stated that a discharge for weight control failure "is not included as an exception to meeting this requirement" and "does not warrant exception" under DoDI 1341.13.

APPLICANT'S RESPONSE TO THE ORIGINAL ADVISORY OPINION

Regarding his request for separation pay, the applicant stated that the language in COMDTINST 1910.1, which the Coast Guard cited and which was issued in 1992, contradicts the language in the 2012 Pay Manual, COMDTINST M7220.29B. Under Chapter 10 of the latter, he argued, he is entitled to separation pay because his situation does not appear in the list of those not entitled to separation pay. He argued that "[b]oth logic and basic canons of legal

[6] COMDTINST M1000.4, Article 1.B.12., authorizes separating a member for the convenience of the Government for "[o]besity, provided a medical officer certifies a proximate cause of the obesity is excessive voluntary intake of food or drink, rather than organic or other similar causes apparently beyond the member's control."

construction dictate that the more recent instruction should take precedence over contradictory language in a much older instruction dealing with the identical subject matter." The applicant alleged that because the Coast Guard amended certain provisions regarding separation pay in Chapter 10 of the Pay Manual in 2012, the Board should consider Chapter 10 as representing the Coast Guard's current policy, especially given that COMDTINST 1910.1 has not been amended since 1992. He alleged that in revising Chapter 10, the Coast Guard must have "intended to conform its policies on separation pay" to those of the other military services in DoDFMR Chapter 7A. The applicant also noted that COMDTINST M1000.4 states that chief warrant officers separated for weight control failure are eligible for separation pay.

Regarding the transferability of his educational benefits, the applicant argued that the Board should consider the language in DoDI 1341.13, which provides that a member discharged early due to a mental or physical condition that was not a result of willful misconduct retains his or her eligibility to transfer educational benefits. The applicant alleged that his weight gain was caused or exacerbated by his sleep apnea and so "fits the literal language of this exception perfectly." Therefore, his transfer of his benefits to his daughter should not have been reversed based on his early separation for weight control failure.

NEW ADVISORY OPINION OF THE COAST GUARD

On December 16, 2015, the JAG submitted another advisory opinion. Regarding the applicant's claim that COMDTINST 1910.1, which denies separation pay to those discharged for weight control failure, should not be considered applicable, PSC noted that COMDTINST 1910.1 is referenced in Chapter 10 of the Pay Manual, which the applicant relied on, and so clearly remained in effect when the applicant was discharged. PSC stated that COMDTINST 1910.1 was not cancelled until August 24, 2015, when the Commandant issued ALCOAST 335/15, which cancelled it but noted that certain provisions therein "remain in effect and will be included in the next revision to the Coast Guard Pay Manual."

PSC stated that the provision in COMDTINST M1000.4, which authorizes separation pay for chief warrant officers, is inapplicable because the applicant was not a warrant officer.

Regarding the transferability of benefits, PSC stated that paragraph 3.g.(2)d of DoDI 1341.13 is inapplicable because the applicant was not discharged from the Coast Guard due to a disability or a physical or mental condition. PSC stated that because of the applicant's discharge, his required service commitment for transferring his educational benefits was not met and there is no exception that applies to members who fail to meet the authorized weight standards.

APPLICANT'S RESPONSE TO THE NEW ADVISORY OPINION

On January 26, 2016, the applicant responded to the new advisory opinion and stated that he would not be submitting additional information and relied on the materials previously submitted.

APPLICABLE LAW AND POLICY

Weight and Body Fat Standards

Article 1.A. of COMDTINST 1020.8H, Coast Guard Weight and Body Fat Standards Program, states that the purpose of the standards are applicable to all Coast Guard military personnel and are intended to ensure that all military personnel maintain a healthy weight and body fat, are capable of meeting the service's operational needs, and present a sharp, professional military appearance. Article 1.B. states that a member must "[m]aintain compliance with weight and body fat standards at all times, unless specifically stated otherwise by this Manual." Article 4.A. states that a member must be processed for separation if he fails to come into compliance with the standards by the end of a probationary period.

Separation Pay

Title 10 U.S.C. § 1174(b)(1) states the following:

> A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

Chapter 10.H.1. of the 2012 Pay Manual, COMDTINST M7220.29B, which was in effect at the time of the applicant's discharge in 2014, cites different statutes and policies for the entitlement to separation pay of commissioned officers, warrant officers, and enlisted members. Chapter 10.H.4.a.(2) refers the reader to COMDTINST 1910.1 how separation pay is computed. Chapter 10.H.1.b. states that enlisted members may be entitled to separation pay if they have at least 6 but less than 20 years of active duty and were involuntarily discharged. Chapter 10.H.2. includes a list of members who may not receive separation pay. The list includes members being separated for unsatisfactory performance, unsuitability, or misconduct under Article 12 of the Personnel Manual (now Article 1 of the Military Separations Manual) and when a "determination is made by the Commander, CG Personnel Service Center, that the member's separation does not warrant payment."

Article 1.B.12.a. of the Military Separations Manual concerns discharges for the Convenience of the Government. (Articles 1.B.9., 1.B.15., and 1.B.17. concern discharges for unsatisfactory performance, unsuitability, and misconduct, respectively.)

COMDTINST 1910.1, *Eligibility of Regular and Reserve Enlisted Personnel for Separation Pay,* "establishes policy, procedures, and responsibilities for determining eligibility for separation pay for Regular and Reserve enlisted members who are involuntarily separated from active duty." Paragraph 3 notes that under 10 U.S.C. § 1174, the Coast Guard may establish the conditions under which members may receive full or half separation pay and that any member separated for substandard performance, unsuitability, or misconduct may not receive separation pay. Paragraph 4.d. lists the circumstances under which members are <u>not</u> eligible for separation pay, such as when they are being separated as a result of a court-martial sentence, for miscon-

duct, for unsatisfactory performance, or under other than honorable conditions. Number (8) on the list is, "The member is being separated for failure to meet the maximum allowable weight standards."

Post-9/11 GI Bill

Title 38 U.S.C. § 3319 provides the following:

> (a) In general.--(1) Subject to the provisions of this section, the Secretary concerned may permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).
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> (2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The Secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the national security interests of the United States.
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> (b) Eligible individuals.--An individual referred to in subsection (a) is any member of the uniformed services who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least--
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> (1) six years of service in the armed forces and enters into an agreement to serve at least four more years as a member of the uniformed services; or
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> (2) the years of service as determined in regulations pursuant to subsection (j).
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> (f) Time for transfer; revocation and modification.--
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> (1) Time for transfer.--Subject to the time limitation for use of entitlement under section 3321 an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the armed forces when the transfer is executed.
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> (j) Regulations.--(1) The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section.
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> (2) Such regulations shall specify--
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> (A) the manner of authorizing the transfer of entitlements under this section;
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> (B) the eligibility criteria in accordance with subsection (b); and
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> (C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2). [Emphasis added.]

Under both Directive Type Memorandum (DTM) 09-003, issued on June 22, 2009, and Department of Defense Instruction 1341.13, issued on May 31, 2013, which both apply to the Coast Guard, to be eligible to transfer one's Post-9/11 GI Bill educational benefits, a member on active duty must have performed at least six years of military service and agree to serve four more years in the military. Enclosure 3 of DoDI 1341.13, paragraph 3.g., *Failure to Complete Service Agreement*, states the following:

> (1) Except as provided in this section of this enclosure, if an individual transferring entitlement under this section fails to complete the service agreed to consistent with paragraph 3.a. of this enclosure in accordance with the terms of the agreement, the amount of any transferred entitlement that is used as of the date of such failure shall be treated as an overpayment of educational assistance and shall be subject to collection by VA.
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> (2) Subparagraph 3.g.(1) of this enclosure shall not apply to an individual who fails to complete service agreement due to:
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> (a) His or her death.

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(d) Discharge or release from active duty or the Selected Reserve for a physical or mental condition, not a disability that did not result from his or her willful misconduct, but did interfere with the performance of duty.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.

2. Under 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22, an application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. The applicant alleged that he discovered the alleged error or injustice on March 5, 2014. The applicant was discharged on March 3, 2014. Therefore, the application is timely.

3. The applicant asked the Board to direct the Coast Guard to authorize the payment of separation pay, which the applicant did not receive upon his discharge, and also to reinstate the transfer eligibility of his Post-9/11 GI Bill benefits. The applicant alleged that he was erroneously and unjustly denied separation pay and the ability to transfer his educational benefits upon his discharge from the Coast Guard for failing to meet the required weight standards. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[7] Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."[8]

4. Under 10 U.S.C. § 1552, the Board is authorized to "correct an error or remove an injustice" in any Coast Guard military record. "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations.[9] For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal."[10] The Board has authority to determine whether an injustice exists on a "case-by-case basis."[11] Indeed, "when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its man-

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[7] 33 C.F.R. § 52.24(b).

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

[9] *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("'Error' means legal or factual error."); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations.").

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

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

date,"[12] and "[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious."[13]

5. The applicant argued that he was erroneously and unjustly denied separation pay to which he was entitled under the Pay Manual, COMDTINST M7220.29B, when he was involuntarily discharged for failing to meet the required weight standards on March 3, 2014. While the list of circumstances that preclude separation pay in the Pay Manual does not include being discharged for weight control failure, the list of such circumstances in the more specific instruction governing separation pay, COMDTINST 1910.1, paragraph 4.d., does include "being separated for failure to meet the maximum allowable weight standards." Contrary to the applicant's claim, the Pay Manual itself and ALCOAST 335/15 show that COMDTINST 1910.1 was still in effect at the time of the applicant's discharge. Therefore, Coast Guard policy did not allow payment of separation pay to enlisted members who, like the applicant, were discharged for failing to meet the weight standards in 2014. The Board notes that the applicant cited to DoD policy regarding separation pay, but 10 U.S.C. § 1174(b)(1) authorizes "the Secretary concerned" to determine the rules for separation pay and, as defined in 10 U.S.C. § 101, "the Secretary concerned" is the Secretary of Homeland Security, not the Secretary of Defense. Therefore, DoD policies regarding separation pay are inapplicable.

6. The applicant argued that his non-receipt of separation pay is unjust despite the rule because his obesity was caused by sleep apnea and he had more than eighteen years of service. In fact, however, obesity is the most common "predisposing factor" for sleep apnea,[14] a physician repeatedly certified that the applicant had no underlying medical condition that was causing his obesity, and the applicant was able to achieve compliance with the weight standards during probationary periods twice previously. Given the policy and the lack of a compelling explanation for the applicant's failure to comply with the weight standards, the Board is not persuaded that his non-receipt of separation pay constitutes an error or injustice.

7. The applicant argued that his non-receipt of separation pay is unjust because warrant officers discharged for failing the weight standards are entitled to separation pay. Separation and separation pay for warrant officers and enlisted members are authorized by different statutes, however. Chapter 10.H.1.a.(2)(c) states that a regular warrant officer discharged under 10 U.S.C. §§ 580, 1165, or 1166 is entitled to separation pay in accordance with 14 U.S.C. § 286a, unless a determination is made to withhold separation pay by Commander, USCG Personnel Service Center under Chapter 10.H.2.f. Paragraph (a) of 10 U.S.C. § 1166 provides that a regular warrant officer who has served as such for at least three years is entitled to separation pay if discharged for unfitness. If the warrant officer does not have three years, 10 U.S.C. § 1165 applies, and that section refers to 10 U.S.C. § 1174. Congress has thus established a special rule regarding separation pay and warrant officers who have served as warrant officers for at least three years. The fact that the applicant was not a warrant officer and so does not qualify for separation pay under these other statutes does not constitute an injustice in his record.

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[12] *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).
[13] *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).
[14] *See* HARRISON'S PRINCIPLES OF INTERNAL MEDICINE, 18th ed. (McGraw-Hill, 2012), p. 2186.

8. With regard to the transferability of his educational benefits, the applicant stated that he transferred his benefits to his dependent in January 2013 but is now erroneously deemed ineligible to do so because he was discharged for weight control failure and did not complete the four-year obligated service requirement. The applicant argued that his discharge for weight control failure should not block the transfer of his benefits because his obesity and sleep apnea fall into the exception for discharges caused by a "physical condition … that did not result from the member's own misconduct but did interfere with the performance of his duties" under DTM 09-003, which is mirrored in the current instruction, DoDI 1341.13. PSC argued that a discharge for weight control failure does not fall within this exception or warrant an exception.

9. Under COMDTINST 1020.8H, Coast Guard members are required to comply with the Coast Guard's weight and body fat standards unless a physician certifies that they are unable to do so, or it is unsafe for them to do so, because of an underlying medical condition. Failing to abide by the requirements in the manual is, in essence, failing to obey an order or regulation and so constitutes a form of misconduct or unsatisfactory performance. Because the applicant's physician repeatedly certified his lack of an underlying medical condition preventing his weight loss and his ability to comply with the standards safely, the preponderance of the evidence shows that the applicant could have but willfully or negligently failed to achieve compliance with the standards during this final weight probationary period even though he had successfully achieved compliance with the standards twice before. Therefore, the Coast Guard's interpretation of the regulations in DoDI 1341.13 and DTM 09-003 as not providing an exception to the four-year obligated service requirement for members discharged for weight control failure is not unreasonable or unjust. In this regard, the Board notes that if the Coast Guard's policy were otherwise, a member could avoid performing the required service for transferring educational benefits under the Post-9/11 GI Bill by being one or two pounds over his or her maximum allowed weight for a few weeks.

10. The applicant has not proven by a preponderance of the evidence that his non-receipt of separation pay and the termination of the transfer of his Post-9/11 GI Bill benefits to his dependent are erroneous or unjust. The applicant's failure to comply with the Coast Guard's weight standards by losing 9 pounds or 3% body fat between October 4, 2013, and January 4, 2014, caused his discharge and his loss of eligibility for both separation pay and the transfer of his educational benefits. Accordingly, his requests for separation pay and for the reinstatement of the transfer of his Post-9/11 GI Bill benefits should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [redacted] USCG, for correction of his military record is denied.

April 8, 2016

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