DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-075

Xxxxxxxxxxxx
xxxxxxxxxxx

FINAL DECISION

[redacted]

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on March 5, 2004, upon the BCMR's receipt of the applicant's military and medical records.

This final decision, dated November 17, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

REQUEST FOR RELIEF

The applicant asked the Board to "[s]it as the first formal medical board in her case and find that she was unfit [for duty] by reason of disabilities that were incurred in the line of duty and not due to misconduct or neglect"; assign her appropriate disability ratings; and correct her military record to show either that she was separated by reason of disability or placed on the temporary disability retired list (TDRL) on July 1, 2002, instead of being discharged by reason of completion of required service.

APPLICANT'S ALLEGATIONS

The applicant alleged that at the time of her discharge, she "suffered from several unfitting conditions and had been extended on active duty for almost a year due to injuries suffered in a motor vehicle accident." She alleged that "[d]espite her extensive record of treatment for these injuries by several civilian care providers as well as military providers, [she] was never processed for an initial medical board [IMB]." The applicant alleged that she should have been processed under the Coast Guard's Physical Disability Evaluation System (PDES) and either medically separated or placed on

the TDRL. Instead, she was released from active duty when her enlistment expired on July 1, 2002.

The applicant alleged that one of her unfitting conditions was asthma. She alleged that she required daily use of "inhalational bronchiodilators" or anti-inflammatory medications while on active duty. She noted that her medical record shows that she consulted doctors about her asthma on ten occasions between November 1998 and April 2002. She also noted that pulmonary function testing had revealed "mild to moderate restriction while taking asthma medication." The applicant alleged that since she suffered from mild to moderate restriction despite the help of asthma medications, she should have been rated as 30% disabled due to asthma.

The applicant alleged that another unfitting condition was a "hip fracture dislocation" that she incurred during a car accident in August 2001. She referred the Board to summaries of this condition in her medical records dated April 29, 2002, and June 5, 2002. She pointed out that the records show that because of her hip problem, she is not able to run and she is "unable to walk for more than one hour due to pain." She alleged that because of her inability to run or to walk for extended distances, she was unfit to perform the duties of her grade and rating. Although there is no rating for "hip fracture dislocation" under the Department of Veterans' Affairs Schedule for Rating Disabilities (VASRD), she stated that her condition could be rated by analogy to VASRD code 5317 since she had no traumatic arthritis.

The applicant noted that at the time of her discharge, she suffered from several other medical conditions, but they did not render her unfit for duty. She alleged that since her conditions could change within the five years following her discharge, she could have been placed on the TDRL.

Finally, the applicant argued that since she has been separated from the Coast Guard, the only remedy available to her is for the Board to sit as a medical board and order direct relief.

SUMMARY OF THE APPLICANT'S MEDICAL AND MILITARY RECORDS

During a pre-enlistment physical examination on September 16, 1996, the applicant noted on a Report of Medical History that she had no history of hay fever or asthma. The physician noted that, aside from a fatty cyst removal in 1996, the applicant "denie[d] other injuries, illnesses, or asthma." She was found fit for enlistment.

On June 2, 1997, the applicant enlisted in the Coast Guard for four years. During a recruit processing examination on June 4, 1997, she admitted to seasonal allergies (hay fever) and to wheezing and using an inhaler as a child. She denied having been diagnosed as asthmatic. The physician concluded that she had a history of asthma.

Following training, the applicant became a xxxxxxxxxxxxxxxxxxxxxxxxxxx. Several documents in her medical record indicate that she took Allegra or Claritin for hay fever while on active duty.

On April 7, 1999, the applicant sought help for shortness of breath. She stated that she had recently returned from visiting xxxxxxxxxx, California, where she had gone to a hospital emergency room when she had intense difficulty breathing. The doctor noted that she had used an inhaler as a child and diagnosed her with mild asthma.

On January 25, 2000, the applicant sought treatment for "moderate dyspnea" (shortness of breath). She told the doctor that she had a prior medical history of "acute asthmatic attacks when she visits her home in xxxxxxxxxx, CA." She was treated with Albuterol and provided an Albuterol inhaler.

At the expiration of her enlistment on June 1, 2001, she extended it for three months, through September 1, 2001. On June 29, 2001, she underwent a physical examination in preparation for being released from active duty. On the Report of Medical History she prepared, she indicated that she was in good health and that she took Claritin D for seasonal allergies. She also told the doctor that she had "occasional episodes" of asthma and used an Albuterol inhaler. On August 8, 2001, she was found fit for separation. The record contains no indication of whether the applicant agreed with this finding.

On August 14, 2001, the applicant was hospitalized as a result of a car accident. The admission report indicates that she "was driving home from her second job last evening when she sustained a motor vehicle accident on base as a single car that struck a telephone pole. The patient believes she may have fallen asleep at the wheel. … The patient states she had worked doubled shifts yesterday as a [redacted] and then at [a local pub] as a waitress." On the hospital discharge report, dated August 23, 2001, her orthopedic surgeon, Dr. M, wrote the following:

> [T]rauma evaluation identified a right acetabular fracture involving both the posterior wall and posterior column. … On the first hospital day she was placed into balanced skeletal traction with a distal femoral traction pin. … On the sixth hospital day, she was taken to the operating room at which time she underwent ORIF [open reduction, internal fixation] of her right acetabular fracture. The patient did very well postoperatively. She was transferred back to the orthopedic floor … . The traction pin was removed. … She advanced with physical therapy. … On the third postoperative day she had already begun to start using stairs. However, this was very slow for her and she appeared to be rebounding with further improvements in stamina and strength.

After being discharged from the hospital, the applicant continued physical therapy and had monthly follow-up examinations with Dr. M. Her enlistment was extended because she was not physically qualified for separation.

On November 19, 2001, Dr. M noted that the applicant had been doing "very well" and that her "range of motion is full to hip flexion, abduction, adduction, internal and external rotation without limitation." Dr. M stated that the applicant was "ready to advance to weightbearing" in physical therapy so that she could begin walking without crutches. On December 14, 2001, Dr. M noted that the applicant "is full weightbearing at present. She has no pain whatever. She has 5/5 strength to hip flexion, hip extension, hip abduction, [and] hip adduction. … She is asked to walk today without the crutches and she does have a significant adductor lurch, which is surprising given her strength on isolated abductor testing on the table. She does need further physical therapy to lose this abnormal stride/gait pattern."

On January 8, 2002, a military doctor noted that Dr. M had reported that the applicant "will complete treatment, including healing of the fracture by 1 July 2002."

On January 30, 2002, Dr. M noted that the applicant "is full weightbearing. She has minimal limp walking on the right side. … [S]he has 80+% return of strength but would like to continue her strengthening program. … She has full flexion, full extension, full internal/external rotation without any limitation whatsoever. … [A]t this point she is not limited in any activities but was encouraged to continue with the strengthening program and to continue to walk without a limp. … She does have a small amount of heterotopic calcification noted which is further calcified proximal to the acetabulum but has not significantly changed in overall size or advancement. … At present she is entirely off all medications."

On February 21, 2002, Dr. M noted that the applicant "comes in with [CWO C], representing the U.S. Military, with regards to an end point evaluation today in preparation for her discharge from the military and possible relocation back to California." Dr. M reported that the applicant was in

> full ambulatory status without any pain whatsoever, and complete loss of the limp that she had in her early postoperative course. She is able to perform virtually any function without difficulty or limitation whatsoever. …
>
> A new complaint … is an occasional thump or popping sound and thumping sensation that she feels in her right hip when she maximally flexes forward when doing an extended toe touch type flexibility drill. …
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> … She shows full, symmetric range of motion with hip flexion/extension, internal rotation, external rotation. She is entirely stable on axial loading and unloading and extension, and in flexion at 90 degrees or better. … {When] she goes into a sitting toe touch posture and with hyperflexion reaching down past her feet there indeed is a sudden audible pop and shift of her left hip entirely consistent with transient subluxation of the right hip. She immediately is reduced. There is no other suggestion of instability. There is no pain. … As this only comes on with a truly hyperflexion gymnastic type positioning, my advice would be to avoid this type of hyperflexion and to avoid any

> position that may duplicate these symptoms but I would not limit her in any other way. … She is certainly not at maximal medical improvement, and it would be another year or more, minimum, before we would be able to appreciate if indeed she were to go on to develop significant post-traumatic arthritis and to see the total extent of her heterotopic ossification after time for full maturation of the process would occur. … [R]ecommendations would be for continued orthopedic follow up … . Only in this manner would we be able to determine the likelihood of, and more appropriately the reality, of developing potential post-traumatic arthritis or other problems down the road. … [She] is fully cleared to perform all activities and duties other than the hyperflexion activities with her right hip as previously instructed.

In March and April 2002, the applicant's physical therapist noted on several occasions that the applicant had a right "Trendelenburg and trunk lurch" when she walked and occasional right hip subluxation.

On April 11, 2002, a naval orthopedic surgeon, Dr. L, evaluated the applicant. He noted that evaluation by a medical board was "probably indicated" because of her hip condition. He reported that x-rays showed "minimal to no heterotopic ossification about the right hip," "concentric reduction of the hip," and "no significant signs of post-traumatic arthritis," but that "her likelihood for developing [arthritis] was very high. … The single largest finding on her physical exam was right hip laxity evidenced primarily by 70 degrees of internal rotation of the right hip vs. 45 degrees of internal rotation of the left hip. Due to this extreme laxity of the hip, I felt that it was improper to make this patient worldwide deployable as of 11 April 2002. My plan for this patient as of 11 April 2002 is for her to forgo any impact activities, and in particular no running. Any additional impact activities to her right hip are more likely to hasten the rate at which she would develop post-traumatic arthritis of the right hip."

On April 29, 2002, a Senior Medical Officer provided a "health summary" to the applicant. He noted that she required twice bilateral sniffs of Flonase and two tablets of Zyrtec per day for "seasonal allergies" and that she still had physical therapy four times a week due to her hip condition. He also noted the following:

> RESIDUAL LIMITATIONS: Although you can kneel and lower into a crouching position, you cannot run and have been instructed by your orthopedic surgeons not to attempt running because of your abnormal gait and because of pain. Your gait involves a drop in the right hip as you swing the right leg forward. The right femur has abnormally exaggerated internal rotation to 75 degrees and your gait requires swinging the leg outward in abduction and ends with the right toe pointed inward as your foot touches down. This abnormal gait limits your ability to walk to about one hour, after which you need frequent stops to rest and note increasing discomfort in the pelvis, right hip and right leg. You also note an audible "clunk" in the right hip with hip flexion. Your physical therapist and your orthopedic surgeons note that this is subluxation of the right hip joint and have cautioned you about the possibility of hip dislocation if you assume positions of extreme right hip flexion. Consequently, your activity is limited in this regard as well.

> FUTURE CONCERNS: You have been informed that your recovery from the pelvic fracture is mostly complete but there may be some continued improvement for another year or so. You are aware that there is an area of heterotopic osteogenesis in the region of the ORIF but that there is no impingement on surrounding structures at this time. Orthopedic follow up every six months to review this area is recommended for the next several years at least. The very real probability is that the right hip structures are likely to undergo post-traumatic degeneration resulting in arthritis and will ultimately require hip replacement surgery.
>
> RECOMMENDATIONS: I strongly urge you to continue your efforts in physical therapy to maximize your functional level. … Disability evaluation and compensation through the Veterans' Administration is recommended.

On July 1, 2002, the applicant was released from active duty upon her "completion of required active service." She became a member of the Individual Ready Reserve.

VIEWS OF THE COAST GUARD

On May 28, 2004, the Judge Advocate General (TJAG) of the Coast Guard recommended that the Board grant the applicant partial relief that was recommended by the Coast Guard Personnel Command (CGPC) in a memorandum on the case.

Regarding the applicant's asthma, CGPC argued that the applicant's condition was controlled through medication and that it did not impair her ability to perform her duties. CGPC argued that because the asthma did not render the applicant unfit for duty, it did not meet the criteria for evaluation under the PDES. TJAG concluded that "[e]ven if the Board disagrees with the Coast Guard, it would be inappropriate for the Board to do as Applicant asks and evaluate the medical evidence itself. The most the Board should do is order the Coast Guard to consider whether Applicant's asthma interfered with her performance of duty at the time of her discharge at the same time it considers Applicant's hip injury."

Regarding the applicant's hip, CGPC stated that, although she was not "worldwide deployable …, she was able to perform most of the duties [then] assigned to her. However, the evaluations conducted during the period make it clear that the Applicant's prognosis for full recovery was questionable."

CGPC stated that under Article 12.B.6. of the Personnel Manual, the applicant's discharge physical examination dated June 29, 2001, was "technically operative at the time of her separation in July 2002, [but] it obviously did not take into account the injuries she suffered on August 12, 2001, and the provisions of the PDES Manual providing a presumption of fitness for duty when a member undergoing separation processing has continued in the service with known impairments are not applicable in this case." CGPC pointed out that because her injuries occurred after her discharge physical, "she had no reasonable opportunity to object to the presumption that she

remained physically qualified for separation." CGPC stated that her command should have ordered another examination and that "there is sufficient evidence in the record to [indicate] that an Initial Medical Board [IMB] should have been convened to fully evaluate the Applicant's condition resulting from her accident."

CGPC recommended that partial relief be granted by conducting an IMB "to evaluate the Applicant's medical condition at the time of her separation, resulting from the injury suffered to her hip on August 12, 2001. If the IMB determines [her] injuries rendered her unfit for continued service prior to separation," her case should be processed under the PDES.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 1, 2004, the Chair sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. The applicant's response was received on June 13, 2004. She agreed with the recommendation that the Coast Guard conduct an IMB to evaluate her condition. However, she disagreed with the recommendation that only her hip injury be reviewed by the IMB. She argued that under the PDES Manual, an IMB should "conduct a detailed physical and evaluate each potentially unfitting condition." She asked the Board to order the Coast Guard to "conduct an IMB for [her] regarding all potentially unfitting conditions" in accordance with the PDES Manual.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 12.B.6.a. of the Personnel Manual provides that "[b]efore retirement, involuntary separation, or release from active duty (RELAD) into the Ready Reserve (selected drilling or IRR), every enlisted member … shall be given a complete physical examination in accordance with the Medical Manual, COMDTINST M6000.1 (series). … The examination results shall be recorded on Standard Form 88. … All physical examinations for separations are good for 12 months. …"

Article 12.B.6.b. provides that "[w]hen the physical examination is completed and the member is found physically qualified for separation, the member will be advised and required to sign a statement on the reverse side of the Chronological Record of Service, CG-4057, agreeing or disagreeing with the findings." Article 12.B.6.c. provides that "[i]f a member objects to a finding of physically qualified for separation, the Standard Form 88 together with the member's written objections shall be sent immediately to Commander, (CGPC-epm-1) for review."

Article 12.B.6.d. states that "[w]hen the examination for separation finds disqualifying physical or mental impairments, use the following procedures: … 3. If the member does not desire to reenlist or is being discharged for reasons other than enlistment expiration and the physical or mental impairment is permanent, a medical board is convened under Chapter 17 and the member remains in service under Article 12.B.11.i."

Medical Manual (COMDTINST M6000.B)

Chapter 3.D. lists the medical conditions that are disqualifying for enlistment in the Coast Guard. Chapter 3.D.24.d. states that one cause for rejection for enlistment is asthma,

> [i]ncluding reactive airway disease, exercise-induced bronchospasm, or asthmatic bronchitis, reliably diagnosed at any age. Reliable diagnostic criteria shall consist of any of the following elements.
>
> (1) Substantiated history of cough, wheeze, and/or dyspnea which persists or recurs over a prolonged period of time, generally more than 6 months.
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> (2) If the diagnosis of asthma is in doubt, a test for reversible airflow obstruction (greater than a 15 percent increase in FEV I following administration of an inhaled bronchodilator), or airway hyperreactivity (exaggerated decrease in airflow induced by a standard bronchoprovocational challenge such as methacholine inhalation or a demonstration of exercise-induced bronchospasms) must be performed.

Chapter 3.B.3.d(3) of the Medical Manual provides that during a physical exam-

ination, "[w]hen the individual is not physically qualified for the purpose of the examination and a waiver is not recommended, the reviewing authority will arrange for the examinee to be evaluated by a medical board and provide administrative action as outlined in Physical Disability Evaluation System, COMDTINST M1850.2 (series)."

Chapter 3.B.5.a. provides that "[a]ny member undergoing separation from the service who disagrees with the assumption of fitness for duty and claims to have a physical disability as defined in section 2-A-38 of the Physical Disability Evaluation System, COMDTINST M1850.2 (series), shall submit written objections, within 10 days of signing the Chronological Record of Service (CG-4057), to Commander CGPC."

Chapter 3.B.6. states that "[w]hen a member has an impairment (in accordance with section 3-F of this Manual) an Initial Medical Board shall be convened only if the conditions listed in paragraph 2-C-2.(b) [of the PDES Manual] are also met. Otherwise the member is suitable for separation."

Chapter 3.F.1.c. provides that "[m]embers are ordinarily considered fit for duty unless they have a physical impairment (or impairments) that interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Active duty or selected reserves on extended active duty considered permanently unfit for duty shall be referred to an Initial Medical Board for appropriate disposition."

Chapter 3.F. "lists certain medical conditions and defects that are normally disqualifying. However, it is not an all-inclusive list. Its major objective is to achieve uniform disposition of cases arising under the law, but it is not a mandate that possession of one or more of the listed conditions or physical defects (and any other not listed) means automatic retirement or separation."

Chapter 3.F.7.b(2) provides that bronchial asthma "[a]ssociated with emphysema of sufficient severity to interfere with the satisfactory performance of duty, or with frequent attacks not controlled by inhaled or oral medications, or requiring oral corticosteroids more than twice a year" is a disqualifying physical defect.

Chapter 3.F.12.b(4) provides that "[m]otion that does not equal or exceed the measurements listed below" is a disqualifying physical defect. The measurements for hip motion are flexion to 90 degrees and extension to 0 degrees.

PDES Manual (COMDTINST M1850.2C)

Chapter 2.C.2. of the PDES Manual states the following:

a. The sole standard in making determinations of physical disability as a basis for

retirement or separation shall be unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated through military service. …

b. The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate members whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply.

(1) Continued performance of duty until a service member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that:

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or

(b) acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered the service member unfit for further duty.

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.

Chapter 3.D.7. states that a "member who is being processed for separation … shall not normally be referred for physical disability evaluation. Unless previously retained on active duty [with a waiver], absence of a significant decrease in the level of a member's continued performance up to the time of separation or retirement satisfies the presumption that the member is fit to perform the duties of his or her office, grade, rank or rating. (see paragraph 2.C.2.)." However, Chapter 3.D.8. provides that an IMB shall be convened "[i]n any situation where fitness for continuation of active duty is in question."

Chapter 3.F.1. provides that an IMB "considers and reports upon any evaluee whose case has been referred for consideration. It conducts a thorough physical examination to evaluate the member's general health. Additionally, all impairments noted shall be separately evaluated … . It shall obtain and examine available records to formulate a conclusion regarding the member's present state of health and the recommendations required." Chapter 3.F.2. states that an IMB "presents a clear medical picture of the case in question making all pertinent diagnoses/prognoses and giving a medical opinion as to the evaluee's fitness for duty and recommendations for future action." Chapter 3.G.3. states that the IMB's Narrative Summary shall include a "summary of the pertinent data concerning each complaint, symptom, disease, injury or disability

presented by the evaluee, which causes or is believed by the medical board to cause impairment of the evaluee's physical condition." Chapter 3.G.4. states that if a member is found medically unfit for duty, the IMB may refer the member to a Central Physical Evaluation Board (CPEB) for further processing under the PDES. Chapter 3.G.6. provides that the IMB also makes findings as to whether conditions were incurred in the line of duty, whether they pre-existed the member's enlistment, and whether such pre-existing conditions were aggravated during the member's active 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 submissions, and applicable law:

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

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The record indicates that on August 14, 2001, after the applicant had undergone a physical examination in preparation for her release from active duty, she had a motor vehicle accident that resulted in significant injuries to her right hip. The physical examination report, which was approved on August 8, 2001, did not cover these injuries and was never amended or redone to account for the injuries. In addition, there is no evidence in the record that the applicant was ever allowed to object to the report of her physical examination by signing a CG-4057, as required by Article 12.B.6. of the Personnel Manual and Chapter 3.B.5.a. of the Medical Manual.

4. The preponderance of the evidence indicates that although the applicant underwent surgery and months of physical therapy after the accident, in April 2002—just two months before her release from active duty—she still walked with a significant lurch. Moreover, she was strongly advised never to run again because such "impact activities" could accelerate the applicant's development of arthritis and the need for a hip replacement, which were anticipated by her doctors. Although gaits are not included in Chapter 3.F. of the Medical Manual as standards of impairment, the Coast Guard has admitted, and the Board agrees, that the restrictions on the applicant's gait likely rendered her unfit for continued service in the Coast Guard. Chapter 3.D.8. of the Medical Manual provides that an IMB shall be convened "[i]n any situation where fitness for continuation of active duty is in question."

5. Chapter 3.B.6. of the Medical Manual provides that, when a member has a

disqualifying impairment, an IMB shall be convened only if the conditions listed in Chapter 2.C.2.(b) of the PDES Manual are met. That chapter provides that "[c]ontinued performance of duty until a service member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that: … acute, grave illness or injury, or other deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered the service member unfit for further duty." The Board finds that although the applicant was presumptively fit for duty until August 2001, when she was being processed for separation, the injuries she incurred in the motor vehicle accident were sufficient to overcome that presumption.

6. The Board agrees with the Coast Guard and the applicant that her command erred in releasing her from active duty without ordering a new physical examination for separation after her motor vehicle accident and without convening an IMB to evaluate her hip condition and to determine whether she should be referred to a CPEB. Therefore, the Board shall order the Coast Guard to convene an IMB to evaluate the applicant regarding her fitness for duty at the time of her release from active duty in accordance with Chapter 3 of the PDES Manual.

7. The applicant and the Coast Guard disagree as to whether the Board should order the IMB to consider the applicant's asthma as a potentially unfitting impairment. As the Coast Guard argued, the applicant stated that her health was good on her Report of Medical History dated June 29, 2001, and there is no indication that her asthma worsened during the year prior to her release. In addition, there is no evidence in the record that the applicant's asthma caused her to be unable to perform the duties of her rank and rating, which is the sole standard for unfitness, pursuant to Chapter 2.C.2.a. of the PDES Manual. Moreover, there is substantial evidence in the record that the applicant's asthma pre-existed her enlistment.

8. As stated in finding 3, above, however, there is no evidence that the applicant was given an opportunity to object on a form CG-4057 to her doctor's finding that she was fit for separation on the Report of Physical Examination that was approved on August 8, 2001, as required by Article 12.B.6. of the Personnel Manual and Chapter 3.B.5.a. of the Medical Manual. Furthermore, as the applicant argued, the PDES Manual does not limit the conditions that an IMB should consider to those that have already been found to be potentially unfitting by a doctor. Chapter 3.F.1. of the PDES Manual provides that an IMB "considers and reports upon any evaluee whose case has been referred for consideration. It conducts a thorough physical examination to evaluate the member's general health. Additionally, all impairments noted shall be separately evaluated." Chapter 3.G.3. states that the IMB's Narrative Summary shall include a "summary of the pertinent data concerning each complaint, symptom, disease, injury or

disability presented by the evaluee, which causes or is believed by the medical board to cause impairment of the evaluee's physical condition."

9. The Board has already found that the applicant was erroneously denied an IMB, under Chapter 3.D.8. of the Medical Manual and Chapter 2.C.2.b. of the PDES Manual. If the applicant had been evaluated by an IMB prior to her release from active duty, she would certainly have been entitled to present the issue of her asthma, in accordance with Chapter 3.G.3. of the PDES Manual. If she had, the IMB would have been free to decide whether or not her asthma was a disqualifying and unfitting condition and to make findings and recommendations accordingly. Although the applicant has not proved by a preponderance of the evidence that her asthma rendered her unfit for duty, the BCMR is not a medical board, and it will not limit the IMB's discretion in deciding what conditions, if any, rendered her unfit to perform the duties of her rank and rating prior to July 1, 2002.

10. Accordingly, relief should be granted by ordering the Coast Guard to convene an IMB to evaluate the applicant and determine whether she was unfit for duty prior to her release from active duty on July 1, 2002. Based upon the findings and recommendation of the IMB, the Coast Guard should further process her case in accordance with the provisions of the PDES Manual.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of her military record is granted as follows:

The Coast Guard shall convene an Initial Medical Board to evaluate her and determine whether she was unfit for duty prior to her release from active duty on July 1, 2002, because of physical impairment. Based upon the findings and recommendation of the IMB, the Coast Guard shall further process her case in accordance with the provisions of the PDES Manual.

The Coast Guard shall correct her record as necessary to reflect the outcome of this PDES processing and shall pay her any amount she may be due as a result of such correction of her record.