


**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of  
Coast Guard Record of:



BCMR Docket  
No. 152-96

**FINAL DECISION**

  
This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on September 3, 1996, upon the receipt of an application for correction by the BCMR.

This final decision, dated October 24, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.\*

**Applicant's Request for Relief**

The applicant, a former marine science technician, first class (MST1; pay grade E-6), asked the Board to "vacate [his] discharge of 28 APR 1994 and restore [him] to active duty." He also asked for backpay and allowances to the "current date." He asserted that the separation code and reenlistment code on his Certificate of Release or Discharge from Active Duty (DD Form 214) were in error.

The applicant enlisted in the Coast Guard on July 25, 1983. He was discharged on April 4, 1994, after approximately 11 years on active duty. He was assigned a JCR separation code (weight control failure) and an RE-3F reenlistment code (eligible for reenlistment except for disqualifying factor - exceeds weight standards) when he was discharged.

The applicant alleged that his discharge "for the convenience of the government under article 12-B-12 [of the Coast Guard Personnel Manual] wasn't correct[;] there is a specific article . . . that deals with weight [which is]

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\* On August 27, 1997, the applicant requested an additional sixty days to submit a response to the Coast Guard's comments in his case. The extension was granted, and the due date for completion of his application was adjusted. The Board has therefore completed this case within the statutory ten-month time period.

12-B-12.a(10).” He claimed that the Coast Guard discharged him under the provisions of Article 12-B-12.a(6), and that it was the inappropriate article to apply to his discharge.

The applicant alleged that Article 12-B-12.a(6) of the Personnel Manual was inapplicable because it was a general provision authorizing discharge of a member “for the convenience of the government.” The applicant alleged that he was discharged for weight problems, and that Article 12-B-12.a(10) was the more appropriate Coast Guard provision to apply to his discharge.

### Views of the Coast Guard

On August 11, 1997, the Coast Guard recommended that the applicant’s request for relief be denied. The Service stated that the applicant had been discharged “in accordance with the specific procedures and policy mandated by [Commandant Instruction] M1020.8B, Allowable Weight Standards for Coast Guard Military Personnel. . . .” (COMDTINST M1020.8B). The Service stated that the applicant had failed to lose a specific amount of weight, within a probationary period, to meet Coast Guard weight standards.

The Service stated that paragraph 7.g(5) of COMDTINST M1020.8B mandated that enlisted members who were unable to meet the maximum allowable weight (MAW) standard, like the applicant, were to be discharged under the authority of Article 12-B-12.a(6) of the Personnel Manual. The Service asserted that the applicant was discharged in accordance with those provisions and was assigned the appropriate separation and reenlistment codes.

The Coast Guard stated that on April 30, 1993, the applicant was “weighed-in” during an annual weight check and it was determined that his weight exceeded the Coast Guard’s MAW. On June 15, 1993, the applicant was notified through an administrative remarks (page 7) entry in his military record that he was to lose 33 pounds by February 7, 1994. If he did not lose the 33 pounds by that date, he would be recommended for separation.

The Coast Guard stated that on June 22, 1993, the applicant signed the page 7 entry, thereby acknowledging that he weighed 243 pounds which was 33 pounds over the MAW for his body frame (210 pounds). The Service stated that a medical officer “confirmed that the applicant could safely lose the excess weight. . . .”

On February 7, 1994, the applicant was notified in a page 7 entry that he did not achieve his maximum allowable weight in accordance with COMDTINST 1020.8B and that he would be recommended for separation. The applicant acknowledged that he weighed 213 1/2 pounds on that page 7 entry.

The Coast Guard stated that Coast Guard Personnel Command (CGPC) authorized the applicant's command to discharge him by reason of convenience of the government, and authorized the assignment of the JCR separation code and RE-3F reenlistment code. The Service stated that Article 12-B-12.a(6) benefited the applicant because that provision "allows the member to reenlist six months after discharge, providing the member meets the maximum allowable weight standards." The Coast Guard stated that Article 12-B-12.a(10), which is used as a reason for discharge when a member is obese, does not have such reenlistment provisions.

### **Applicant's Response to the Views of the Coast Guard**

On August 19, 1997, the Board sent the applicant a copy of the Coast Guard's recommendation and encouraged him to respond. On August 27, 1997, the applicant asked the Board for a sixty-day extension in which to submit his reply to the Coast Guard's views. The Board granted the applicant's request, and advised him that the due date for his application would be extended accordingly.

On October 17, 1997, the applicant submitted his response. In it, he alleged that the Coast Guard arbitrarily applied the provisions of COMDTINST M1020.8B upon him. He stated that his probationary period was instituted based on a weigh-in that took place in June 1993, and not April 30, 1993, as the Coast Guard stated in its recommendation. The applicant alleged that he alone was singled out to be weighed in June, and that this action of the Coast Guard represented "arbitrary or capricious" application of COMDTINST M1020.8B.

The applicant also alleged that the Coast Guard never considered his body fat percentage as compared to his body weight and height. He stated that COMDTINST M1020.8B, paragraph 6, provided MAW exemptions for a member whose excess body weight was attributed to muscle, and not fat. He asserted that the Coast Guard made no attempt to determine the origin of his excess weight.

The applicant claimed that five months after he was discharged, COMDTINST M1020.8B was replaced with new weight provisions. He stated that the new provisions allowed for members of certain age and height to have a heavier weight and higher body fat percentage, and that he would have met the newer requirements.

### **SUMMARY OF RECORDS**

The applicant was 71" tall, had a wrist size of 7 1/2, and was deemed to have a "large" body frame. In June, 1993, he was 35 years old.

The applicant's military and medical records show that on three separate occasions over an approximate nine year period, he was placed on probationary status for exceeding the MAW.

On December 5, 1985, the applicant weighed 220 pounds. He was ten pounds overweight. The Coast Guard prescribed a two-month probationary period in which the applicant was to lose the ten pounds.

On March 21, 1990, the applicant weighed 250 pounds. He was forty pounds overweight. He was given an approximate ten-month probationary period in which to lose the forty pounds.

On June 7, 1990, the applicant was evaluated by a medical doctor regarding his weight loss program. The medical doctor found that "no underlying medical condition or other physical cause for the excess weight was found [in the examination]." The doctor determined that a weight loss program of one pound per week was appropriate in the applicant's case, and the applicant was provided with information on appropriate diet and exercise. The doctor's report included a box to be checked in the event the member's weight is attributed to muscle mass. The doctor did not check that box, and made no finding that the applicant's weight was due to muscle mass.

On April 30, 1993, the applicant received his annual weigh-in. He weighed 242 1/2 pounds. He was 32 1/2 pounds overweight. The medical representative scheduled the applicant's probationary period to begin on June 15, 1993, and to end on February 7, 1994.

On June 15, 1993, the applicant was weighed again, and found to be 33 pounds overweight. He was referred to a PYA (physician's assistant) for a weight loss program. The PYA found that the applicant had no medical impediments to weight loss and the PYA approved the program that had been prescribed.

The applicant's records contain a chronological listing of his monthly probationary weigh-ins. On September 7, 1993, 2 1/2 months after his probationary period began, the applicant weighed-in at 231 1/4 pounds. On October 25, 1993, the applicant weighed 229 pounds. On November 2, 1993, he weighed 229 pounds. On January 14, 1994, he weighed 226 pounds. On February 7, 1994, the ending date of his probationary period, the applicant weighed 213 1/2. He had not achieved the MAW; he was still 3 1/2 pounds overweight.

## RELEVANT REGULATIONS

### *Commandant Instruction M1020.8B*

Commandant Instruction (COMDTINST) M1020.8B was released on January 29, 1990. The instruction's subject heading was "Maximum Allowable Weight Standards for Coast Guard Military Personnel." The purpose of the instruction was to establish "maximum height-weight standards for all Coast Guard Members."

Paragraph 4.a of the instruction stated that "[m]ilitary members must be physically fit and appear as such in uniform." Paragraph 4.b of the instruction stated that "the term 'maximum allowable weight', as used [therein] is not a person's ideal weight from a health or appearance viewpoint but rather the most a member can weigh and remain in the Coast Guard unless granted an exemption or waiver."

Paragraph 5.h of the instruction states that active duty members who were discharged for exceeding the maximum allowable weight could request reenlistment at their former rate, "provided they are within the maximum allowable weight, meet appearance standards, and have been out of the Service at least 6 months but not longer than 12 months." It further states that such requests would be evaluated by the Commandant (G-PE) "based on the needs of the Service and the member's past performance, including previous appearance problems." Processing for reenlistment was to be completed at a Coast Guard recruiting office.

Paragraph 6.b addressed exemptions available to be applied by authorized personnel. It stated the following, in part:

b. Area Commanders, District Commanders, Commanders of Maintenance and Logistics commands, Superintendent, Coast Guard Academy, and Chief Office of Personnel and Training are authorized to exempt individuals exceeding the standards of enclosure (1) because of a high level of muscle mass accompanied by a superior state of physical conditioning provided that:

- (1) the member's excess weight is determined by a physician to result from muscle mass, not fat; and,
- (2) the flag officer personally determines that the member presents an acceptable appearance in uniform at a weight recommended by the physician and approved by the flag officer. . . . (Emphasis in original.)

Paragraph 7.a of the instruction provides that "all members shall be weighed annually, during the calendar month of the member's birthday, or more often if deemed necessary by the unit commanding officer." (Emphasis added).

Paragraph 7.g(5) of the instruction states that members who failed to meet their maximum allowable weight at the end of their probationary period would be processed for separation under Article 12-B-12.a(6) of the Personnel Manual.

*Commandant Instruction M1020.8C*

Commandant Instruction M1020.8C was released on September 1, 1994. It introduced some more detailed weight requirements for Coast Guard members.

Chapter 4, section B of the instruction provides the following, in part:

B. Some individuals may have a physical makeup, primarily due to high muscle mass, that places them in an overweight category even though their percentage of body fat is well within limits. In these cases, upon determination that the member's body fat is within standards, the member will be assigned a new maximum allowable weight for screening purposes equal to the member's weight when the body fat determination is made . . . .

Enclosure (1) to the instruction listed the recommended healthy weights for men and women. The weights were derived from a 1989 study by the National Research Council. For men and women, aged 35 years and over and 71" tall, the recommended weight range was 151 to 194 pounds.

Enclosure (2) to the instruction provided the revised MAW for men based on the member's height and frame size. Members who were 71" tall with a wrist size of 7 1/2 to under 7 3/4 had an MAW of 209 pounds.

### 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 section 1552 of title 10, United States Code. The application was timely.
2. The applicant asked the Board to change his reenlistment and separation codes on his DD Form 214. He alleged that they were in error because they were assigned under the incorrect Coast Guard regulation.

3. The applicant insisted that he should have been discharged in accordance with the provisions of Article 12-B-12.a(10) of the Personnel Manual. That provision is applied in cases where a member is discharged due to obesity. The applicant was never determined to be obese, or to suffer from obesity, while he served on active duty in the Coast Guard. Therefore, Article 12-B-12.a(10) was not the authority applied in his discharge.

4. The applicant alleged that COMDTINST M1020.8B was applied to him arbitrarily because the Coast Guard performed his weigh-in on a date other than his annual birthdate weigh-in. Paragraph 7.a of COMDTINST M1020.8B states that if a unit commanding officer believes it is necessary, he or she could require a member to have more frequent weigh-ins in addition to the annual weigh-in. It is possible that the applicant's commanding officer found it necessary to take frequent weight measurements of the applicant.

However, the reason for the applicant's weight measurement on June 15, 1993, can be attributed to the beginning of his probationary period. His record shows that he received his annual weigh-in April 30, 1993, but his probationary period did not begin until June 15, 1993. Each member is weighed at the beginning of his or her probationary period, and the measurement is included in the probationary period monitoring log in his or her record. Therefore, there was no error in weighing the applicant on June 15th.

5. The applicant also alleged that the medical officer never tested him to determine if his body weight was the result of muscle mass, and not body fat.

The applicant's record reveals that his weight control was an ongoing problem during his Coast Guard career. He had been on weight loss probation on three occasions within a nine year period. Moreover, on June 7, 1990, the applicant was evaluated by a medical doctor who determined that the applicant's excess weight was not attributable to medical or physical condition, including muscle mass.

The applicant's record contains a copy of a letter from his command to the medical PYA in which the PYA determined that it was medically safe for the applicant to lose the 33 pounds within the eight-month probationary period. On this document, the PYA indicated that the applicant had no medical conditions which would prevent weight loss within the probationary period.

The Board finds that if the applicant's excess weight was not attributed to muscle mass in 1990, then it is highly probable that his excess weight in 1993 was not due to muscle mass either. His records indicate that he had no medical or physical impediments to weight loss. Therefore, it is likely that his excess weight was body fat, and therefore, could be lost through a weight loss program.

6. The applicant made no indication that he was unable to lose 33 pounds as requested by his command. He also has not shown that he contested the determination of the PYA regarding his ability to lose 33 pounds. In fact, the chronological report of the applicant's probationary weigh-ins shows that he did not lose the majority of the weight until the end of the probationary period. This suggests that he did not actively attempt to maintain his weight loss program. The fact that the applicant's weight fluctuated so frequently in his 11 years of service suggests that he had difficulty maintaining a program of diet and exercise to ensure that he did not exceed the MAW in the future.

7. The applicant was discharged in accordance with the provisions of COMDTINST 1020.8B. That instruction established the then-current maximum height and weight standards for all Coast Guard members. Paragraph 7.g(5) of the instruction provided that active duty members who failed to meet the prescribed requirements were to be discharged under the authority of Article 12-B-12.a(6) of the Personnel Manual. Accordingly, the applicant's command discharged him under Article 12-B-12.a(6).

8. The applicant asserted that after he was discharged, the Coast Guard introduced new weight standards which replaced COMDTINST M1020.8B. The Board has found that on September 1, 1994, COMDTINST M1020.8C was released, and established new weight requirements. However, there are no provisions in COMDTINST M1020.8C that would put the applicant in a better position than he was in when he was discharged in 1994 under COMDTINST M1020.8B.

The recommended weight for 35 year old, 71" tall men and women was between 151 and 194 pounds. Additionally, under COMDTINST M1020.8C, the MAW for members of the applicant's height and frame size is 209 pounds. Therefore, if the provisions of the new instruction had been applied to him at the time of his discharge, the applicant would have been 4 1/2 pounds overweight.

9. The Board recognizes that the applicant was only 3 1/2 pounds shy of the MAW at the end of his probationary period. However, the purpose of COMDTINST M1020.8B was to allow the commanding officers the authority to regulate the appearance and physical fitness of the members under their supervision. The applicant's command determined that the applicant did not meet the requirements of the instruction, and therefore required him to lose 33 pounds in order to remain in the service. That decision was not an abuse of discretion by the command, or by the Coast Guard.

10. Additionally, Paragraph 5.h of the instruction allows the member being discharged for weight failure to reenlist after six months at his or her former rate. This provision accommodates those members whose weight



problems are temporary. The applicant had the option to reenlist in the Coast Guard within one year of his discharge, provided he met the MAW. He has not shown that he attempted to take advantage of that option.

11. The applicant has not provided any evidence to show that he is physically or medically incapable of maintaining a weight of 210 pounds. He has not proven that he suffered an injustice by being discharged by reason of weight failure.

The applicant was not determined to suffer from obesity. Therefore, he was not processed for discharge under Article 12-B-12.a(10) of the Personnel Manual. The Coast Guard properly discharged the applicant in accordance with Article 12-B-12.a(6) of the Personnel Manual, as directed by COMDTINST M1020.8B.

12. Accordingly, the applicant's request for relief should be denied.

**ORDER**

The application for correction of the military record of former  
USCG, is denied.

