DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-205

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FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on July 1, 2010, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 8, 2011, 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 [redacted] was medically retired from the Coast Guard Reserve on March 23, 2009, with a 30% disability rating for Crohn's disease.[1] He alleged that he was first diagnosed with the disease while serving on extended active duty in 2004, and he asked the Board to correct his record to show that, instead of being released from active duty on November 14, 2004, he was retained on active duty for several months while he was processed under the Coast Guard's Physical Disability Evaluation System (PDES) and then medically retired from active duty, so that he will be entitled to active duty retirement pay instead of Reserve retirement pay.

The applicant alleged that the Coast Guard erred in releasing him from active duty in 2004 without first processing him under the PDES and that if he had been processed under the PDES in 2004, he would have been retired from active duty with a 30% disability rating. He also alleged that the certified physician's assistant (PAC) who conducted his pre-discharge physical examination on September 28, 2004, never told him that his Crohn's disease was disqualifying for military service. Therefore, he was unaware that he should have been processed under the PDES until December 2006, when a physician, Dr. R, showed him Chapter 3.D.17.b.

[1] Crohn's disease is "regional ileitis." Ileitis is inflammation of the ileum, which is the "distal portion of the small intestine." DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 25TH ED. (1974).

of the Medical Manual[2] and said that PDES processing should have begun when the applicant was first diagnosed with Crohn's disease in 2004. He alleged that Dr. R also said that the PAC who conducted his pre-discharge physical examination in 2004 was incompetent and no longer worked for the Coast Guard.

The applicant stated that after Dr. R recommended that he be evaluated by a medical board in December 2006, his PDES processing was long delayed because of confusion and miscommunications between his command and the Integrated Support Command. However, throughout his PDES processing, he "was told that [he] would be receiving an active duty pension as this disability occurred while serving on active duty." The applicant alleged that he did not learn that he was receiving a Reserve retirement until after he received his first retirement pay on April 30, 2009.

SUMMARY OF THE RECORD

[redacted] the applicant was involuntarily recalled to active duty in support of a contingency operation pursuant to 10 U.S.C. § 12302. The orders were extended through September 30, 2004.

On September 13, 2004, the applicant went to a civilian hospital with complaints of upper abdominal pain for about 3 weeks, diarrhea for about 13 days, and fever for 10 days. Upon his discharge from the hospital on September 17, 2004, he was diagnosed with "abd [abdominal] pain, possibly Crohn's exacerbation" and prescribed 40 milligrams (mg) of Prednisone, a corticosteroid, per day.

On September 28, 2004, the applicant underwent a pre-discharge physical examination to determine his fitness for separation from active duty. On his Report of Medical History, he noted that he was taking Prednisone for Crohn's disease. The Report of Medical Examination was completed by a PAC. In block 77 of the report, which is for summarizing the member's "defects and diagnoses" and noting whether the defects are disqualifying or not,[3] the PAC noted that the applicant had "Crohn's disease – newly diagnosed" and dyslipidemia (high cholesterol) but was "normal otherwise." The PAC did not mark either condition as "NCD" (not considered disqualifying) or note in block 74 whether the applicant qualified for separation.[4] However, under Chapter 3.F.9.a.(8) of the Medical Manual, Crohn's disease is disqualifying "[e]xcept when responding well to ordinary treatment other than oral corticosteroids or immune-suppressant medications."

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[2] Chapter 3.D. of the Medical Manual lists the medical conditions that are disqualifying for *enlistment* in the Coast Guard or Coast Guard Reserve, including a history of or current Crohn's disease. Chapter 3.F. lists the conditions that are disqualifying for *retention*, including Crohn's disease "[e]xcept when responding well to ordinary treatment other than oral corticosteroids or immune-suppressant medications." Medical Manual, Chap. 3.F.9.a.(8)

[3] Chapter 4.B.6. of the Medical Manual states that in block 77 of the Report of Medical Examination, the examiner must "[l]ist ALL defects in order to protect both the Government, and evaluee, in the event of future disability compensation claims. All defects listed which are not considered disqualifying shall be so indicated by the abbreviation NCD (Not Considered Disqualifying)."

[4] *See* footnote 3, above. In block 74 of the Report of Medical Examination, the examiner must "[s]tate whether or not the examinee is qualified for the purpose of the examination." *Id.*

At a monthly follow-up examination on October 14, 2004, the applicant was advised to make dietary changes and, during the following month, to taper off the Prednisone and take Asacol. However, his symptoms returned and on November 15, 2004, he was prescribed 6-MP and 60 mg of Prednisone per day. On December 6, 2004, the doctor again noted that the applicant would be tapering off Prednisone.

On November 17, 2004, the applicant was released from active duty (RELAD) back to the Reserve. According to the applicant he had been on terminal leave from the Coast Guard since October 1, 2004, and so had already returned to his civilian job as a police officer. Upon returning to inactive duty in the Reserve, the applicant drilled regularly. He performed 18 drills between his RELAD on November 17, 2004, and the end of his anniversary year on March 18, 2005 (AY 2005).

On January 3, 2005, a chief health services technician (HSC) serving as the clinic administrator reviewed the Report of Medical Examination and noted that the applicant had not met the standards for separation. However, the only disqualifying defects that the HSC noted were that the applicant had "failed to provide eye exam/IOP Repeat Audio."

From March 7 to 11, 2005, the applicant was hospitalized for "an extreme exacerbation of Crohn's accompanied by abdominal pain." His doctor concluded that the medications he had prescribed, including Prednisone, 6-MP, Protonix, diflucan, and zelnorm, were not working. The applicant had a port catheter inserted for regular infusions of Remicade, an immune-suppressant medication, and received his first infusion. Following his discharge from the hospital, he was prescribed 20 mg of Prednisone per day and Remicade infusions every six to eight weeks.

As a reservist, the applicant continued to drill and perform required periods of active duty for training. He performed 38 drills and 15 days of active duty for annual training in AY 2006 (from March 19, 2005, to March 18, 2006); 38 drills and 25 days of active duty for annual training in AY 2007; 45 drills and 4 days of active duty for annual training in AY 2008; and 31 drills and 16 days of active duty for annual training in AY 2009.

At his unit's semi-annual weigh-in on October 27, 2006, the applicant was 14 pounds overweight. His civilian doctor wrote a letter stating that weight gain is a well-known side effect of Prednisone use. On December 14, 2006, Dr. R noted that taking Prednisone for Crohn's disease was likely causing the applicant to exceed the Coast Guard's weight standards.

On December 15, 2006, the applicant filed for disability benefits from the Department of Veterans' Affairs (DVA). On April 11, 2007, he underwent a physical examination pursuant to his claim. The applicant told the doctor that he had been having 8 to 12 bouts of diarrhea and abdominal pain per year lasting about 3 days each and that during these periods he would have diarrhea 4 to 6 times per day. He also told the doctor that he was working full-time but that he had been absent from work for periods totaling about 3 weeks during the past year because of his Crohn's symptoms.

On May 7, 2007, the DVA awarded the applicant a 10% disability rating for service-connected Crohn's disease effective as of December 15, 2006. The DVA stated that the 10% rating was granted "for moderate symptoms with infrequent exacerbations. A higher evaluation of 30 percent is not warranted unless the evidence shows moderately severe symptoms with frequent exacerbations." The applicant appealed the DVA's decision, noting that he was suffering from flare-ups of Crohn's disease every month and undergoing Remicade infusions every six weeks. On November 29, 2007, the DVA raised his disability rating to 30%, effective back to December 15, 2006, because of the "frequent exacerbations" of the disease.

On December 14, 2007, the applicant's commanding officer asked the regional Integrated Support Command to convene a medical evaluation board to evaluate the applicant's fitness for duty. The commanding officer stated the following:

> 2. In early September 2004, while serving on active duty under Title X (Enclosure 1 [orders]), [the applicant] was hospitalized and later diagnosed with Crohn's Disease. On 28 September 2004, prior to release from active duty, he received a physical and at the time, discussed the disease and provided his civilian health records to [the PAC] at ISC XXXX Health Department. No action was taken and [he] was released from active duty.
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> 3. [The applicant] claimed that in 2006, he provided [Dr. R], USPHS, USCG, a copy of his civilian medical records relative to his Crohn's Disease diagnosis and [Dr. R] was going to determine if a medical board was going to be completed by ISC XXXX.
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> 4. [The applicant] has had trouble meeting the Coast Guard's weight standards and he has explained that his prescribed medication for Crohn's Disease has a side effect of destroying his immune system and also results in him not being able to stay within the Coast Guard's prescribed weight standards. In October 2007, [he] was weighed and was 14 pounds overweight and claims his health is deteriorated to the point where he doesn't believe he can lose the weight.
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> 5. According to [the applicant], he was recently rated 30% disabled by the VA. [He] provided a copy of his medical records (Enclosure 2).

On July 16, 2008, a civilian doctor wrote a letter stating that the applicant "is currently undergoing IV Remicade treatments every 8 weeks. Because of the nature of this disease, it is not uncommon for the patient to experience periods of remission followed by periods of exacerbation. Therefore, the patient remains and will continue to remain on Remicade for an undetermined amount of time (i.e., until a cure is found or better drug regimen is introduced)."

On November 25, 2008, a Coast Guard attorney informed the applicant that an Informal Physical Evaluation Board (IPEB) had found him not fit for duty and recommended that he be permanently retired with a 30% disability rating. The applicant accepted the recommendation instead of demanding a hearing before a formal board.

The applicant's retirement orders, issued on February 25, 2009, and effective as of March 24, 2009, state that the retirement was authorized based on a written decision by the Reserve Personnel Management branch of the Personnel Command and directed by Commander, Personnel Command, who approved the recommendation of the IPEB that the applicant be permanently retired with a 30% disability rating in accordance with 10 U.S.C. Chapter 61.[5]

[5] 10 U.S.C. chapter 61 contains the statutes governing all disability retirements, both regular and Reserve.

On May 7, 2009, the Pay and Personnel Center responded to a letter from the applicant about his retirement pay and stated that his non-regular, Reserve retirement pay was correct based upon the retirement orders.

VIEWS OF THE COAST GUARD

On October 27, 2010, the Judge Advocate General submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, he adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The PSC stated that the under the PDES, members cannot initiate PDES processing, which is only initiated by a commanding officer when a doctor finds the member has an unfitting or disqualifying medical condition. "The law that provides for disability retirement or separation (10 U.S.C. 61) is designed to compensate a member whose military service is cut short due to a physical disability that has rendered him or her unfit for continued duty." The PSC stated that under Chapter 2.C.2.c. of the PDES Manual, "[i]f a member is being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is deemed fit for duty even though medical evidence indicates he has impairments."

The PSC stated that the applicant was being separated from active duty in November 2004 because his active duty orders ended, not because of his diagnosed Crohn's disease. The PSC noted that the PAC wrote on the Report of Medical Examination dated September 28, 2004, that the applicant had recently been diagnosed with Crohn's disease, but that the HSC who reviewed the report noted only that the applicant had not qualified for separation because he had failed to undergo required vision and hearing examinations. The PSC stated that "[a]lthough the applicant's separation physical noted 'Crohn's disease – newly diagnosed,' this notation may not have prompted further action since Crohn's disease would not have been a disqualifying condition for separation. … Applicant was not having a recurrence of Crohn's disease symptoms at the time of his separation physical."

The PSC stated that that the applicant's fitness for duty following his release from active duty is proved by the fact that he continued to perform drills and active duty for annual training for more than four more years. The PSC argued that the applicant's performance of duty after being RELAD creates a presumption of fitness for duty.

The PSC stated that the command initiated PDES processing for the applicant because he failed weight probation and had received a 30% disability rating from the DVA. When the applicant was retired on March 24, 2009, he had 19 years of satisfactory federal service for a Reserve retirement with 3,680 Reserve retirement points. These satisfactory years include a little more than 10 years of total active duty service.

The PSC stated that the applicant was properly RELAD on November 17, 2004, and "there is no indication that he should have been retained on active duty. … There is no reason to

change the date of applicant's permanent disability retirement and consequently, [he] should not be awarded retirement back pay and benefits."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 17, 2010, the Board received the applicant's response to the Coast Guard's advisory opinion. The applicant repeated some of his allegations. He also argued that contrary to the Coast Guard's claim, he was not fit for duty between September 2004 and his medical retirement in 2009. He explained that after his discharge physical on September 28, 2004, he went on terminal leave from October 1, 2004, until he was RELAD on November 17, 2004. During those weeks, he returned to his civilian job as a police officer but had to take leave because his symptoms returned.

During his subsequent anniversary years, the applicant stated, his command and the ISC told him he needed to continue drilling to earn satisfactory years of service for retirement purposes, and they were flexible and allowed him to adjust his drill schedule so that he could drill when his Crohn's disease was not flaring up. The applicant stated that if he had been required to serve on continuous active duty, to travel, or to drill on a set schedule, he would not have been able to continue.

The applicant stated that after Dr. R decided that he should be processed under the PDES in December 2006, his command and the ISC told him that he should continue drilling until a medical board could be convened "to avoid losing a good year of service towards my retirement. I continued to drill when fit to do so." However, the medical board was delayed for almost a year because of miscommunications and confusion over who was going to convene the board. When the medical board was finally convened in December 2007, he was again told to continue drilling so that he would not lose a satisfactory year of service for retirement purposes. Therefore, he drilled when he was fit to do so. During this period, the applicant stated, the Medical Officer at the ISC repeatedly told him that he should not have been RELAD after he was diagnosed in 2004 and also that the PAC had been fired for incompetency.

The applicant alleged that at the time of his RELAD, his condition was severe because he was hospitalized for it just a couple of weeks before his separation physical examination on September 28, 2004. The PAC, he alleged, disregarded his disqualifying diagnosis "despite my efforts to bring it to her attention repeatedly during the separation physical." He alleged that, contrary to regulations, she failed to determine whether his disease was disqualifying and failed to advise him of her findings. In addition, he was never offered the opportunity to agree or disagree with the PAC's findings.

The applicant argued that the fact that he did not suffer a flare-up between his discharge from the hospital on September 17, 2004, and his examination on September 28, 2004, was not an adequate test of his fitness because flare-ups are irregular. He alleged that he suffered symptoms of his disease while on terminal leave from October 1 to November 17, 2004, and informed his command of that fact. He alleged that between October 1, 2004, and April 6, 2005, he took 19 days of leave and left work early four times because of Crohn's disease and regularly submitted his medical records to the Coast Guard. In support of this allegation, he submitted his leave

records from his civilian employer, and alleged that they show that in 2004 he was unfit to continue serving on active duty. The leave records show that he took leave from his civilian job as a police officer as follows in 2004: 10 hours of sick leave on October 19, 2004; 2 hours of vacation on 11/02/04; 10 hours of sick leave each on November 15, 16, 17, and 18, 2004; 10 hours of vacation leave each on 11/24/04 and 11/25/2004; 3 hours of holiday leave on 12/7/04; and 10 hours of holiday leave on 12/23/04. The records also show that he took 10 hours of sick leave each on February 23 and 24, 2005; 10 hours of sick leave for eight days in March 2005; and 10 hours of vacation leave in June 2005.

The applicant argued that he was not fit for duty and that his ability to drill following his RELAD depended entirely upon the flexibility of his position. He applicant stated that to be "fit for full duty," a member must be physically able to perform duty worldwide and that this was clearly not the case in 2004, when his Crohn's disease was uncontrolled by Prednisone and other medications. His duties as a special agent for the Coast Guard often included participating in protection details for the Commandant and other dignitaries, which required travel and long days of work, but he was unable to perform such details in 2004 and early 2005. He also noted that under Chapter 6.A. of the Medical Manual, members are not fit for full duty if they are not medically ready for deployment, and his symptoms clearly prevented him from being ready for deployment.

The applicant stated that if the PAC had properly assessed his Crohn's disease as a disqualifying condition, under Articles 12.B.6.d. and 12.B.11.i. of the Personnel Manual, his command would have retained him on active duty in order to convene an MEB. He alleged that if an MEB had been convened in 2004, he would have been found unfit for duty and further processed under the PDES for a physical disability retirement from active duty. The applicant argued, in this regard, that his case is similar to BCMR Docket No. 2008-083, wherein the Board granted relief. The applicant stated that he has tried to get statements from the PAC and Dr. R without any success.

APPLICABLE REGULATIONS

Coast Guard Personnel Manual

Under Article 12.B.6.a. of the Personnel Manual in effect in 2004, each member must undergo a physical examination prior to being RELAD, and the examination is supposed to occur approximately six months prior to the RELAD date. Article 12.B.6.b. states that when the examination is completed, 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. states that if a member objects to a finding of physically qualified for separation, the report of the examination and the member's written objections shall be sent to the Coast Guard Personnel Command (CGPC) for review. If necessary, the member may remain on active duty beyond the expected separation date.

Coast Guard Medical Manual

Chapter 3.B.3.a.1. of the Medical Manual in effect in 2004 states that when completing the Report of Medical Examination, DD-2808, pursuant to a physical examination,

> [w]hen the results of all tests have been received and evaluated, and all findings recorded, the examiner shall consult the appropriate standards of this chapter to determine if any of the defects noted are disqualifying for the purpose of the physical examination. … If in the examiner's opinion, a defect listed as disqualifying is not disabling for military service, or a particular program, the examiner shall indicate the basis for this opinion and recommend a waiver in accordance with the provisions of section A of this chapter.

Chapter 3.F.1.c. of the Medical Manual states the following:

> Members 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.2. of the Medical Manual states the following:

> This section lists certain medical conditions and defects that are normally disqualifying. … 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. If the member's condition is disqualifying but he/she can perform his/her duty, a waiver request could be submitted in lieu of immediate referral to an Initial Medical Board. If the request is denied, then an Initial Medical Board is required.

The list mentioned in Chapter 3.F.2. includes, in Chapter 3.F.9.a.(8), Crohn's disease "[e]xcept when responding well to ordinary treatment other than oral corticosteroids or immune-suppressant medications."

Chapter 3.A.8. of the Medical Manual states that if the examiner finds that a member has a condition that is disqualifying but not actually disabling, the member may request a temporary or permanent waiver to avoid separation.

Chapter 3.B.5.a. of the Medical Manual states that any member undergoing separation from the service who disagrees with the assumption of fitness for duty and claims to have a physical disability shall submit written objections within 10 days of signing the chronological record of service to CGPC. Article 3.B.5.b. states that consultations shall be obtained to thoroughly evaluate all the problems or objections indicated by the evaluee.

Chapter 3.B.5.c. states that CGPC will evaluate each case and, based upon the information submitted, take one of the following actions: (1) find separation appropriate, in which case the individual will be so notified and the normal separation process completed; (2) find separation inappropriate, in which case the entire record will be returned and appropriate action recommended; or (3) request additional documentation before making a determination.

According to Chapter 3.B.6. of the Medical Manual, which is entitled "Separation Not Appropriate by Reason of Physical Disability,"

> [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.

Physical Disability Evaluation System (PDES) Manual

Article 2.A.15. of the PDES Manual defines "fit for duty" as "[t]he status of a member who is physically and mentally able to perform the duties of office, grade, rank or rating."

Article 2.B.2. states that a member "is presumed fit to perform the duties of his or her office, grade, rank or rating. The presumption stands unless rebutted by a preponderance of evidence."

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

> Fit For Duty/Unfit for Continued Duty. The following policies relate to fitness for duty:
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> 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. Each case is to be considered by relating the nature and degree of physical disability of the evaluee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank or rating. In addition, before separation or permanent retirement may be ordered:
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> (1) There must be findings that the disability:
> (a) is of a permanent nature and stable, and
> (b) was not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence.
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> b. The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate a member 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:
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> (1) Continued performance of duty until a 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:
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> (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 him or her 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.

c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is presumed fit for duty even though medical evidence indicates he or she has impairments.

d. Inadequate performance of duty, by itself, does not constitute physical unfitness. The evidence must establish a cause and effect relationship between the inadequate performance and the evaluee's physical impairments.

e. An evaluee whose manifest or latent impairment may be expected to interfere with the performance of duty in the near future may be found "unfit for continued duty" even though the member is currently physically capable of performing all assigned duties. Conversely, an evaluee convalescing from a disease or injury which reasonably may be expected to improve so that he or she will be able to perform the duties of his or her office, grade, rank, or rating in the near future may be found "Fit for Duty." In this instance, the evaluee will continue in an interim duty status until convalescence is complete, at which time he or she will be returned to a full duty status.

f. The following standards and criteria will not be used as the sole basis for making determinations that an evaluee is unfit for continued military service by reason of physical disability.

(1) Inability to perform all duties of his or her office, grade, rank or rating in every geographic location and under every conceivable circumstance. Where feasible, and if requested by the evaluee, consideration should be given to providing the member an opportunity for a change in rating to one in which the disability is no longer a disqualifying factor.

(2) Inability to satisfy the standards for initial entry into military service, except as specified in paragraph 2.C.2.g.

(3) Lack of a special skill in demand by the service.

(4) Inability to qualify for specialized duties requiring a high degree of physical fitness, such as flying, unless it is a specific requirement of the enlisted rating.

(5) The presence of one or more physical defects that are sufficient to require referral for evaluation or that may be unfitting for a member in a different office, grade, rank or rating.

(6) Pending voluntary or involuntary separation, retirement, or release to inactive status. (see paragraph 2.C.2.b.(1))

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i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the Department of Veterans Affairs for disability compensation after release from 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. In the fall of 2004, the applicant was being RELAD because his Title 10 orders were ending. Chapter 3.B.6. of the Medical Manual states that when a member is being separated from active duty for reasons other than disability and the "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 [Article 2.C.2.b. of the PDES Manual] are also met. Otherwise the member is suitable for separation." Chapter 3.F.9.a.(8) of the Medical Manual states that Crohn's disease is disqualifying "[e]xcept when responding well to ordinary treatment other than oral corticosteroids or immune-suppressant medications." The applicant was diagnosed with Crohn's disease and prescribed Prednisone, a corticosteroid, by a civilian physician in mid September 2004, about two weeks before his separation physical examination on September 28, 2004.

3. Article 2.C.2.b.(2) of the PDES Manual states that "[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." Those paragraphs require a member to rebut his fitness for duty by showing that he was physically unable to perform his duties adequately or was disabled by an acute, grave illness or injury or other deteriorating physical condition that rendered him unfit.

4. Based upon the medical evidence of record, coupled with the errors committed by the Coast Guard, the Board finds that the applicant was entitled to PDES processing. The PAC erred in conducting the applicant's physical examination for separation on September 28, 2004. The PAC noted the applicant's newly diagnosed Crohn's disease on the Report of Medical Examination but, contrary to regulation, failed to state whether it was disabling or not and failed to indicate whether the applicant was qualified or disqualified for separation.[6] In addition, the applicant apparently never had the opportunity to agree with or object to the PAC's finding (assuming she made one) because there is no CG-4057 in the applicant's record.[7] The applicant has submitted sufficient medical evidence to establish that he had a deteriorating physical condition (Crohn's disease) that caused him to be unfit at the time of his RELAD in 2004. Therefore, under Article 2.C.2.b.(1)(b), he was entitled to PDES processing.

5. Even though the applicant has established that he was entitled to PDES processing prior to his 2004 RELAD, he has not proved by a preponderance of the evidence that he would have received a 30% disability rating due to Crohn's disease at that time. At the time of his RELAD, he was in the early stages of Crohn's disease having been diagnosed just two weeks before his Title 10 orders were to end on September 30, 2004.[8] Except for a hospital stay of 4 days and treatment with Prednisone, the applicant did not exhibit any other symptoms prior to his

[6] Coast Guard Medical Manual, Chapter 4.B.6. (instructions for completing blocks 74 and 77 of the Report of Medical Examination).
[7] Coast Guard Personnel Manual, Article 12.B.6.b. (requiring member's signature on CG-4057).
[8] The applicant stated that his Title 10 orders were extended to November 17, 2004, so that he could take terminal leave between October 1, 2004 and November 17, 2004. There is no written approval for an extension of the orders in the record.

separation physical; nor did he provide medical or command evidence explaining how the Chron's disease interfered with his ability to perform the duties of his office, grade, or rate.

6. Approximately 3 years after his RELAD, the applicant underwent PDES processing at the direction of his command because the Prednisone he was prescribed for Crohn's disease allegedly caused him to be unable to meet weight requirements. The IPEB determined that the applicant was unfit and rated his disability due to Chron's disease as 30% disabling under Veterans Administration Schedule for Rating Disabilities (VASRD) code 7323. *See* 38 C.F.R. § 4.114. For a 30% rating under VASRD code 7323, the applicant's condition must have been moderately severe with frequent exacerbations. During the period between his RELAD and the IPEB, the applicant was hospitalized for 4 days in March 2005, had a port catheter inserted for regular infusions of Remicade, an immune-suppressant medication, and was continued on Prednisone. In light of this medical evidence, the Board finds that the applicant's condition had worsened after his return to the Reserve and that its interference with his ability to perform the duties of his office, grade or rate was clearly established.

7. To summarize, the Board finds that the applicant was entitled to PDES processing prior to his RELAD in 2004, but he has failed to prove by a preponderance of the evidence that he would have received a 30% disability rating at that time. Accordingly, his request for relief should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR (retired), for correction of his military record is denied.