

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-160



FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application after receiving the applicant's completed application on August 13, 2013, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 25, 2014, 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, an [REDACTED] asked the Board to correct her record to show that she was not placed on the weight control program in October 2011.¹ She alleged that she was erroneously placed on the program because her height was incorrectly measured as 70 inches with a corresponding maximum allowable weight (MAW) of 191 pounds, when in fact she is 71 inches tall with a MAW of 197 pounds.

SUMMARY OF THE RECORD

On October 29, 2007, the applicant underwent a physical examination at the Military Entrance Processing Station (MEPS) at Fort Lee, VA. She was 19 years old, and her height was recorded on the report of medical examination as 70 inches with a weight of 161 pounds. She enlisted in the Coast Guard on December 18, 2007.

On November 25, 2011, the applicant was counseled on a Page 7 that she weighed 197 pounds and was 6 pounds overweight with 34% body fat. Her height was recorded as 70 inches; her MAW was 191 pounds; and her maximum allowable body fat percentage was 32%. She was counseled that if she failed to lose the excess weight or body fat by the end of a 2-month probationary period, January 25, 2012, she would be recommended for discharge.

¹ The record shows that the applicant was placed on the weight control program on November 25, 2011.

On December 24, 2011, a Page 7 was placed in the applicant's record to document that the probationary period had come to an end and that she had successfully met the requirements of the Coast Guard's weight and physical fitness standards.

On May 1, 2012, the applicant was counseled on a Page 7 that at 199 pounds and 35% body fat, she was 2 pounds overweight based on a height of 71 inches and corresponding MAW of 197. She was advised that she would be recommended for separation if she failed to lose the weight or attain 32% body fat by the end of the probationary period, August 1, 2012.

On April 29, 2013, the applicant was exempt for the weigh standards due to pregnancy, but her height was input in the database as 71 inches.

The Coast Guard's JUMPS database contains the following data regarding the applicant's height:

- 25 Oct 2011 70.0
- 24 Dec 2011 70.0
- 13 Apr 2012 70.0
- 27 Apr 2012 70.0
- 06 Jun 2012 70.0
- 06 Jun 2012 71.0
- 29 Apr 2013 71.0

VIEWS OF THE COAST GUARD

On October 29, 2013, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by Commander, Personnel Service Center (PSC).

PSC argued that the applicant's initial medical screening was done at the Ft. Lee MEPS and her height at enlistment was properly recorded as 70 inches. He also noted that according to the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8H, Article 2.B.4.c.5., because a member's height does not appreciably change over time, units are not required to re-measure personnel for height at every assessment. PSC noted that if the applicant's record had shown her height as 71 inches at the time of her enlistment, then it could be presumed that her October 2011 height measurement of 70 inches was erroneous. However, PSC argued, because she was consistently measured at 70 inches prior to June 2012, she has not provided enough evidence to overcome the presumption that she was correctly measured in October 2011.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 1, 2013, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. No response was received.

APPLICABLE REGULATIONS

COMDTINST M1020.8H (series) provides the Coast Guard's weight and fitness standards and regulations. Article 2.D.1. states that all military personnel will be weighed each October and April, but COs may screen members against standards any time they deem it necessary. Article 2.D.4. states that members who are found to be overweight will not be advanced, transferred to a new unit, assigned to training, or paid bonus installations until they are in compliance with regulations.

Article 2.B.4.c. states that a member's height is measured with shoes off and feet together and flat on the floor, and the measurement is rounded so that, for example, a height of 65.4 inches is reported as 65 inches, and a height of 65.5 inches is reported as 66 inches. The article also states that because a member's height does not appreciably change over time, units are not required to re-measure personnel for height at every assessment, but commands must verify a member's height once during his or her tour.

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 asked the Board to correct her record to show that she was not placed on weight probation in November 2011 as stated on a Page 7 in her record. She alleged that she was erroneously placed on the weight probation because her height was incorrectly recorded. 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.² 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."³

3. In 2007, before enlisting in the Coast Guard, the applicant underwent an initial medical screening where her height was measured at 70 inches. Records show that her height was measured at 70 inches until May 1, 2012, when it was recorded as 71 inches on a Page 7. These records are relevant to her claim because a member's height affects her MAW. On November 25, 2011, she was notified that she was being placed on weight probation because, at 197 pounds, she was 6 pounds overweight since her MAW at 70 inches was 191 pounds. About six months later, however, when she weighed 199 pounds, she was advised that she was just 2 pounds overweight because with a height of 71 inches her MAW was 197 pounds.

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

4. The applicant argued that the measurement of 71 inches on the May 1, 2012, Page 7 proves that the measurement of 70 inches on the November 25, 2011, Page 7 is erroneous. Given the prior reports of her height being 70 inches, however, the Board finds that she has not overcome the presumption of regularity accorded the November 25, 2011, Page 7 or proven by a preponderance of the evidence that the height of 70 inches reported on that Page 7 was erroneous.

5. Accordingly, the application should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED] record is denied.

April 25, 2014

