DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-142

[redacted]
(former) BM1

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter "Board") according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application on August 6, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 31, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a former Boatswain's Mate, First Class (BM1/E-6), was Honorably discharged from the Coast Guard Reserve on January 27, 2023, due to a physical disability not incurred in the line of duty (a left shoulder condition). He has requested that the Board grant him a medical retirement based on other conditions that *were* incurred in the line of duty. Alternatively, he has asked that the Board direct the Coast Guard to re-process him through the Physical Disability Evaluation System (PDES).

SUMMARY OF THE RECORD

The applicant joined the Coast Guard as a Seaman Recruit (SR/E-1) on April 20, 1999, and continued on active duty until February 20, 2010, when he was released and entered the Selected Reserve (SELRES). He served additional active duty periods, including from May 2012 to July 2015, July 2016 to September 2017, and January 2018 to May 2018. Between these periods and from May 2018 until his January 2023 discharge, the applicant served in SELRES. In total, he approximately 17 years of active duty and approximately 5 years of reserve service.

VA Records Submitted by the Applicant

U.S. Department of Veterans Affairs (VA) records enclosed with the applicant's submission to the Board show that after reporting increased neck pain radiating to his shoulder in mid-2016, the applicant underwent an MRI and was diagnosed with degenerative changes in the cervical spine, with resultant upper extremity radiculopathy. Also in 2016, the applicant was diagnosed with migraine headaches, which he reported caused light and sound sensitivity, throbbing pain, nausea, and vomiting. In April 2017, the applicant was assessed with posttraumatic stress disorder (PTSD) based on his report of exposure to deceased and badly injured first responders and other individuals as part of the Coast Guard's response to the September 11, 2001, World Trade Center attacks. A VA Medical Center (VAMC) record shows the applicant reported intrusive thoughts, nightmares, hypervigilance, hyperarousal, hyperstartle response, sleep disturbance, avoidance, isolation, and increased irritability, which he felt had been getting worse over the past year. In 2018, after he reported lower back pain that had been present "for years," the applicant underwent a MRI and was diagnosed with degenerative disc disease of the lumbar spine, with resultant lower extremity radiculopathy.

While serving in the SELRES, the applicant was awarded VA disability compensation benefits for numerous service-connected conditions. With his submission to the Board, the applicant included a November 2018 VA rating decision. While the decision appears to have adjudicated a claim submitted in September 2017, it indicates that the applicant was in receipt of VA benefits for some conditions since at least 2014. In relevant part, the November 2018 VA decision awarded the following: a 50 percent rating for PTSD; 30 percent for left upper extremity radiculopathy; 30 percent for migraines; 20 percent for lumbar degenerative disc disease; 20 percent for a right shoulder condition; 10 percent for left lower extremity radiculopathy; 10 percent for gastroesophageal reflux disease (GERD); 10 percent for cervical spine degenerative disc disease; and 10 percent for left elbow lateral epicondylitis. The combined rating awarded was 70 percent from April 28, 2014, and 100 percent from September 26, 2017.

The applicant also submitted VA Disability Benefits Questionnaires (DBQs) completed by a VA nurse practitioner in October 2018. The DBQs detailed symptoms associated with the applicant's various conditions for use in adjudicating his benefits claim. The DBQs submitted by the applicant included assessments of the following conditions: the thoracolumbar spine, the cervical spine, headaches, and GERD. Each DBQ detailed various symptoms, including pain and reduced range of motion with respect to the cervical and lumbar spine, and pain, nausea, vomiting and sensitivity to light and sound with prostrating attacks approximately once monthly, with respect to the applicant's headaches. Each DBQ included a section assessing whether the condition in question impacted the applicant's ability to work, and the VA examiner indicated "No" for each condition.

Left Shoulder Injury and PDES Processing

On March 6, 2019, the applicant injured his left shoulder during a "combative training exercise" at his civilian job as a law enforcement officer with a separate service branch.[1] He was diagnosed with a left acromioclavicular (AC) joint sprain. Later in March 2019, the left shoulder was examined, and it was noted that the injury was expected to fully resolve. In August 2019, however, the applicant reported to an emergency room with complaints of left shoulder pain, numbness, and limited range of motion and underwent a Magnetic Resonance Imaging scan (MRI). Significant capsular distension and other abnormalities were noted. The applicant was then placed on restricted duty and ordered not to engage in lifting, carrying, or reaching with his left arm.

According to the applicant, he was informed by Dr. K.D. some time in 2019 that he would be "med boarded." Although the record does not contain documentation confirming the date or manner of notification, forms completed by the applicant and Coast Guard medical officers in July and August 2020 (discussed in the section directly below) appear to signal the initiation of PDES processing.

Pre-MEB Examination

The applicant completed a DD Form 2807 (Report of Medical History) on July 14, 2020. He reported a number of medical issues, including the following:

- difficulty breathing for periods of time lasting hours to days since 2001;
- sinus infections numerous times since 2008;
- facial fracture in August 2006;
- tore right shoulder in April 2013 and had two surgeries;
- numbness and pain in left elbow since 2012;
- separated AC joint after falling on left shoulder in March 2019 with continuing weakness and pain down left arm since then;
- back and neck pain and numbness radiating down left leg and left arm, diagnosed with lumbar radiculopathy in December 2017 and cervical radiculopathy in April 2015;
- pain in big toe from injury in August 2002;
- weakness and pain in left knee, given brace after falling going up and down stairs multiple times;
- GERD caused by hiatal hernia, on medication since 2006;
- Eczema since 2017 and contact dermatitis since 2002 believed related to September 11 response;
- Migraines diagnosed in December 2017.

[1] The applicant's left shoulder injury was later determined not to have been in the line of duty.

According to the examining physician's "Summary and elaboration" of all pertinent data," signed by Dr. L.R. on August 3, 2020, the applicant was deemed unfit for full duty. Dr. L.R. further stated that it was important that the applicant follow up with orthopedics, gastroenterology, and neurology as soon as possible.

Also on August 3, 2020, Dr. L.R. completed a DD Form 2808 (Report of Medical Examination). Therein, Dr. L.R. noted decreased left shoulder range of motion and decreased strength of the left arm and hand. Mild to moderate anxiety was also noted, along with migraines, GERD, primary osteoarthritis, hypertension, Barrett's esophagus, and radiculopathy. Dr. K.D. signed the examination report as the Approving Authority.

Dr. L.R. also documented his August 3, 2020, examination of the applicant on separate naval hospital clinic records. Therein, Dr. L.R. noted that the applicant "report[ed] to medical for PEB physical examination." The applicant's history of cervical radiculopathy, left shoulder AC joint separation, migraine headaches four to five times per month, esophageal condition, back pain, muscle aches, generalized pain, and tiredness were noted. It was also noted that the applicant reported anxiety, but no depression.

Per a September 2020 electromyography (EMG) report, the applicant had scapular winging and left shoulder weakness since his March 2019 injury, and had been going to physical therapy, but still had weakness. Examination showed decreased left shoulder strength.

On October 28, 2020, range of motion testing was performed on the applicant's cervical spine and shoulders. Decreased range of motion was noted.

March 2021 MEB

In March 2021, a Medical Evaluation Board (MEB) Narrative Summary (NARSUM) was completed, which stated the following:

> This is a 41 year old right hand dominate male reserve Boatswain Mate First Class with 17 years active duty and 5 years select reserve service in the USCG who was evaluated via a record review for the purpose of an initial medical board on 26Mar2021 with the disqualifying diagnoses of:
>
> M25.512 Chronic Left shoulder pain w/ chronic long thoracic neuropathy
>
> According to review of health records, this member suffered a non-line of duty injury to his left shoulder after rolling onto his left shoulder on 06Mar2019 during a combative training exercise in his civilian job as a Department of the Air Force Law Enforcement Officer. He was evaluated in the Joint Base Charleston Emergency Department following the injury on 06Mar2019 and diagnosed with a Left Acromioclavicular Joint Sprain. On 29Mar2019 he had a follow up appointment with orthopedics that indicated in the treatment plan that "[his shoulder] is getting better and will continue to get better. It might take 6-8 weeks but it should resolve completely. Follow up should be as needed." No limitations to activities were provided at this time.
>
> The next medical record entry was an Emergency Room note from the Charleston VAMC dated 10Aug2019. The ER note indicated that he injured his left shoulder approximately 4 months earlier when he fell onto his

shoulder while playing with his children. He reported feeling a pop with limited range of motion (ROM) and intermittent numbness and tingling. X-rays of the shoulder were completed in the ER and read by the radiologist as, "No acute osseous abnormality. No significant degenerative change. Essentially normal exam." He was given a 7 day limited duty chit by the ER provider for limited ROM of the left shoulder and no lifting over 5 pounds.

An MRI without contrast of the L shoulder was obtained the following day, 11Aug2019, and the report findings were, "Significant capsular distention and contacting bone marrow edema of the acromioclavicular joint likely secondary to sprain or osteal lysis secondary to overuse/weightlifting. Infection is a differential consideration but is considered less likely given the lack of adjacent inflammatory changes. The coracoclavicular ligament is intact. Mild distal supraspinatus and infraspinatus tendinosis without rotator cuff tear. Mild degenerative tearing of the posterior labrum with mild fraying of the superior labrum. These labral findings may be asymptomatic." A VA physical therapy evaluation was done on 10Sep2019 and planned to be conducted weekly for 8-10 weeks. There was no significant documented improvement in the left shoulder symptoms.

He continued with left shoulder limitations as above by his VA primary care provider until he had an orthopedic surgery visit with Dr. [S.W.] on 14Oct2019 at which time the recommendation for 3 months of no lifting, reaching, or carrying with the left arm was given. Dr. [S.W.] concluded that the SM likely had a long thoracic nerve injury and on 30Dec2019 an EMG nerve conduction study was ordered.

The member's follow up was significantly delayed due to COVID pandemic closures of medical offices and then difficulties in getting the member on orders to complete medical visits at Navy Health Clinic Charleston (NHCC) for in-person appointments for the MEB physical exam and Deluca measurements. The EMG of the left upper extremity was eventually completed on 29Sep2020. The study was abnormal and showed electrodiagnostic evidence for chronic long thoracic neuropathy.

Physical examination was done on 03Aug2020 and Deluca measurements were obtained on 28Oct2020, both at NHCC. Please see the separate physical exam and Deluca ROM measurement documentation. The Deluca measurements show a significantly decreased ROM of the left shoulder in all planes of motion.

Past medical history was reviewed. Of significant note is the VA medical record indicates this SM has a 100% service connected disability rating with the following conditions listed: inflammation of the sciatic nerve, migraine headaches, degenerative arthritis of the spine, inflammation of the upper radicular nerves, lumbar or cervical strain, gout, post-traumatic stress disorder, hiatal hernia, scars, limited flexion of the forearm, sleep apnea syndrome, eczema, hypertensive vascular disease, facial scars, and limited motion of the arm.

Chronic medications include naproxen 500mg po bid prn, verapamil 120mg daily, famotidine 40mg qhs, lansoprazole 15mg 2 po bid, and clobetasol topical

It is the opinion of the board that the diagnosis of chronic left shoulder pain is correct. He has been continuously limited in the performance of duty since 10Aug2019.

There is no disciplinary action pending.

There is no disciplinary action pending.

Personal appearance of the evaluee before an FPEB would not be deleterious to the patient's physical or mental health.

Disclosure to the evaluee of information relative to his physical or mental condition would not be deleterious to that condition. If discharged into one's own custody, the evaluee will not constitute a danger to himself or the public safety.

The evaluee is not likely to become a public charge.

[LCDR C.L.]
Board Member and preparer

In a memorandum dated May 18, 2021, the applicant's Commanding Officer (CO) endorsed the MEB report and recommended the applicant be found unfit for duty. The CO stated that the duties normally associated with the applicant's grade and rate included small boat search and rescue and law enforcement operations covering a large area of responsibility. The CO then stated that the applicant was serving in a limited duty capacity, and that his duties were solely administrative. The CO concluded by stating that the applicant was incapable of being put into the fleet and required to perform the prescribed duties associated with his grade and rate.

On June 3, 2021, the applicant signed a form titled "Evaluee's Statement Regarding the Findings of the Medical Board Report." The form indicated that the MEB had found the applicant did not satisfy medical retention standards based on his left shoulder condition. The form also included the following statement: "I believe that all my impairments have been evaluated adequately by the Medical Board Report." The applicant signed the form and also initialed a waiver of his right to submit any statement rebutting the MEB's findings and recommendations.

February 2022 IPEB

According to a Report Cover Sheet prepared by the two MEB members, the report was provided to an Informal Physical Evaluation Board (IPEB) along with extracts from the applicant's health record, copies of the July 2020 Report of Medical History and August 2020 Report of Medical Examination, and the command endorsement.

On February 28, 2022, the IPEB issued its findings and recommendations. The IPEB found the applicant's left shoulder condition was not incurred in service and that the condition rendered the applicant unfit for continued service. Thus, the IPEB recommended the applicant for permanent retirement. The IPEB's findings and recommendation were signed by its three members on August 8, 2022.

On September 28, 2022, the applicant's assigned Coast Guard counsel, M.H., indicated she had reviewed the IPEB's findings and disposition and had counseled the applicant regarding their acceptance or rejection. On September 28, 2022, the applicant accepted the IPEB's tentative findings and recommended disposition and waived his right to a formal hearing.

The Approving Authority approved on December 15, 2022, and a Separation Authorization was issued for the applicant to be discharged on January 27, 2023.

Applicant's Retirement

In a memorandum dated March 10, 2023, the applicant was informed that because he had served for 20 or more years, he was permitted to request a non-regular (reserve) retirement in lieu of separation based on the IPEB findings.

In a July 10, 2023, memorandum, the applicant was transferred to Retired Reserve Without Pay (RET-2) status, effective July 1, 2023.

Based on the foregoing, the applicant's actual date of discharge is somewhat unclear. While initially authorized for separation on January 27, 2023, the "Member Information" documents provided to the Board by the Coast Guard indicate the applicant may have remained in SELRES until retiring on July 1, 2023, consistent with the July 10, 2023, memo.

APPLICATION

In his July 2024 submission, the applicant, through counsel, requested that the Board either medically retire him with a 100 percent rating based on all of his "unfitting" medical conditions, or refer him to the PDES for full consideration of those conditions. The applicant argued that despite Coast Guard policy requiring MEBs to fully evaluate all of a member's impairments, and despite his MEB "flagging" numerous conditions incurred in the line of duty, the MEB focused only on his left shoulder injury, the only condition *not* incurred in the line of duty. The applicant contended that this resulted in the IPEB not being provided a clear picture of his general health and being unable to render a competent and fully informed decision in his case. But for these errors, the applicant argued, he would have been medically retired from service. The applicant went on to argue that his numerous medical conditions failed medical retention standards detailed in Department of Defense Instruction (DoDI) 6130.03.

With his application, the applicant enclosed an "affidavit" in which he detailed his history of service in the Coast Guard. He explained that he received stellar marks over the years and was steadily promoted and asked to take on leadership responsibilities. The applicant then recalled suffering a series of injuries, some which he sought medical care for and others he did not. He described a spinal injury incurred while underway when a large swell caused him to strike his back against a metal bench. Although imaging showed no fractures, he contended that being required to go underway for many hours the following day exacerbated the injury and contributed over time to his current spinal conditions. The applicant also recalled tearing his right rotator cuff, labrum, and bicep during a drill, necessitating two surgeries and resulting in continuing numbness, weakness, and pain. He also recalled being diagnosed with Barrett's esophagus, GERD, and stomach ulcers after experiencing severe stomach pain. He further noted that he had injured his left elbow during service and was eventually diagnosed with epicondylitis. The applicant went on to

describe his exposure to many drowning victims and other body recoveries during law enforcement and search and rescue missions, with the most significant being the September 11 attacks. He explained that he believed his PTSD, migraines, depression, hypertension, and sleep apnea all related to his activities responding to the attacks. He described his PTSD symptoms as including panic attacks, inability to concentrate, and memory issues. He concluded by asserting that due to his musculoskeletal and mental health symptoms, his performance began to suffer, resulting in his being physically unable to demonstrate techniques during training and turning down a position as a section leader for a position with less responsibility. He also reported that his panic attacks had led to at least one trip to the emergency room, and that he was no longer able to go underway without fear and anxiety.

Regarding his left shoulder injury, the applicant stated that upon being informed that he was likely to be med boarded, he explained his other medical issues and his belief that he would be able to recover from the left shoulder injury. According to the applicant, various miscommunications with medial staff and his command occurred regarding the status of his PDES case and whether he needed to re-enlist. He also contended that upon receipt of the IPEB findings, his assigned PDES counsel, M.H., told him that he had two choices: accept the decision or provide proof that his left shoulder injury happened while on orders. The applicant stated that at that time, he expressed his concerns regarding his other medical issues, but that M.H. advised him to accept the IPEB findings, and he "did not hear from her again." He recalled that he was later contacted by another Coast Guard attorney, K.G., who said she would be representing but there was "not much she could do." The applicant stated that K.G. attempted to correct these issues by requesting that his PDES processing start again from the beginning but was told it was "already done" and to "move on." The applicant also discussed various miscommunications regarding the timing of his eligibility for retirement and his Tricare insurance status. He stated that he was ultimately informed that for the period of March to July 2023, he was not covered by Tricare. As a result, per the applicant, Tricare would seek refunds for payments made for extensive care his wife received for pregnancy complications during this period, resulting in more than $100,000.00 in outstanding medical bills owed by the applicant.

VIEWS OF THE COAST GUARD

In a memorandum dated January 30, 2025, the Coast Guard Personnel Service Center (PSC) recommended the Board deny the application. The PSC argued that the applicant's PDES processing complied with Coast Guard policy and that the applicant was counseled on and accepted the IPEB's findings and waived further consideration. The PSC also noted that the applicant had not provided service-contemporary medical documentation that substantiated that he had additional conditions that were incurred in the line of duty and were disqualifying for service.

In a separate memorandum dated April 1, 2025, a Coast Guard Judge Advocate (JA) concurred with the PSC and argued that the applicant's medical conditions, other than his left shoulder injury, were not unfitting for service. The JA noted that the sole standard for determining medical retirement or separation under Coast Guard policy was unfitness to perform the duties of office, grade, rank, or rating. Regarding the applicant's VA rating, the JA argued that the record showed that up until the point of his left shoulder injury, the applicant was performing his duties without apparent issue and had not presented evidence showing the VA-rated conditions caused him to be unfit to serve.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 24, 2025, the Board provided the applicant with the Coast Guard's submissions and invited him to submit a response within 30 days. No response was submitted.

APPLICABLE LAW AND POLICY

Board Proceedings

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a). "Error" means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. *See Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) ("'Error' means legal or factual error."); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations."). Injustice, when not also error, is treatment by the military authorities that "shocks the sense of justice." *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a "case-by-case basis." Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

"The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by a preponderance of the evidence." 33 C.F.R. § 52.24(b). Absent evidence to the contrary, the Board presumes that Coast Guard officials have carried out their duties "correctly, lawfully, and in good faith." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

10 U.S.C. Chapter 61

Title 10, Chapter 61 (10 U.S.C. §§ 1201-1217) covers "Retirement or Separation for Physical Disability." The statute provides that a member is medically retired when

found unfit for duty due to disability incurred during active service, when the disability in question warrants at least a 30 percent rating under the VA Schedule for Rating Disabilities (VASRD). A member is medically separated with severance pay when found unfit due to disability incurred during active service when the disability warrants a rating less than 30 percent.

Coast Guard Policy

Physical Disability Evaluation System, COMDTINST M1850.2D (May 2006) (hereinafter "*PDES Manual*") was in effect during the applicant's service and discharge. Article 1.D. provides a general overview of the PDES, as follows:

1. Medical Evaluation Board (MEB). A member is introduced into the PDES when a commanding officer (or medical officer or higher authority as described in chapter 3) questions the member's fitness for continued duty due to apparent physical and/or mental impairment(s) and directs that an MEB be convened to conduct a thorough examination of the member's physical and/or mental impairment(s). The results of this examination, prepared in MEB format, should be as detailed as possible so as to provide a complete portrait of the member's physical and mental impairments for subsequent review.

2. Commanding Officer Endorsement. The MEB will then be sent to the evaluee's unit for action set forth in articles 1.C.6 and 3.I. The unit commanding officer will prepare an endorsement. This endorsement shall reflect the commanding officer's observations of the evaluee's working ability and any impact the injury or disease has on the evaluee's ability to perform the military duties associated with his or her office, grade, rank, or rating. The commanding officer shall fully evaluate the more intangible aspects such as motivation and ability to adapt.

3. Evaluee Response to MEB. A copy of the MEB shall also be provided to the evaluee, who will be given an opportunity to comment on the report. To help the evaluee in reviewing the report, the evaluee's commanding officer will arrange assistance by a qualified individual capable of explaining the meaning of the report and the evaluee's rights.

4. Convening Authority Review. The commanding officer then forwards the entire record, properly endorsed, including the evaluee's statement, if any, to Commander (CGPC-adm-1).

5. Commander (CGPC-adm) Referral to IPEB. CGPC-adm will then review the record and, if it is sufficient, refer the MEB to the IPEB. If an MEB is insufficient, CGPC-adm will hold the case in abeyance pending receipt of the required information.

6. IPEB Action. The IPEB reviews the record of each case referred to it and evaluates the fitness and disability of the evaluee. IPEB findings and recommended disposition must be unanimous (article 4.A.6.). The findings and recommended disposition are initially only sent to the evaluee. If the evaluee elects counsel, the decision will be provided to the assigned legal counsel as well.

7. Evaluee Response to IPEB. Elected counsel, if chosen by the evaluee, will examine the records and review the case, the findings, and recommended disposition with the evaluee. Counsel shall explain to the evaluee the full implications of the IPEB's findings and recommended disposition, the evaluee's rights, and alternative IPEB courses of action that should be considered. The evaluee must then make a decision on the findings and recommended disposition based on the counseling provided (see articles 4.A.13 and 4.A.14 for available options). The time frame for responding is not later than 30 calendar days from the date of receipt of notification of findings from CGPC.

8. FPEB Action and Evaluee Response. Upon receiving a case, the FPEB arranges for the presence of the evaluee and witnesses. This board provides the full and fair hearing which, if demanded by an evaluee, is required by 10 USC §1214. An audio recording is made of the testimony and proceedings, witnesses are heard under oath or affirmation, and other evidence may be received to establish the evaluee's fitness or unfitness for duty and the degree of disability, if applicable. The evaluee is given a copy of the audio recording, if requested, and the findings, amplifying statement, and recommended disposition. The evaluee is allowed not more than 21 calendar days from the date of receipt of the FPEB findings, recommended disposition, and amplifying statement, to review and, if desired, to submit a rebuttal to the President, FPEB. If no rebuttal is submitted within the 21 calendar day period, the case is forwarded to Commandant (G-LGL) for review.

9. PRC Action and Evaluee Response. If an evaluee has rebutted the findings and recommended disposition of an IPEB or FPEB, the entire record is reviewed by the PRC. The PRC, in reviewing the record, ensures that the correct Department of Veterans Affairs Schedule for Rating Disabilities (VASRD) diagnostic code(s) has been assigned, there is no pyramiding of impairments, a correct percentage of disability has been assigned to the VASRD descriptive diagnosis(es), and there is a preponderance of evidence of record to support the findings and, if found unfit, the disability rating. If the IPEB or FPEB findings and recommended disposition are approved by the PRC, or if only minor changes are made, the record is forwarded to Commandant (G-LGL) for a determination of legal sufficiency and for action by CGPC. If the PRC does not approve the findings and recommended disposition of the IPEB or FPEB, it will take action as provided in article 6.C. Substitute findings and disposition will be sent to the evaluee, who has the opportunity to rebut or appeal the substitution within 21 calendar days from the date of receipt from CGPC. The PRC will consider the evaluee's comments and will either modify the substitute findings and recommended disposition to accommodate the evaluee, or adhere to substitute findings or disposition and so notify the evaluee of the decision and the right to request a hearing before a PDAB. If a rebuttal statement is not received within the 21 calendar day period, the evaluee will be deemed to have concurred with the substitute finding. (chapter 7)

10. PDAB. The PDAB is the final board in the disability system. It will review the record of a case presented to it and will hear statements, in person, of the evaluee and counsel if they wish to make such statements. The PDAB will not normally call witnesses or hear other testimonies which are not already contained in the record. The PDAB's decision is forwarded to Commandant (G-LGL) for legal sufficiency review. If legally sufficient, the record is forwarded to the final approving authority. If legally insufficient, the record is returned to the PDAB with recommended corrective action. Upon completion of Commandant (G-LGL)'s review, the record is returned to the PDAB for completion of necessary endorsements, then forwarded to the final approving authority.

11. Legal Review. When an evaluee accepts the findings and recommended disposition of an IPEB, FPEB, or PRC, the record is forwarded to Commandant (G-LGL) for legal review. If legally sufficient, the record is forwarded to the final approving authority. If legally insufficient, the record is returned to the IPEB, FPEB, PRC, or PDAB with recommended corrective action. A case involving a flag officer is forwarded for review to the Director of Health and Safety (CG-11); then to Commandant (G-LGL) for legal review and transmittal to the final approving authority (articles 1.E. and 1.F).

12. Final Action. Policy and procedure regarding final action in physical disability evaluation cases is published in article 17.B. of the Personnel Manual, COMDTINST M1000.6 (series).

Article 2.A.30. of the *PDES Manual* defines a "Medical Board" as follows: "A medical board is clinical body normally comprised of one or more medical officers who describe an individual's disease or injury, the physical impairment, and the impairment of function, including any latent impairment. It includes a written professional opinion on whether the member's physical and mental qualifications satisfy the medical standards for retention set forth in the Medical Manual."

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

Article 2.C.1.b. provides as follows: "Laws pertaining to a disability retirement or separation shall be administered equitably and in good conscience. Although these laws shall be administered in a manner which protects the government from assuming unwarranted responsibility for payment of disability and retirement benefits, reasonable doubt as to the entitlement of an evaluee shall be resolved in the evaluee's favor. The reasonable doubt doctrine should not be applied if the issue can be resolved by additional evidence."

Article 2.C.2. provides the following policies related to fitness for duty:

a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank, or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank, or rating….

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

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

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

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

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i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation but which could affect

potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the DVA for disability compensation after release from active duty.

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Chapter 3 details procedures and policies applicable to MEBs, as follows:

A. Purpose. The purpose of a Medical Evaluation Board (MEB) is to evaluate and report upon the present state of health of any member who may be referred to the MEB by an authorized convening authority and provide a recommendation as to whether the member is medically fit for the duties of his or her office, grade, rank, or rating.

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F. General Procedure for Medical Evaluation Board.

1. An MEB reviews and reports upon any evaluee whose case has been referred for consideration. It conducts a thorough physical examination to evaluate the member's general health. Additionally, all impairments noted shall be separately evaluated in accordance with the VA Physician's Guide for Disability Evaluation Examinations, including psychiatric examination when indicated. It shall obtain and examine available records to formulate a conclusion regarding the member's present state of health and the recommendations for future action.

2. An MEB is not a forum for conducting a formal hearing, taking other than medical evidence, or making determinations required of physical evaluation boards by chapters 4, 5, 6, and 7 of this Manual. It presents a clear medical picture of the case in question making all pertinent diagnoses or prognoses and giving a medical opinion as to the evaluee's fitness for retention and recommendations for future action. A checklist is provided as exhibit 3-2 to aid in preparing the MEB.

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Article 3.G.3. discusses MEB reports, which include a typed NARSUM. The NARSUM "shall present a summary of the pertinent data concerning each complaint, symptom, disease, injury or disability presented by the evaluee, which causes or is believed by the MEB to cause impairment of the evaluee's physical condition…."

Chapter 4 addresses IPEB procedures and policies. Pursuant to Article 4.A.13.c., after being counseled on an IPEB's "Not Fit for Duty" findings, a member's options include accepting the findings, rejecting them and demanding a formal hearing at the FPEB, or requesting reconsideration by submitting additional information to the IPEB.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record, his submission, the Coast Guard's submission, and applicable law and policy:

1. The Board has jurisdiction under 10 U.S.C. § 1552(a), as the applicant is seeking correction of an alleged error or injustice in his military records. The applicant has

exhausted all other administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application is timely, as it was filed within three years of the applicant's discovery of the alleged error or injustice, as required by 10 U.S.C. § 1552(b). The applicant was discharged in 2023 and submitted his application to the Board in 2024.

3. The applicant declined a hearing before the Board and requested that his application be considered based on the records and evidence submitted.

4. The applicant asked that the Board grant him a medical retirement with a 100 percent disability rating or direct the Coast Guard to re-process him through the PDES.[2] The applicant contends, primarily, that his MEB failed to consider all of his medical conditions, including those for which he was receiving VA compensation. He contends that as a result of this failure, his IPEB based its findings and recommendations on an incomplete and inaccurate record.

5. The Board initially observes that the existence of a physical defect or condition that is ratable under the VA Schedule for Rating Disabilities (VASRD) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability.[3] In this regard, the Board notes that the nature and purpose of VA benefits decisions differs significantly from that of the PDES. While the VA assesses whether a condition is related to a veteran's service, and the condition's severity, it does not consider the threshold question of whether any particular condition renders the veteran unfit for continued military service. For the PDES, this question is central, and a finding of unfitness is a prerequisite to the assignment of any rating under the VASRD. The Board also observes that there is no law, regulation, or VA policy which prevents a veteran with a 100 percent VA rating from maintaining full-time gainful employment.[4]

6. While the applicant contends that his VA-rated conditions were "unfitting" at the time of his PDES processing, he has submitted little medical evidence in support of this proposition. The only medical evidence related to the applicant's service-connected

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[2] The Board acknowledges the applicant's account of conflicting correspondence he received about his separation orders, separation date, and Tricare eligibility, which apparently resulted in large outstanding medical bills. Even assuming the Board had authority to consider these matters, however, the application does not include a request that the Board do so. As such, the Board will confine its decision to the specific relief requested.

[3] *PDES Manual*, Art. 2.C.2.i.

[4] An exception exists when a veteran is in receipt of individual unemployability (referred to as "IU" or "TDIU") benefits, based specifically on his or her inability to maintain employment. Veterans in receipt of IU benefits are required to submit documentation annually showing they remain unemployed and/or have an income below established limits. See https://www.va.gov/disability/eligibility/special-claims/unemployability/. The record in this case does not indicate the applicant receives IU benefits.

conditions submitted to the Board consists of: (1) the October 2018 VA DBQs addressing his lumbar spine, cervical spine, headaches, and GERD conditions; (2) three brief entries within treatment records noting a history of radiating lumbar and cervical pain related to diagnoses of degenerative disc disease; and (3) a two-page record of an April 2017 mental health diagnostic session with an assessment of PTSD based on the applicant's reported symptoms.[5]

7. In each of the DBQs that were submitted, although some level of impairment is noted, the VA examiner specifically indicated that none of the conditions impacted the applicant's ability to work. It may be inferred that the applicant's headache, musculoskeletal, and mental health symptoms (the latter as documented in the April 2017 diagnostic assessment and November 2018 rating decision) would cause some level of occupational impairment. The medical evidence documenting the applicant's conditions, however, does not support a finding that these conditions, alone or together, rendered the applicant unable to continue his Coast Guard duties.

8. As with the VA DBQs and treatment records just discussed, the Board finds no evidence in the applicant's personnel files or elsewhere to suggest that he was unfit for duty due to any condition other than his left shoulder AC joint injury. Instead, the evidence shows that at the time of that injury in 2019, the applicant was employed full time as a civilian law enforcement officer. The applicant points to no record, and the Board finds none, suggesting his performance in the SELRES suffered due to any other cause than his left shoulder injury. In this regard, the Board notes that continued performance of duty creates a presumption of fitness for duty, and the PDES is not intended to bestow benefits on those who have continued serving while tolerating physical impairments that have not actually precluded Coast Guard service.[6] In this case, the record shows that the applicant's VA-rated conditions were present for a number of years prior to his left shoulder injury in 2019, yet there was no indication that those conditions rendered him unfit for duty or that he or any authorized official sought a PDES referral for them.

9. The applicant has argued that the MEB failed to fully address his VA-rated conditions, in violation of the *PDES Manual*. Indeed, a MEB is directed to opine as to whether a member "satisfy[ies] the medical standards for retention," and to conduct a "thorough physical examination to evaluate the member's general health."[7] The applicant appears to overlook that he was provided a comprehensive medical examination in connection with the MEB, as documented by Dr. R.L. on a medical history and examination reports in July and August 2020. Therein, Dr. L.R. performed a physical

[5] The applicant did not submit the DBQ completed as part of his award of VA compensation for PTSD, though a reference to an examination for that condition scheduled in October 2018 appears in the DBQs focused on his other conditions.
[6] *PDES Manual*, Art. 2.C.2.b.
[7] *Id*. Arts. 2.A.30.; 3.F.1.

evaluation and documented the applicant's numerous medical conditions, including back and neck pain with radiculopathy, GERD, migraine headaches, and anxiety (the applicant evidently did not report PTSD during the examination).

10. While the relevant policy requires the applicant be afforded a thorough examination, there is no requirement that all of an evaluee's medical symptoms be addressed in detail in the body of the NARSUM. Instead, the NARSUM "shall present a summary of the pertinent data concerning each complaint, symptom, disease, injury or disability presented by the evaluee, which causes or is believed by the MEB to cause impairment of the evaluee's physical condition…."[8] In this case, the NARSUM appeared to conclude – reasonably, in the Board's view – that the condition which impaired the applicant was his left shoulder injury. Notably, the record showed at the time of the MEB that the left shoulder condition continued to cause pain, weakness, and limited range of motion almost two years after the initial injury. Nonetheless, the MEB cover sheet shows that the applicant's available, relevant medical records, along with documentation of the full medical examination conducted in August 2020, were provided to the IPEB for its consideration.

11. The applicant contends that the MEB and IPEB failed to evaluate and consider his VA-rated conditions. Based on the foregoing, however, the Board finds that the NARSUM's acknowledgement of those conditions, and the MEB's inclusion of the August 2020 examination report and other relevant medical records in its submission tot he IPEB, shows that these boards did consider the applicant's full medical picture. The applicant, then, has not pointed to any contemporary medical or personnel records that were overlooked during the PDES process which supported a finding that his VA-rated conditions rendered him unfit for duty.

12. The Board next notes that as a general matter, the occurrence of an error or injustice is not sufficient, on its own, to warrant any and all relief requested by an applicant in a given case. Instead, the Board is authorized to grant relief that it "considers … necessary to correct an error or remove an injustice."[9] This authority has been explained as a "twofold duty to properly evaluate the nature of any error or injustice and, in addition, to take such corrective action as will appropriately and fully erase such error or compensate such injustice."[10] In other words, when the Board finds that an error or injustice occurred, its objective is to determine what remedy will most effectively place the applicant in the position he or she would have been in had the error or injustice not occurred. As such, even assuming, *arguendo*, that the applicant's PDES processing failed to comply with the PDES Manual in some respect, this finding would not necessitate granting a medical retirement or PDES re-processing.

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[8] *PDES Manual*, Art. 3.G.3.
[9] 10 U.S.C. § 1552(a)(1).
[10] *Caddington v. United States*, 178 F. Supp. 604, 606 (Ct. Cl. 1959).

13. In determining whether an error or injustice requiring correction occurred in this case, the Board is cognizant that the Coast Guard's PDES process provides significant procedural protections to ensure members are afforded due process and permitted to raise issues from beginning to end. Members are permitted to rebut a MEB's findings, and to request reconsideration of an IPEB's findings or reject the findings and request a FPEB, where they may submit additional evidence and speak at a hearing. The member may then rebut a FPEB's findings and obtain review by the PRC, and finally the PDAB. The member is also afforded legal counsel beginning at the IPEB stage.

14. In this case, the applicant was afforded meaningful opportunities to participate in the PDES process and to raise questions and/or concerns. The applicant accepted and waived rebuttal of the MEB's findings and, after consultation with his assigned counsel, accepted the IPEB's findings and recommended disposition, and waived a FPEB hearing. While he has taken issue with the advice provided by his assigned PDES attorney regarding acceptance of the IPEB findings, this does not explain the applicant's prior waiver of a rebuttal to the MEB findings, in June 2021, which included an acknowledgment that he "believe[d] that all [his] impairments ha[d] been evaluated adequately by the Medical Board Report."

15. "The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank, or rating because of disease or injury incurred or aggravated through military service."[11] In this case, the applicant was diagnosed with and compensated by the VA for PTSD, cervical and lumbar spine degenerative disc disease, radiculopathy, GERD, headaches, and other conditions. However, there is no documentation in the record – contemporary to the applicant's service or otherwise – supporting a finding that these conditions rendered the applicant unable to adequately perform his Coast Guard duties. Instead, the applicant continued to serve in the SELRES with no documented performance issues despite the presence of these conditions for a number of years. Moreover, to the extent the MEB or other stages of the applicant's PDES processing failed to fully and/or technically comply with Coast Guard policy, the Board finds that such failures would have been obviated, to an extent, by the provision to the applicant of multiple opportunities to raise any then-existing concerns for proper and timely consideration.

16. For the foregoing reasons, and after careful consideration of the entire record, the Board finds the applicant has not met his burden to establish an error or injustice warranting the relief requested in his application. As such, the application must be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[11] PDES Manual, Art. 2.C.2.a.

ORDER

The application of former Coast Guard BM1/E-6 [redacted] is denied.

July 31, 2025

[redacted]

[redacted]

[redacted]