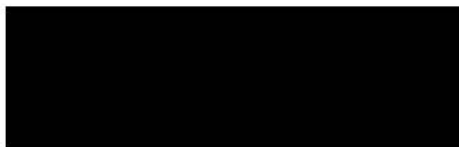


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-198



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on June 22, 2017, and assigned it to staff attorney [REDACTED] to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated April 6, 2018, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a [REDACTED] second class ([REDACTED] E-5) who was placed on the temporary disabled retired list (TDRL) on January 12, 2018, asked the Board to correct his record to show that he was retired as an officer in pay grade O2-E, instead of as an enlisted member in pay grade E-5. He explained that while he was attending Officer Candidate School (OCS), he began experiencing worsening post traumatic stress disorder (PTSD) symptoms, which ultimately led to his disenrollment from the school and processing for a medical separation as a result of PTSD and a traumatic brain injury (TBI) he had previously sustained. The applicant stated that he should have been retired in pay grade O2-E, which is the pay grade he would have received had he successfully completed OCS. He stated that the "Coast Guard through the Medical Board process has refused to acknowledge their errors and even their administrative errors."¹ He argued that his family should not be punished financially for his medical conditions.

With his application, the applicant provided a written explanation of events. He stated that he began having symptoms at OCS, which worsened as time passed. His family started to notice the symptoms first when they visited him while he was on liberty. He stated that at some point he could not sleep, which led to him failing his room inspections. Because he was failing room inspections, he was ordered to complete "endless hours of marching tours," which encroached on his study time. He explained that this caused him to fail a test by one question. Ultimately his

¹ The applicant does not provide additional information regarding what errors he is referencing here.

“lack of sleep, inability to concentrate, to process information, hypervigilance, physical tremors, irritability, and flashback created a snowball effect that [led to his] dismissal from the program.” He stated that after his dismissal from OCS, he encountered difficulty obtaining the medical attention he needed. He received weekly counseling but his wife insisted that he receive PTSD-specific counseling.

The applicant stated that he was initially informed that the closest facility that could accommodate PTSD-specific needs was 200 miles away and would require a referral. He stated that weeks went by as he was waiting for a referral as he was constantly denied and redirected to different medical personnel. He asserted that his wife decided to do her own research and found a Department of Veterans Affairs (VA) satellite office within twelve miles. This office had a program that specialized in PTSD treatment and did not require a referral. The applicant stated that after a few conversations with members of his command, he was able to begin attending appointments at the VA office. However, when his condition worsened again, he traveled back to his home with his wife, and he was administratively transferred to a base closer to his home. The applicant stated that he still strove hard to succeed in his career, and he studied to take the next Service Wide Exam to hopefully advance to [REDACTED]/E-6 in the Coast Guard. He alleged that if he had not attended OCS, he would have advanced to [REDACTED] before he was retired.

At the time the applicant submitted his application to the Board, he was being processed for separation under the Physical Disability Evaluation System (PDES), and he had recently learned that the Physical Evaluation Board (PEB) assigned him a 50% disability rating and recommended a placement on the TDRL, which would require a reevaluation after six months. He had also learned that his retired pay grade would be E-5. The applicant stated that he contested the 50% disability rating and “requested an evaluation due to [his] expulsion from the Officer Candidate School relating directly to [his] condition.” He stated that he had also requested an investigation by Congress because he had “heard through reliable sources” that a combat veteran is expelled from every OCS class. He stated that he is requesting this because he felt that the OCS aggravated his condition to a point that he is no longer able to serve in the military, and he is concerned that the Coast Guard is doing this to many other members like him. From this Board, the applicant clarified that he is requesting a 100% permanent retirement at pay grade O2-E and an “external audit of the practices dealing with prior service personnel (combat) in all training programs to include but not limited to the USCG Officer Candidate School.”

In support of his application, the applicant provided various documents, some of which are described below in the Summary of the Record. He also provided a letter his wife wrote to their Congressman dated June 9, 2017, asking that the Coast Guard’s regulations be changed regarding its handling of members with PTSD. She also argued that the Coast Guard was unjustly handling the applicant’s PDES processing. The applicant also provided a copy of his Army DD Form 214.² It shows that he served in the Army for three years, seven months, and twenty-five days and was honorably discharged on September 9, 2007, for completing his required active service. The applicant also provided a copy of *Disorder in the Coast Guard: The United States Coast Guard’s Illegal Personality and Adjustment Disorder Discharges*, a forty-three page paper with appendixes by the Vietnam Veterans of America.

² A DD 214 is prepared to document a member’s release or discharge from a period of active duty.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 26, 2007, in [REDACTED] grade E-3. He earned the [REDACTED] designation in 2009, advanced to [REDACTED]/E-4 in 2010, and advanced to [REDACTED] E-5 in 2012. His record shows that he received many excellent performance evaluations as an [REDACTED]. On January 20, 2015, the applicant received notification that he had been chosen to attend OCS beginning on July 30, 2015.

On October 5, 2015, the applicant received notification that he was being disenrolled from OCS for “failure to meet performance standards.” On October 7, 2015, the applicant was disenrolled from OCS. The record of disenrollment states that he had been in a probationary status since September 14, 2015, following a Performance Review Board which had been convened to address his leadership and management deficiencies. The record further states that after a second Performance Review Board on October 2, 2015, the applicant was removed from OCS for “failure to meet performance standards.” In the Remarks section, it states that the applicant “should be considered for future military service.” A handwritten note states that the applicant “indicated that he had difficulty with stress management.”

On October 8, 2015, the applicant sought “stress management training.” The doctor diagnosed him with an anxiety disorder with “some PTSD symptoms.” The doctor’s notes state that the applicant reported that he had been disenrolled from OCS [REDACTED] to “a number of deficiencies,” including failing room inspections and getting bad reviews when standing watches as officer of the day. The doctor noted that the applicant said—

he hasn’t responded well to stress here, especially when under time constraints or someone is yelling at him. ... He’s had difficulty sleeping, his appetite is low (and he’s lost 25lbs, although he “was getting chunky” and wanted to lose some weight), he’s had difficulty concentrating, and he’s felt jittery and developed a hand tremor. ... He did not report symptoms of depressed mood, anhedonia, feeling helpless or hopeless, social isolation, racing thoughts, hypo mania, panic attacks, agitation or aggression. ... His recent stressors include OCS & disenrollment, uncertainty about his future USCG career; and geographic separation from his wife and children. ... Past stressors include his tour in Afghanistan from 2006-07 as a U.S. Army cavalry scout during “Operation Enduring Freedom”—he has some guilt about killing enemy; saw much tragedy; watched # friends die; lost 3 friends in a helo crash May 2006; RPG hit in front of his Humvee and shrapnel hit him while positioned in the turret, causing a superficial arm injury “not enough for a Purple Heart.” He has nightmares about Afghanistan about once wk. He has intrusive daytime thoughts about his combat experiences, triggered when he sees cadets who look similar to his Army buddies, sees or hears a helicopter flying, or sees the ... memorial on base. He denied flashbacks or startling easily. ... probable mild TBI while in Afghanistan – rocket hit 15ft from him, he was blown against a rock face and knocked unconscious (duration unknown) (“maybe 10 minutes”), corpsman “slapped me awake.” No further medical attention, doesn’t think he’s had a head CT or brain MRI. Few episodes of brief [loss of consciousness] while doing martial arts in the past.

The applicant was subsequently diagnosed with PTSD. On July 6, 2017, an informal Physical Evaluation Board (PEB) found that the applicant was not fit for duty due to PTSD and residuals of a TBI. The findings state:

Posttraumatic stress disorder with occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or

irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to [REDACTED] circumstances (including work or worklike setting); inability to establish and maintain effective relationships.

[REDACTED] Residuals of traumatic brain injury (TBI) with predominate cognitive deficit in memory, attention, concentration and executive func[REDACTED]

Residuals of traumatic brain injury (TBI) for subjective symptoms...

[The applicant's] medical condition is disqualifying and continues to prevent him from perform[REDACTED]g the duties required of a service member of his rank or primary rating.

The PEB found that the disabilities were combat-related and incurred in line of duty during war or national emergency. The PTSD was rated at 70%, the first TBI was rated at 40%, and the second TBI was rated at 10% for a combined rating of 80%. The recomm[REDACTED] disposition was to place the applicant on the TDRL.

On September 28, 2017, the applicant, through counsel, accepted the tentative findings of the PEB and waived his right to a formal hearing.

The applicant was placed on the TDRL on January 12, 2018.

VIEWS OF THE COAST GUARD

On November 17, 2017, the Judge Advocate General of the Coast Guard submitted an advisory opinion in which he adopted the findings of the Coast Guard Personnel Service Center (PSC) in a memorandum on the case and recommended that the Board deny the applicant's request.

PSC argued that relief should be denied because the applicant did not complete OCS and therefore did not receive a commission. The Coast Guard Recruiting Manual, COMDTINST M1100.2F, Article 7.B.5.a. states that "selectees are commissioned upon the successful completion of OCS." The applicant did not successfully complete OCS due to "failure to meet performance standards." In addition, PCS noted that the applicant had recently accepted the findings of the informal Physical Evaluation Board and waived his right to a formal PEB hearing.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 29, 2017, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

The Coast Guard Recruiting Manual, COMDTINST M1100.2F, Article 7.B.5.a., states that selectees "are commissioned upon the successful completion of OCS."

Article 1.A.4.a. of the Officer Accessions, Evaluations, and Promotions manual, COMDTINST M1000.3A, states the following:

Chief warrant officers and enlisted members who meet the requirements of Article 1.B.5. of this Manual who are selected as candidates for a temporary regular commission and the [REDACTED] successfully complete Officer Candidate School (OCS) may be appointed to temporary regular commissioned officers. Chief warrant officers may be appointed to the grade of lieutenant (junior grade), and enlisted members may be appointed to the grade of ensign. Upon OCS graduation and original appointment as temporary regular commissioned officers, such officers incur a three-year active duty commissioned service obligation.

Article 1.A.4.b. of the manual states that enlisted members who are commissioned as temporary officers “*after OCS graduation perform duties and [REDACTED] by the privilege of regular commissioned officers*” (emphasis added). They serve a four-year probationary period before they become permanent commissioned officers.

Article 1.C.12.f. of the Military Separations Manual, “Grade on [REDACTED] for Physical Disability,” states the following in accordance with 10 U.S.C. § 1372:

Unless entitled to a higher grade under some other provision of law, any Coast Guard member who retires for physical disability or is placed on the temporary disability retired list (TDRL) under 10 U.S.C. § 61 is entitled to the grade or rate equal to the highest of:

- (1) The grade or rate in which the member served on the date his or her name was placed on the TDRL or, if his or her name was not carried on that list, on the date when the member retires.
- (2) The highest grade or rate in which the member served satisfactorily, as the Commandant determines.
- (3) The permanent regular or Reserve grade or rate to which the member would have been promoted had it not been for the physical disability for which he or she retired and which was found to exist as a result of the member’s physical examination.
- (4) The temporary grade to which the member would have been promoted had it not been for the physical disability for which he or she retired, if eligibility for that promotion was based on cumulative years of service or years of service in grade and the disability was discovered as a result of his or her physical examination for promotion (10 U.S.C. §1372).

Article 3.A.1.b. of the Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2A, states that the rules for taking the Servicewide Examination and advancing to a higher pay grade in Article 3.A. apply to all active duty enlisted members as well as temporary commissioned officers on active duty whose permanent status is enlisted.

Article 3.A.13. of COMDTINST M1000.2A provides that a disabled member may compete for advancement and be advanced until the Commandant takes final action on the recommendation of a PEB to separate the member due to disability.

Article 3.A.21.a. of COMDTINST M1000.2A states, “Commanding officers may submit recommendations to Commander (CG PSC-EPM) for advancement to pay grade E-6 for temporary commissioned officers whose permanent enlisted status is pay grade E-5, if they meet the applicable eligibility requirements of Article 3.A.5. of this Manual.”

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. The applicant alleged that his retirement as a [REDACTED] in pay grade E-5, instead of pay grade O2-E, 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.³ 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."⁴

3. The applicant asked the Board to correct his record to show that he was placed on the TDRL in pay grade of O-2E. The applicant argued that if the Coast Guard had handled his medical conditions properly he would have been able to complete OCS and receive his commission upon graduation and therefore retire at a higher paygrade. The record shows that the applicant was disenrolled for "failure to meet performance standards" after two Performance Review Boards met to discuss his progress. The record indicates that he was disenrolled for a number of deficiencies, including leadership and management issues, which he described to his doctor as repeatedly failing room inspection and receiving bad reviews for his watch-standing as an officer of the day. In his application to the Board, the applicant attributed his performance problems at OCS to his PTSD, and his PTSD may well have contributed to some of his performance problems at OCS, although his prior evaluations show that his job performance as an enlisted member had not been adversely affected. In accordance with Article 7.B.5.a. of the Coast Guard Recruiting Manual and Article 1.A.4. of the Officer Accessions, Evaluations, and Promotions manual, however, an enlisted member receives a temporary commission as an ensign in pay grade O-1E (not O-2E) only after he has successfully completed OCS and has graduated. The applicant did not complete or graduate from OCS and so remained an [REDACTED]/E-5 at the time of his retirement.

4. If the applicant had satisfactorily completed and graduated from OCS, he would have received a temporary commission as an ensign pursuant to Article 1.A.4.a. of COMDTINST M1000.3A, and that temporary commission would not have become a permanent commission until the applicant completed a four-year probationary period. Under 10 U.S.C. § 1372 and Article 1.C.12.f.(4) of the Military Separations Manual, an enlisted member being placed on the TDRL may be retired in the "temporary grade to which the member would have been promoted had it not been for the physical disability for which he or she retired, if eligibility for that promotion was based on cumulative years of service or years of service in grade and the disability was discovered as a result of his or her physical examination for promotion (10 U.S.C. § 1372)." The applicant's eligibility for his temporary commission was not based on his cumulative years of service,

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

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

however, and his disability was not discovered as a result of a physical examination for promotion. Therefore, he is not entitled to retirement as an ensign in pay grade O-1E. Instead, he is entitled to retirement at the pay grade he held at the time of his retirement, which was [REDACTED] E-5.

5. The applicant alleged that if he had not attended OCS and been diagnosed with PT [REDACTED] he would have advanced to [REDACTED] /E-6 before he retired. Enlisted advancements result from competition through the SWE conducted each May, however, and under Articles 3.A.1.b. and 3.A.21.a. of the Enlisted Accessions, Evaluations, and Advancements manual, COMDTINST M1000.2A, the applicant was eligible to compete for advancement and advance to [REDACTED] /E-6 even though he was selected for OCS, and he could have advanced to [REDACTED] /E-6 even if he had received a temporary commission. And under Article 3.A.13.e., the applicant did not become ineligible to participate in the SWE due to his disability until the Commandant took final action on the PEB recommendation, which was after the May 2017 SWE. Therefore, neither the applicant's disability nor his selection for or attendance at OCS prevented him from advancing to [REDACTED] E-6.

6. The Board notes that the applicant also asked the Board to order an "external audit of the practices dealing with prior service personnel" at Coast Guard training facilities. The Board has no authority under 10 U.S.C. § 1552 to do so.

7. Accordingly, relief should be denied because the applicant has not proven by a preponderance of the evidence that his placement on the TDRL as an [REDACTED] in pay grade E-5 constitutes an error or injustice.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of retired [REDACTED], USCG, for correction of his military record is denied.

April 6, 2018

