DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

[redacted]

BCMR Docket No. 2016-196

FINAL DECISION

This proceeding was conducted under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. After receiving the applicant's application on August 12, 2016, the Chair docketed the case and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 8, 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, who was honorably discharged when his enlistment expired on July 23, 2015, asked the Board to correct his record to show that he is entitled to full separation pay, instead of the half separation pay he received. The applicant alleged that he was erroneously and unjustly denied full separation pay with no explanation. He argued that the applicable manuals do not support the denial of full separation pay for those discharged for failing to maintain the Coast Guard's weight standards more than three times during an enlistment, as he was.

The applicant explained that he was discharged when his enlistment expired because he had been placed on weight probation four times during his six-year enlistment even though he passed the PT tests (physical training). However, he explained, pursuant to ALCOAST 093/14, which was issued in March 2014, members with more than three weight probationary periods during an enlistment became ineligible to reenlist. The applicant stated that his command initially told him after ALCOAST 093/14 was issued that he would be allowed to reenlist because he had more than six years of service, but in September 2014 his command advised him he could not reenlist and was not entitled to a reenlistment board pursuant to ALCOAST 093/14.

The applicant stated that a chief yeoman (YNC) told him that because his discharge would be considered involuntary, he would be eligible for separation pay when his enlistment ended in July 2015. When the YNC asked the Pay and Personnel Center (PPC) how much separation pay the applicant would receive, PPC replied with the following calculation: "½ (10% x [monthly] base pay x active duty years). 10% x 12 x 3261 x 6.67 = $26101.52."

The applicant stated that it was only when he went to the YNC's office to sign his discharge form DD 214 on July 20, 2015, that he learned that he would be receiving only half separation pay, which was a little over $13,000. The YNC and a chief warrant officer could not explain why and advised him to contact PPC directly, but an authorizing official he contacted at PPC could not explain it either. Therefore, the applicant asked the Command Master Chief (CMC) at PPC for assistance. The applicant stated that he provided the CMC with policies showing that he was entitled to a reenlistment board and separation pay because he had more than six years of service. The CMC replied that "it's always been done that way for years," that it was a vague policy and a "gray area," and that he should apply to the BCMR following his discharge.

The applicant argued that because ALCOAST 093/14 had only been in effect since March 2014, it could not have been "done that way for years." He noted that under the Pay Manual, COMDTINST M7220.29B, members discharged for substandard performance are authorized half separation pay. However, he argued, this provision should not have applied to him because his performance evaluations were good and he had passed the PT tests in 2014 and May 2015. The applicant noted that he received only half of the $26,101.52 in separation pay shown in PPC's email.

SUMMARY OF THE RECORD

On May 28, 2007, the applicant enlisted in the regular, active duty Coast Guard at age 24 and became an [redacted]

On a CG-3307 ("Page 7") dated August 2, 2007, the applicant was advised that he was 9 pounds over his maximum allowed weight (MAW) and had 28% body fat. He was placed on weight probation and required to lose his excess weight and/or body fat or be discharged.[1] On August 10, 2007, the probationary period ended because the applicant had reduced his weight to 185 pounds.

On a Page 7 dated November 14, 2009, the applicant was advised that he was 6 pounds over his maximum allowed weight (MAW) of 186 pounds and had 30% body fat, whereas 22% was the maximum allowed for his age. He was again placed on weight probation and required to lose his excess weight and/or body fat or be discharged. On April 3, 2010, the probationary period ended because the applicant had reduced his body fat to 22%.

On a Page 7 dated May 3, 2011, the applicant was advised on a Page 7 that although he had exceeded the weight standards and been non-compliant at the semiannual weigh-in, he had achieved compliance before his medical appointment and before being formally placed on

[1] COMDTINST M1020.8H, Article 4.A., states that members must be processed for separation if they are non-compliant at the end of weight probation, fail to make progress during weight probation, are placed on weight probation for a third time in 14 months, fail a third consecutive semiannual weigh-in, or have so much excess weight and body fat percentage that their probationary period (calculated at a rate of one pound per week or one month per one percent body fat, whichever is greater) would exceed 35 weeks.

weight probation. He was reminded that three consecutive non-complaint weigh-ins might result in his discharge.

On a Page 7 dated December 6, 2011, the applicant was placed on weight probation again because he was 13 pounds over his MAW and had 23% body fat. He was advised that he would be separated if he failed to comply with the weight and/or body fat standards by the end of his probationary period. He was also reminded that it was his second consecutive non-compliant weigh-in. On February 27, 2012, the probationary period ended because the applicant had reduced his body fat to 20%.

On a Page 7 dated October 30, 2012, the applicant was placed on weight probation again because he was 23 pounds over his MAW and had 27% body fat. He was advised that if he failed to comply with the standards by the end of the probationary period, he would be separated. On March 19, 2013, the probationary period ended because he weighed 195 pounds and had 24% body fat.[2]

On a Page 7 dated April 30, 2014, the applicant was placed on weight probation again because he was 34 pounds over his MAW and had 27% bod fat. He was advised that if he failed to comply with the standards by the end of the probationary period, he would be separated. On October 31, 2014, the probationary period ended because the applicant had achieved 24% body fat.

On January 22, 2015, the applicant went to a clinic alleging that he had been diagnosed with [redacted].[3] He stated that he had been diagnosed with these conditions but had hidden them from the Coast Guard, which he said was easy to do because his supervisor was a civilian. However, he told the doctor, he had decided to reveal them all. The applicant told the doctor that he had not been prescribed any medications for these conditions but was taking [redacted][4] before running and that he was in counseling for [redacted]. The applicant requested a medical board. The doctor noted that he would review the applicant's medical records before making a determination.

A Page 7 dated January 23, 2015, exactly six months before the expiration of the applicant's enlistment, states that during his reenlistment/pre-separation interview, the applicant was advised that he was ineligible to reenlist because he had been placed on weight probation more than three times during his enlistment. In addition, the applicant's commanding officer (CO) noted that he did not recommend the applicant for reenlistment.

On February 3, 2015, the CO sent the Personnel Service Center (PSC) notification that he recommended that the applicant receive an honorable discharge. He noted that the applicant was ineligible to reenlist when his enlistment expired based of his weight probationary periods.

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[2] The Coast Guard's weight and body fat standards vary by the member's age, and the applicant had turned 30 years old by the time his probationary period ended, which changed the applicable standards.

[3] The applicant did not submit any medical records showing that he was diagnosed with these conditions while on active duty.

[4] [redacted] is a bronchodilator that increases air flow to the lungs while running.

On February 12, 2015, the CO's recommendation for an honorable discharge was approved by PSC, with notations showing that the applicant should be discharged with a JBK separation code, denoting completion of his obligated service, pursuant to Article 1.B.12.a.(10) of the Military Separations Manual, COMDTINST M1000.4, which authorizes discharges for obesity. A "Separations Panel Sheet" notes that PSC had reviewed the applicant's medical records with a doctor and that the applicant was not entitled to a board.

On February 23, 2015, PSC issued the applicant's Separation Authorization, which states that he should be honorably discharged on or before July 23, 2015, with an RE-3 reenlistment code and half separation pay.

On May 3, 2015, the applicant signed a Page 7 noting that to be entitled to separation pay, he had to agree to serve in the Reserve for at least three years, and he agreed to do so.

On July 23, 2015, the applicant was honorably discharged pursuant to Article 1.B.12. of the Military Separations Manual, COMDTINST M1000.4. His DD 214 shows a separation code of JBK and a reenlistment code of RE-3.[5] He had completed 8 years, 1 month, and 26 days of active duty. The narrative reason for separation is "completion of required active service."

ADVISORY OPINION OF THE COAST GUARD

On March 16, 2017, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board deny the applicant's request. The JAG adopted the findings and analysis provided in a memorandum on the case prepared by PSC and noted that PSC's conclusion that the applicant was ineligible to reenlist means that the applicant was not fully qualified for retention, pursuant to COMDTINST 1910.1, the Commandant's instruction regarding separation pay. The JAG stated that under that instruction, "A member who is not recommended for retention or continuation, but is still fully qualified for retention, may receive full separation pay. However, the applicant was only entitled to half separation pay because he was not fully qualified for retention due to being unable to meet the reenlistment criteria outlined in ALCOAST 093/14.

PSC stated that under ALCOAST 093/14, the Commandant established two main criteria that must be met by all members who want to reenlist. First, the members must have the recommendation of their COs, and second, the members must meet the published eligibility criteria. PSC noted that under the ALCOAST, members whose COs recommend them for reenlistment but who did not meet the eligibility criteria can appeal to PSC for consideration, members who meet the eligibility criteria but are not recommended by their COs are entitled to a reenlistment board if they have more than six years of service, but members who are neither recommended for reenlistment nor meet the eligibility criteria are separated when their enlistments end. PSC stated that the applicant was ineligible to reenlist under the ALCOAST because of the number of his weight probationary periods.

[5] An RE-3 reenlistment code indicates that the member was ineligible to reenlist upon discharge due to a disqualifying factor but may be reenlisted with a waiver from the Recruiting Command.

PSC stated that the Coast Guard's regulations regarding separation pay appear in both COMDTINST M7229.2B, the Pay Manual, and COMDTINST 1910.1, the Commandant's instruction concerning the "Eligibility of Regular and Reserve Enlisted Personnel for Separation Pay." Under Article 10.H.1.b. of the Pay Manual, members with more than six years of active duty who are involuntarily separated from active duty (discharged, released, or denied reenlistment) are eligible for separation pay, and Article 10.H.4.a.2. notes that members are only eligible for half separation pay if they are separated for "substandard performance." In addition, PSC stated, Article 4.A. of COMDTINST 1910.1 specifies that to be eligible for full separation pay, a member must receive an involuntary honorable discharge with more than six years of active duty; agree to serve in the Reserve for three years; and be "fully qualified for retention but … not recommended for retention or continuation." And under Article 4.B. of this instruction, half separation pay is authorized for members who are involuntarily honorably discharged with more than six years of active duty; agree to serve in the Reserve for three years; are not fully qualified for retention; and are not recommended for retention or continuation when their enlistments expire. PSC stated that a branch of the Commandant's office determines whether members are entitled to full, half, or no separation pay and decide whether to enlist them in the Reserve when they receive the discharge recommendation from the CO.

PSC stated that the Page 7 dated January 23, 2015, shows that the applicant was advised that he was not recommended for reenlistment by his CO and was not eligible to reenlist because he had had more than three weight probationary periods. Therefore, his command submitted the required paperwork to process him for separation at the end of his enlistment. PSC stated that the applicant did agree to serve in the Reserve for three years as required for receipt of separation pay, but whether a member is actually enlisted in the Reserve after signing the agreement is at the discretion of the Reserve.

PSC concluded that the applicant has not shown that his receipt of half separation pay was erroneous or unjust because members must meet specific criteria to be entitled to full separation pay, which is not a guaranteed entitlement. PSC stated that the applicant did not meet the criteria for full separation pay because he was both ineligible to reenlist and not recommended for reenlistment by his CO. Therefore, PSC authorized half separation pay, and the applicant was correctly paid. PSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE ADVISORY OPINION

On April 28, 2017, the applicant submitted his response to the Coast Guard's advisory opinion and strongly disagreed with it.

The applicant alleged that throughout his separation processing, he was told that his discharge had nothing to do with his job performance, which was excellent, and that he would receive "100% of [his] separation pay."

The applicant argued that it was unjust for the Coast Guard to change the reenlistment criteria after enlisting him in 2007. He noted that if the reenlistment criteria had remained the same as in 2007, he would have been allowed to reenlist. The applicant admitted that he had

struggled with his weight and was on weight probation multiple times but attributed this to genetics, biochemistry, shift work, a sedentary job, and insufficient time to work out.

The applicant also alleged that his CO's decision not to recommend him for reenlistment was unjust because he had interacted with the CO on only a handful of occasions to pass information and the CO did not know him. The applicant stated that when he learned that the CO was not recommending him for reenlistment and that he would not receive a reenlistment board, he requested a meeting with the CO. However, before they met, the applicant's supervisor briefed the CO about the applicant's situation, and so the CO's mind was already made up when they met. The applicant alleged that the CO would not listen to him and refused to recommend him for reenlistment only because the applicant was ineligible to reenlist. He argued that the documentation of his separation processing reveals the CO's motivation. The applicant alleged that the CO refused to endorse him because he thought that endorsing a member who was not eligible for reenlistment would look bad. The applicant alleged that if the CO had not already made up his mind not to recommend the applicant, the applicant might have had a reenlistment board or received full separation pay.

The applicant argued that it is unfair that his rights depended on his CO's decision about recommending him for reenlistment. He also argued that the Coast Guard claimed in the advisory opinion that he was discharged because he was not recommended for reenlistment but in fact he was discharged because he was ineligible due to the policy change. He stated that his CO refused to recommend him for reenlistment only after he became ineligible and noted that the documentation does not explain why his CO refused to recommend him except to note the number of times he had been placed on weight probation.

The applicant also argued that he should have been evaluated by a medical board because his weight problem was evidence that he might have [redacted]. However, his doctors told him that it was just a weight problem and that no medical board was required. The applicant stated that he consulted a [redacted] who told him that [redacted] can cause weight gain.

The applicant alleged that after his discharge he was evaluated by the Department of Veterans Affairs (VA) and learned that he had [redacted]" from his discharge processing, which should have been evaluated by a medical board. The applicant alleged that he also had "several [redacted] issues, [redacted] issues ALL related to weight gain and weight retention." The applicant stated that the doctors he consulted in the Coast Guard did not pursue these issues and only conducted a urine test, but the VA doctors conducted blood tests and told him that there is a "high possibility" that he has a [redacted] deficiency called [redacted].

The applicant stated that he was expecting more than $27,000 in separation pay before his discharge and was completely unprepared to receive half of the full amount. He stated that it is unjust that he was denied full separation pay given that Coast Guard lawyers told his CMC that it was a "gray area," which means it is a matter of interpretation. He offered to submit a recording of this conversation.

The applicant also claimed that although he loved the Coast Guard, he has been lied to ever since he enlisted. He stated that he never received a signing bonus or a reenlistment bonus and he never complained because he thought he would be in for twenty years and retire. He stated that the Coast Guard's justification for denying him full separation pay "is just a manipulation and more lies."

APPLICABLE LAW AND POLICY

Weight and Body Fat Standards

Article 1.A. of COMDTINST 1020.8H, Coast Guard Weight and Body Fat Standards Program, states that the purpose of the standards are applicable to all Coast Guard military personnel and are intended to ensure that all military personnel maintain a healthy weight and body fat, are capable of meeting the service's operational needs, and present a sharp, professional military appearance. Article 1.B. states that a member must "[m]aintain compliance with weight and body fat standards at all times, unless specifically stated otherwise by this Manual." Article 4.A. states that a member must be processed for separation if he fails to come into compliance with the standards by the end of a probationary period.

Reenlistment

Article 1.A.5. of COMDTINST M1000.2 (hereinafter, the "Enlisted Manual"), lists the requirements for eligibility for reenlistment in the regular Coast Guard, including having certain minimum average performance evaluation marks, being physically qualified, and being recommended for reenlistment by one's CO.

Article 1.B.4.b. of COMDTINST M1000.4, the Military Separations Manual, states that a command shall advise each member of his or her eligibility to reenlist approximately six months before his or her enlistment expires to allow enough time to process the member for separation or reenlistment.

ALCOAST 093/14, issued on March 7, 2014, states the following:

> SUBJ: IMPLEMENTATION OF ADDITIONAL REENLISTMENT CRITERIA
> A. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
> B. Military Separations, COMDTINST M1000.4 (series)
> 1. To ensure the Coast Guard retains a disciplined, high-performing workforce, reenlistments and/or extensions should only be offered to those members (active and reserve) who maintain high professional standards and adhere to the Coast Guards core values. Therefore, to be eligible for reenlistment or extension of (re)enlistment, a member must meet two basic criteria: receive a positive recommendation from their commanding officer and meet the eligibility criteria listed in REF A and paragraph 2 below.
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> 2. In addition to the eligibility requirements listed in Articles 1.A.5. and 1.A.7. of REF A, all active and reserve members, regardless of duty status, must meet the following eligibility requirements during their current period of enlistment (to include any extensions):
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> a. Achieve a minimum factor average of 3.5 on their enlisted performance evaluations,
> b. Have no more than one unsatisfactory conduct mark, …
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> • • •
>
> h. Have no more than three weight probationary periods, …

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3. The commanding officers recommendation remains an integral part of the reenlistment process and provides commands an opportunity to clearly articulate a member's suitability for continued service. …

4. Members must meet all eligibility requirements to reenlist/extend. Members who meet the eligibility criteria but are not recommended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board. Additionally, members who do not meet the eligibility criteria, but are recommended for reenlistment/extension by their commanding officer, may also submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members, regardless of total years of service.

5. These updated reenlistment eligibility criteria are effective 17 March 2014. Article 1.B.4.b. of REF B requires commands to conduct a pre-discharge interview approximately six months prior to a member's expiration of enlistment (EOE) to notify a member whether they are eligible to reenlist. To accommodate this provision, members whose EOE is within six months of the 17 March 2014 effective date (17 September 2014) will not be screened against these updated reenlistment criteria. Members whose EOE is after 17 September 2014 who desire to reenlist or extend their enlistment must be screened against these updated reenlistment criteria within the timeframe of Article 1.B.4.b. of REF B. Commanding officers should coordinate with their servicing personnel office for electronic and paper records reviews prior to effecting enlistments/ extensions. The updated reenlistment eligibility criteria shall not be used as a tool to separate members that would otherwise be eligible under Article 1.B. of REF B.

6. Members not eligible for reenlistment/extension of enlistment will be discharged from the active or reserve component, as applicable, upon the expiration of their enlistment in accordance with the provisions of Article 1.B.11. of REF B with an RE-3 reenlistment code. [Emphasis added.]

The associated FAQs included the following questions and answers:

7. If I am not recommended for reenlistment/extension, what options do I have?

Members who meet the reenlistment eligibility criteria but are not recommended for reenlistment by their commanding officers may submit an appeal to CG PSC-EPM-1 or CG-PSC-RPM-1, as applicable, if they have **less** than eight years total active and/or reserve military service.

Members who meet the reenlistment eligibility criteria but are not recommended for reenlistment by their commanding officers who have **more** than eight years total active and/or reserve military service are entitled to a reenlistment board …

8. If I am not eligible for reenlistment/extension, what options do I have?

Members who are not eligible for reenlistment/extension but are recommended by their commanding officer for reenlistment may submit an appeal to CG PSC-EPM-1 or CG-PSC-RPM-1, as applicable.

On July 6, 2015, shortly before the applicant's discharge, the Coast Guard released ALCOAST 274/15, which stated that ALCOAST 093/14 "remains valid" but added the following clarification of the language in paragraph 4:

SUBJ: AMENDMENT TO ALCOAST 093/14 REENLISTMENT CRITERIA
A. COMDT COGARD WASHINGTON DC 072054Z MAR 14/ALCOAST 093/14

> B. Enlisted Accessions, Evaluations, and Advancements, COMDTINST M1000.2 (series)
> 1. REF A remains valid.
> 2. Effective immediately, paragraph 4 of REF A is amended to include the following: Members who do not meet the reenlistment eligibility criteria are not entitled to a reenlistment board, even if they have eight or more years of total active and/or reserve military service.
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> 3. Members meeting criteria in REF A, but who are not recommended for reenlistment, and who have eight or more years' total active and/or reserve military service, are entitled to a reenlistment board.
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> 4. Final authority regarding the decision to approve reenlistments for members who do not meet the eligibility criteria in REF A rests with CG PSC (epm) or CG PSC (rpm). Commands may recommend members for reenlistment even if they do not meet the criteria in REF A. Specifically, commands should identify how the member has overcome the circumstances that made them ineligible. CG PSC reviews every case in which a member fails to meet criteria in REF A while considering the commands recommendation for reenlistment.

Separation Pay

Title 10 U.S.C. § 1174(b)(1) states the following:

> A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

Chapter 10.H.1.b. of the Pay Manual, COMDTINST M7220.29B, states that enlisted members may be entitled to separation pay if they have at least 6 but less than 20 years of active duty and were involuntarily discharged or denied reenlistment. Chapter 10.H.1.e. states,

> Per 10 USC 1174(e) and as a condition of entitlement for receipt of SEP PAY, anyone otherwise eligible for that pay shall submit to Commander, USCG Personnel Service Center, a signed agreement to serve in the Coast Guard Ready Reserve for a period of at least three years.
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> (1) Commander, USCG Personnel Service Center, shall specify the format of this written Ready Reserve agreement.
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> (2) Actual accession into the Ready Reserve of a discharged member that is authorized SEP PAY under this Section and any subsequent assignment to duty as a reservist is solely at the discretion of Commander, USCG Personnel Service Center.

Chapter 10.H.2. of the Pay Manual includes a list of members who may not receive separation pay. The list includes members being separated voluntarily or for unsatisfactory performance, unsuitability, or misconduct under Article 12 of the Personnel Manual (now Article 1 of the Military Separations Manual) and when a "determination is made by the Commander, CG Personnel Service Center, that the member's separation does not warrant payment."

Chapter 10.H.4.a.(1) of the Pay Manual states that for a member whose performance has been satisfactory, the amount of separation pay is computed by multiplying the years of active service times the monthly basic pay to which the member is entitled at the time of separation times ten percent. Chapter 10.H.4.b.(2) states, for "Substandard Performance or as authorized in Eligibility of Regular and Reserve Enlisted Personnel for Separation Pay, COMDTINST 1910.1

(series). Effective 5 Nov 1990, one half of the amount computed in Section 10-H-4.a.(1) of this Manual.

COMDTINST 1910.1, titled "Eligibility of Regular and Reserve Enlisted Personnel for Separation Pay," states that it "establishes policy, procedures, and responsibilities for determining eligibility for separation pay for Regular and Reserve enlisted members who are involuntarily separated from active duty." Paragraph 3 notes that under 10 U.S.C. § 1174, the Coast Guard may establish the conditions under which members may receive full or half separation pay and that any member separated for substandard performance, unsuitability, or misconduct may not receive separation pay.

Paragraph 4.a. of COMDTINST 1910.1 states that, to be entitled to full separation pay, an active duty member must be honorably separated with at least six years of active duty; must agree to serve in the Reserve for three years (whether or not actually enlisted in the Reserve); and must be involuntarily separated—

> because of not being recommended for retention or continuation on active duty under one of the following specific conditions:
>
> (a) The member is fully qualified for retention but is not recommended for retention or continuation.
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> (b) The member is fully qualified for retention and is being involuntarily separated under a reduction in force by authority designated by the Commandant as authorized by Section 1169 of reference (b).

Paragraph 4.b. of COMDTINST 1910.1 provides that an active duty member is authorized half separation pay if he is involuntarily separated with at least six years of active duty; agrees to serve in the Reserve for three years (whether or not actually enlisted in the Reserve); receives an honorable discharge (or a general discharge under certain circumstances); and—

> is not fully qualified for retention and is not recommended for reenlistment or continuation under any of the following conditions:
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> 1 Expiration of enlistment.
>
> 2 Homosexuality. [This instruction was not amended following the repeal of Don't Ask/Don't Tell.]
>
> 3 Alcohol abuse rehabilitation failure.
>
> 4 Security.

Paragraph 4.d. of COMDTINST 1910.1 lists the circumstances under which members are not eligible for any separation pay, and number (8) on the list states, "The member is being separated for failure to meet the maximum allowable weight standards."

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 applicant is timely pursuant to § 1552(b) because the applicant was discharged with half separation pay on July 23, 2015, less than three years before he applied to the Board.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[6]

3. The applicant asked the Board to direct the Coast Guard to pay him full separation pay. He alleged that his discharge with half separation pay and no right to a reenlistment board was erroneous and unjust. 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[7] 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."[8] For the reasons stated below, the Board finds that the applicant has not overcome the presumption of regularity or proven by a preponderance of the evidence that his discharge with half separation pay and no reenlistment board was erroneous or unjust.

4. The applicant alleged that he was erroneously and unjustly denied full separation pay to which he was entitled under the Pay Manual, COMDTINST M7220.29B. Under 10 U.S.C. § 1174(b)(1), the Secretary has authority to determine what circumstances do not warrant full separation pay or any separation pay. Chapter 10.H.2. of the Pay Manual authorizes PSC to determine when a member's separation does not warrant separation pay. Chapter 10.H.4. states that members who are eligible and whose performance has been satisfactory are authorized full separation pay, but half separation pay is awarded for "substandard performance or as authorized in … COMDTINST 1910.1." The applicant argued that his performance had been satisfactory based on his evaluation marks, but the record shows that he had repeatedly been non-complaint with the weight standards, and it was his duty to maintain his compliance with those standards.[9] Because the record shows that he repeatedly failed to perform this duty, the Board finds that the applicant has not proven by a preponderance of the evidence that he was authorized full separation pay under the provisions of the Pay Manual based on his performance.

5. Paragraph 4.a. of COMDTINST 1910.1 authorizes full separation pay for members who, like the applicant, are honorably separated with at least six years of active duty and agree to serve in the Reserve, but only if they are involuntarily separated because of a reduction in force, which is not the case here, or because they are not recommended for retention but are fully qualified for retention. In this case, the applicant was not recommended for retention by his CO and, pursuant to ALCOAST 093/14, he was not fully qualified for retention based on the number of his weight probationary periods. Therefore, he was not authorized full separation pay under paragraph 4.a. of COMDTINST 1910.1. However, under paragraph 4.b., the applicant was authorized half separation pay because he was involuntarily separated with an honorable

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[6] *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).
[7] 33 C.F.R. § 52.24(b).
[8] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).
[9] COMDTINST 1020.8H, Article 1.A. The Board notes that under paragraph 4.d. of COMDTINST 1910.1, failing weight probation is a type of substandard performance that precludes the receipt of any separation pay.

discharge and agreed to serve in the Reserve but was "not fully qualified for retention and [was] not recommended for reenlistment or continuation" by his CO when his enlistment expired. Therefore, based on the provisions of COMDTINST 1910.1, the Board finds that the applicant has not shown that the Coast Guard erred by paying him half separation pay, instead of full.

6. The applicant argued that his receipt of half separation pay was unjust because he was told that he would receive full separation pay of more than $26,000. The record shows that in advising the applicant about his separation pay, PPC correctly replied that his separation pay would be calculated as follows: "1/2 (10% x [monthly] base pay x active duty years)." Thus, the applicant was provided with the calculation for half separation pay. PPC then filled in the numbers for the applicant's monthly base pay and active duty time and showed the calculation for full separation pay—"10% x 12 x 3261 x 6.67 = $26101.52"—without dividing the amount in half for him. The applicant apparently relied on the last figure and failed to notice that PPC had also indicated that he was only entitled to half—"1/2"—that amount. Based on the evidence of record, the Board is not persuaded that the applicant's receipt of half separation pay is unjust[10] because he had thought he would receive full separation pay.

7. The applicant argued that it was unjust that the Coast Guard changed the reenlistment criteria in 2014 because he would have been eligible to reenlist if the criteria had remained the same as when he enlisted in 2007. The Board notes, however, that the Coast Guard is authorized to prescribe reenlistment criteria and that members of the military have no constitutionally or statutorily protected right to reenlist even if they expect to be able to reenlist:[11] "The mere unilateral expectation of a continued benefit is insufficient to invoke the protections of procedural due process."[12] As one court noted,

> Decisions to reenlist or discharge members of the Armed Services more properly fall within the categorization of "at will" decisions as opposed to terminations "for cause." The statutory provisions allowing a person to reenlist in one of the Armed Forces provide that the appropriate officials "may authorize the reenlistment ...." 10 U.S.C. § 508(a) (1976) (emphasis added). Thus, military officials are vested with discretion in making reenlistment decisions. Essentially, the contract of military employment is terminable "at will" at the end of the contract period.

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[10] Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from Coast Guard military records. For the purposes of the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

[11] 10 U.S.C. § 508 ("A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe"); *West v. Brown*, 558 F.2d 757, 760 (5th Cir. 1977), *cert. denied*, 435 U.S. 926 (1978) (holding that there is no constitutional right to reenlist in the military); *Weinberger v. Salfi*, 422 U.S. 749 (1975) (finding that if there is no constitutionally protected interest, the government may impose rational restrictions on government benefits); *Williams v. United States*, 541 F. Supp. 1187, 1192 (E.D.N.C., 1982) (finding no constitutionally protected interest in reenlistment under the Fifth Amendment where the Marine Corps' weight restrictions were rationally related to the Corps' legitimate interest in military preparedness and effectiveness; and no liberty or property interest in reenlistment because "[t]he mere unilateral expectation of a continued benefit is insufficient to invoke the protections of procedural due process," citing *Board of Regents v. Roth*, 408 U.S. 564 (1972)).

[12] *Williams*, 541 F. Supp. at 1192, citing *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

> *Id.* Although a person enlisted in one of the Armed Services may have a right to the continuation of that employment until the end of his enlistment period, he possesses no entitlement to reenlistment. Once his period of enlistment expires, he is subject to discharge at the discretion of the appropriate military official.[13]

Title 10 U.S.C. § 508 states that a member of the regular Coast Guard may be reenlisted "under such regulations as the Secretary concerned may prescribe." ALCOAST 093/14 shows that the Coast Guard changed its regulations before the applicant's enlistment expired to make members with more than three weight probationary periods ineligible to reenlist. Not allowing members who frequently exceed the weight standards to reenlist is rationally related to the Coast Guard's interest in military preparedness and effectiveness. Therefore, the Board finds that the applicant has not shown that his ineligibility to reenlist under the new criteria issued in ALCOAST 093/14 was unjust.

8. The applicant alleged that he was unjustly denied reenlistment because his CO refused to recommend him for reenlistment only because he was ineligible for reenlistment under ALCOAST 093/14. As noted above, however, the applicant's CO is entitled to a presumption that he acted "correctly, lawfully, and in good faith"[14] in deciding not to recommend the applicant for reenlistment. The CO's memorandum to PSC lists only the applicant's weight probationary periods as justification for the CO's recommendation that he be discharged for failing to comply with the reenlistment criteria. Therefore, it appears that the applicant's several weight probationary periods caused his CO to not recommend him for reenlistment, as well as making the applicant ineligible to reenlist. The Board finds that the applicant has not proven by a preponderance of the evidence that the CO acted arbitrarily in making his recommendation.

9. The applicant argued that he should have received a reenlistment board. In BCMR Docket Nos. 2015-002, 2015-150, and 2016-003, the Board noted that on October 1, 2014, about two weeks after the new reenlistment criteria went into effect on September 17, 2014, pursuant to paragraph 5 of ALCOAST 093/14, PSC's attorney reported to the JAG's office that PSC's interpretation of paragraph 4 of ALCOAST 093/14 is as follows:

1) Eligible & recommended = reenlist
2) Eligible & not recommended = request a waiver/appeal from epm-1 (less than 8 years' service) or reenlistment board (over 8 years' service)
3) Not eligible & recommended = request a waiver/appeal from epm-1 regardless of years in service – no reenlistment board
4) Not eligible & not recommended = no reenlistment, no waiver/appeal

The Board denied relief in those cases, finding that, read alone, the third sentence of paragraph 4 in ALCOAST 093/14—"Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board."—appeared to give members with more than eight years of service the right to a reenlistment board, but that read in conjunction with the second sentence of paragraph 4—"Members who meet the eligibility criteria but are not recom-

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[13] *Williams*, 541 F. Supp. at 1192.
[14] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

mended for reenlistment by their commanding officer who have less than eight years total active and/or reserve military service may submit an appeal to CG PSC-EPM-1 for active duty members or CG PSC-RPM-1 for reserve members. Members who have eight or more years of total active and/or reserve military service are entitled to a reenlistment board."—the two sentences mean, as PSC had interpreted them, that members with less than eight years who are eligible but not recommended to reenlist may appeal, while such members (eligible but not recommended) with more than eight years are entitled to a reenlistment board. Therefore, under the terms of ALCOAST 093/14, the applicant, with more than eight years of service, would have been entitled to a reenlistment board only if he was eligible to reenlist under the criteria in ALCOAST 093/14 but was not recommended to reenlist by his CO. However, the applicant was both ineligible to reenlist and not recommended to reenlist. Therefore, the Board finds that he has not proven by a preponderance of the evidence that he was erroneously or unjustly denied a reenlistment board.

10. In his response to the Coast Guard's advisory opinion, the applicant belatedly argued that he should have been evaluated by a medical board and medically discharged, instead of being denied reenlistment, because his weight problem was evidence that he might have [redacted] issues, [redacted] issues, or [redacted] issues. The record shows that before his discharge, the applicant went to a health clinic requesting a medical board and alleging that he had already been diagnosed with [redacted], but that he had hidden all of these conditions from the Coast Guard. However, he admitted that he was not taking any medications except a bronchodilator, [redacted] before running. The doctor noted that he would review the applicant's medical records before making a determination about whether the applicant was entitled to a medical board, and he presumably did so. In addition, PSC's records show that PSC consulted a doctor about the applicant's medical condition before authorizing his administrative discharge. These officials are presumed to have acted correctly in performing their duties and the applicant has submitted no evidence to show that he incurred or was diagnosed with any of these conditions prior to his discharge or that they caused him to be unfit for duty. Therefore, the Board finds that the applicant's claim that he was entitled to a medical board before his discharge is unsupported in the record.

11. As explained above, the applicant has not proven by a preponderance of the evidence that his receipt of only half separation pay was erroneous or unjust; that he was erroneously or unjustly denied reenlistment based on his ineligibility and his CO's non-recommendation; or that he was entitled to a reenlistment board or medical board before his discharge. Accordingly, relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [redacted] for correction of his military record is denied.

June 8, 2017

[redacted]