

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2016-138**



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**FINAL DECISION**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the completed application on June 1, 2016,<sup>1</sup> and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 21, 2017, 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 reservist who was retired by reason of physical disability on March 4, 2013, requested through a representative<sup>2</sup> that she receive active duty orders from March 18, 2010, through March 4, 2013. The applicant stated that she was verbally instructed by a medical officer at her unit, Lieutenant (LT) S, a licensed Physician's Assistant, in March 2010 to stop performing Inactive Duty Training (IDT) or Active Duty Training (ADT) until resolution of her back injury. The applicant claimed that she was injured while performing IDT in March 2010, but her command did not issue a Line of Duty (LOD) determination, did not counsel her on the Physical Disability Evaluation System (PDES), and did not timely issue a Notice of Eligibility (NOE). The applicant argued that she has outstanding 2010 and 2011 medical bills from local hospitals that should have been covered by the Coast Guard.

The applicant provided the following timeline of events surrounding her claims:

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<sup>1</sup> The application was received on May 8, 2013. The Chair ordered her medical records several times before they were received. Pursuant to 33 C.F.R. § 52.21, the application was not "completed" for docketing purposes until her medical record was received from the Department of Veterans' Affairs on June 1, 2016.

<sup>2</sup> The applicant's representative is BMCM M, a retired master chief who became the Command Master Chief of the applicant's unit in 2012. The applicant and BMCM M served together at a Mississippi unit from April 30, 2008, to October 27, 2009; and at Port Security Unit (PSU) from October 14, 2012, to December 18, 2012, although during this latter period at PSU, the applicant was not actually performing drills.

- March 10, 2010: The [REDACTED] applicant is injured while on IDT orders.
- April 12, 2010: The applicant's command is activated for overseas deployment.
- April 27, 2010: LT S requested emergency room records from the hospital where the applicant received treatment for her back injury.
- May 11, 2010: Commander (CDR) B sent the applicant a memorandum informing her of the initial medical board findings, which recommended that she be released from active duty and the selected reserve. In the memorandum, CDR B states that the illness was incurred in the line of duty and was not due to the applicant's misconduct.
- June 6, 2010: The applicant received a memorandum from LT S notifying the applicant of the findings of the medical board. The memorandum states that a medical board convened on May 11, 2010, had found that the applicant did not satisfy medical retention standards. The applicant stated that this memorandum was not signed by anyone in the medical department senior to LT S.
- June 10, 2010: The applicant met with the Command Master Chief, BMCMM and Chief Warrant Officer (CWO) W to discuss her rights and how to move forward with a rebuttal to the medical board's findings.
- December 2010: The applicant's case arrived at the Personnel Service Center (PSC).
- June 11, 2011: The applicant's case was placed on hold until June 30 due to lack of current medical information.
- December 2, 2011: A LOD determination was completed and an NOE was issued in order for the applicant to attend doctor appointments to gather information required by the medical board.
- October 3, 2012: The medical board received requested information from a medical clinic.
- January 14, 2013: The applicant was counseled on the findings of the medical board.
- January 15, 2013: The applicant accepted the findings and declined counsel.
- February 21, 2013: The case was signed by the Final Action Authority. It was then delivered to Reserve Personnel Management (RPM) for separation authorization.
- March 5, 2013: The applicant was placed on the Temporary Disability Retirement List (TDRL).

The applicant provided copies of relevant documentation, which are included below in the Summary of the Record.

### [REDACTED] SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on January 19, 2006, for a period of eight years through January 18, 2014. The applicant completed a period of active duty training from March 26, 2006, to April 7, 2006. She was in [REDACTED] "A" school from May 7, 2006, until she graduated on August 11, 2006. The applicant served on Active Duty for Operational Support (ADOS) from November 12, 2006, to July 4, 2008, for Hurricane Katrina operations.

[REDACTED]

On May 19, 2006, during [REDACTED] "A" school, the applicant was seen for left heel pain at a military medical facility. She stated that she had felt the pain for about seven days and it had started while she was running. The applicant reported that there was no known trauma to her heel, but it began to hurt during running. She was released with an anti-inflammatory prescription and instructions not to participate in sports for two weeks. She was seen by a military physical therapist on May 23, 2006, when it was noted that x-rays showed that the applicant had calcaneal heel spurs. The physical therapist noted that the applicant displayed "intermittent antalgic gait" on her left side. The physical therapist also noted that the applicant had left Achilles irritation and swelling. The applicant was seen by the military physical therapist on May 25, 2006, and reported that she was experiencing swelling and pain on the bottom of her left foot. The doctor noted that the applicant continued to exhibit Achilles tendonitis and plantar fasciitis symptoms. She was seen on June 5, 2006, by military medical personnel for a follow-up. The applicant reported that she still had pain in her heel that increased throughout the day and that physical therapy was helping.

The applicant was seen at a military facility on July 14, 2006, after completing her physical fitness test and reported that her heel pain was a 10/10 for pain. She stated that she had shooting pain from her heel to the back of her leg, and she experienced numbness and tingling in her heel. The applicant was seen by the military physical therapist again on July 17, 2006. The physical therapist noted that the applicant was still experiencing pain in her Achilles and arch region, but that her condition was overall improving. The applicant underwent physical therapy again on July 19, 2006. The next day, she was seen by an orthopedist, who confirmed that the applicant had tarsal tunnel. The applicant attended physical therapy again on July 26 and 31, 2006. On August 3, 2006, the physical therapist noted that the applicant's foot had been kicked by accident, which caused significant pain and swelling. The applicant continued physical therapy through August 2006.

On November 6, 2006, the applicant was seen by military medical personnel for a pre-deployment physical examination prior to leaving for Hurricane Katrina operations. The medical record states that the applicant's vital signs, head, lungs, cardiovascular system, musculoskeletal system, and neurological system were all normal. The notes state that the purpose of the physical was because the applicant was "deploying to continuing salvage efforts to Katrina area – going to New Orleans proper. Leaving in 5 days."

On January 24, 2007, while she was serving on ADOS for Hurricane Katrina, the applicant sought treatment for pain in her left hip that went down her leg to her foot. The applicant stated that lifting her knee caused severe pain all the way down her leg. She stated "that this may be related to stepping down into a hole" six weeks earlier. The applicant stated that the pain was constant and worsened with use and different positions. She also complained of a "tender spot" on her lower left back. She was diagnosed with lower back pain and given an anti-inflammatory prescription. The applicant was also seen at a military facility on April 5, 2007, for pain in her left ankle "after falling in a hole 2 days ago." The applicant stated that it was very painful and she had to keep her ankle perfectly straight as any movement would cause shooting pains up to her hip. She also stated during this visit that "she hurt her right foot 6 weeks ago."

On June 4, 2008, while still serving on active duty, the applicant went to a civilian emergency room in [REDACTED], complaining of mid-thoracic back pain. The applicant

told the doctor that she had no history of back problems and denied any specific injury or picking up anything heavy. She did report to the doctor a chronic pain in her left lower leg. The doctor diagnosed the applicant with an acute back strain. On June 5, 2008, an x-ray of her thoracic spine showed “minimal disc space narrowing at multiple levels of the mid thoracic spine with associated small anterior osteophytes.”

After being released from active duty on July 4, 2008, the applicant continued drilling regularly in the Reserve. She completed her annual Active Duty Training from May 11 to 22, 2009. (The applicant alleged that during this training, she was required to complete a water survival swim. She stated that she was “wearing anti-exposure coveralls in 58-degree weather which caused the muscles in her back to tighten up so severely she had to be helped from the water.” The back spasm and pain she experienced from the swim limited her ability to perform her duties during her last week of active duty training.)

The applicant’s Leave and Earning Statement (LES) for the month of January 2010, which covers payments processed through January 21, 2010, shows that she drilled once and performed one Readiness Management Period (RMP), which is a period of inactive duty for administrative purposes, such as medical appointments. The January LES also shows that she had performed five unpaid drills to date during the fiscal year.

The applicant’s LES for the month of February 2010, which covers the period January 22 through February 18, 2010, shows that she performed drills for two consecutive weeks—throughout the last week of January and the first week of February—and that she had performed one drill without pay, which increased her total of unpaid drills for the fiscal year to six.

The applicant’s LES for the month of March 2010, which covers the period February 19 through March 23, 2010, shows that she was paid for drills performed on February 20 and 21, 2010, and for two undated RMPs. Her March LES also shows that her total of unpaid drills for the fiscal year remained six. A print-out of the applicant’s duty record from another database shows that she was credited with an RMP for a dental exam on February 17, 2010, and that she performed RMPs (instead of drills) on February 20 and 21. This print-out reflects no duty at all in March 2010.

The applicant’s medical records show that she underwent a dental examination on February 17, 2010, and a gynecological examination on February 25, 2010. On March 4, 2010, a clinic report to the applicant’s unit that, pursuant to her Periodic Health Assessment, she was found to be fully medically ready and required no follow up at that time. Under additional comments, the results state that the applicant reported a history of lower back pain.

The applicant’s LES for the month of April 2010 also shows that she performed no drills and had performed six unpaid drills so far that year. Her remaining pay records indicate that, except for RMPs for medical evaluations, she performed no further active or inactive duty.

[REDACTED]

On March 18, 2010, the applicant visited the emergency room at [REDACTED],<sup>3</sup> a civilian hospital located closer to her home than to the Port Security Unit (PSU), for back pain. (According to the applicant, she first went to the [REDACTED] Memorial Hospital, another civilian hospital that is closer to the PSU, where a CT scan was performed. She stated that she was left in the waiting room for an extended amount of time, so she then went to the [REDACTED] Hospital for further treatment.) The medical notes from her [REDACTED] Hospital visit note that the applicant reported that “she went over to [REDACTED] Medical Hospital and had a CT done there, but was not seen by a doctor.”

The applicant stated at the hospital that she was having lower lumbar pain and she was having difficulty walking. She had stated that she had a history of intermittent back pain, but that she had not been evaluated for it. The applicant complained of occasional numbness in her leg and pain in her thigh. The doctor noted that the applicant had had a CT scan done at a nearby hospital, which revealed that she had a herniated disc. Specifically, the doctor determined from the CT scan “L5-S1 posterior central disc protrusion with osteophyte representing chronic disc protrusion with thecal sac displacement and apparent impingement of the left S1 nerve root.”

The applicant’s unit was deployed to Kuwait from April 12, 2010, through September 30, 2010, but the applicant did not deploy with her unit as expected.

On April 27, 2010, LT S sent a letter to the [REDACTED] Hospital and requested the applicant’s medical records. The letter includes the following:

I serve as this unit’s medical officer, part of my duties require that I investigate claims for medical disability. [The applicant] is assigned to this unit and claims to be suffering from chronic back pain. She has indicated to me that she has received care from your facility for back pain several times over the last several years. As such I am requesting photocopies or scanned email attachments of her medical file to include emergency room provider notes, radiology reports, nursing notes, and physical therapy notes if available. Dates of service from 2001 to present.

A Medical Board Report Cover Sheet, dated May 11, 2010, appears in the applicant’s record. The cover sheet indicates that the applicant was diagnosed with displacement of lumbar vertebral disc, sciatica with radiculopathy, Achilles tendinitis, tarsal tunnel, and plantar fasciitis. All five of these diagnoses were marked as being “EPTE,” meaning that they existed prior to entry on duty. The cover sheet does not include a narrative, and the remarks only state that the applicant was to stay on limited duty indefinitely, and that she was not to perform PT or heavy lifting. This document is signed by LT S only. The name of a “Senior Member,” Dr. M, is included above LT S’s name, but there is no signature.

A memorandum dated May 11, 2010, indicates that CDR B of the PSU informed PSC of the results of an initial medical board convened for the applicant. CDR B recommended that the applicant be found not fit for duty and released from active duty and the Selected Reserves. The memorandum is not signed by CDR B; instead at the bottom it is signed by another member “by direction.” It lists the medical board report as an attachment, but there is no corresponding,

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<sup>3</sup> [REDACTED] Hospital is approximately a 45-minute drive east of the PSU, and a 25-minute drive east of the applicant’s home. [REDACTED] Memorial Hospital is approximately a 25-minute drive southeast of the PSU, and about 25 minutes south of [REDACTED] applicant’s home.

contemporary medical board report in the record other than the Cover Sheet discussed above. The memorandum includes the following:

[The applicant] is currently assigned to the [REDACTED]. She is required to maintain an accurate and complete inventory of [REDACTED] and property. She is tasked with ensuring that all [REDACTED] and in proper working order. [The applicant] is also responsible for standing a security watch and maintaining weapon proficiency qualifications. All members of [the unit] are required to pass a bi-annual physical fitness test, which entails push-ups, sit-ups, and a 1.5-mile run. [The applicant] is presently limited in the performance of the normal duties of her grade due to the medical condition noted in this medical board. [The applicant] was unable to complete her mandatory physical fitness test in April 2010 due to her medical condition. . . This illness was within the line of duty and was not due to the [applicant's] misconduct. [Emphasis added.]

The record contains a letter from LT S to the applicant dated June 6, 2010, on which LT S notified her of the findings of a medical board.<sup>4</sup> With this letter she was provided a copy of the board's initial report. The letter states that the board had found that the applicant's diagnosis of Lumbar Radiculopathy with Central Disc Protrusion is correct and that she was unable to perform her duties due to chronic back and leg pain. The remainder of the letter informed the applicant of her rights and responsibilities, including the option to rebut the findings of the board and the requirement that she acknowledge the findings in front of a witness.

On June 15, 2010, the applicant and BMCMM (as a witness) signed a statement regarding the findings of the report of the medical board convened on May 11, 2010. The diagnoses listed on the statement are displacement of lumbar disc, lumbar radiculopathy, plantar fasciitis, and Achilles tendinitis. The recommendation is: "Does not satisfy medical retention standards." The applicant signed under the statement "I desire to submit a rebuttal to the above findings and recommendations which will become part of my official record."

The record before the Board contains no further documentation until October 27, 2010, when the applicant underwent a physical examination for the purpose of a medical evaluation board. The reason cited for the visit is "military services medical evaluation board." The complaints or concerns were noted as "lower back pain radiating down the legs. She has been unable to fulfil her duties in the Coast Guard and has been submitted for medical board evaluation." The evaluation notes show that the doctor concluded that the applicant was not fit for duty.

On January 25, 2011, the Command Master Chief, BMCMM, sent an email to Chief Health Specialist (HSC) W. BMCMM had provided HSC W with copies of the initial medical board findings. HSC W asked BMCMM to call him so he could provide her with "some guidance." BMCMM emailed HSC W again two days later and included the applicant's rebuttal to the initial medical board findings, which are not in the record before the BCMR. She also stated, "we are not arguing that [the applicant] cannot serve in the [REDACTED] rate and in PSU anymore. I just want the Coast Guard to take some sort of responsibility for her care since she should have never been

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<sup>4</sup> The narrative findings and recommendations of the medical board in the applicant's file available to the Board are dated October 26, 2012, despite having been apparently initiated on May 11, 2010. They are therefore discussed below in chronological order per the date on the document.

released back into the SELRES with the injury she incurred at [REDACTED] "A" school,<sup>5</sup> and the aggravation to the original injury during Katrina should have at least generated an LOD determination." BMCM M also added that the applicant should have received counseling on "performing a lateral to another rate that does not require carrying a weapon or being on a boat. I believe she should receive that counseling now."

On January 26, 2011, the applicant submitted a four-page rebuttal to the findings of an initial medical board that are not in the record before the Board. The rebuttal, which was prepared by BMCM M, includes the following:

After the initial injury on 19May2006 to the left heel and subsequent diagnosis of calcaneal heel spurs, Achilles tendonitis, plantar fasciitis, and tarsal tunnel syndrome, the opportunity for [the applicant] to fully recover was not permitted. During "A" school, she completed 16 sessions of physical therapy in which it was noted [the applicant] displayed intermittent antalgic gait, swelling, numbness, pain, and tissue irritation. Due to the fact she was released from no duty or light duty to rejoin her class...there was continued irritation and re-injury to the left foot, heel, and ankle. Additionally, she was required to participate in physical fitness tests which included running 1.5 miles...She was diagnosed with leg strain gastrocnemius, and an Orthopedic Surgeon diagnosed her with Achilles tendonitis and tarsal tunnel syndrome. She graduated [REDACTED] "A" school and was released back into the SELRES. According to the Reserve Policy Manual (COMDTINST 1001.28A) Chapter 6 Section A.5, [the applicant] should have had a Line of Duty determination performed prior to leaving [REDACTED] "A" school and should have been issued a Notice of Eligibility (NOE) for follow-up care for the heel spurs, Achilles tendonitis, plantar fasciitis, and tarsal tunnel syndrome.

[The applicant was] recalled to active duty in November 2006 for Hurricane Katrina Operations. Injuries suffered on active duty during January and April 2007, aggravated [the applicant's] previous condition. There is a clear progression of the original diagnosis which worsens with each subsequent injury. These are also noted in her demobilization physical examination. Additional trips to the emergency room and Sector [ ] clinic occurred in April, June and September of 2008 for more back pain, acute thoracic strain, another diagnosis of plantar fasciitis, and hamstring tendonitis and overuse. While performing her annual ADT in May of 2009, [the applicant] was required to complete her annual water survival swim... She was wearing anti-exposure coveralls in 58-degree water which caused the muscles in her back to tighten up so severely she had to be helped from the water... [H]er back pain from the survival swim limited her ability to perform her duties throughout the last week of her ADT.

The most recent aggravation to [the applicant's] injuries came when she was performing IDT drills...in March of 2010. She was engaged in preparing the unit's assets for the ready-for-operations inspection prior to the unit departing for an overseas deployment. She was climbing up into the boats and then back down, crawling under trailers, and moving around the [REDACTED] on a regular basis... On 18Mar2010, [the applicant] visited [the] Hospital with severe back pain extending all the way down to her toes, unable to walk upright and numbness in her leg. [The rebuttal discussed the diagnoses and their symptoms.] Throughout the entire medical history pertaining to [the applicant's] injuries, there is a very specific sequence which occurred and is evidence of: 1) never having been treated correctly; 2) never being allowed to heal properly; and 3) were never considered for line of duty determinations...

I would like to ask that the medical board consider whether there is enough evidence to argue that had [the applicant] undergone surgery for any of the initial injuries, such as the calcaneal heel spurs or the tarsal tunnel syndrome, would she be facing the possibility of permanent paralysis in her lower limbs at this point in her life? According to the Reserve Policy Manual (COMDTINST

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<sup>5</sup> The applicant was on active duty attending [REDACTED] "A" school from May 7, 2006, to August 11, 2006.

1001.28A) Chapter 6 Section [REDACTED] [the applicant] should have also been issued a Notice of Eligibility (NOE) for authorized medical treatment concerning her leg and back. She also should not have been released back to the SELRES after "A" school or after Hurricane Katrina Operations. This section specifically states that an NOE should be authorized for "an injury, illness or disease incurred or aggravated in the line of duty."

The applicant was seen for a mental health appointment by VA medical personnel on August 16, 2011. The notes include the following:

The [applicant] reported that she has been on administrative hold from the US Coast Guard Reserve for 1.5 years in response to a back injury (three ruptured discs) that prevents her from being able to perform her work. In spite of the hold, she has not been able to get treatment for her back and thus is extremely limited in terms of physical activity.

On December 2, 2011, the applicant received a memorandum providing her Notice of Eligibility (NOE) for medical benefits. The memorandum states the following:

Your duty status is determined to be "Fit for Limited Duty" as a result of [the injuries] incurred in the line of duty while performing active duty training...According to the provisions of [the Reserve Policy Manual], you are issued a Notice of Eligibility (NOE) for Medical treatment, beginning 0000, 02 DEC 2011. This NOE entitles you to medical care appropriate for the injury until it cannot be materially improved by further hospitalization or treatment. You are entitled to travel and transportation reimbursement, for travel incident to medical care...This NOE shall remain in effect until 01 JUN 2012 unless extended by Coast Guard Personnel Command, Reserve Personnel Management.

On December 14, 2011, the applicant went to physical therapy at a VA facility for lower back pain. The notes of the appointment include the following:

[The applicant] presented to physical therapy with low back pain. She states she injured her low back while working for the USCG 2.5 years ago. She states she began having back pain at work but kept working through the pain. She states that she would push herself to the point where she couldn't get out of bed. She is currently on medical hold from the Coast Guard. [The applicant] reports that she has gone to the ER on several occasions with low back pain when she was having a bad episode of pain.

The applicant underwent a fitness for duty examination on December 27, 2011. The applicant was found to be not fit for duty indefinitely. The doctor's notes include the following:

PT is here for a medboard physical and issues related to this. She just had a cholecystectomy on 12/25/11 also. She has a herniated L5-S1 with impingement causing bilateral radiculopathies from an injury on 3/18/2010 while she was [REDACTED] for an inspection while doing her reserve drills. She got an N.O.E. last week but LT [V] is working to get it retroactive to 3/18/10. She apparently has a medboard already done but she never had a physical, etc. She's being TX'd at the V.A. for manic-depression and PTSD... We'll need to order an updated MRI since she's having worsening radiculopathies now bilaterally. She'll need to see a neurosurgeon and continue the physical therapy... I discussed this case with LT [V] the clinic administrator, the Tricare rep's, physical therapist and front desk personnel to ensure we get everything done on her behalf.

On January 2, 2012, a health specialist at the applicant's unit asked the Personnel Service Center Reserve Policy Management office (PSC-rpm) to backdate the applicant's NOE. The memorandum states the following:

[The applicant] was initially diagnosed with calcaneal heel spurs, Achilles tendonitis, and plantar fasciitis on 19 May 2006. During "A" school, she completed 16 physical therapy sessions, during which she displayed intermittent antalgic gait, swelling, numbness, pain, and tissue irritation. Her condition was aggravated by a physical fitness test. Afterwards she reported for sick-call and was diagnosed with leg strain gastrocnemius. Injuries suffered while on active duty in January and April 2007 re-aggravated her condition... Additional emergency room visits occurred in April, June, and September of 2008 with diagnoses of back pain, thoracic strain, plantar fasciitis, and hamstring tendonitis... On 18 MAR 2010, [the applicant] again went [to] the emergency room complaining of severe back pain. [The applicant] received a Medical Evaluation Board with an undetermined status. [The applicant] was issued a NOE from 02 DEC 2011 until 01 JUN 2012. However, most of her bills were accumulated earlier than this dating back to 10 MAR 2010. This memorandum is requesting a NOE from 18 MAR 2010 to 02 DEC 2011 to pay for [the applicant's] treatment.

There is no documentation showing that PSC-rpm replied to this request, but the applicant's NOE was not backdated.

The applicant was seen for a mental health appointment by VA medical personnel on March 14, 2012. She reported that her mood was no better, and that she was "still dealing with the Coast Guard and her back issues." She also complained of lower extremity swelling and anxiety about an upcoming procedure.

On June 4, 2012, the applicant received her first NOE extension, which extended her eligibility for medical care from June 2, 2012, through August 31, 2012.

On August 22, 2012, the applicant was seen by a Spine and Rehab clinic for "Medical Evaluation Board Range of Motion Report." The diagnosis was "low back pain" and the doctor stated that he suspected "recurrent L5/S1 disc extrusion." The doctor also noted the following:

USCG [REDACTED] who has been off work for one year. She relates onset of left foot pain five years ago and onset of low back pain 1 ½ years ago for no apparent reason. Imaging revealed L5/S1 disc extrusion. [The applicant] underwent L5/S1 discectomy in June 2012. She was initially better for the first two or three weeks post op. [The applicant] relates that she has progressively worsened since then. She now presents with constant low back and left later leg/lateral foot pain that varies in intensity.

A medical record in the applicant's file dated August 28, 2012, states that she was seen as an outpatient "for the purpose of a[n] update to the Medical Evaluation Board (MEB) dated 11 May 2010." The record contains the following:

An Initial MEB was submitted on 11 May [REDACTED]ber 2011, [the applicant] visited her PCM...to complete an MEB physical... The [applicant] was noted to have a Herniated Disc at L5-S1 with impingement causing bilateral radiculopathies related to an injury she sustained while working on a USCG small boat on 18 March 2010. [The applicant] was a drilling reservist at the time of the injury... On 08 February 2012, [the applicant] was seen by a civilian neurosurgeon. The provider noted [the applicant] to have constant back pain bilaterally that radiates through the legs and feet... An MRI dated 04 May 2012 revealed a herniated nucleus pulposus and extrusion at L5-S1 with significant encroachment on the thecal sac and left nerve root, there was a mild broad-based posterior disc protrusion at L4-5 with flattening of the ventral thecal sac but no nerve root involvement noted... On 22 August 2012, the [applicant] followed up with her USCG PCM noting continued [REDACTED] symptoms into her left leg that now seemed worse than before

having surgery.. The [applicant] notes she is now unable to work due to he [REDACTED] making the drive...will make her symptoms worse for the next few days... It is the opinion of this board that the listed diagnoses is correct, and that the member will not be able to return to a Fit For Duty/World Wide Deployable status for USCG Service.

On September 12, 2012, the applicant received her second NOE extension. This provided an extension from August 31, 2012, through September 30, 2012.

The applicant was seen on September 28, 2012, for a mental health appointment at a VA facility. The doctor's notes indicated that the applicant learned she would require another surgical procedure "on her back to correct the injury acquired during her Coast Guard service. [The applicant] reported the DOD will not fund this additional, warranted surgery and is in the process of being medically discharged from the Coast Guard." The doctor added that this caused the applicant to experience increased depressive and anxious symptoms.

The applicant's Informal Physical Evaluation Board (IPEB) findings and recommended disposition is dated on October 26, 2012, on page 1.<sup>6</sup> Pages 3 and 4 are dated November 5, 2012. Page 1 contains electronic signatures from the IPEB board members dated November 7, 2012. The applicant was found to suffer from post-traumatic stress disorder (PTSD); "intervertebral disc syndrome: forward flexion of the thoracolumbar spine 30 degrees or less"; and "left lower extremity radiculopathy rated analogously to incomplete paralysis of sciatic nerve, mild." All three of these conditions were found to be "aggravated or incurred while entitled to receive basic pay" and the "proximate result of performance of active duty or inactive duty training." The applicant was given a 70% disability rating and was found unfit for continued duty "by reason of physical disability." The findings note that the board "did not rate tarsal tunnel per VASRD, 4.14, avoidance of pyramiding, 'the evaluation of the same disability under various diagnoses is to be avoided.'" The board also did not rate Achilles tendinitis because there was no evidence that the condition was unfitting. The findings also note that the applicant's "medical conditions prevent her from performing the duties required of a service member of her rank and primary rating. Her impairments are rated at a disability level of 50 percent or more, but are such that a permanent evaluation is not yet possible. She is therefore placed on the Temporary Disability Retired List." The recommended disposition was temporary retirement. A staff member noted on page 2 that the applicant signed a facsimile copy dated January 14, 2013. Following a legal review, the Final Approving Authority signed and approved the IPEB report on February 21, 2013.

The applicant was separated from the Reserve on March 4, 2013, and placed on the TDRL on March 5, 2013.

On May 6, 2015, the applicant was seen by VA medical personnel for her chronic back pain. Under "Social History" the medical record states that the applicant reported that she was "not working currently. She is receiving pension from the Coast Guard. She has lost her home and cars from not being paid while she was finishing active duty. She is due 3 years of back pay."

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<sup>6</sup> [REDACTED] alleges that the reason for the delay between the convening of the board on May 11, 2010, and the findings being prepared [REDACTED] late 2012, is that her unit was deployed overseas shortly after her injury. Her unit returned from Kuwait in [REDACTED]

**VIEWS OF THE COAST GUARD**

On January 25, 2017, the Judge Advocate General (JAG) for the Coast Guard submitted an advisory opinion in which he recommended the Board deny relief. The JAG stated that although the applicant claims to have been injured while performing IDT drills in March 2010, she was never issued a LOD determination or an NOE for that time period. The JAG pointed out that the applicant did receive an NOE in December 2012, but PSC would not backdate the NOE to cover the applicant's medical expenses incurred after her injury in March 2010.

The JAG argued that the applicant has not proven that there was an error or injustice because she has provided no evidence that she drilled in March 2010. To the contrary, the JAG argued that information from PSC confirms that the applicant did not participate in an IDT drill in March 2010, and her request for relief should therefore be denied. The JAG stated that the applicant's payment records for March and April 2010 show that the applicant was last paid for IDT drills completed on February 20 and 21, 2010. The applicant's April Leave and Earning Statement (LES) does not reflect any drill dates completed in March 2010. The JAG argued that because the applicant has not proven that she drilled in March 2010, the NOE granted on December 2, 2012, was correct and no correction to the applicant's record is warranted.

With the advisory opinion, the JAG adopted the findings and analysis in a memorandum on the case by PSC. PSC argued that the application is not timely because the applicant was discharged in 2013. PSC also argued that the applicant did not complete any drills in March 2010, and claimed that her last recorded IDT drill in Direct Access (a Coast Guard human relations database) was October 16, 2009. In addition, PSC argued that the applicant was medically evaluated during a Physical Health Assessment on March 4, 2010, and was determined to be "fully medically ready." While the assessment noted that the applicant reported "history of low back pain," PSC argued that there "was no indication that the...back pain was ongoing or preventing the [applicant] from performing her duties, as demonstrated by her recent completion of ADT on 22 May 2009."

PSC acknowledged that the applicant was evaluated in an emergency room on March 18, 2010, and that she was later released and ordered to light duty. PSC further acknowledged that the applicant reported to the Medical Evaluation Board that she re-aggravated a lower back injury while working on a boat while drilling. PSC argued, however, that the applicant's Direct Access entries do not indicate that she was drilling at all in March 2010. In addition, PSC stated that an official LOD determination was never completed for the applicant's March 18, 2010, injury.

In regards to the applicant's December 2, 2011, NOE, PSC stated that typically an NOE authorization requires an approved LOD determination signed by the commanding officer of the member's unit. The applicant's record, however, does not contain a signed and approved LOD determination. PSC stated that one explanation for the fact that the applicant had an authorized NOE without an LOD is that the NOE was "issued in order to allow for further medical evaluation of the applicant to complete the MEB." The Reserve Policy Manual states that physical examinations shall be authorized in order to determine fitness for duty or disability processing.<sup>7</sup> PSC argued that even in non-LOD cases, the "Coast Guard still has a responsibility to ensure members

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<sup>7</sup> Reserve Policy Manual, COMDTINST M128A, Article 6.A.1.

with potentially unfitting conditions receive proper medical evaluation [REDACTED] the applicant admitted this fact in the timeline she provided when she wrote that the NOE “was issued so [the applicant] can attend doctor’s appointment for [REDACTED] required medical examinations for medical board.”

PSC noted that the applicant’s unit requested [REDACTED] 2, 2012, that her NOE be backdated “to cover the medical bills accrued [REDACTED] the applicant in April, June, and September of 2008; and for an emergency room visit on 18 March 2010.”<sup>8</sup> PSC argued that the request was not approved presumably because there is no record of the applicant having performed any duty in March 2010, nor was a signed LOD determination submitted. PSC further argued that the fact that the request to backdate the NOE was not approved is evidence that the applicant was not entitled to care, and Coast Guard officials are presumed to have performed their duties correctly. Therefore, PSC claimed that the applicant has not shown that her record warrants correction to reflect that she received ADT orders from March 18, 2010, to March 4, 2013, and recommended that the Board deny relief.

### APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 30, 2017, the Chair sent a copy of the Coast Guard’s advisory opinion to the applicant and invited a response within thirty days. On March 1, 2017, the applicant, through her representative, replied and stated that she disagreed with [REDACTED]’s opinion. The applicant stated that the Board has been presented with the factual and legal sides of this case, but that she is also a “human” and not just a docket number. She stated that it has been seven years since the injury, and former Coast Guard members who witnessed the injury are now unavailable or unwilling to provide a statement.

In response to the Coast Guard’s assertion that the application was untimely, the applicant stated that she was unable to control how long it took for the Board to receive her medical records. The applicant stated once she was placed on the TDRL in March of 2013, she submitted her application within months. She also stated that because it has been over seven years since the injury, and because there were so many errors made by the Coast Guard, she did not receive proper care and her quality of life has been severely diminished.

In response to the Coast Guard’s statement that Coast Guard officials are presumed to have acted correctly, the applicant stated that people make mistakes. Specifically, the applicant stated that her Leave and Earning Statements (LES) are not accurate representations of the time she worked in 2010. She noted that the records show that she underwent a Physical Health Assessment on March 4, 2010, yet there is no record of this time the applicant spent at the unit in her Direct Access or LES records.<sup>9</sup> Another mistake made by Coast Guard officials, according to the applicant, was by Dr. M, the Senior Physician on the May 11, 2010, medical board. The applicant claimed that in June 2010, Dr. M did not recall ever convening a medical board for the applicant, and that he never signed the medical board findings. The applicant further stated that the cover

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<sup>8</sup> [REDACTED] est actually asked that the NOE be backdated only to March 18, 2010.

<sup>9</sup> Pursuant to Chapter 5.5 of the Reserve Policy Manual, reservists are authorized and paid for Readiness Management Performance administrative duties such as health assessments in advance of deployments.

sheet to the medical board report is [REDACTED] and is dated May 11, 2010, but the rest of the pages on the medical board report are from November 2012 – over two and half years later.

The applicant stated that the Coast Guard's contention that she was found fit for duty on March 4, 2010, and that her history of back pain had not been preventing her from performing her duties is in line with her claim that she was injured on March 18, 2010, after the Physical Health Assessment. The applicant also stated it is not inconsistent with her argument that her March 2010 injury did not prevent her from completing her ADT drills in May of 2009, ten months prior, as PSC pointed out.

Regarding the events leading up to the applicant's March 2010 injury, she stated that she was ordered by YN1 S to report to PSU, without any signed orders, to help prepare the unit's boats for upcoming operations. YN1 S told her that she would take care of the applicant's orders. The applicant stated that this was the second incident involving drills and pay mistakes with YN1 S. When the applicant first reported to this unit, she stated that it was several months before she received direct deposits because YN1 S had neglected to officially transfer the applicant from her prior unit. The applicant stated that YN1 S ended up having to pay the applicant through "host drills." The applicant further asserted that, after talking to other members of the unit, this was standard for this particular yeoman. YN1 S would reportedly tell members to report and never complete the appropriate drill orders.

The applicant's representative, BMC M, stated that when she began as Command Master Chief at the unit on October 14, 2012, she was informed that numerous discrepancies had been found in members' records because of YN1 S, and that steps were being taken to try to correct any errors. BMC M further stated that the applicant's unit was nicknamed the "Wild Wild West of the PSU's." Specifically, BMC M claimed the following:

As the Command Master Chief, information was shared with me that Officers in the Wardroom were running amok under then Commanding Officer [B]. One day, the Chiefs came back from lunch with the Government Vehicle and when they opened the doors, beer cans fell out into the parking lot. The Commanding Officer was the most "inept" CO they had ever worked with. In fact, he transferred out of Port Security Unit...with several investigations pending.

In regards to her drills, the applicant, through her representative, stated that the LES for the month of March shows that the applicant had already completed 60 IDT paid drills since the start of her anniversary year, January 19, by March 2010. The applicant argued that her Direct Access duty report print-out was likewise incorrect. The applicant stated that she received her Physical Health Assessment on March 4, 2010, and there is no record of her completing this in either her LES or her Direct Access site. [REDACTED]

The applicant added that at the time of her injury, her unit was preparing to deploy overseas to Kuwait. She stated that when a unit is preparing to deploy, the command's sole focus is on readying the unit. The command has a short amount of time to get "a lot of pieces into place." Everyone in the unit – over 100 people in the applicant's unit – must be trained and deployment-ready. All boats, vehicles, and equipment must also be prepared. As a result, the applicant stated, the command's sole focus at the time of her injury was preparing the unit, and any paperwork that needed to be done [REDACTED] was not a priority. The yeomen, like YN1 S, were

responsible for many aspects of the deployment preparations and for all of the normal day-to-day data entry. The applicant stated that all of this goes to show that it was a stressful environment in March 2010 for everyone at the unit, and it is through no fault of her own that she did not receive orders or have her drill time properly accounted for in Direct Access. The applicant stated this “case is simply a case of not having enough resources to ensure that all members were being taken care of.”

The applicant stated that the “only steadfast proof” she could provide is that an NOE was prepared, an LOD was completed,<sup>10</sup> and LT S admitted that the applicant was drilling in March 2010. The applicant added that she believed LT S was trying to do what was best for the unit by quickly getting the applicant processed out so that he could fill her billet before deployment. She stated that she did not believe that LT S was trying to be deceitful when “he allegedly convened a Medical Board and had CDR [B] sign it.”<sup>11</sup>

BMCM M added that when she became involved in June 2010, the applicant had been home in bed since the injury, and was unable to work, drive, or walk on her own. Without an NOE or an LOD determination, the applicant was “left to fend for herself.” When BMCM contacted the unit for updates or assistance, the response she received was that the unit was deployed overseas and she would have to wait until LT S returned. BMCM M added that the applicant has suffered greatly not only from the pain of the injury, but from the “incompetence” of the Coast Guard. BMCM M stated that the applicant has “lost the ability to earn a living, and has a severely diminished quality of life.” She added that the applicant has essentially been punished “all because one yeoman decided not to make sure a member...had written orders to perform drills.”

With her response, the applicant provided a copy of an email dated February 24, 2017, from LT N, the [REDACTED], which sent her Active Duty [REDACTED] work list for the month of March 2010. LT N stated, “No mention of any injuries. I think I would have annotated that.” The list includes reorganizing a 20,000 square foot warehouse. [REDACTED]

### ADDITIONAL PROCEEDINGS

On June 15, 2017, the JAG assigned to this case provided an Injury Report that was not in the record because “it was never properly executed or made part of the applicant’s record.” The date on the Injury Report is April 5, 2007, but it was prepared on September 9, 2010. It was prepared by BMCM M, the applicant’s representative. For clarification, the JAG also provided the following breakdown of when the applicant and BMCM M were assigned to different units:

**Mississippi Unit:**

BMCM M: April 30, 2008 – October 13, 2012

Applicant: January 19, 2006 – October 27, 2009

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<sup>10</sup> There is no LOD determination in the applicant’s record, but the memorandum dated May 11, 2010, states that her injury had been incurred in the line of duty, although corresponding medical board cover sheet indicates that it was not.

<sup>11</sup> There is no document signed by CDR B in the applicant’s records. However, the memorandum dated May 11, 2010, stating her injury was within the line of duty, was signed by direction above CDR B’s name.

PSU:

BMC M: October 14, 2012 – April 30, 2014

Applicant: October 28, 2009 – December 18, 2012

The injury report states that it was from the Mississippi unit and that the applicant was seen by a medical officer on April 5, 2007. The diagnosis is “left ankle strain” and the report states that the applicant was present for and performing military duty at the time of the injury. The Sources of Information section states “Member’s Health Record; Member’s statements; Copies of member’s orders.” The “Alleged Circumstances Initially Reported” states the following:

Member was walking along cement slab with her supervisor...and they were surveying an area where civilian contractors were removing debris from the waterway. She stepped off the side of the cement and fell down into a hole that was hidden by tall grass, severely turning her left ankle. She iced and elevated the ankle for two days and took Motrin for pain with little relief or healing taking place. She stated that any movement of the ankle caused shooting pain up to her hip and that she was experiencing tingling sensations on the bottom of her left foot.

The circumstances portion of the report states the following:

Member fell into a hole while on a site survey performing her duties as an overseer for civilian contractors cleaning debris from waterways after Hurricane Katrina on 03Apr2007. She twisted her left ankle severely. She elevated and iced the ankle for two days prior to seeking medical attention when she realized it was not getting any better and she was experiencing tingling sensations on the bottom of her foot and shooting pain up to her hip on the left side. She was given Motrin 800 and told to return if the pain worsened or if there was any numbness or tingling. Her supervisor...was with her at the time of this injury. No other documentation was completed for the member’s health record relating to this injury, nor was an injury report ever completed for this injury at the time. I believe that this injury can be aggravation of a previous injury accrued at [REDACTED] “A” school for this member that is very well documented in the member’s health record, but again no injury report exists for the original and initial injury.

The member should never have been released from Active Duty after the initial injury or the subsequent injuries incurred while the member was on active duty orders following [REDACTED] “A” school. No line of duty determinations were ever completed and she was sent home to cope with more and more severe injuries each time she was released from active duty. The member is now unable to work in a civilian job or be productive due to the severity of the injuries and cannot afford to get medical care or insurance due to her unemployed status. Her only source of income was IDT pay until she was told by LT [S] from Port Security Unit...that she was forbidden from drilling anymore because of her injuries. There has been no further communication with her other than receiving a memorandum from LT [S] on or around 06JUN2010 that an Initial Medical Board had been completed on her and she was being discharged from the Coast Guard. The member was removed from the deployment list of Port Security Unit... [REDACTED] shown anything in writing stating that she was not fit for full duty. As of 09SEP2010, the member is still not drilling and has still received no communication from her unit or from LT [S] regarding her health status or the status of her ability to complete a good year for the SELRES. Member will need a waiver for not completing her required 15 days of ADT, since LT [S] would not allow the member’s request for orders for tactical boat crewman school to be processed.

On June 16, 2017, the Board emailed LT S for clarification on the events of March 2010. On June 17, 2017, LT S responded and stated the following:

[REDACTED]

I do recall [the applicant], she was medically unfit for active duty mobilization due to her lower back condition. [A]s I recall from the ER provider notes (the individual that ordered the CT scan that showed the disc injury), [the applicant] had experienced severe pain while riding her motorcycle in March of 2010 but I would need to see those records again to be sure since she had also been to that same ER for back pain issues twice in 2008. I did instruct [the applicant] as had her PHA provider that she could not complete IDT drills until her back condition was corrected. The medical board was not to process her for discharge but rather to bring to light the fact that she had a medical condition that according to the CG Medical Manual is disqualifying for service. My role as the unit medical officer was to ensure that members were physically fit for deployment.

The Board emailed LT S back, and asked for clarification that LT S's recollection was that the applicant was not injured while drilling in March 2010. On June 19, 2017, LT N responded again and stated:

I do recall [the applicant] talking about straining her back while working on [REDACTED] but this could not be corroborated by her direct supervisor (SCPO [P]). I asked both him and the [REDACTED] Officer (LT [N]) if they recalled sending her home early for back pain or filling out an injury report. They all agreed that she did the work, was very good at it in fact but she never complained about a specific injury related to working on the [REDACTED] and certainly never came to sick bay and saw myself or one of my medics. Basically, it came down to her telling us one story and then that March 18<sup>th</sup> ER record stated her back was aching after a long motorcycle ride. I had the documentation of back and leg strains dating back to her enlistment training at Cape May but she had been cleared of all that and placed fit for full duty prior to arriving at our unit.

The Board also emailed LT N and asked him for any insight he could provide regarding the events on March 2010. He responded on June 27, 2017, and stated the following:

Actually I was the [REDACTED] Officer at the time. I would have remembered an injury to one of our members. I am notetaker, I always keep them to help jog my memory. My recollection was she had prior back issues/injuries before coming to the unit. [LT S], the PA, had conversations with her. I remember expressly telling her to be careful because I was aware of her back. If she injured herself it was well before March 2010. [REDACTED] [H] sent me a status report in 2010 of activities during the drill weekend. There is no mention of an injury. She had a Medical hold I was aware of in 2009. I will send you copies of my OneNotes that have her name it.

LT N also provided five emails with notes he had that mentioned the applicant. The first included a note from September 20, 2009, which indicates that the applicant was not a member of his team at this point. The second, also from September 20, 2009, includes a note from when the applicant reported to his unit. LT N stated, "I took a note reminding myself she has a Medical Hold. It was related to her back. I didn't annotate the issue due to HIPAA." The title of the note is "Personnel Issues" and just states the applicant's name "medical hold – status." The third email, from the same date, included a note titled [REDACTED]s." It included notes about members of LT N's unit, including the applicant. The notes on her include: "3 years in CG"; "unemployed. [REDACTED] "joined 3 years"; and "Has medical issues I need to follow on."

The fourth email included a note from December 11, 2009, which was titled "December 2009 Drill Weekend." LT N stated that this was the next mention of the applicant and that "she was a very good worker." The note includes items for supervisors to address, and the first was in regards to the applicant. It states: "#1 [REDACTED] how is [the applicant's] LOC going? When you get close to complete [REDACTED] [REDACTED]. If you need more help than that, as long as we can

articulate bullet points I can help you write it.” The fifth email includes the note from [REDACTED] H regarding the Activity Status Report for the month of March. (This list is summarized above.)

On June 29, 2017, the Chair sent a copy of LT S’s and LT N’s emails to the applicant and invited a response. The Board received the applicant’s response<sup>12</sup> on July 5, 2017. In reference to LT S’s statement that the applicant aggravated her back on a long motorcycle ride, she stated that she has not ridden a motorcycle “more than a single block” since she was around thirteen years old. She stated that someone at her PSU had been injured on a motorcycle, but it was not her. She argued that this misremembering tends to validate her argument that there were many issues going on at her unit prior to deployment, so information was not correctly captured.

In reference to the statement that she had a medical hold from 2009, the applicant stated that this was a very misleading description. She clarified that she had a medical waiver from running, so she performed swimming as an alternative for annual physical fitness tests. She stated that she had taken and passed the swimming test many times prior to her March 2010 injury.

The applicant acknowledged that there are no notes of her injury in March 2010. She stated that it is probable that no notes of her injury exist at the unit. She stated the following:

[REDACTED] [H] was my main contact. I worked with him with very little Supervision. I was a good [REDACTED] and dependable... [The Senior Chief] stayed out of the [REDACTED] to allow the junior enlisted people to perform their work. LT [N] was our [REDACTED] and I had worked with him previously during a different operations, so I knew him to be an honest person. I was working on my own as the only Reservist who was able to volunteer to help [REDACTED] get the boats ready...It was not a normal drill weekend. I would volunteer as I had days available. We had all been advised to use up our drills PRIOR to our deployment or we would lose them. I had already used all my drills...but the YN1 assured me she could input the proper request for extra duty even if it meant I was drilling for points only. We were under a heavy deadline to get the boats ready for this inspection, and [REDACTED] had no other volunteers who were able to come in and help due to them already preparing their employers for their extended deployment. Since I was the only Reservist there, I reported directly to [REDACTED] [H], as the other active duty personnel were not involved...

That particular day, I was in the warehouse by myself replacing the brakes on the boat trailers. I had been up and down on the boats all week replacing gauges and checking items that needed attention on the boats. I reached over to pick up a roto like I had done a million times before and felt a twinge in back, like I had pulled a muscle. I sat down and collected myself, allowing the muscle to stop contracting and then finished my day. There was no sickbay to go to. There were no other Reservist[s] there, as this was not a Reserve drill weekend for the unit. There was no one to say anything to, and at that time, I didn’t think there was anything to tell [REDACTED] [H]. I truly did not even consider going to the doctor, because I felt I had just pulled a muscle. The next morning, I called [REDACTED] [H] to tell him I had strained my back and that I would not be in until the next day to continue working... He said, “No worries. I hope you feel better. See ya then.” As it turned out, I was unable to recover from the pain and unable to return the rest of the week. I would not assume he ever made a record of the phone calls or the injury as we both were still assuming it was just a pulled muscle... I went to the ER to get medication for swelling and pain.

I went directly to medbay that Saturday morning and turned in my paperwork so as to be in compliance for the drugs I was taking. LT (currently LCDR) [S] took the paperwork, glanced through it, tossed it in his basket and said, “That’s a show stopper.” He walked away from me. I know that sounds completely unprofessional and inappropriate, but I can tell you there were so many

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<sup>12</sup> The applicant herself, as opposed to her representative, wrote this response.

people trying to get out of going [REDACTED] the deployment, I can only assume he thought I was one of them. I had actually been to him before with stomach pain, and he point blank asked me if I was trying to get out of running. Turns out I had gallstones. I was sent home and told I was unable to drill, so I missed...signing any drill sheet as it had not been passed around yet. I stayed home in bed that entire month, unable to even turn myself over...

I did not have any personal medical insurance at the time, as I had just moved...to join PSU [ ] specifically to support them on the upcoming deployment. The following drill weekend, I was still not mobile and attempted to contact the unit through emails to my chain-of-command via the YN1. I was basically told they were ramping up for the deployment and that they didn't have time for me. After my attempts to reach anyone in my chain-of-command, I had my roommate drive me to the unit the following drill weekend so I could speak to someone about my status, the deployment and my injury. I spoke to [REDACTED] [H], who told me I needed to go speak to LT [N]. I...spoke to LT [N] who said he would go find out what was going on because he was unaware of the situation I was in. Once he returned to speak to me, he had me filling out an accident form with the SK1, and was told I was not welcome at the unit until my situation was resolved. I pleaded with LT [N] for advice on what to do, as I stated earlier, we had worked together before and I trusted him. His parting words to me were, "Do you make the Coast Guard or does the Coast Guard make you?"

I went home completely confused and unsure of what my next steps were. I was just trying to get healed up so I could perform my duties and still deploy with the unit. I was already feeling guilty for not being able to get [REDACTED] [H] completely finished, and I did not understand the complete lack of communication... I was a hard worker and had never been in trouble before...I did not know what to do or who to turn to for help. The next thing I knew, I was receiving a certified mail from the Coast Guard that contained a med board that was completed and closed before I even knew it had taken place. I was emotionally and physically distraught by this time as I was unable to do anything for myself. I was not getting any better, and I was unable to find a job in the condition I was in. I contacted the Master Chief from my previous unit...and asked for help. This is how I was paired with BCCM [M] as my advocate and how I was able to eventually get the medical care I needed.

I believe to this day that if I had received medical care immediately instead of months later, I would have fully recovered and been able to continue contributing... I believe my hard work was recognized by my previous commands, as I quickly advanced in rate, even as a Reservist, and had received various awards prior to my injury.

Again, LT [N's] worklist for that month corroborates the work I have been stating I was doing when I was injured all the way back to 2010. *I know what happened to me. I know when it happened to me. I know how it happened.* I am trusting that as you gather all of this information, you will place more weight on the fact that I have actually lived through this nightmare for the past seven years, and am not some number or long forgotten name on someone's whiteboard to be dealt with.

### APPLICABLE LAW AND POLICY

Title 10 U.S.C. § 1074a, as in effect in 2010, states, "the following persons are entitled to the benefits described in subsection (b): (1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing – (A) active duty for a period of 30 days or less [or] (B) inactive-duty training." Subsection (b) states that the described people are entitled to "the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment [and] subsistence during hospitalization."

[REDACTED]

Title 37 U.S.C. § 204(g) states: “A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated— (A) in the line of duty while performing active duty; [or] (B) in line of duty while performing inactive-duty training” but “the total pay and allowances shall be reduced by the amount of [non-military] income. In calculating earned income for the purpose of the preceding sentence, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.” Section (i)(2) states that pay and allowances “may not be paid under subsection (g)...for a period of more than six months. The Secretary concerned may extend such period in any case if the Secretary determines that it is in the interests of fairness and equity to do so.”

Title 37 U.S.C. § 206 provides that a reservist is entitled to drill pay for a scheduled drill that the reservist is unable to perform because of a physical disability resulting from an injury, illness, or disease incurred or aggravated in the line of duty while performing active duty or inactive duty training.

Title 10 U.S.C. § 1218(d), which was applicable from October 28, 2009, to December 18, 2014, provides that a reservist is entitled to retention on active duty during the PDES process and until separated if the reservist becomes disabled in the line of duty while entitled to imminent danger pay.

Article 3.B.6.c. of the Reserve Policy Manual, COMDTINST M1001.28A, states that reservists shall not be issued orders to perform active or inactive duty unless they are in a Fit for Full Duty status.

Article 6.A.3. of the Reserve Policy Manual states that a reservist who incurs or aggravates an injury in the line of duty is entitled to medical treatment as authorized by 10 U.S.C. § 1074a in an approved medical treatment facility or authorized civilian healthcare provider. “Medical care shall be provided until the member is found fit for duty, or the injury ... cannot be materially improved by further hospitalization or treatment and the member has been separated or retired as the result of a Coast Guard Physical Disability Evaluation System (PDES) determination.”

Article 6.A.4.a. of the Reserve Policy Manual states that a “reservist who incurs or aggravates an injury ... in the line of duty is entitled to pay, allowances, and travel and transportation incident to medical and/or dental care, in accordance with 37 U.S.C. § 204 and § 206.” Paragraph b states, “A reservist who is unable to perform her military duties due to an injury incurred or aggravated in the line of duty is entitled to full pay and allowances, including incentive and special pays to which entitled, if otherwise eligible, less any earned as income as provided under 37 U.S.C. 204(g).” In addition, any “member in receipt of incapacitation pay who is unable to perform military duties, i.e., Not Fit For Duty (NFFD), shall not be allowed to attend IDT periods or ADT.”

Article 6.A.5.a. of the Reserve Policy Manual states that a reservist who incurs or aggravates an injury while in duty status is authorized medical treatment while a line of duty determination is pending. Article 6.A.6.e. states that PSC may authorize a reservist to be

ordered to or continue on active duty while the member is being treated for an injury incurred or aggravated in the line of duty while performing IDT or ADT.

Article 6.B.1. of the Reserve Policy Manual addresses members' and commands' responsibilities:

- a. Reservists who are injured or who become ill while in a duty status as defined by Section 6.A.2.b of this chapter must immediately report the injury or illness to their commands, whether or not the injury or illness is considered by the member to be severe enough to warrant medical attention.
- b. Commands shall document all injuries or illnesses reported by reservists, shall ensure that they immediately receive required medical and/or dental treatment when injured or become ill while in a duty status, and shall report all injuries and occupational illnesses in accordance with Safety and Environmental Health Manual, COMDTINST 5100.47 (series). At a minimum, a report of a reservist's illness or injury will be documented in his or her Coast Guard medical record through a narrative type SF 600 (Chronological Record of Medical Care) entry. The servicing ISC (pf) and CGPC-rpm shall be copied on all notifications involving incapacitation of reservists.
- c. Commands shall refer cases in which a reservist is expected to remain incapacitated for more than six months to the Coast Guard Physical Disability Evaluation System (PDES).

Article 6.B.3. of the Reserve Policy Manual states that an NOE for authorized medical treatment is issued to a reservist to document eligibility for medical care as the result of an injury incurred or aggravated in the line of duty. Upon determination that the member will require beyond the first three-month period, a member's command must notify PSC and may request extensions in one-month increments. NOE extension requests must indicate if a medical board has been initiated. Extensions to an NOE may not exceed six months. In addition, an NOE makes the member eligible for pay and allowances pursuant to 37 U.S.C. § 204(g) and (h).

According to Section 7.A.1. of the Administrative Investigations Manual, when an active duty or reserve "member becomes ill or is injured, certain statutory rights or benefits accrue to the member if the disability was attributed to military service, i.e., in the Line of Duty (LOD), and not due to the member's own misconduct. A report of investigation may be necessary to provide the basis for LOD/Misconduct determinations by the Coast Guard, as well as by other agencies." Section 7.B.1. states that an IPEB is bound by the LOD determination of a command, but if no LOD investigation has been completed, an IPEB may direct the command to conduct one. Section 7.B.2. states that LOD determinations are used to determine a reservist's eligibility for medical care as well as for pay and allowances under 37 U.S.C. § 204. Section 7.D. requires an LOD determination when a member is unable to perform her duties for more than 24 hours or may be entitled to disability benefits or continuing medical care. Section 7.F. states that in making an LOD determination, "authorities shall preclude a Coast Guard member's death (on active duty), disease or injury was incurred in the LOD and not due to misconduct unless clear and convincing evidence shows otherwise."

## FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. Under 10 U.S.C. § 1552(b), an application to the Board must be filed within three years of the date the applicant discovers the alleged error in her record. The applicant's medical board was initiated in May 2010, the Coast Guard issued her an NOE in December 2011, and she was placed on the TDRL on March 5, 2013. The Board received her application on May 8, 2013. The application is therefore considered timely even though the Board did not receive her medical records and so could not docket the case pursuant to 33 C.F.R. § 52.21 until 2016.
3. The applicant alleged that the Coast Guard erred in not placing her on active duty or at least issuing her an NOE from March 18, 2010, through March 5, 2013, due to her injuries that were incurred and aggravated in the line of duty. 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.<sup>13</sup> 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."<sup>14</sup>
4. Not entitled to active duty. Under 10 U.S.C. § 1218(d), only reservists who become unfit for duty because of an injury incurred while they are entitled to imminent danger pay are entitled to be retained on active duty until placement on a disabled retired list. There is no evidence that the applicant's injury was ever incurred or aggravated while she was entitled to imminent danger pay, and so she was not entitled to placement and retention on active duty when she became unfit for duty in 2010. However, pursuant to 10 U.S.C. § 1074a and 37 U.S.C. §§ 204 and 206, she may have been entitled to pay and allowances and to medical care for injuries that she incurred or aggravated in the line of duty.
5. Injuries were incurred and aggravated on active duty. The applicant's medical records show that she injured her left foot, ankle, leg, and lower back while on active duty in 2006, 2007, 2008, and 2009, and she was later found unfit for duty and retired as a result of her leg and lower back conditions:
  - In July 2006, the applicant injured her left foot while performing physical fitness activities while on active duty attending at █████ "A" School. She was diagnosed with calcaneal heel spurs, an "intermittent antalgic gait," irritation and swelling of her Achilles tendon, and plantar fasciitis—all on her left side—and referred for physical therapy.
  - While on active duty from November 2006 to July 2008, the applicant sought help and was treated for lower back pain and pain in her left hip radiating down her left leg in January

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<sup>13</sup> 33 C.F.R. § 52.24(b).

<sup>14</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

2007 after she stepped in a hole; for a left ankle sprain that radiated pain up her left leg to her hip in April 2007; and for lower back pain and chronic pain in her lower left leg in June 2008.

- The record indicates that the applicant suffered a back spasm or injury and pain while performing a cold-water survival swim test during her annual active duty training from May 11 to 22, 2009. LT N's notes show that her back condition was a known issue in September 2009.
- On October 27, 2012, the IPEB found that the applicant was unfit for duty and recommended that she be retired because of these back and left leg injuries, which the IPEB described as "intervertebral disc syndrome: forward flexion of the thoracolumbar spine 30 degrees or less" and "left lower extremity radiculopathy rated analogously to incomplete paralysis of sciatic nerve, mild."

6. Fit for duty until March 4, 2010. The preponderance of the evidence shows that despite her impairments, the applicant was fit for duty until at least March 4, 2010. LT N's notes in the fall of 2009 indicate that she was drilling and considered a very good [REDACTED]. The applicant's medical records show that on March 4, 2010, following medical appointments for a Periodic Health Assessment in February 2010, the applicant was reported to be fit for duty and ready to deploy overseas with her unit. The Board therefore finds that despite the applicant's prior injuries to her left foot, ankle, leg, and hip and to her lower back, which were incurred and/or aggravated repeatedly while on active duty in 2006, 2007, 2008, and 2009, as of March 4, 2010, she was still fit for duty and able to perform her duties as a [REDACTED].

7. Unfit for [REDACTED] duties as of March 18, 2010. The preponderance of the evidence shows that on or shortly before March 18, 2010, the applicant aggravated her lower back condition, became unfit for her military duties as an [REDACTED] and remained unfit for those duties until she was medically retired in March 2013. The applicant claimed that she injured her back while working voluntarily at her unit, for points but not pay, to prepare boats for the upcoming overseas deployment in April. She stated that she did not request immediate medical attention because she thought she had simply pulled a muscle. Ocean Springs Hospital notes from March 18, 2010, state that the applicant was experiencing lower back pain that caused her to have difficulty walking. This aggravation was such that the applicant became not fit for duty, as evidenced by the fact that she did not deploy with her unit in April 2010 and the unit's medical officer, LT S, considered her condition disqualifying and attempted to initiate a medical board for her in May 2010. In fact, according to the record, she was never again deemed fit for full duty as an [REDACTED], although the NOE memorandum dated December 2, 2011, states that she was fit for limited duty at the time. There is no evidence that the applicant's command thought that she was malingering, reported her as being absent without leave from the deployment, or reported her absences on drill weekends as unexcused after her unit returned from overseas in September 2010.

8. Applicant timely reported injury. The preponderance of the evidence shows that the applicant informed her command of her medical condition in March 2010 as required by Article 6.B.1. of the Reserve Policy Manual because she did not deploy with her unit in April 2010 and the unit's medical officer, LT S, attempted to initiate a medical evaluation board in May 2010. The record shows that LT S was aware that the applicant had become unfit for duty in March 2010. He

sent a letter to Ocean Springs Hospital on April 27, 2010, to get a copy of the applicant's medical files. A memorandum dated May 11, 2010, which is attributed to CDR B but signed by someone else "by direction," states that a medical evaluation board had found that the applicant's injuries were incurred "within the line of duty," although there is no corresponding medical evaluation in the record. In addition, LT S signed a Medical Board Report Cover Sheet on which he indicated that the applicant's diagnoses were "EPTE," which denotes that they "existed prior to entry." Despite the fact that the Medical Board Report Cover Sheet is dated May 11, 2010, the medical examination was not completed until October 27, 2010, after the unit returned from overseas, and the report of the IPEB, which found that the applicant was "unfit for continued duty by reason of physical disability" and recommended placement on the TDRL, is dated two years later, in October 2012. There is no evidence that the applicant caused the delays between the worsening of her back condition in March 2010, the medical evaluation board examination in October 2010, and the IPEB in October 2012. To the contrary, the record shows that she was left to her own devices while her unit deployed overseas and she contacted the Command Master Chief of her prior unit, who tried to advocate on her behalf.

9. Disabilities previously incurred and aggravated in line of duty. The preponderance of the evidence shows that the applicant's back and leg disabilities, for which she was medically retired in 2013, were incurred and aggravated in the line of duty (LOD) in 2006, 2007, 2008, and 2009. Section 7.F. of the Administrative Investigations Manual, COMDTINST M5830.1A, states that in making an LOD determination, "authorities shall presume that a Coast Guard member's death (on active duty), disease or injury was incurred in the LOD and not due to misconduct unless clear and convincing evidence shows otherwise," and there is no clear or convincing evidence that the applicant did not incur or aggravate her back and leg injuries in the line of duty. Under Sections 7.C. and 7.D. of the manual, the applicant's command should have completed LOD investigations following her injuries on active duty before March 2010, and under Section 7.B.1., the IPEB was authorized to direct her command to complete an LOD investigation and was bound by the result. Although there is no report of an LOD determination by the applicant's command in her record, the IPEB's report shows that that board concluded that the applicant had incurred or aggravated her disabling injuries in the line of duty. The IPEB rated three conditions as being permanently unfitting for duty and found that they were all "incurred or aggravated while entitled to receive basic pay" and that they were the "proximate result of performance of active duty or inactive duty training." In addition, the NOE memorandum dated December 2, 2011, states that her injuries had been incurred or aggravated in the line of duty. Under 10 U.S.C. § 1074a, no NOE should have been authorized if the applicant's injuries had not been found to have been incurred or aggravated in the line of duty.

10. Entitlement to medical care. The applicant was entitled to medical care for injuries she had incurred or aggravated in the line of duty, pursuant to 10 U.S.C. § 1074a and Article 6.A.3. of the Reserve Policy Manual, until she was placed on the TDRL as of March 5, 2013. According to § 1074a and Article 6.A.3., a reservist is entitled to medical care for injuries she incurs or aggravates in the line of duty until she has been separated or retired under PDES processing. While the applicant's command was apparently preoccupied with the pending deployment and may have been unaware in March 2010 that she had previously incurred back and leg injuries in the line of duty, the Board finds that under this law and policy, she was nonetheless entitled to medical care for those injuries, which is conferred on a reservist by the issuance of a Notice of Eligibility (NOE) for medical care. The record shows that the applicant did not receive an NOE until December 2,

2011, despite the fact that she became unfit for duty as an [REDACTED] because of her back condition on or about March 18, 2010; had not been fit for full duty as an [REDACTED] or drilled since that date; and was subsequently retired based on a finding that her injuries had been incurred or aggravated in the line of duty. Therefore, the Board finds that pursuant to 10 U.S.C. § 1074a and Article 6.A.3. of the Reserve Policy Manual, the applicant was entitled to an NOE providing medical care for her in-the-line-of-duty injuries in March 2010 and remained entitled to the NOE until she was medically separated on March 4, 2013.

11. Entitlement to incapacitation pay. The preponderance of the evidence shows that the applicant is entitled to pay and allowances under 37 U.S.C. § 204(g) and Article 6.A.4. of the Reserve Policy Manual offset by her civilian income because she became physically disabled (unfit for duty) on or about March 18, 2010, because of the injuries she had previously incurred and aggravated in the line of duty. This law and policy state that a reservist is entitled to pay and allowances—offset by civilian income—if she is physically disabled because of an injury incurred or aggravated while in the line of duty on active duty or inactive duty training. The applicant’s medical records show that she repeatedly injured her left foot, ankle, and leg and lower back in the line of duty while on active duty attending [REDACTED] “A” school in 2006, while on active duty from November 2006 through July 2008, and during active duty training in May 2009. The medical records show that she then aggravated these prior injuries to her back on or about March 18, 2010, and became unfit for full duty as an [REDACTED]. The applicant alleged that she also became unable to perform her civilian job because of these injuries, and, as noted above, she was retired as a result of these injuries, which were found to have been incurred or aggravated in the line of duty by the IPEB.

12. Entitlement to drill pay. The Board finds that the applicant became eligible for drill pay pursuant to 37 U.S.C. § 206 and Article 6.A.4. of the Reserve Policy Manual on or about March 18, 2010. Under this law and policy, a reservist is entitled to drill pay (1/30 of basic pay) for each scheduled drill that the reservist is unable to perform because of a physical disability resulting from an injury, illness, or disease incurred or aggravated in the line of duty while performing active duty or inactive duty training. The record shows that the applicant was a member of the Selected Reserve and drilled regularly for pay as an [REDACTED] until she aggravated her back injury in March 2010 and was unable to perform drills thereafter. Accordingly, the Board finds that the applicant became eligible for drill pay pursuant to § 206 and Article 6.A.4. on or about March 18, 2010.

13. Lack of drill record in March 2010. The Coast Guard argued that the applicant is not entitled to any relief because there is no evidence supporting her claim that she injured her back while drilling for points but not pay in March 2010. The Coast Guard relied on the fact that the applicant’s LESes for that period show that she did not perform any paid or unpaid drills or RMPs in March 2010 and her drill record shows that she was not credited with any paid or unpaid drills or RMPs in March 2010. However, the record-keeping at the applicant’s unit was apparently imperfect because her March LES shows that she was paid for multiple drills on February 20 and 21, 2010, but her drill record shows that she was credited with only RMPs on those dates. In addition, her March LES shows that she was paid for two RMPs, presumably for her medical appointments on February 17 and 25, 2010, but she was credited with only one of those RMPs in her drill record. Therefore, the Board finds that the applicant’s allegation that in March 2010, she

injured her back while drilling voluntarily for points but not pay to prepare boats for the upcoming deployment in April 2010 is plausible, even though her LES and drill record do not show that she performed any duty in March 2010.

Even if the applicant was not on duty when she aggravated her back condition in March 2010, however, she would still be entitled to medical care and pay and allowances under 10 U.S.C. § 1074a and 37 U.S.C. §§ 204(g) and 206 from the time she became unfit for duty in March 2010 as a result of the injuries she had incurred and aggravated in the line of duty in 2006, 2007, 2008, and 2009 until she was placed on the TDRL. As noted above, 10 U.S.C. § 1074a entitles a reservist who is injured in the line of duty to medical care for those injuries; 37 U.S.C. § 204(g) entitles a reservist who is physically disabled as the result of an injury incurred or aggravated in the line of duty to pay and allowances offset by civilian income; and 37 U.S.C. § 206 entitles a reservist who cannot perform scheduled drills because of an injury incurred or aggravated in the line of duty to drill pay. These entitlements began when the applicant first incurred and aggravated these injuries prior to 2010, and none of these laws or the corresponding policies in the Reserve Policy Manual state that the entitlements stop if the member's in-the-line-of-duty injury worsens on a day when the member is not on duty. The applicant is entitled to the pay and benefits provided by these laws because she became unfit for her duties as an [REDACTED] on or about March 18, 2010, due to a back injury that she had previously incurred and aggravated while on active duty and in the line of duty in 2006, 2007, 2008, and 2009. In addition, the preponderance of the evidence shows that she remained unfit for her [REDACTED] duties and entitled to the pay and benefits provided by these laws until she was retired due to her injuries on March 4, 2013. As noted above, there is no evidence that the applicant's command ever thought that she was malingering or reported her absences from drill as unexcused between March 2010 and December 2011. The fact that her command dropped the ball because of the overseas deployment in April 2010 and the Coast Guard failed to document a formal LOD determination and issue the NOE at the time of her injuries and then failed to timely process her under the PDES does not negate her legal entitlements under the statutes or Chapter 6 of the Reserve Policy Manual.

14. Refusal to backdate 2011 NOE. The Coast Guard argued that PSC-rpm's apparent (but undocumented) denial of the applicant's command's request to backdate the NOE, which was issued on December 2, 2011, should be accorded a presumption of regularity. However, there is no documentation of PSC-rpm's denial of the request in the record, and so the legal or factual grounds for the apparent denial (assuming PSC-rpm actually considered her request) are unknown. Nor did the Coast Guard cite any statute or policy that would disentitle the applicant—who was rendered unfit for duty in 2010 as a result of injuries that had previously been incurred or aggravated in the line of duty—to the medical care and pay and allowances provided under 10 U.S.C. § 1074a and 37 U.S.C. §§ 204(g) and 206. With no documentation showing that PSC-rpm actually considered and denied the request to backdate the NOE and no legal authority that would support the apparent refusal to backdate the applicant's NOE, the fact that PSC-rpm did not backdate the NOE does not persuade the Board that the applicant was not entitled to an NOE for her in-the-line-of-duty injuries before December 2, 2011.

15. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that the Coast Guard erred by not issuing an NOE pursuant to 10 U.S.C. § 1074a and by failing to counsel the applicant about her entitlement to pay and allowances under 37 U.S.C.

§§ 204(g) and 206 when she became [REDACTED] unfit for duty in March 2010 because of injuries she had previously incurred and aggravated in the line of duty while on active duty in 2006, 2007, 2008, and 2009. The Board therefore finds that the applicant is entitled to an NOE not as of December 2, 2011, when the Coast Guard issued her one, but from March 18, 2010, until her disability retirement on March 4, 2013. In addition, she should be counseled on her right to pay and allowances pursuant to 37 U.S.C. §§ 204(g) and 206.

16. Accordingly, the Board finds that the applicant's request for constructive active duty should be denied but the Coast Guard should correct the applicant's NOE to cover the entire period from March 18, 2010, to March 4, 2013, and reimburse her for the medical expenses she incurred as a result of the medical conditions for which she was temporarily retired pursuant to the decision of the Informal Physical Evaluation Board if she submits documentation showing her payment of those medical expenses within six months of the date of this decision. Her record should show that she was unfit for duty as an [REDACTED] from March 18, 2010, to March 4, 2013, because of injuries previously incurred or aggravated in the line of duty, and she should be advised of her entitlements under 37 U.S.C. §§ 204(g) and 206. She should receive any back pay and allowances due her subject to legal offsets as a result of this correction if she submits the required documentation within six months of this decision.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

[REDACTED]

[REDACTED]

**ORDER**

The application of former [REDACTED] USCGR, for correction of her military record is granted in part as follows:

The Coast Guard shall correct the Notice of Eligibility she was issued on December 2, 2011, to cover the period of March 18, 2010, through March 4, 2013, and shall reimburse her for the medical expenses she incurred as a result of the medical conditions for which she was temporarily retired pursuant to the decision of the Informal Physical Evaluation Board if she submits documentation showing her own payment of those expenses to the Personnel Service Center within six months of the date of this decision.

The Coast Guard shall correct her record to show that she was unfit for duty as an [REDACTED] from March 18, 2010, to March 4, 2013, because of injuries previously incurred or aggravated in the line of duty and shall counsel her about her entitlements under 37 U.S.C. §§ 204(g) and 206. The Coast Guard shall pay her any back pay and allowances due, subject to legal offsets, as a result of this correction if she submits the documentation required for such payments under applicable law and policy within six months of the date of this decision.

July 21, 2017

