DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-169

[redacted]

FINAL DECISION

[redacted] **Attorney-Advisor:**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on September 16, 2002, upon the BCMR's receipt of the applicant's request for correction. On July 24, 2003, the Board issued an Interim Decision directing several corrections to the disputed OER for the period June 1, 19xx to April 30, 20xx. However, the Board held a single matter in abeyance for further consideration: whether the applicant has proved that his diabetes played a detrimental role in his performance of assigned duties during the evaluation period for the disputed OER. The Interim Decision is incorporated as part of this Final Decision and is attached below.

This final decision, dated October 22, 2003, is signed by the three duly appointed members who served as the Board in this case on July 24, 2003.

SUMMARY OF THE APPLICANT'S MEDICAL RECORD

In accordance with the Board's Order, dated July 24, 2003, the Coast Guard submitted the applicant's original and complete medical record on August 18, 2003. It is summarized, in pertinent part, as follows:

On November 12, 19xx, the applicant was evaluated by Physician's Assistant (PA) R at a military medical facility for diabetic-type symptoms. He complained of "frequency in urination" and reported that "diabetes runs in [his] family." The medical notes indicate that PA R reviewed the applicant's laboratory (lab) results and ordered a series of lab testings. The applicant was assessed as having "DM [diabetes mellitus]."

On the 11th, 14th, and 29th of December 19xx, the applicant underwent repeated lab tests. His blood glucose levels were reported at 347,[1] 372, and 350, respectively. He was advised to continue his prescribed diabetes medication therapy.[2]

On January 7 and 14, 19xx, the applicant underwent more lab tests. His blood glucose levels were reported at 267 and 306, respectively.

On February 11, 19xx, the applicant was seen in follow-up by PA R, who noted that the applicant's diabetes needed better control, as he was still experiencing blurred vision. The PA's notes also indicate that the applicant reported improved fatigue, less frequent urination, and feeling well. He underwent more lab tests and was given refills of his medication. PA R found the applicant fit for full duty.

On February 19, 19xx, PA R contacted the applicant regarding his lab results of February 11, 19xx, wherein his blood glucose level was reported at 303. The applicant was advised to increase his dosage of Micronase, continue with his other medication, and have more lab tests in one week.

On March 19, 19xx, the applicant underwent lab tests. His test results indicated a blood glucose level of 210.

On March 21, 19xx, the applicant was seen in follow-up for his diabetes mellitus. According to PA R's medical notes, the applicant reported feeling well, and his diabetes was assessed as "improved." PA R recommended that the applicant increase his dosage of Glucophage and return for re-evaluation in two weeks. The applicant was found fit for full duty.

On April 6, 19xx, the applicant was seen in follow-up by PA R. The medical notes indicate that the applicant was "feeling improved." PA R also noted that the applicant's "DM [diabetes mellitus] control [had] improved." The plan of treatment was to perform more lab tests and increase the applicant's dosage of Micronase if his condition was not well controlled. He was found fit for full duty.

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[1] The normal range for blood glucose is between 70 mg/dl (mg/dl means milligrams of glucose in 100 milliliters of blood) and 110 mg/dl. Each elevated blood glucose range carries a degree of risk for developing complications. The risk of complications is considered low for the 110 mg/dl to 180 mg/dl range; moderate for the 180 mg/dl to 250 mg/dl range; high for the 250 mg/dl to 400 mg/dl range; and very high for the 400 mg/dl to 800 mg/dl range.

[2] The applicant was prescribed Micronase, Glucophage, and Glucotrol—all three of which are oral anti-diabetic medications used for the control of hypoglycemia and its associated symptoms in patients with non-insulin dependent diabetes mellitus type II.

On April 7, 19xx, the applicant underwent more lab tests. His blood glucose level was reported at 218.

On April 8, 19xx, the applicant had more lab tests done, wherein his blood glucose level was reported at 264.

On May 3, 19xx, the applicant was referred to a naval diabetic clinic for evaluation. Lab tests revealed a highly elevated blood glucose level of 406. According to the notes of CDR J, a medical officer in the endocrinology department, the applicant "admit[ted] to poor dietary compliance and [a low level of] exercise." The applicant also stated that he may have had symptoms of polyuria,[3] polydipsia,[4] blurred vision, and weight loss since April 19xx. The applicant was provided a glucometer[5] with instructions and supplies (test strips), underwent more lab work, and was scheduled for a nutritional evaluation.

On May 4, 19xx, the applicant met with a registered nurse to discuss exercise, as part of his outpatient diabetes education program.

On May 6, 19xx, the applicant had an eye examination with a civilian optometrist. According to CGPC, during that examination, the optometrist noted that the applicant's new medication—though not identified by name—had affected his vision.

On June 1, 19xx, the period of the disputed OER began. During this period, which lasted through April 30, 20xx, the applicant served as a xxxxxxxxxxxxx for xx months and then as a xxxxxxxxxxx officer for xx months at a Coast Guard marine safety office (MSO).

On June 8, 19xx, the applicant had an appointment with a registered nurse at a military facility to discuss "stress management," as part of his outpatient diabetes education program.

On June 16, 19xx, the applicant met with a registered dietician at a military nutrition clinic to discuss an appropriate calorie range and diet, goals of medical nutrition therapy, and healthy eating habits. The appointment was part of the applicant's outpatient diabetes education program.

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[3] "Polyuria" is defined as "the passage of a large volume of urine in a given period, a characteristic of diabetes." *Dorland's Illustrated Medical Dictionary,* 1436 (29th ed. 2000) (hereinafter "*Dorland's*").

[4] "Polydipsia" is defined as "chronic excessive thirst and intake of fluid; it may have an organic cause, such as the dehydration of diabetes mellitus …." *Id.*, 1430.

[5] A glucometer is an instrument for home blood glucose testing.

On July 1, 19xx, the applicant was evaluated by CDR J of the endocrine department in the diabetic clinic. According to the medical notes, the applicant appeared "clinically stable" and denied having "polyuria, polydipsia, polyphagia,[6] … [or] fatigue." CDR J's plan of treatment was to renew the applicant's medication and order lab tests. He recommended that the applicant follow-up in two to three months.

On July 6 and 27, 19xx, the applicant met with a registered nurse practitioner to discuss "sick day management" and "foot care," respectively, as part of his ongoing outpatient diabetes education program.

In Xxxxxx and Xxxxxx of 19xx, the applicant underwent cataract removal surgeries. The applicant had a period of convalescence after each surgery, and according to CGPC, a number of post-operative follow-up visits in evaluation of his condition.

On April 4, 20xx, the applicant was seen by PA R for a swollen left ring finger, which the applicant reported was injured while playing basketball in March 20xx. The medical notes indicate that the applicant had decreased grip strength and increased pain with palpitation of the finger but no problems with circulation. He was diagnosed with a "finger strain/sprain," provided a finger splint, prescribed Ibuprofen, (an anti-inflammatory drug), and found fit for full duty.

On November 17, 20xx, the applicant was seen at a military facility, complaining of soreness in his left ring finger that had not resolved since injuring it in March 20xx. He reported that he was only recently able to "remove his wedding ring" and "that the joint [was] tender to the touch." He was assessed with "possible arthritic changes" in the finger and advised to return if he experienced any new or worsening of symptoms.

The applicant's medical record contains no further entries until approximately fifteen months later in February 20xx.

SUMMARY OF THE APPLICANT'S RELEVANT SUBMISSIONS

On June 30, 2003, the applicant submitted a signed affidavit from Dr. H, his current endocrinologist, which, in pertinent part, states the following:

> Upon review of his outpatient health record, [the applicant] was definitively diagnosed with diabetes mellitus type 2 in Mar[ch 19]XX following an initial evaluation by his [U.S. Coast Guard] primary care provider in Nov[ember 19]XX. Initial symptoms did include blurred vision, and frequent urination. The frequent urination particularly at night made

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[6] "Polyphagia" is defined as "excessive eating; gluttony." *Dorland's*, 1434.

> getting the proper amount of sleep difficult leading to fatigue, another common symptom of many due to an abnormal elevation in blood sugar. [The applicant] reported a family history notable for diabetes mellitus type 2, a fact placing him at increased risk of disease development. Following initial diagnostic testing and therapy, [the applicant] was subsequently referred to an endocrinologist at [a naval medical center] and completed initial specialty consultation in May [19]XX.
>
> It is probable that [the applicant] suffered from a temporary strain associated with adjusting to the diagnosis of diabetes type 2 and the life long requirement for daily therapy. It is also probable that the temporary strain and the physiological changes in his body impacted his occupational performance in a negative fashion.

On August 4, 20xx, the applicant's XXXXXXXX (XXX) selection board convened. The applicant was not selected for promotion to the next higher rank of XXX.

By memorandum dated September 17, 20xx, the applicant requested the removal of his failure of selection by the 20xx XXX selection board, should the Board decide to remove the disputed OER in its entirety.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 7.A.2.e. of the Personnel Manual defines "sick leave" as the "period of authorized absence granted to persons while under medical care and treatment. Article 7.A.5.F. provides that "[s]ick leave is granted for illness, injury, and convalescence."

Medical Manual (COMDTINST M6000.1B)

Article 1.A.1.a. of the Medical Manual sets forth the mission of the Coast Guard Health Service Program. It provides that "[t]he Health Services Program supports the Coast Guard missions by providing quality health care to maintain a fit and healthy active duty corps …."

Article 1.B.1. provides that "[t]he principal duty of medical officers is to understand and support the operational missions of the Coast Guard. Medical Officers include Physicians, Physician Assistants …, and Nurse Practitioners …."

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. The application was timely.

2. In the Board's Interim Decision issued in this matter on July 25, 2003, all dispositive issues were addressed and decided, with the exception of one regarding the applicant's medical condition. The sole issue now before the Board is whether the applicant has proved that his diabetes played a detrimental role in his performance of assigned duties during the evaluation period for the disputed OER.

3. According to the applicant's medical record, he was first diagnosed with and treated for diabetes mellitus type II in November 19xx. The record further indicates that, on various occasions, the applicant experienced health problems associated with his condition. However, during the June 1, 19xx through April 30, 20xx period of the disputed OER, the objective medical evidence showing that his diabetes detrimentally affected his performance of duties is slim. The record contains a statement from his current endocrinologist who opined that "[i]t is probable that [the applicant] suffered a temporary strain associated with adjusting to the diagnosis of diabetes …" and that such strain and "the physiological changes in his body impacted his occupational performance in a negative fashion." However, the applicant's medical record contains no evidence of his taking any sick-in-quarters days or being found unfit during the evaluation period. Moreover, according to medical notes made on July 1, 19xx, the applicant stated that he had no complaints of polyuria, polydipsia, polyphagia, or fatigue—all symptoms which he claimed had a negative impact on his health and ability to work—and was found to be "clinically stable" by the examining medical officer.

4. Given the above evidence, the record fails to indicate that, during the evaluation period, the applicant's diabetes either limited his physical or mental capabilities, or had more than a minimal effect on his ability to perform his assigned duties. Although the treating endocrinologist concluded that the applicant underwent strain upon being diagnosed with diabetes, he said that the strain was temporary. According to the medical record, the diagnosis of diabetes was rendered in November 19xx—nearly seven months prior to the commencement of the period of the disputed OER. The Board therefore finds insufficient evidence to conclude that the applicant's temporary strain associated with his diagnosis of diabetes had a significant effect on his ability to work during the evaluation period. Moreover, aside from the endocrinologist's opinion, the applicant submitted no statements or other credible evidence to support his contentions regarding physical manifestations of the symptoms he claims to have detrimentally affected on his performance during the evaluation period. Consequently, the applicant has not proven by a preponderance of the evidence that his diabetes detrimentally interfered with his ability to perform assigned duties between June 1, 19xx and April 30, 20xx.

5. With respect to the applicant's Xxxxxx and Xxxxxx 19xx cataract surgeries and the periods of convalescence leave associated therewith, he was granted sick leave and excused from duty in accordance with applicable Coast Guard regulations. See Articles 7.A.2.e. and 7.A.5.f. of the Personnel Manual. The days of leave during which the applicant was not observed were not factored into his performance evaluation during the period of the disputed OER, and therefore, had no bearing on the marks or comments he received.

6. Furthermore, the record fails to support a finding that the Coast Guard unfairly failed to accommodate his condition. See Article 10.A.2.b.2.i.(2) of the Personnel Manual. The applicant argued that because the symptoms associated with his condition had a "negative impact on [his] ability to sit, view the computer monitor[,] and focus on his work," the Coast Guard should have changed his duties in such a manner to enable him to perform well. However, the record fails to show any evidence that the applicant ever announced to Coast Guard officials, medical or otherwise, that he was unable to continue to perform his assigned duties because of his diabetes. Without substantial evidence that the applicant's diabetes was hindering his performance or that he ever complained that it was hindering his performance during the evaluation period, the Board cannot find either that the Coast Guard had a duty to adjust his duties to accommodate his condition or that it unreasonably failed to do so.

7. Lastly, in his response to the memorandum from CGPC, the applicant argued that the Board should remove the disputed OER from his record based on his contention that the Coast Guard provided inadequate medical treatment for his diabetes, which resulted in his diminished performance of assigned duties. However, to be entitled to such relief, the applicant must overcome the strong but rebuttable presumption that Coast Guard medical officers have acted correctly, lawfully, and in good faith in executing their duties of "providing quality health care to maintain a fit and healthy active duty corps …." See Arens v. United States, 969 F.2d 1034, 1037 (Fed. Cir. 1992); Sanders v. United States, 594 F.2d 804, 813 (Ct. Cl. 1979); Articles 1.A.1.a. and 1.B.1. of the Medical Manual. The applicant may rebut this presumption only with clear and persuasive evidence to the contrary.

8. To prove that the treatment of his condition was inadequate, the applicant relies heavily on his own complaints regarding his care and on the fact that his care was transferred to a naval medical facility in May 19xx. While this evidence may indicate that the applicant was displeased with his treatment, it does not substantiate the applicant's contentions that he received improper medical care or treatment from the Coast Guard.

9. The medical record establishes that when the applicant first sought treatment in November 19xx, he was diagnosed with diabetes mellitus type II and immediately prescribed anti-diabetic medications based on the clinical findings from

laboratory tests ordered by Coast Guard medical officers. During the course of his treatment, the applicant's condition was frequently monitored through laboratory tests performed to check his blood glucose levels on more than fifteen different occasions, and his anti-diabetic medications were adjusted based on those clinical findings. Moreover, the Coast Guard's initial diagnosis of diabetes mellitus type II has remained unchanged to the present day. In view of the foregoing, the Board cannot find any persuasive evidence in the record to support the applicant's allegation that the Coast Guard provided him improper medical treatment. Nor does the Board find that adjustments made to the applicant's anti-diabetic medication amounted to a failure to correctly treat the applicant's condition. Instead, it appears that medical officers were making reasonable modifications to the applicant's medication in response to fluctuations in his condition. In the absence of objective evidence which shows that the medical treatment provided by Coast Guard officials was in some way flawed or unsound, the Board must presume regularity.

10. Moreover, contrary to the case in BCMR Docket No. 66-80, the instant case presents no medical evidence indicating that the Coast Guard failed to "diagnose [his condition] promptly and correctly." Although BCMR Docket No. 66-80 sets forth that the Coast Guard's improper diagnosis and treatment of a "physical illness beyond [a member's] control … could easily have a nonspecific, depressing impact" on the performance of a member's duties, the applicant has not presented credible evidence to satisfy this standard. In BCMR Docket 66-80, the Board found that the Coast Guard committed an error and an injustice which diminished the applicant's physical capacity to perform his duties. In this case, however, the medical evidence presented by the applicant does not establish that his diabetes was misdiagnosed or improperly treated or that it negatively affected his job performance during the evaluation period. Because the applicant's contentions are not adequately substantiated to support a finding that his case is factually similar to BCMR Docket No. 66-80, his reliance on that BCMR case is misplaced. The applicant has not proven by a preponderance of the evidence that the Coast Guard's treatment of his diabetes had a "nonspecific depressing impact" on his performance of duty during the period of the disputed OER.

11. Based on his contention that the disputed OER prejudiced his chances of selection, the applicant requested the removal of his failure of selection by the 20xx XXX selection board. In determining whether a nexus exists between the errors and the applicant's failure to be selected, the Board applies the standards set forth in Engels v. United States, 230 Ct. Cl. 465 (1982) by answering two questions: "First, was [the applicant's] record prejudiced by the errors in the sense that the record appears worse than it would in the absence of the errors? Second, even if there was some such prejudice, is it unlikely that [the applicant] would have been promoted in any event?" However, the Board finds that because the Interim Decision issued on July 24, 2003 removed the inappropriate comments erroneously included in the disputed OER and the reply and endorsements thereto, the applicant's record was correct when it was

reviewed by the 20xx XXX selection board. Consequently, there is no need for an Engels analysis.

12. The Board finds no basis in the record for granting the applicant's request that the disputed OER be removed from his record in its entirety. Accordingly, no further relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [redacted], USCG, for the correction of his military record is granted only as required by the Order of this Board issued in its Interim Decision on July 24, 2003. No other relief is granted.

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