DEPARTMENT OF HOMELAND SECURITY BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of the Coast Guard Record of:

BCMR Docket No. 2010-140

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title14 of the United States Code. The Chair docketed the case upon receipt of the applicant's completed application and military records on March 26, 2010, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated January 13, 2011, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

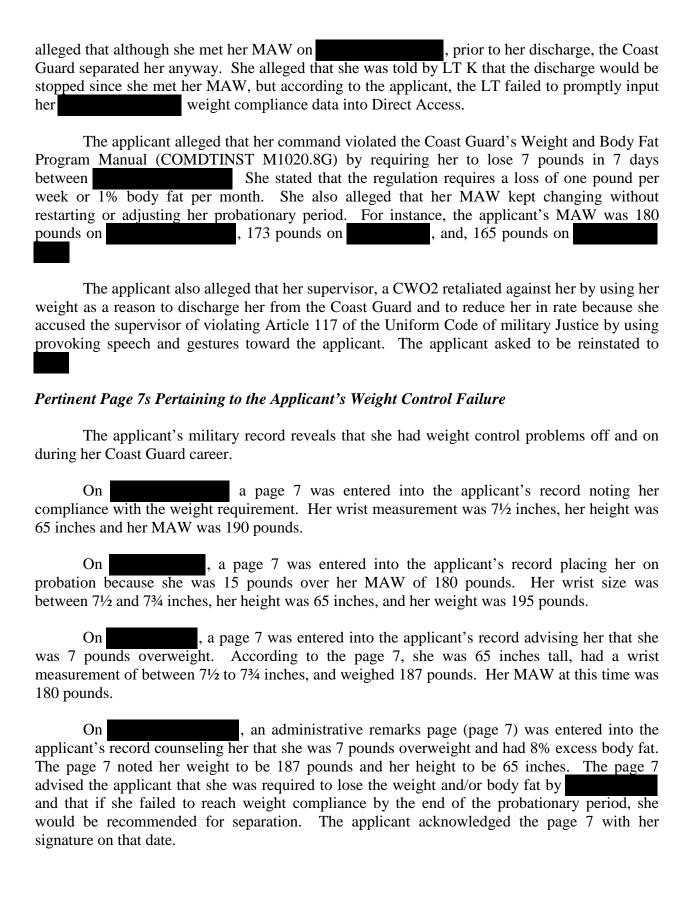
REQUEST

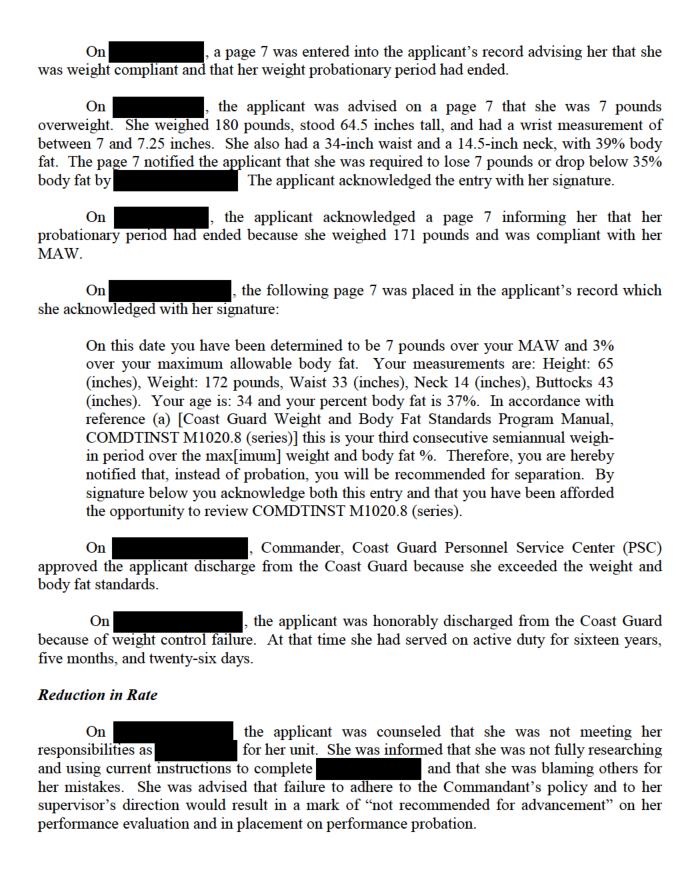
The applicant asked the Board to correct her record to show that she remained on active duty and was not discharged because of weight control failure on the con

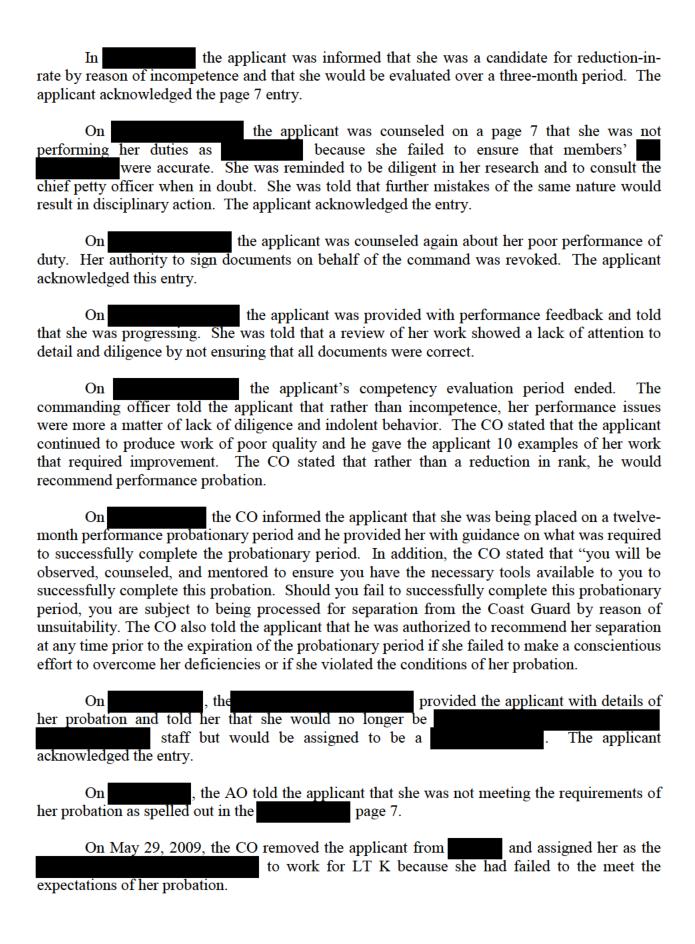
ALLEGATIONS

At that time, she was 65 inches tall and weighed 172 pounds. Her waist measured 33 inches, her neck measured 14 inches, and her buttocks measured 43 inches. She had 37% body fat. Based on these measurements, the applicant was determined to be 7 pounds overweight and 3% over her allowable body fat percentage. The page 7 advised the applicant that this was her third consecutive semiannual weigh-in period in which she exceeded the maximum allowable weight (MAW)¹ and body fat percentage, which was a basis for separation from the Coast Guard. The command informed the applicant that instead of placement on weight probation, she would be recommended for separation from the Coast Guard. The applicant

¹ MAW is the weight permitted for a member based on body mass index.







On the CO told the applicant that her probation had ended because of her change in primary duties and reduction in pay grade.

VIEWS OF THE COAST GUARD

On August 10, 2010, the Judge Advocate General (JAG) of the Coast Guard adopted the comments from PSC as the Coast Guard's advisory opinion. PSC recommended that the Board deny the requested relief. In this regard, the PSC argued that the Coast Guard is presumptively correct and the applicant has failed to substantiate any error or injustice in her record.

PSC stated that on the Coast Guard determined that the applicant was not in compliance with the weight and body fat standards for the third consecutive time in less than 12 months. PSC stated that Article 3.3.1 of COMDTINST M1020.8G, permits the separation of a member who has been non-compliant with the weight and body fat standards for three consecutive weight-ins. According to PSC, the applicant's situation met the requirements of Article 3.3.1. of COMDTINST M1020.8G and she was properly separated from the Coast Guard in accordance with that policy.

The Coast Guard did not address the applicant's request to be reinstated to pay grade E-6

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 14, 2010, the Board received the applicants reply to the views of the Coast Guard. She restated contentions that she had made earlier. She also alleged that in April 2009, the changed the applicant's weight characteristics by entering incorrect numbers into Direct Access. The applicant complained that there is no recourse for the member when data is input incorrectly into Direct Access. The applicant also appeared to allege that she had an underlying medical condition (Lyme disease) that made losing weight difficult. She submitted copies of medical records showing that she was treated for Lyme disease. She alleged that during her probationary periods, she did not receive meaningful weight loss or dietary counseling.

With regard to reinstatement to the applicant stated that according to the Personnel Manual, "[a]fter 6 months you are authorized to regain your original rank after reduction." She also stated that the removal of all page 7s from her record that were prepared by Sector will allow for a fresh start with the Coast Guard.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

- 2. The question before the Board is whether the Coast Guard committed an error by discharging the applicant under Article 3.3.1 of COMDTINST M1020.8G. because she exceeded the weight and/or body fat standards on three consecutive weigh-ins. For the reasons discussed below, the Board finds that the Coast Guard did not commit an error in this regard.
- 3. On September 8, 2009, the Coast Guard issued ALCOAST 512/09, with an effective date of October 1, 2009. Under this ALCOAST, the Coast Guard implemented a new standard for determining a member's MAW based on Body Mass Index (BMI).² The ALCOAST contained a chart that listed the MAW based on a member's height and a BMI of 27.5, regardless of age and gender.³ The applicant was 65 inches tall, so under the BMI standard her MAW was 165 pounds. She exceeded her MAW by 7 pounds on
- 4. According to ALCOAST 512/09, although a member's MAW and body fat number will change under the new standard, the process and procedures of the Weight and Body Fat Program (COMDTINST M1020.8 (series)) remained in effect. Therefore, under COMDTINST M1020.8 (series) and ALCOAST 512/09, because the applicant exceeded her MAW, she was subject to a body fat measurement to determine whether she exceeded her maximum body fat allowance. According to the page 7, she exceeded her maximum allowable body fat by 3%.
- 5. Because the applicant exceeded her MAW and her maximum allowable body fat, she was not in compliance with the Coast Guard's Weight and Body Fat Program, as amended by ALCOAST 512/09. Because the weigh-in was her third consecutive weigh-in in which she was not in compliance with the Coast Guard's weight and body fat program, she was subject to separation. In this regard, the applicant was not in compliance on Paragraph 6.D of ALCOAST 512/09 states the following: "If a member is found non-compliant with weight/body fat standards during this October weigh-in, and it is their third consecutive non-compliant weigh-in they shall be processed for separation."
- 6. The applicant argued that she met her weight requirements on she was discharged anyway. She provided no evidence to support this allegation. Even if she did meet weight standards by the Commandant had approved her discharge on Moreover, the Coast Guard was not obligated to consider such information because she was not on weight probation and nothing in the regulation stated that a discharge for non-compliance would be terminated because the applicant stated that she had met her weight and/or body fat requirement prior to her discharge date. Moreover, since she was not on weight probation, the Coast Guard had no duty to monitor her weight and/or body fat after the weigh-in. Accordingly, the applicant has not shown by a preponderance of

² ALCOAST 469/08 issued in September 2008 and ALCOAST 168/09 issued on March 21, 2009, advised members that effective October 1, 2009, the Coast Guard would be implementing a new standards for determining MAW based on the BMI.

³ Prior to October 1, 2009, the Coast Guard used a member's wrist measurement and height to determine their MAW.

the evidence that the Coast Guard committed an error by discharging her for non-compliance with the weight and body fat requirements of ALCOAST 512/09.

- 7. The applicant's request for reinstatement to submitted insufficient evidence that she performed at a higher level than indicated by her command. She indicated in her statements that her supervisor was rude to her and treated her unfairly because she had attempted to place her on report for using provoking speech towards the applicant, but there is no evidence, except for the applicant's allegations, that this treatment was prevalent throughout the probationary period and that it was so severe that the applicant was unable to perform the duties of a submitted in reducing the applicant to successfully complete her probationary period. The applicant did not provide the Board with a specific regulation, and the Board is aware of none, which stated that a member reduced for incompetency will be reinstated to the grade from which reduced after a six-month period. Therefore, the applicant's request for reinstatement to should be denied due to insufficient evidence of error or injustice.
- 8. The applicant requested to have all page 7s prepared while assigned to CG Sector removed from her military record. However, there is insufficient evidence that any of the page 7s are erroneous. All of the allegations have been considered, and those are not discussed in the findings and conclusions are considered not to be dispositive of the issues in this case.
- 9. Under the regulation, members like the applicant who are discharged for non-compliance with the Weight and Body Fat program can request reenlistment provided the member is within their MAW, meets appearance standards, and has been out of the service for less than 24 months. However, the decision to authorize such reenlistment will be based on service need and the member's past performance. The applicant indicated in an email to that she is weight compliant and has been denied reenlistment on three separate occasions. The Board is not aware of the reason for the Coast Guard's refusal to reenlist the applicant, but service need, if that is the reason, is a legitimate reason for not doing so.
- 10. Accordingly, the applicant has failed to prove that the Coast Guard committed an error or injustice.

ORDER

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

