

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-142

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. After receiving the applicant's completed application the Chair docketed the case on July 9, 2013, but the application was newly completed pursuant to 33 C.F.R. § 52.26 when the applicant requested significant new relief in response to the Coast Guard advisory opinion. The Chair assigned the case to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 7, 2014, 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] now serving in the Coast Guard Selected Reserve, originally asked the Board to (1) amend the discharge date on her DD-214 documenting for her active duty in the regular Coast Guard to show that she was discharged on March 25, 2012, instead of February 25, 2012; (2) direct the Coast Guard to task an individual with the responsibility of ensuring all her outstanding medical expenses are covered by TriCare; and (3) direct the Coast Guard to expedite her case through the Physical Disability Evaluation System (PDES) with a completion date of August 1, 2013.

The applicant stated that in December 2011 for various personal reasons, she requested to be discharged from active duty and enlisted into the Selected Reserve as a drilling reservist so that she could continue living in a particular area. However, she had incurred certain medical and dental conditions while on active duty and, upon being discharged and enlisted in the Reserve, she encountered significant medical and administrative issues that deprived her of insurance coverage and caused her and her family great financial hardship. She submitted copies of bills showing that she was billed \$5,705.00 for dental treatments dated from January 5 to February 15, 2012;¹ \$1,013.00 for testing performed on February 24, 2012;² \$415.00 for tests

¹ Because the applicant was still on active duty on these dates, it is not clear why the charges would not have been covered by TriCare.

performed on March 3, 2012; and \$3,632.00 for a CT scan on March 22, 2012; as well as a debt collection notice dated August 24, 2012, for \$1,525.00 for service provided by a cardiologist on an unknown date; a debt collection notice dated November 2, 2012, for \$475.00 for service provided by a radiologist on an unknown date; a mortgage foreclosure notice dated August 15, 2012, based on a past due debt of \$3,187.38 for overdue payments since July 1, 2012; and a vehicle repossession notice dated August 22, 2012, based on two months' overdue payments totaling \$942.00.

The applicant argued that she should not have been discharged from active duty on February 25, 2012, despite her request. She alleged that because of her ongoing medical issues, she should have been retained on active duty for at least another month while she underwent follow-up examinations and dental treatment. The applicant stated that during her pre-separation physical examination, the doctor discovered several medical issues and directed her to follow up on those issues with civilian providers, and she was scheduled to undergo expensive dental treatment. Despite these pending medical problems, the Coast Guard failed to delay her discharge date, which resulted in the termination of her medical insurance. With no medical insurance, the applicant was left to pay huge medical and dental bills out of pocket. The applicant alleged that her command's failure to complete her retention physical exam also delayed the receipt of her DD-214. Without a DD-214, the applicant alleged, she could not use her veteran's benefits, which caused a tremendous financial strain on her and her family. The applicant submitted a copy of her DD-214, which shows that it was faxed to her on March 20, 2012. The applicant therefore asked the Board to correct her discharge date to March 25, 2012, so that her medical expenses would be covered by TriCare. The applicant also requested a hearing before the Board.

The applicant further explained that because she had decided to leave active duty and join the Selected Reserve (SELRES), she began terminal leave on January 27, 2012, and scheduled an appointment with a Coast Guard medical officer to complete the physical examination that is required of members being separated from active duty and entering the SELRES.³ The applicant stated that obtaining a DD-214 documenting her active duty was contingent upon fully completing the medical evaluation process.

During the course of my medical examination, I completed multiple laboratory tests. The results of which concerned the Coast Guard medical officer, so on or about 22 Dec 2011 the doctor submitted referrals for additional exams by civilian providers. Subsequently, I scheduled all the appointments with the civilian providers and participated in tests and exams as directed. The Coast Guard medical officer also informed me that she recommended that my enlistment be extended at least an additional 30 days to allow time for me to complete my physical exam. ... During this time, I was also instructed by a Coast Guard dental officer to go to an outside provider for the completion of my dental restoration. This was necessary due to the fact that the Coast Guard does not offer the specific procedure needed to address my dental issue. I received a referral and e-mail correspondence that stated I had been cleared to go to my civilian dental appointments.

² *Id.*

³ The SELRES consists of members within the Ready Reserve designated as essential to contingency requirements and have priority over all other Reserve Elements. The Ready Reserve consists of reservists who are subject to immediate recall to active duty. All members of the Ready Reserve are considered to be in an active status.

The applicant alleged that under Coast Guard policy, because her doctor ordered further testing, her command should have delayed her separation date. And because the testing took about a month, her enlistment would have been extended by about a month, until March 25, 2012. Instead, she was discharged on February 25, 2012, and swore into the Reserve the next day. She alleged that she should have been immediately assigned to the SELRES in a paid billet. If she had been, she would have received 180 days of transitional medical insurance coverage under TAMP. Because she believed her expenses would be covered by TAMP, she underwent the medical tests and dental treatment in March 2012 that her doctors had already ordered.⁴

The applicant stated that during a visit to the urologist for the results of one of her laboratory exams in March 2012, she discovered that her separation orders had not been amended to allow her to remain on active duty another 30 days, until she completed the required physical examination, and that she had been incorrectly placed in the Individual Ready Reserve⁵ (IRR) rather than the SELRES, which left her ineligible for TAMP. The receptionist at her urologist's office informed her that she would be responsible for paying for the appointment because her health insurance had been terminated. The applicant alleged that amending her orders would have avoided any issue with payment to the civilian providers because she would have remained covered by her insurance. Upon leaving the urologist, the applicant went to the Coast Guard clinic to try to determine the problem with her medical insurance and payment of her medical expenses, but they would not discuss the situation with her. Instead, the applicant was informed that she was no longer authorized to be in the building.

Around the same time, the applicant alleged, she was notified that she was no longer an active duty or Reserve member that had privileges to see or talk to anyone in the Coast Guard clinic. The applicant stated that she could not understand why she was not allowed access to Coast Guard medical and why she was not covered under her medical insurance, since her orders were supposed to have been amended to prevent a situation like this.

At this point, my stress level had been at an all-time high for weeks. I was left to agonize over my prognosis, and the mounting financial problems on top of the rejection from my active and reserve branch. Because of the lack of medical coverage combined with the stress, hassle and mounting financial problems, I got extremely depressed. I did not go back to civilian providers to complete my physical exam since I did not have medical coverage and I could not afford to continue. I looked to the local Veteran's Administration Hospital (VA) to get a diagnosis so that I would be able to understand my illness.

I started seeing a counselor at the During one of my sessions, she suggested I contact the Veteran's Affairs representative at the congressman's office and a charity called Ride for a Cause; I did both. Ride for a Cause paid one of my pending medical expenses acquired from the Coast Guard directed physical exam. At the same time, my congressional representative contacted the Coast Guard. Following the inquiry from the congressman's office, the Coast Guard responded acknowledging responsibility for the medical expenses and indicated they would take care of it. However, the remedy described in that letter was later determined not be a viable option. Also

⁴ Sponsors and eligible family members may be covered by TAMP if the sponsor is: Separating from regular active duty service and agree to become a member of the Selected Reserve of a Reserve Component. The Service member must become a Selected Reservist the day immediately following release from regular active duty service to qualify.

⁵ The IRR consists of members who are trained and have previously served in the active forces or in the SELRES. The IRR consists of members of the RC who must fulfill their military service obligation and those who have fulfilled their military service obligation and voluntarily remain in the IRR.

with the aid of my congressional representative, I was able to begin open communication with the Coast Guard. It was confirmed by an active duty transition team that a billet was available for me to enlist into the SERLRES, but I had to wait until my physical exam was complete. Because of the extensive delay in completing my physical exam, I could not get a DD-214, releasing me from active duty, although I was informed before that I had been released and that my medical coverage had ceased because of it. The lack of receipt of my DD-214 prevented me from drilling as a SELRES, and my schooling was interrupted. All the benefits I had anticipated were unavailable to me for a substantial period of time. I had nothing but my last check to survive on for months. ... I have suffered unbelievable stress and hardship from this situation.

On 27 June 2012, I was notified via e-mail that my initially flagged condition did not preclude me from service in the SELRES. Although I had not been physically seen at the ... Medical Office since December 2011, my retention exam was later approved. As a result I received orders in September 2012 to start drilling ... in October. Before my second drill in November the results from the VA conducted CT scan confirmed the results of the scan performed by the initially referred civilian physician back in March 2012. The CT scan identified lesions on my liver. After two additional MRI scans, I was diagnosed with numerous (8+) hepatic adenomas to be surgically removed in a laparoscopic assisted liver resection. The remaining adenomas are to be closely monitored due to their complex location.

Currently, my liver resection surgery is scheduled for May 2013. I am still being treated by the VA urology department as my hematuria still has no diagnosed cause and continues to be noted on my VA urinalysis reports. I am actively being medically treated for depression through the VA and regularly attend supplemental counseling sessions.

In support of her application, the applicant submitted a statement from a hepatologist dated March 5, 2013, who wrote that the applicant was undergoing treatment for multiple liver lesions, which needed to be removed in case they ruptured or became malignant. She also submitted a letter dated May 16, 2013, from her Reserve command, who stated that poor communication between medical and administrative professionals allowed the applicant to be released from active duty and become personally liable for medical bills that were the Coast Guard's responsibility to pay. He stated that he believes that she did not know that she had no insurance coverage when in March 2012 she underwent testing and treatment previously ordered by Coast Guard providers. He stated that all his attempts to fix the problem had failed.

SUMMARY OF THE RECORD

The applicant enlisted on active duty in the Coast Guard on February 26, 2002. She served as an active duty member of the Coast Guard and advanced to E-6. Her record contains a Separation Section form dated June 2, 2011, which states that the applicant was extending her enlistment for eight months from June 25, 2011, to February 25, 2012, to complete 10 years on active duty and that she would leave active duty when her enlistment ended if her request to extend was not approved.

On August 22, 2011, the applicant reported to a Coast Guard clinic for a routine Occupational Medical Surveillance and Evaluation Program (OMSEP) physical.⁶ The applicant was enrolled in OMSEP due to benzene and hazardous waste exposures. The notes from the physical

⁶ OMSEP physicals are required for all CG personnel who work in areas where they could be exposed to workplace hazards such as high decibel noise or chemical exposure. Personnel in the MST rating are often exposed to hazardous chemicals in their day to day duties.

state that the “[applicant] does testing on oil samples, uses chemicals in a regulated laminar flow hood and uses PPE (no respiratory PPE).” The lab work completed on the applicant showed abnormal results in the applicant’s liver in that her “LFTs” were elevated. Based on the results, the physician stated that the applicant could return to work, but she was not to be near hazardous chemicals “until further notice.”

At a following appointment on September 12, 2011, the physician reported that the results of a liver ultrasound had been normal and that lab results were “much improved but still slightly elevated, mild hematuria. The doctor noted that the applicant’s “[c]hild was also ill at time of original LFT elevation. Suspect it was viral.”

On October 17, 2011, the applicant complained of a fast heart beat and headache “on and off for days.” The applicant was referred to a cardiologist.

At an appointment on December 22, 2011, the physician noted that the applicant had not gone to see a cardiologist because she had had no further symptoms and she was busy with work at the laboratory. The referral was renewed, but she was “released without limitations.”

In January 2012, the applicant began terminal leave because she had decided not to reenlist when her enlistment ended on February 25, 2012.

On February 6, 2012, the applicant returned to the clinic for a pre-separation/retention physical examination. She reported numerous prior medical conditions on her medical history report. The doctor released her without limitations but noted that she had “ONGOING ISSUES: dry skin; hemorrhoid occasional flare up; seeing Cardio for old palpitations. Not symptomatic, completing work up; microscopic hematuria.” On the Report of Medical Examination, the physician reported several medical conditions as “NCD” (not considered disabling) and noted that her heart palpitations in 2011 had “resolved.” However, the physician also noted that the applicant’s hematuria should be followed up and that she should be “monitor[ed] by cardiology” based on her palpitations in 2011. The physician released her without limitations but ordered some lab tests.

At a follow-up appointment on February 15, 2012, for additional testing, the physician reported, “[m]ember is separating from Active Duty into active reserves, but has to reenlist by 26 Feb. Will need to attempt to complete work up. Doubt this is disqualifying but needs further workup to rule out causes for hematuria. Patient was notified today and referral placed in. Member will follow up.”

The applicant did not reenlist on active duty, but she signed a Reserve enlistment contract so that after her active duty enlistment ended on February 25, 2012, she became a member of the Reserve as of February 26, 2012. Instead of being placed immediately in a SELRES billet, however, the applicant was placed in the Individual Ready Reserve (IRR). Her separation/retention physical examination was incomplete, so it was not known whether she was fit for duty in a SELRES billet. Because she was not placed in a SELRES billet, she did not qualify for TAMP coverage.

On March 15, 2012, a medical note indicates that the applicant had “sworn into Reserves, but cannot get ID card and Orders until medical is finished and PE is qualifying. Has pending issues still and pending consults. ... Will need both urology and cardiology notes in order to clear her for retention.”

The applicant’s DD-214 was completed and faxed to her on March 20, 2012.

Due to the applicant’s ongoing medical issues, her physician requested a Notice of Eligibility (NOE) in May 2012. An approved NOE would have allowed the applicant to have medical coverage for the service-connected medical issues listed by her physician. Notes from the physician dated May 3, 2012, show that the physician completed an NOE request for the applicant. The notes also state that the applicant was having similar insurance coverage issues with dental work she needed. The notes specifically state that the doctor “had originally recommended extension of active duty prior to separation but Command Admin did not do that. Now having to do NOE to resolve issues.” Because the applicant’s pre-separation physical examination had not been completed, however, the DEERS database was not updated, which caused the request for an NOE to be denied.

The applicant’s physician sent an email on June 27, 2012, forwarding the Report of Medical Examination to the applicant’s command noting that she was physically “qualified for service” and for retention in the Reserve. The physician advised her in the email that he had “completed your retention exam and made you fit for retention. You can continue to work up but we have determined they are not [disqualifying] for retention. I gave your completed physical to [a chief health specialist] yesterday.” The Report of Medical Examination was finalized and signed by a health services technician as being complete and accurate on July 29, 2012.

In July and August 2012, the applicant completed the required paperwork and weigh-in to move from the IRR to the SELRES. On August 21, 2012, she noted on her request that she did not have any medical conditions that would affect her ability to serve in the Reserve.

In September 2012, the applicant received orders to a Reserve unit and began drilling as a reservist. In the Reserve, the applicant received care through the Department of Veterans Affairs for various medical issues.

Following an MRI conducted on February 14, 2013, a doctor noted on March 6, 2013, that the applicant had “multiple lesions most consistent w/ adenomas” on her liver. The applicant underwent surgery on her liver to remove the lesions in May 2013. In July 2013, her Reserve command convened an Initial Medical Board to determine her fitness for duty. The board found that she suffered from several medical conditions that were unlikely to improve.

VIEWS OF THE COAST GUARD

On January 31, 2014, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant 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 when further tests were ordered during the applicant's pre-separation physical examination, her command should have retained her on active duty "on a medical hold" until the Report of Medical Examination was finalized. If she had been retained on active duty until the report was finalized, the testing and treatment her physicians had told her to complete would have been covered by TriCare (military health insurance). PSC made the following recommendations below with regard to the application:

- a) The Coast Guard recommended extending the applicant's enlistment date on her DD-214 and in her personnel record 30 days to show a new discharge date of March 25, 2012. PSC stated that this recommendation is "based on the fact that once notified by the applicant's physician that the applicant had outstanding referrals that required completion before her fitness for separation/retention was determined and her separation physical could be completed, the applicant's command should have retained the member on active duty on a medical hold until the physical was finalized." By remaining on active duty, the applicant would have been covered by TriCare to attend her referral appointments.
- b) The Coast Guard recommended that the applicant receive all back pay and allowances for this adjustment.
- c) The Coast Guard recommended adjusting the applicant's record to show she was transferred to the SELRES on March 26, 2012. Making this adjustment would have made the applicant eligible for TAMP thereby allowing any follow up appointments to be covered by her insurance.
- d) The Coast Guard recommended that issuing a retroactive NOE effective March 26, 2012, for the applicant for the medical issues that required referrals to ensure any medical care related to those issues would be covered by TriCare.
- e) The Coast Guard recommended providing credit in the form of unpaid points for the missed Reserve drill days the applicant would have attended if she had received SELRES orders as expected upon release from active duty on 26 March 2012. The Coast Guard provides a second option, which would allow the applicant to conduct extra drill days which will be applied to her 2012-2013 year to make up for the drills she missed by not being transferred into the SELRES when anticipated. The JAG stated that this will prevent the applicant from having a "bad" year when her SELRES period is retroactively extended by five months.
- f) The Coast Guard recommended expediting the applicant's pending Medical Evaluation Board post haste through the PDES process to determine fitness for retention or possible medical retirement as soon as possible.
- g) Finally, the Coast Guard recommended reimbursing the applicant any monies she can prove she had to pay out of pocket for medical appointments which are related to her separation/retention physical referrals.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 11, 2014, the Chair of the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. The applicant responded on March 1, 2014, and included in her response a new request for relief: "reinstatement on active duty up to the present."

The applicant alleged in her response that upon review of the advisory opinion, she became aware of a number of documents and correspondences which she previously had no knowledge of. Upon reviewing the advisory opinion with the new information she was provided, the applicant came to the conclusion that her original claim and request for relief needed to be modified. The applicant concurred with recommendations (2), (6), and (7) referenced above, however, the applicant stated that all other recommendations would be affected by her new request for relief. Specifically, the applicant requested the following:

- (1) I request the Board grant Credit report repair assistance. I am not sure what, if any, power the Board has to help me get my credit back in line. A simple review of my credit report can prove that I had no issues prior to this admin/medical failure. This is an addition to my original request.
- (2) I would like to be treated as Active duty.

Recommendation [(1)] states "the Applicant's Command should have retained the member on Active Duty on a medical hold until the physical was finalized. Remaining on Active Duty would have provided the Applicant with TriCare coverage to attend her referrals."

E-mail correspondence labeled P dated Wednesday January 29, 2014 4:47 PM Subject: Alicia Todman; The end of paragraph 3 states "I am uncertain which reserve component category she was in during that 8 month gap. Inactive Ready Reserves (IRR) also requires members to meet retention standards."

[HEALTH] RECORD: CHRONOLOGICAL RECORD OF MEDICAL CARE Dated 25 Jul 2013 included the following notation, "A/P Written by [Censored] @ 25 Jul 2013 1024 EDT 1. Visit for: administrative purpose: MULTIPLE DQ CONDITIONS PER VA RECORDS. NOT FIT FOR DUTY AS RESERVE MST, MEB INITIATED. COMMAND NOTIFIED. SHE SHOULD NOT DO ANY HAZMAT OR RESPONSE TYPE DUTIES, REALLY SHOULD NOT BE DRILLING, BUT WILL LEAVE THAT TO THE COMMAND."

[HEALTH] RECORD: CHRONOLOGICAL RECORD OF MEDICAL CARE Dated 06 Mar 2013 notes "(1)...Has had 2 CT scans, 2 Ultrasounds of Abdomen/pelvis all imaging has shown lesions on liver had MRI of liver".

The first CT scan referenced above was performed during the USCG urology referral the other was conducted through the VA, both were months apart and reported the same lesions.

The only DD2808 in the package states "member meets retention standards" also note no information in section 76, "significant or disqualifying defects", was included. There is no included documentation conveying the sentiments found in [HEALTH] RECORD: CHRONOLOGICAL RECORD OF MEDICAL CARE Dated 25 Jul 2013.

COMDTINST M6000.1E Chapter 3.B.3.a.1 (Page 1) "Review of Findings and Evaluation of Defects" explains how the Medical examiner should report her recommendation on a DD-2808 form

(3) I am requesting compensation for losses incurred during my transition w/o civilian employment.

E-mail correspondence labeled P dated Wednesday January 29, 2014 4:47 PM Subject: [applicant]; states, "...this member may be eligible for and in need of Incapacitation Benefits while the BCMR is in process.

As I understand this program (which I was previously unaware existed until I read the recommendation package) is intended to compensate reservists who are injured or get sick while in the reserves and can document lost wages from their civilian employment. The issue I take up with this is the fact that the timing of my incident never permitted me to establish civilian employment. I was dealing with these issues since I had been discharged up to the day I had my surgery without any official USCG assistance.

The applicant stated that her original request was "geared towards rectifying [her] billing issues" and that she "had always desired that the end result would leave [her] in a position comparable to where [she] was when [she] got out." However, she now believes that her situation is unique and her circumstances would make her ineligible for standard compensation (Reserve Incapacitation Benefits). The applicant stated that since her discharge she has been under the care of the DVA and that the findings that the DVA discovered were in line with the original CT scan results from her Coast Guard urology referral. The applicant argued,

...for this reason I should be treated as Active Duty as it is fair to assume that the same medical conclusions would have been reached had my diagnosis not been delayed and subsequent treatment been completed through the Coast Guard while I was still on Active Duty. If the system had worked as it was intended I would have had the same medical evaluation board (MEB) recommendation from active duty and never would have been permitted to drill in the reserves at all. In short I mean that my active duty career should be extended to the present day.

It is unclear if or how my duty status was conveyed to the command as there isn't any documentation in the package I received. I was never informed of the recommendation that I not drill nor was I offered a DD-3307, under COMDTINST M1000.4 ch.1.B.11.f, to sign waiving my right to follow the Medical Officers recommendation. I believe that my medical exam was wrongfully approved, letting me complete only two drills, before I again was medically restricted and subsequently recommended for a medical board.

In response to this amended request for relief, the Chair notified the applicant that pursuant to 33 C.F.R. § 52.26, her application would be considered newly completed so that the Coast Guard and the Board could consider her new request for relief. The applicant was given the choice of either (a) amending her request for relief as stated in her response, waiving the Board's original 10-month statutory deadline, and accepting the delay of the Board's decision, or (b) having the Board deliberate and decide the case while considering everything she's submitted except for the new relief she has requested. The applicant chose to amend her request for relief, thereby waiving the 10-month deadline and accepting any delay in the Board's decision. By waiving the 10-month deadline, the 10-month clock was restarted as of March 4, 2014.

THE COAST GUARD'S SUPPLEMENTAL ADVISORY OPINION

On March 11, 2014, the Judge Advocate General (JAG) submitted a supplemental advisory opinion in response to the applicant amending her request for relief. The Coast Guard

stated that the applicant did not provide any new basis for the additional relief she requested in her response to the original advisory opinion dated January 30, 2014. Therefore, the JAG recommended that the Board grant the relief detailed in the original advisory opinion they submitted.

PSC included two additional supporting documents in their input to the JAG. First, the report of the applicant's separation/retention physical examination was included, which showed that the applicant's examination was started on February 6, 2012, but was not finalized until July 29, 2012. The applicant was found fit for retention on active duty and for service in the Reserve, but the doctor noted that she had hematuria that was "more than microscopic" and that she should follow up with a urologist.

PSC also included a narrative summary for a Medical Board dated July 26, 2013. The narrative summary outlined several diagnoses that would disqualify the applicant for retention.

APPLICANT'S RESPONSE TO THE SUPPLEMENTAL ADVISORY OPINION

On February 11, 2014, the Chair sent the applicant a copy of the Coast Guard's supplemental advisory opinion and invited her to respond. The applicant responded on April 24, 2014, and included in her response references to various Coast Guard policies which the applicant believes supports her request for new relief. Specifically, the applicant responded with the following statement:

There were numerous failures on the side of the Coast Guard that caused the administrative issues involved with my case. Very clear instructions found in the Coast Guard Medical and Administrative manuals were simply neglected. The absence of documentation is a major point I aim to bring to light. Therefore I can only point to the related instruction manuals and break down the documentation found in my medical record to stress the deviations from the standard operating procedures. I appreciate the acceptance of fault; however, it would be improper to offer financial compensation that would not apply to me. Having gone through the regulations and instruction manuals it seems that the only way to properly handle my case is to go back to the root of the issue and retroactively reinstate me back to active duty and fix my paperwork in its entirety. I have provided a summarization of my main points as well as the associated citations. For clarity, I have highlighted the important sections in yellow and the key elements in green.

The applicant specifically references four main points which she alleged supports her new request for relief: (1) her medical conditions were documented while she was on active duty; (2) she should not have been released from active duty or placed into the Selected Reserves (SELRES) or Inactive Ready Reserves (IRR) without a completed physical examination; (3) she should have been informed of the medical examiner's recommendations and afforded the opportunity to follow them or waive her rights; and (4) her Medical Exam Board (MEB) should be conducted while she is on active duty. For each claim, the applicant referenced the following Coast Guard policies, which she argued, apply to her case and justify her retention on active duty in lieu of being separated and enlisted in the Reserve:

- The applicant argued that before her command separated her on February 25, 2012, she should have been required to waive retention on active duty because her doctors had referred her for medical tests and dental treatment in March 2012. She pointed out that Article 1.B.11.f. of the Military Separations Manual states the following:

(a) An active duty member whose enlistment expires while he or she suffers from a disease or injury incident to service and not due to his or her own misconduct and who needs medical care or hospitalization may remain in the Service after the normal enlistment expiration date with his or her consent, which should be in writing and signed by the ill member, and recorded in accordance with reference (o), Personnel and Pay Procedures Manual, PPCINST M1000.2 (series). He or she may remain until recovered to the point he or she meets the physical requirements for separation or reenlistment or a medical board ascertains the disease or injury is of a character that prevents recovery to such an extent...

(b) If the member desires separation, it shall be effected, provided the member signs this entry on an Administrative Remarks, Form CG-3307, entry in the PDR, witnessed by an officer, when examined for separation: "I, [Member's name], desire to be separated from the Coast Guard on my normal expiration of active obligated service date. I understand I will not be eligible for further follow-up studies or treatment at a U.S. Uniformed Services medical facility or disability benefits under laws of the Coast Guard administers, and any further treatment or benefits would be under the Veterans' Administration's jurisdiction."

(c) An untimely separation of a member subject to a physical evaluation board proceeding may prejudice the case because the law requires making necessary physical disability determinations while the member is entitled to receive basic pay except for members on duty 30 or fewer days (10 U.S.C. § 1204)...

- Regarding her claim that she should not have been separated from active duty on February 25, 2012, she pointed out that under Chapter 3.A.6.e. of the Medical Manual, her command was responsible for ensuring that her physical examination was completed and under Chapter 3.A.7., an examination had to be completed before she could be involuntarily separated or released to the Reserve.
- Regarding her claim that her physician should have but failed to formally advise her command to retain her on active duty, she pointed out that Chapter 3.B.3.a.(1) of the Medical Manual states the following:

Review of Findings and Evaluation of Defects. When the results of all tests have been received and evaluation, 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. When physical defects are found that are not listed in the standards as disqualifying, but that in the examiner's opinion would preclude the individual from performing military service or the duties of the program for which the physical examination was required, the examiner shall state that opinion on the report indicating reasons...

- The applicant alleged that her physician should have notified her not to drill in the Reserve because Chapter 3.B.3.a.(3) of the Medical Manual states that "[a]fter completing the physical examination, the medical examiner will advise the examinee concerning the findings of the physical examination" and Chapter 2.C.2.1.e. of the PDES Manual states that "[a]n evaluatee whose manifest or latent impairment may be expected to interfere with the performance of duty in the near future may be found not fit for duty even though the member is currently physically capable of performing all assigned duties...."

- The applicant argued that her command failed to properly process, endorse, and finalize her Report of Physical Examination pursuant to Chapter 3.B.3.b.(1) of the Medical Manual, which states the following:
 - (a) The command has a major responsibility in ensuring the proper performance of physical examination on personnel assigned and that physical examination are scheduled sufficiently far in advance to permit the review of the findings and correction of medical defects prior to the effective date of the action for which the examination is required. The command is also responsible to ensure that the individual complies with the examiner's recommendations and to initiate any administrative action required on a Report of Medical Examination.
 - (b) All Report of Medical Examination, DD-2808's shall be reviewed by Commanding Officers, or their designee, to determine that the prescribed forms were used and that all necessary entries were made.
 - (c) When the medical examiner recommends further tests or evaluation, or a program of medical treatment (such as hearing conservation, periodic blood pressure readings, etc.), the command will ensure that these tests or examinations are completed or that the individual is directed to and does comply with the recommended program. When a necessary test, evaluation, or program can be completed within a 60 day period, the unit may hold the Report of Medical Examination, DD-2808 to permit the forwarding of results. In all cases the command shall endorse the Report of Medical Examination, DED-2808 to indicate what action has been taken and forward the report to the reviewing authority if the 60 day period cannot be met or has elapsed.
- The applicant alleged that the Reviewing Authority failed to endorsed the DD 2808 with an explanation of the delay since the Report of Medical Examination was not timely completed within 60 days, as required under Chapter 3.B.3.c.(7) of the Medical Manual.

APPLICABLE LAW AND POLICY

Article 1.B.6.a. of the Military Separations Manual, COMDTINST M1000.4, states that a member being retired, involuntarily separated, or released from active duty into the Ready Reserve (RELAD) must undergo a complete physical examination before separation. Members being voluntarily discharged or transferred to the Standby Reserve "may request a medical or dental screening." The physical examination should be scheduled at least six months before the separation date to allow completion.

Article 3.B.3.b.1. of the Medical Manual in effect in 2012, COMDTINST M6000.1E, states the following about Reports of Physical Examination:

(a) The command has a major responsibility in ensuring the proper performance of physical examinations on personnel assigned and that physical examinations are scheduled sufficiently far in advance to permit the review of the findings and correction of medical defects prior to the effective date of the action for which the examination is required. The command is also responsible to ensure that the individual complies with the examiner's recommendations and to initiate any administrative action required on a Report of Medical Examination.

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(c) When the medical examiner recommends further tests or evaluation, or a program of medical treatment (such as hearing conservation, periodic blood pressure readings, etc.), the command will ensure that these tests or examinations are completed or that the individual is directed to and does comply with the recommended program. When a necessary test, evaluation, or program can be completed within a 60 day period, the unit may hold the Report of Medical Examination, DD 2808

to permit the forwarding of results. In all cases the command shall endorse the Report of Medical Examination, DD-2808 to indicate what action has been taken and forward the report to the reviewing authority if the 60 day period cannot be met or has elapsed.

(d) Disposition of Reports

1. If a physical examination is accomplished for a purpose for which the command has administrative action, the original DD-2808 and DD-2807-1 and a return self-addressed envelope shall be forwarded to the reviewing authority. No action will be taken to accomplish the purpose for which the physical examination was taken until the endorsed original of the report is returned by the reviewing authority indicating the examinee meets the physical standards for the purpose of the examination.

Article 3.B.5.a. of the Medical Manual states the following about the member's response to a Report of Medical Examination:

Member's responsibilities. Any member undergoing separation from the service that 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 PSC. Such objections based solely on items of medical history or physical findings will be resolved at the local level.

Article 3.F. of the Medical Manual lists the medical conditions that may be disqualifying for retention in the military and trigger medical board processing. Hematuria is not on the list of disqualifying conditions.

Article 2.C.2. of the PDES Manual, COMDTINST M1850.2D, states the following:

b. The law that provides for disability retirement or separation (10 U.S.C. 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:

(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

(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 significant 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 articles 2.C.2.b.(1)(a) or (b) are met.

(3) The determination of a grave or serious condition or significant deterioration must be made by a competent Coast Guard medical officer. Such medical authority will consult with the CGPC senior medical officer, as necessary, to ensure proper execution of this policy in light of the

member's condition. The member's command may concurrently submit comment to the CGPC senior medical officer.

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 deemed fit for duty even though medical evidence indicates he or she has impairments.

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e. An evaluatee whose manifest or latent impairment may be expected to interfere with the performance of duty in the near future may be found not fit for duty even though the member is currently physically capable of performing all assigned duties. Conversely, an evaluatee convalescing from a disease or injury that 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 evaluatee 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 evaluatee is not fit for duty by reason of physical disability:

(1) inability to perform all duties of the office, grade, rank, or rating in every geographic location and under every conceivable circumstance. Where feasible, and if requested by the evaluatee, 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 article 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; or

(6) pending voluntary or involuntary separation, retirement, or release to inactive status (see article 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 DVA for disability compensation after release from active duty.

Article 3.B.3.b.1. of the Medical Manual states the following about Reports of Physical Examination:

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(b) When the medical examiner recommends further tests or evaluation, or a program of medical treatment (such as hearing conservation, periodic blood pressure readings, etc.), the command will ensure that these tests or examinations are completed or that the individual is directed to and does comply with the recommended program. When a necessary test, evaluation, or program can be completed within a 60 day period, the unit may hold the Report of Medical Examination, DD 2808 to permit the forwarding of results. In all cases the command shall endorse the Report of Medical Examination, DD-2808 to indicate what action has been taken and forward the report to the reviewing authority if the 60 day period cannot be met or has elapsed.

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Article 3.F. of the Medical Manual lists the medical conditions that are normally disqualifying for retention and trigger medical board processing. Hematuria is not on the list.

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 filed within three years of the applicant's separation.⁷

2. The applicant requested an oral hearing before the Board. Pursuant to 33 C.F.R. § 52.31, "[t]he Chair shall decide in appropriate cases whether to grant a hearing or to recommend disposition on the merits without a hearing," and § 52.51 states that "[i]n each case in which the Chair determines that a hearing is warranted, the applicant will be entitled to be heard orally in person, by counsel, or in person with counsel."⁸ The Chair, acting pursuant to 33

⁷ 10 U.S.C. § 1552(b).

⁸ See *Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board"); *Flute v. United States*, 210 Ct. Cl. 34, 40 (1976) ("The denial of a hearing before the BCMR does not *per se* deprive plaintiff of due process."); *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁹

3. The applicant alleged that she was prematurely discharged from active duty while she still had ongoing medical issues which needed to be resolved before her separation/retention physical examination was complete. She alleged that her premature discharge caused her tremendous financial hardship, and she asked the Board to correct her record to show that she was not separated from active duty but retained on active duty up until the date her current PDES processing is complete. 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 her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹⁰ 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."¹¹

4. On February 25, 2012, the applicant was discharged from active duty at her own request because she did not want to move to a new geographical location. Although the applicant alleged that she was RELAD into the Reserve, that term is technically inapplicable because she was not a reservist serving on active duty and being released back to inactive duty, and because she had no remaining time left on her original eight-year military service obligation. Instead, she was a member of the regular Coast Guard who was voluntarily discharged from the regular Coast Guard when her enlistment ended on February 25, 2012, and so she had to enlist in the Reserve effective as of February 26, 2012, to become a reservist. Although the applicant was being voluntarily discharged, instead of being RELAD, it is clear that her physician thought medical screening was warranted, in accordance with Article 1.B.6.a. of the Military Separations Manual, because of her prior diagnosis. The applicant had been diagnosed with hematuria during an OMSEP examination in August 2011, when her physician found that she was fit to work but advised her not to risk exposure to hazardous chemicals because her LFTs were elevated for unknown reasons. Of course, under Article 1.B.6.a., the applicant should have begun her pre-separation medical screening six months before her discharge date, which would have provided time for proper discharge processing and prevented the lack of insurance coverage she experienced. Instead, she waited until February 6, 2012, less than three weeks before her enlistment ended, to undergo the examination.

5. The record shows that the applicant continued to perform her assigned duties following her initial diagnosis with hematuria in August 2011 until she went on terminal leave in January 2012. In December 2012, a doctor noted that the applicant had not made use of a cardiology referral because she had been very busy at work in the lab, and the doctor released her with no limitations. Therefore, the preponderance of the evidence shows that the applicant was

⁹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

¹⁰ 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

¹¹ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

fit for duty even though she was undergoing testing due to microscopic hematuria when she was discharged from active duty on February 25, 2012. Under Chapter 3.F. of the Medical Manual, hematuria is not a disqualifying condition for retention in the service. Moreover, because she was voluntarily separating from active duty and not being separated because of a medical condition, the provisions of Article 2.C.2. of the PDES Manual applied. Under that article, the applicant was presumptively fit for duty and could be separated despite her ongoing medical conditions because she was physically able to perform her duties and had not recently suffered an acute, grave illness or injury. Her fitness for duty at the time of her separation is also supported by the finding of her physician in June 2012, after the follow-up tests were done, and by the applicant's own claim on August 21, 2012, that she was physically qualified to serve in the Reserve. The fact that the applicant was advised to undergo liver surgery more than a year after her separation from active duty and the fact that she was later processed under the PDES medical board system do not overcome the presumption of fitness for duty in the spring of 2012 or the finding of her physician that she was fit for duty/retention on the report of her pre-separation physical examination.

6. Under Article 3.B.3. of the Medical Manual, however, when the physician ordered further tests and failed to complete the Report of Physical Examination in February 2012, her command was responsible for ensuring that those tests were completed. Moreover, under Article 3.B.3.b.1.d.1., the command was not authorized to take action "to accomplish the purpose for which the physical examination was taken until the endorsed original of the report is returned by the reviewing authority indicating the examinee meets the physical standards for the purpose of the examination." Therefore, as the Coast Guard admitted in the advisory opinion, the applicant's command was not authorized to separate her from active duty and enlist her in the Reserve until the Report of Medical Examination was finalized. Had the command ensured that the report was finalized in February 2012, the applicant could have been placed in the SELRES on February 26, 2012, and her medical expenses would have been covered by TAMP. Had her command extended her active duty until the additional tests were complete, the expenses would have been covered by TriCare. Moreover, because no DD-214 was issued until March 20, 2012, the applicant's ability to receive care through the VA was apparently delayed.

7. Although the applicant originally requested a one-month extension on active duty and the Coast Guard agreed with this original request, the applicant's separation date should not be determined so arbitrarily. The Coast Guard has admitted that the applicant's command should not have separated her until her Report of Medical Examination confirming her fitness for duty was finalized, and that report was not finalized until July 29, 2012. Therefore, in accordance with Article 3.B.3. of the Medical Manual, that is the earliest date on which she should have been discharged from active duty.

8. The applicant asked the Board to retain her on active duty up through the end of her current PDES processing, but she has not proven by a preponderance of the evidence that she was unfit for duty on July 29, 2012. Although she had been diagnosed with hematuria, that condition is not disqualifying for retention under Chapter 3.F. of the Medical Manual, and her physician had found her fit for duty. Therefore, the Board finds that the relief recommended by the Coast Guard should be granted except that the date of discharge should be July 29, 2012, and the date of enlistment in the Reserve and affiliation with the SELRES should be July 30, 2012.

9. The applicant asked the Board to help her improve her credit rating, which was harmed as a result of the financial hardship caused by her premature separation from active duty. Neither the Board nor the Coast Guard has any authority over the credit bureaus, however.

10. Accordingly, the applicant's request for relief should be granted in part and her record should be corrected to show that—

- (a) She was not separated on February 25, 2012, but was retained on active duty until July 29, 2012, the date her Report of Medical Examination was finalized and is owed the backpay and allowances due as a result of this correction.¹²
- (b) She enlisted in the Reserve and was placed in the SELRES on July 30, 2012, allowing her to be eligible for and covered by TAMP as of that date.
- (c) She was issued an NOE effective July 30, 2012, so that subsequent medical referrals by Coast Guard providers would be covered by TriCare as necessary.
- (d) She performed the regularly scheduled drills at her unit for points but not pay from July 30, 2012, until the date she actually began drilling for pay.

In addition, the Coast Guard should designate personnel to help the applicant seek reimbursement for her out-of-pocket medical expenses that would have been covered by TriCare or TAMP if she had been discharged from active duty on July 29, 2012, and entered the SELRES and received an NOE on July 30, 2012, or reimburse her for those expenses directly. No other relief is warranted.

(ORDER AND SIGNATURES APPEAR ON NEXT PAGE)

¹² 10 U.S.C. § 1552(c)(1) states that the Secretary “may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another’s service ... or on account of his or another’s service as a civilian employee.”

ORDER

The application of [REDACTED], USCGR, for correction of her military record is granted in part. The Coast Guard shall correct her military records to show the following:

- She was not separated on February 25, 2012, but was retained on active duty until July 29, 2012, the date her Report of Medical Examination was finalized, and is owed the backpay and allowances due as a result of this correction.
- She enlisted in the Reserve and affiliated with the SELRES on July 30, 2012, making her eligible for TAMP coverage as of that date.
- She was issued an NOE effective July 30, 2012, so that subsequent medical referrals by Coast Guard providers for medical conditions incurred in the line of duty shall be covered by TriCare.
- She performed the regularly scheduled drills at her unit for points but not pay from July 30, 2012, until the date she actually began drilling for pay.

The Coast Guard shall pay her any amount she is due as a result of these corrections. In addition, the Coast Guard shall designate personnel to help her seek reimbursement for her out-of-pocket medical expenses that would have been covered by TriCare or TAMP if she had been discharged from active duty on July 29, 2012, and entered the SELRES and received an NOE on July 30, 2012; or if reimbursement of expenses that would have been covered by TriCare or TAMP is impossible due to the delay in filing claims, the Coast Guard shall reimburse her for such unreimbursed expenses directly.

November 7, 2014

