DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-125

[redacted]
SK3/E-4 (former)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. After receiving the applicant's completed application on May 14, 2019, 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 July 24, 2020, 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 petty officer who was discharged for weight control failure on March 20, 2017, asked the Board to correct his record by

- changing his narrative reason for separation from "Weight Control Failure" to "Disability, Permanent," and the corresponding separation code from JCR to WRF; and
- assigning him at least a 50% permanent disability rating for a mental health disorder due to traumatic stress.

The applicant, through counsel, explained that after he enlisted on September 12, 2011, and completed recruit training, he was assigned to a cutter and trained for a particular skill rating to become a petty officer. But then he decided to switch ratings and requested orders to attend "A" School for a different rating. While awaiting those orders, on February 28, 2014, he was "hit with shrapnel from an accidental discharge of an LA-51 (flash bang) shotgun round," which was "less than two feet from [his] face when it was discharged in close quarters." He stated that the "round exited the shotgun, blew past [his] face, and bounced off the wall adjacent to him ending up at his feet where it ultimately exploded." A metal shard penetrated his leg, and he "suffered hearing loss in his right ear as well as other psychological issues."

The applicant stated that shortly after this accident, he was assaulted by a petty officer, who was subsequently punished at mast for committing assault and battery against him. He stated that the assault "seemed to exacerbate [his] psychological triggers" and he "continued to experience anxiety and depression on a regular basis." The petty officer was transferred to another unit.

In the summer of 2014, the applicant stated, he received orders to attend the "A" School and accepted them, though he was "still struggling." He graduated from this "A" School and was assigned to a Base. But then he "began noticing that his anxieties were still ever-present." He would experience "uncontrollable momentary rage" after sudden loud noises and he feared harming someone. He would have "similar uncontrolled reactions" whenever he was touched. He became depressed and his ability to engage positively in daily activities diminished. When he shared these symptoms with a supervisor, he was ordered to go to the medical clinic. He did so, but the clinic "took no further action and [he] was returned to duty untreated."

The applicant stated that his issues continued and his anxiety and depression worsened. He had difficulty sleeping, and his "performance of his duties was obviously impaired." Therefore, in 2016, he returned to the medical clinic for help and was given "a referral to behavioral health and ultimately sent to an in-patient program specializing in treatment of anxiety disorders." He "spent 35 days in intensive in-patient treatment" and received out-patient treatment upon his release. He was prescribed medications to treat his symptoms, and the medications had a side-effect of causing weight gain.

The applicant stated that after he was released from in-patient treatment in early 2017, his Base command told him that he would be processed for a medical separation due to his mental health issues. But then in March 2017, they told him that he would be involuntarily discharged for weight control failure. He hired counsel and petitioned to have his administrative discharge suspended so that he could be evaluated by a medical board and processed under the Physical Disability Evaluation System (PDES). But his petition was "disregarded," and he was quickly discharged for weight control failure on March 20, 2017.

The applicant stated that he "continues to struggle with anxiety, depression and inability to sleep stemming from the trauma surrounding both the shotgun incident as well as the physical assault" and is "essentially homeless" as he has been "relying on the generosity of friends and family."

Applicant's Arguments

The applicant argued that the Coast Guard committed both an error and injustice by discharging him for weight control failure, instead of medically retiring him. First, he argued that the Coast Guard erred by failing to convene a Medical Evaluation Board (MEB) to assess his fitness for duty even though his military clinician had reported on November 16, 2016, that he suffered from anxiety and Major Depression and was not suitable for military service. He also argued that the military clinician's notes show that his mental infirmity was permanent. Therefore, the Coast Guard committed both error and injustice by failing to convene an MEB as required by Chapter 3.D.8. of the Physical Disability Evaluation System (PDES) Manual,

COMDTINST M1850.2D. He argued that if he had been properly evaluated by an MEB, he would have been permanently medically retired. To support this argument, he submitted copies of his medical records, which are summarized below, and an article from the Journal of Obesity which notes that many people report weight gain while being treated for depression, anxiety, or psychosis with medications and attribute their weight gain to their medications. The article reviews some case studies of individuals. Section 3 states that although one study concluded that the weight gain experienced by patients taking an antidepressant was caused by increased calorie intake, "it is likely that multiple neurotransmitters, receptors, and neurocircuits are responsible for drug-induced weight gain."

Second, the applicant argued that notations on his DD 214 documenting his administrative discharge are erroneous and unjust. He argued that the Narrative Reason for Separation shown in block 28, "Weight Control Failure," is erroneous and unjust because his weight gain can be attributed to the medications he was prescribed for his anxiety and depression. Specifically, the applicant stated, he was prescribed Seroquel, which is "known to cause both increased appetite and weight gain." The applicant admitted that he had experienced "weight fluctuations" before taking this medication but noted that each time, he had been able to lose his excess weight to comply with the weight standards. He claimed that after he began taking medications for his mental health, "increased exercise and reduced calorie intake had no effect on his body weight or mass. No matter how much he worked out and curbed his diet, the weight remained and, in fact, even increased." Therefore, he stated, his inability to comply with the weight standards "was directly negatively impacted by his clinical treatment for depression and anxiety," and the Coast Guard's decision to discharge him administratively for weight control failure, instead of convening an MEB and processing him under the PDES for a medical retirement, was erroneous and unjust.

The applicant argued that the Board should order the Coast Guard to medically retire him with at least a 50% disability rating pursuant to § 4.129 of the Veterans' Affairs Schedule for Rating Disabilities (VASRD), which states that when a mental disorder that

> develops in service as the result of a highly stressful event is severe enough to bring about the veteran's release from active military service, the rating agency shall assign an evaluation of not less than 50 percent and schedule an examination within a six-month period following the veteran's discharge to determine whether a change in evaluation is warranted.

The applicant stated that before the stressful events explained above, he "was without issue" and the quality of his service was "normal." But after the stressful events, he began experiencing severe depression and anxiety. He had "an aversion to being touched" and "manifestations of extreme and unexplained rage." Therefore, he was prescribed medications that caused him to gain weight, caused his failure to meet the weight standards, and so directly caused his separation. Accordingly, since his medications caused his weight gain, he should have been medically retired from the Coast Guard with at least a 50% disability rating.

SUMMARY OF THE RECORD

In 2011, the applicant enlisted in the Coast Guard at age 21. After recruit training, he was assigned to a cutter, trained for a rating, and advanced to Fireman (FN/E-3). The Board

received the applicant's Coast Guard medical records from the VA, which show that he was often non-compliant with the Coast Guard's weight and body fat standards and was required to lose weight to meet them. His medical records also show the following:

On February 25, 2014, the applicant received treatment for a shallow laceration from a "shrapnel injury. Pt was in the galley on board [a cutter] when a flash bang went off and he was struck in the leg. Pt admits to ears still ringing. Pt denies losing consciousness. No others were injured in accident." The corpsman stated that the laceration was about an inch long, was not bleeding, and did not require sutures. He cleaned the laceration and applied Bacitracin and a bandage.

In February 2015, the applicant completed "A" School for a different rating and was reassigned to a large Base. On April 21, 2015, he went to the Base clinic for a follow-up consultation following an audiogram as he continued to have tinnitus in his right ear. The doctor noted the following:

> Episodes occur every few weeks and last only 30-60 seconds and then go away. The tinnitus began after a loud noise exposure on his previous cutter. A shotgun with a live round (not a dummy round) was accidentally discharged right in front of his face (barrel was facing 90 degrees away from him). They were conducting training on the mess deck. The round ricocheted off of the reefer and then exploded at his feet leaving him with a small laceration on his right lower leg.

The applicant also asked the doctor to document an incident with his supervisor in his medical record. He told the doctor that his supervisor had "slammed [the applicant] into his rack [bed] in a fit of rage." And since that incident, he did not like to be touched while at work. The applicant stated that his current work environment was good, and he "denie[d] inability to concentrate, anger issues, insomnia, pervasive thoughts of the incident."

On July 27, 2016, the applicant went to the Base clinic because his Periodic Health Assessment had shown that he was "high risk" due to his BMI, poor sleep, tobacco use, poor diet, stress, and lack of physical activity. He stated that he could sleep 8 to 9 hours on weekend nights but only got 4 to 6 hours of sleep on weeknights. He was prescribed Doxepin for his sleep and advised to stop using tobacco, to increase his sleep, to exercise regularly, and to adjust his diet. He was referred for weekly therapy with a psychologist to address his stress and then prescribed Trazadone, an antidepressant.

On September 1, 2016, the applicant went to the Base clinic complaining of insomnia due to stress and anxiety and requesting a new medication. He stated that the medication that he had been prescribed earlier was causing him to feel groggy and lethargic. A physician's assistant noted that the applicant was in therapy with a psychologist once a week to develop coping mechanisms for stress and prescribed Celexa.

On September 21, 2016, the applicant went to the Base clinic for a follow-up consultation. He told the Medical Officer, Dr. J, that he was a victim of workplace violence and that he did not like loud noises because he had been within a foot of a weapon accidentally discharging and had shrapnel hit his lower leg. The applicant asked Dr. J to convene an MEB for him. The doctor found the applicant fit for full duty and wrote the following diagnosis:

> Anxiety: Based on previous trauma and lack of treatment up until recently, believe that it is too premature to pursue medical board at this juncture. Believe that patient would benefit from inpatient treatment and he concurred. He has upcoming leave scheduled to visit with his father who is …, therefore he could begin treatment 10 Oct 16. Discussed case with clinic administrator who concurs with plan. Member is to continue medications and weekly therapy with Dr. [P, the psychologist] until inpatient treatment begins.

On October 10, 2016, the applicant began attending a 35-day private inpatient treatment program based on his anxiety and insomnia.

On November 16, 2016, Dr. J noted that the applicant had just completed a 35-day inpatient treatment program and said it was very helpful. Dr. J had not yet received the doctors' notes from the program, but the applicant told him that he had been diagnosed with "PTSD, insomnia, and massive Depressive Disorder [sic]." He complained about the quality of the food at the facility but also stated that he was eating more due to his anxiety and was unable to control his food portions. The applicant told the Dr. J that he had "multiple 'triggers' including [increased] noise [and] changing environments." He stated that he had experienced these issues for a year and a half, but his symptoms had worsened due to stress during the past six months. The applicant also reported that his stress was "manageable" and that he was experiencing no side-effects from his medications. The applicant had been having weekly therapy sessions and taking medications before the inpatient program, but he denied any positive results from that treatment. Based on the applicant's statements, Dr. J noted that the applicant's diagnoses were anxiety and Major Depressive Disorder, and the following:

- Member not suited for military service. Stable on meds but significant functional impairment noted on hospital d/c [and] member unable to tolerate [increased]/loud noise
- Cont[inue] current meds
- Had appt [with] psychologist today – cont. to [follow up]
- To start PHP [post-hospitalization program] this week. Check in [with Medical Officer] in 2 weeks
- Discussed med board process

On a Command Weight Referral form dated December 9, 2016, the applicant's CO noted that he weighed 261 pounds and was 59 pounds overweight. In addition, he had 32% body fat, while the maximum allowed for his age was 22%. Dr. J certified on this form that the applicant did not have any medical conditions and was not taking any medications that could be contributing to his excess weight and that it was safe for him to lose weight through exercise and diet.

On a Page 7 dated December 13, 2016, the applicant was advised that with a height of 72 inches and weight of 261 pounds, he was 59 pounds overweight. In addition, his body fat measured 32% whereas the maximum allowed percentage for his age (26 years old) was 22%. The Page 7 explains that because the applicant was more than 35 pounds overweight and had more than 8% excess body fat, he was not eligible for a weight probationary period. Therefore, he would be processed for separation in accordance with the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8.

On December 16, 2016, Dr. J noted that the applicant had returned for a follow-up because he was halfway through his outpatient program. Dr. J also noted that the applicant had been "binge eating." His prescribed medications were Zoloft, Ambien, Minipress, and Seroquel, but he was not going to take Seroquel anymore. Dr. J reported that the applicant was

> visibly sullen and upset as his psychiatrist at [the post-hospitalization treatment program] informed him that he is likely bipolar. Member stated 'this is not what I wanted.' Member reported that he is upset about the bipolar diagnosis because he 'came in for one thing and came out with another.' He mentioned fleeting thoughts of SI [suicidal ideation], however denies plan. He doesn't wish to harm himself because he has future career plans that he looks forward to. He denies HI [homicidal ideation].

Dr. J noted that he would "wait for clinical notes from [the inpatient treatment program] and follow up with [Dr. W, the psychiatrist] to confirm diagnosis. If bipolar disorder is confirmed, will proceed with medical board." Dr. J also noted that the applicant had been binge eating and gained about 20 pounds. The applicant's status was noted as "limited duty" for 30 days. He was not allowed to perform boat or sea duty.

On January 9, 2017, the applicant returned to the Base clinic. He stated that he had been having "fleeting" morbid thoughts but denied having suicidal or homicidal ideations. He stated that he did not want to return to work at the warehouse because of the "known triggers," which were loud noises. A physician's assistant (PA) noted that the applicant was fit for limited duty but that because of the applicant had been diagnosed with Major Depression Disorder and was unable to perform his duties, the PA would recommend an MEB. The PA noted that the applicant had continued to gain weight and that he was being processed for an administrative discharge for weight control failure, which would "run concurrently" with an MEB. He also noted that the applicant had an appointment with his psychiatrist the next day and with a psychologist the following week.

On January 11, 2017, the applicant returned to the Base clinic. He reported to Dr. J that he had successfully completed his outpatient treatment program but was being "triggered" at work and was concerned that no one was addressing this issue. He explained that he worked in a warehouse and if a pallet dropped, the loud noise would scare him for one to two seconds after which he would calm down. Dr. J noted that he had finally received the report of the applicant's inpatient treatment. The psychiatrists had reported that the applicant had no symptoms of PTSD and had been placed in the "addictive issues/maladaptive coping mechanisms group." He was "overeating to soothe emotional distress," which was "causing the majority of his problems." The report stated that the symptoms he complained of might be due to one of the following: factitious disorder; histrionic personality disorder; or uncontrolled anxiety. The applicant's responses to questions were vague, lacking in detail, and exaggerated. The treatment center reported that the applicant was worried about his future and this worry consumed his thoughts.[1] He was most likely suffering from an adjustment disorder with a prolonged stressor (more than six months), but he did not meet the criteria for PTSD. The applicant had reported that he was not sleeping well and had insomnia, fatigue, irritability, and racing thoughts, but there was "no evidence of bipolar/mania. Some depressive symptoms but [we] don't feel [he] meets criteria

[1] Why the applicant was worried about his future in October 2016 is unclear, but he presumably knew, based on his weight, that he was unlikely to qualify for weight probation during the semiannual weigh-in.

and symptoms better explained by [the adjustment disorder and worry about his future]." However, Dr. J noted, the diagnosis upon discharge was Major Depression, GAD. He also noted that the applicant's status was MEB "pending."

On February 22, 2017, the applicant returned to the Base clinic for a follow-up consultation. He told Dr. J that he continued to struggle with being at work and being "triggered" by loud noises. He had stopped taking his medications with no difficulty or increase in symptoms, but he asked for a prescription for Ambien to help him sleep and an SSRI, which Dr. J provided. Dr. J noted that the applicant's diagnosis was an unspecified adjustment disorder with symptoms of anxiety and depressed mood and that the applicant did not meet the criteria for PTSD. On the Duty Status line, Dr. J wrote "not fit for duty – unclear Admin Sep vs. Med Board." He also noted that he would ask the PDES Branch for advice.

On March 15, 2017, the applicant returned to the Coast Guard clinic for a follow-up consultation. He reported that he was being administratively separated. Dr. J noted that the PDES Branch had advised him that members being separated because of an adjustment disorder were administratively separated instead of being evaluated by an MEB.

On March 20, 2017, the applicant was honorably discharged under the authority of Article 1.B.11. of the Military Separations Manual. His Narrative Reason for Separation on his DD 214 is "Weight Control Failure," with a corresponding JCR separation code and RE-3 reentry code.

On September 30, 2017, the VA advised the applicant that he had been awarded a 50% disability rating for service-connected PTSD, which was backdated to his date of discharge. The VA awarded the applicant a 10% disability rating for tinnitus but found that his hearing was normal.

VIEWS OF THE COAST GUARD

On December 4, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case and adopting a memorandum on the case signed by Commander, Personnel Service Center (PSC).

PSC stated that the evidence shows that the applicant was diagnosed by a licensed psychologist as having an adjustment disorder. His increased eating was linked to his adjustment disorder and not to his medications. On November 16, 2016, after his 35-day inpatient treatment program, it was noted that the applicant was not "suitable" for military service and had "significant functional impairment." The Medical Officer also indicated that "MEB" was the applicant's "Duty Status." Then on December 12, 2016, the doctor noted the applicant's binge eating and weight gain and changed his status to "limited duty" for 30 days. And one day later, the Medical Officer certified that there were no medical diagnoses or medications that were contributing to the applicant's weight gain. PSC noted that an abeyance of the weight standards can be granted for conditions or medications that cause weight gain, but the doctor found that the applicant did not qualify for an abeyance.

PSC stated that in January 2017, a third-party licensed psychologist, Dr. W, reported that the applicant did not appear to have PTSD; that his responses were vague and seemed exaggerated; that he showed a pattern of maladaptive coping mechanisms, including overeating to relieve emotional distress; that he had an adjustment disorder; that there was no evidence of bipolar/mania; and that his symptoms of depression were better explained by the adjustment disorder. In February 2017, Dr. W noted that the applicant was not fit for duty and wrote "Admin Sep vs. Med Board" in his notes. Then in March 2017, Dr. W confirmed the adjustment disorder diagnosis and stated that after consulting the PDES Manual, he had determined that separation should be through administrative channels. PSC stated that the applicant has not submitted persuasive evidence showing that the diagnosis of adjustment disorder was erroneous or unjust, and the Coast Guard "took all reasonable steps to thoroughly assess [his] medical condition, specifically, ensured third-party inpatient and outpatient behavioral science studies; and that policy was properly and exhaustively followed while discharging the Applicant."

PSC stated that in the months leading up to his discharge, the applicant was noncompliant with Coast Guard weight standards. He was more than 35 pounds overweight and so he did not qualify for a weight probationary period and had to be administratively discharged. PSC stated that the applicant's command noted that his binge eating was related to his adjustment disorder and examined whether there was a basis for convening an MEB. But in accordance with the Medical Manual, an adjustment disorder is not grounds for convening an MEB. Once it was determined that the applicant was not entitled to an MEB, he was administratively separated for "weight control failure," although he could have been discharged for unsuitability due to his adjustment disorder.

The JAG also provided a memorandum and first noted the following Coast Guard policies:

- Chapter 1.D.1. of the PDES Manual states, "A member is introduced into the PDES when a commanding officer (or medical officer or higher authority as described in chapter 3) questions the member's fitness for continued duty due to apparent physical and/or mental impairment(s) and directs that an MEB [Medical Evaluation Board] be convened to conduct a thorough examination of the member's physical and/or mental impairment(s)."
- Chapter 2.C.2.c. of the PDES Manual states, "If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is deemed fit for duty even though medical evidence indicates he or she has impairments."
- Chapter 2.A.9. of the PDES Manual, states that certain medical conditions are not physical disabilities and result in administrative separations, instead of PDES processing. The list of examples includes alcoholism, certain allergies, motion sickness, and obesity and refers the reader to a list of personality and intelligence disorders in Chapter 5 of the Medical Manual.
- Article 4.A.1. of the Weight and Body Fat Program Manual, "Separation in Lieu of Probation," requires discharge for members who exceed their body mass index (BMI) screening weight and maximum allowable body fat percentage to the extent that their

weight probationary period would be greater than eight months, when calculated by body fat, and more than 35 weeks when calculated by weight.

- Chapter 5.B.3. of the Medical Manual states that "adjustment disorders" are generally treatable and not usually grounds for separation but may be grounds for administrative separation if they are prolonged or non-curative and "render[] a member unsuitable for further military service."
- Chapter 1.B.15.b.3. of the Military Separations Manual authorizes administrative discharges for members diagnosed with adjustment disorders.

First, the JAG noted that in prior decisions, including BCMR Docket No. 2003-092, the BCMR has noted that it "is not a medical board and is not well positioned to assess whether [an applicant's medical condition(s)] rendered him unfit for duty … [or] to determine the degree to which he was disabled." The JAG argued that it would be improper for the Board to try to assess the applicant's fitness for duty and degree of disability as if it were a medical board.

Second, the JAG stated that the applicant was not entitled to processing under the PDES because he was never referred for processing by an authorized MEB convening authority. The JAG stated that the notation by the Coast Guard Medical Officer, LCDR J, stating that the applicant was "not suitable for military service" did not require or warrant convening an MEB. LCDR J discussed the PDES process with the applicant, who had inquired about it, and noted that the applicant had an appointment with a psychologist. But LCDR J did not initiate the PDES process, which "demands the conclusion that [LCDR J] did not find cause for referral to PDES." The JAG noted members are not authorized to request PDES processing and so his contention that he requested PDES processing but his request was ignored is irrelevant. In addition, the JAG noted that in stating that the applicant was "not suitable" for military service, LCDR J was using the language of administrative discharges for "unsuitability" when a member has an adjustment disorder, pursuant to Chapter 1.B.15. of the Military Separations Manual, instead of saying that the applicant was "unfit" for further military service.

Third, the JAG stated that the applicant has not proven by a preponderance of the evidence that he was diagnosed with or rendered unfit by PTSD before his discharge in March 2017. She denied that the Coast Guard diagnosed the applicant with PTSD before his discharge. She stated that the applicant had been examined several times for PTSD and was found not to meet the criteria. The record therefore shows that the Coast Guard "took affirmative steps to establish whether or not Applicant had PTSD" and determined that he did not. She stated that the preponderance of the evidence shows that the applicant did not meet the criteria for PTSD or an MEB while on active duty and so the Coast Guard has committed no error or injustice.

Fourth, the JAG stated that the applicant was not eligible for PDES processing because he was diagnosed with an adjustment disorder and so was potentially subject to an administrative separation because of his diagnosis, rather than a medical separation, in accordance with Chapter 1.B.15. of the Military Separations Manual. The JAG stated that the record shows that the Medical Officer concluded that the applicant did not have PTSD or Major Depression but likely had a prolonged adjustment disorder, which could have caused an administrative separation. Presumably, the JAG argued, Medical Officer concluded that the applicant did not require evaluation by an MEB because he did not convene one, as he could have if he had thought the applicant was

unfit for duty. The JAG stated that all of the medical evidence submitted by the applicant establishes that he did not have PTSD or a major depressive disorder before his discharge. And "[f]ollowing the opinions of the treating physician, [CAPT W], this Board must conclude that the underlying symptomology of his obesity was that Applicant had an adjustment disorder while in the Coast Guard." The JAG noted that CAPT W wrote that the applicant had "a pattern of maladaptive defenses/coping mechanisms … overeating to soothe emotional distress. … Adjustment disorder with prolonged duration of more than 6 months without prolonged stressor." Therefore, the Coast Guard did not commit error or injustice by not convening an MEB.

Fifth, the JAG noted that the subsequent diagnosis of service-connected PTSD by the VA does not show that he had PTSD before his discharge. VA ratings are not determinative of the same issues involved in military disability cases, and any long-term diminution in the applicant's earning capacity attributable to his military service "is properly a matter for determination by the Department of Veterans' Affairs, not the Coast Guard or the BCMR." The JAG noted that service-connected conditions may develop and become disabling after discharge, and the VA may award compensation for those conditions, but the Coast Guard's findings are limited to the member's condition before discharge. The VA's finding that the applicant is 50% disabled by PTSD is neither binding on the Coast Guard "nor indicative of differing or conflicting opinions between Coast Guard and DVA medical officials." Pursuant to 10 U.S.C. § 1201 and Chapter 2.C.2.c. of the PDES Manual, the "sole standard for a physical disability determination in the Coast Guard is unfitness to perform duty."

Finally, the JAG concluded that the applicant was properly discharged for weight control failure. When he was found to be 59 pounds overweight on December 13, 2016, he was processed for separation without another probationary period, pursuant to Article 4.A.1. of the Weight and Body Fat Standards Program Manual, because his probationary period would have exceeded the maximum allowed probationary period of 35 weeks or 8 months.

The JAG stated that the applicant has failed to establish by competent evidence that his medications caused his weight gain, and his Command Referral Form refutes his claim since the doctor reported that there was no medical diagnosis or medication that was contributing to his weight gain. The applicant himself reported that he ate because of anxiety and would try to diet but then binge eat. And, the JAG stated, the medical records show that in the months before his discharge the applicant "was on and off various medications with no appreciable change in his weight." Therefore, the JAG stated, the Coast Guard committed no error or injustice by discharging the applicant for "weight control failure." The JAG opined that it was a more favorable narrative reason for discharge than an "unsuitability" discharge for "adjustment disorder." Accordingly, the JAG recommended that the Board deny the applicant's request in this case.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 10, 2019, the Chair sent the applicant a copy of the Coast Guard's views to the applicant's attorney and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Weight and Body Fat Standards Program Manual

COMDTINST M1020.8H (series) provides the Coast Guard's weight and fitness standards and regulations. Chapter 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. Chapter 3.B. requires non-compliance to be documented on a Page 7 in the member's record. Chapter 3.D. states that for a non-compliant member, a weight-probationary period begins immediately unless the person is ineligible—for example, by being 35 pounds or more overweight or being non-compliant for a third time within fourteen months. The duration of the probationary period is set at either one week per pound of excess weight or one month per percentage of excess body fat, whichever is greater. But a weight probationary period may not exceed eight months or thirty-five weeks, whichever is greater.

Chapter 4.A.1., "Separation in Lieu of Probation," states that if the member is ineligible for weight probation because their probationary period would exceed both eight months by body fat percentage and 35 weeks by weight calculations, the command must initiate the member's administrative discharge. (Chapter 1.B.12.a.(10) of the Military Separations Manual authorizes the discharge of members for obesity as long as a medical officer has determined that the proximate cause of the obesity is excessive intake of food or drink, rather than a medical condition or medication that physiologically causes weight gain.)

Chapter 5.A.2. of COMDTINST M1020.8H states that the Coast Guard may authorize medical abeyances of the weight standards "to avoid penalizing a member who may be non-compliant due to medical conditions/ medications that directly contribute to weight gain. Injuries or illnesses that interfere with a member's ability to exercise are not grounds for a medical abeyance." The examples of such qualifying medical conditions provided in Chapter 5.A.3. are polycystic ovarian syndrome, hypothyroidism, and prescribed corticosteroids. The member must become compliant with the weight standards when the condition has stabilized and the abeyance ends.

Medical Manual

Chapter 3.F. of the Medical Manual includes the physical standards applicable to all Coast Guard military members. Chapter 3.F.1.c. states the following:

> Fitness for Duty. Members are ordinarily considered fit for duty unless they have a physical impairment (or impairments) that interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual's ability to reasonably perform those duties. Active duty or reserves on extended active duty considered permanently unfit for duty shall be referred to a Medical Evaluation Board (MEB) for appropriate disposition.

The remainder of Chapter 3.F. is a list of "conditions and defects that are normally disqualifying" for continuation in military service and require evaluation by an MEB. Chapter 3.F.16. states the following:

16. Psychiatric Disorders. (See Chapter 5 Section B of this Manual concerning disposition.)

a. Disorders with Psychotic Features. Recurrent psychotic episodes, existing symptoms or residuals thereof, or recent history of psychotic reaction sufficient to interfere with performance of duty or with social adjustment.

b. Affective disorders; anxiety, post-traumatic stress disorder or somatoform disorders. Persistence or recurrence of symptoms sufficient to require treatment (medication, counseling, psychological or psychiatric therapy) for greater than twelve (12) months. Prophylactic treatment associated with significant medication side effects such as sedation, dizziness, or cognitive changes or requiring frequent follow-up that limit duty options is disqualifying. Prophylactic treatment with medication may continue indefinitely as long as the member remains asymptomatic following initial therapy. Any member requiring medication for any of the above disorders must be removed from aviation duty. (Incapacity of motivation or underlying personality traits or disorders will be processed administratively. See Military Separations, COMDTINST M1000.4 (series) for further guidance.)

c. Mood disorders. Bipolar disorders or recurrent major depression do not require a six (6) month evaluation period prior to initiating a medical board. All other mood disorders associated with suicide attempt, untreated substance abuse, requiring hospitalization, or requiring treatment (including medication, counseling, psychological or psychiatric therapy) for more than twelve (12) months. Prophylactic treatment associated with significant side effects such as sedation, dizziness, or cognitive changes, or frequent follow-up that limit duty options is disqualifying. Prophylactic treatment with medication(s) may continue indefinitely as long as the member remains asymptomatic following initial therapy. Any member requiring medication for any of the above disorders must be removed from aviation duty. (Incapacity of motivation or underlying personality traits or disorders will be processed administratively. See Military Separations, COMDTINST M1000.4 (series) for further guidance.)

d. Personality; sexual; factitious; psychoactive substance use disorders; personality trait(s); disorders of impulse control not elsewhere classified. These conditions may render an individual administratively unfit rather than unfit because of a physical impairment. Interference with performance of effective duty will be dealt with through appropriate administrative channels (see Chapter 5 Section B of this Manual).

e. Adjustment Disorders. Transient, situational maladjustment due to acute or special stress does not render an individual unfit because of physical impairment. However, if these conditions are recurrent and interfere with military duty, are not amenable to treatment, or require prolonged treatment, administrative separation should be recommended (see Chapter 5 Section B of this Manual).

Chapter 5.A.1.a. of the Medical Manual states, regarding psychiatric conditions, that psychiatric conditions that are considered treatable should be treated, and "[i]f a successful outcome (availability for worldwide assignment) is not realized within six months of the initiation of therapy, the patient's condition must be reassessed. If the reassessment indicates that the prognosis for a successful outcome is poor, the member shall be processed for discharge pursuant to Military Separations, COMDTINST M1000.4 (series) or through the Physical Disability Evaluation System, COMDTINST M1850.2 (series)."

Chapter 5.A.3. of the Medical Manual states that adjustment disorder, including those with anxiety and "depressed mood," are "generally treatable and not usually grounds for separation. However, when these conditions persist or treatment is likely to be prolonged or noncurative (e.g., inability to adjust to military life/sea duty, separation from family/friends), process in accordance with Military Separations, COMDTINST M1000.4 (series) is necessary."

Chapter 5.A.11. states that anxiety disorders and PTSD "may be disqualifying for retention."

PDES Manual

Chapter 1.D.1. states, "A member is introduced into the PDES when a commanding officer (or medical officer or higher authority …) questions the member's fitness for continued duty due to apparent physical and/or mental impairment(s) and directs that an MEB be convened to conduct a thorough examination of the member's physical and/or mental impairment(s)."

Chapter 2.A. includes the following "definitions":

> 9. Conditions or Defects not Physical Disabilities. Certain conditions and defects may cause a member to be unfit for continued duty and yet not have physical disabilities within the meaning of the law, thereby subjecting the member to administrative separation. These conditions include, but are not limited to, alcoholism; allergy to uniform clothing; character disorders; enuresis; heat intolerance with disturbances of thermal regulation; inability to be fitted in uniform clothing; motion/travel sickness; obesity; primary mental deficiency; pseudofolliculitisbarbae of the face and/or neck; somnambulism; stuttering or stammering; systemic or marked allergic reactions following stings by red ants, bees, wasps or other stinging insects; unsanitary habits including repeated venereal disease infections. A full listing of personality and intelligence disorders is contained in chapter 5 of the Medical Manual, COMDTINST M6000.1 (series).
>
> 35. Not Fit for Duty (NFFD). The status of a member who is determined by the final approving authority within the PDES to be unable to perform the essential duties of the member's office, grade, rank, or rating. …
>
> 40. Physical Disability. Any manifest or latent physical impairment or impairments due to disease, injury, or aggravation by service of an existing condition, regardless of the degree, that separately makes or in combination make a member unfit for continued duty. The term "physical disability" includes mental disease, but not such inherent defects as behavior disorders, personality disorders, and primary mental deficiency.

Chapter 2.C.2. of the PDES Manual states the following:

> a. The sole standard in making determinations of physical disability as a basis for retirement or separation shall be unfitness to perform the duties of office, grade, rank, or rating because of disease or injury incurred or aggravated through military service. Each case is to be considered by relating the nature and degree of physical disability of the evaluee concerned to the requirements and duties that a member may reasonably be expected to perform in his or her office, grade, rank, or rating. In addition, before separation or permanent retirement may be ordered:
>
> (1) there must be findings that the disability
>
> (a) is of a permanent nature and stable; and
> (b) was not the result of intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence.
>
> • • •
>
> b. The law that provides for disability retirement or separation (10 U.S.C. 61) is designed to compensate a member whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. … The following policies apply.
>
> (1) Continued performance of duty until a member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty. This presumption may be overcome if it is established by a preponderance of the evidence that

> (a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or
>
> (b) acute, grave illness or injury, or other significant deterioration of the member's physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered him or her unfit for further duty.
>
> (2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in articles 2.C.2.b.(1)(a) or (b) are met.
>
> (3) The determination of a grave or serious condition or significant deterioration must be made by a competent Coast Guard medical officer. Such medical authority will consult with the CGPC senior medical officer, as necessary, to ensure proper execution of this policy in light of the member's condition. The member's command may concurrently submit comment to the CGPC senior medical officer.
>
> • • •
>
> i. The existence of a physical defect or condition that is ratable under the standard schedule for rating disabilities in use by the Department of Veterans Affairs (DVA) does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability. Although a member may have physical impairments ratable in accordance with the VASRD, such impairments do not necessarily render him or her unfit for military duty. A member may have physical impairments that are not unfitting at the time of separation but which could affect potential civilian employment. The effect on some civilian pursuits may be significant. Such a member should apply to the DVA for disability compensation after release from active duty.

Chapter 3.D. of the PDES Manual, "Requirement for Medical Evaluation Board," refers the reader to the Medical Manual for guidance before convening an MEB and states that the "[e]xistence of one or more of the following situations requires convening an MEB. … 8. In any situation where fitness for continuation of active duty is in question."

Military Separations Manual

Chapter 1.B.12.a.(10) of COMDTINST M1000.4 authorizes administrative discharges of members for obesity if a doctor has certified that the proximate cause of the obesity is excessive intake of food and drink, rather than a medical condition or medication.

Chapter 1.B.14. authorizes the medical separation of members due to physical disability pursuant to the procedures in the PDES Manual.

Chapter 1.B.15.b. authorizes administrative discharges of members for "unsuitability," which includes inaptitude, personality disorders, apathy, and adjustment disorders, *inter alia.*

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable regulations:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's discharge.[2]

[2] 10 U.S.C. § 1552(b).

2. The applicant alleged that his administrative discharge for "weight control failure" was erroneous and unjust and that his record should reflect a medical retirement for PTSD with a 50% disability rating. 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 the record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[3]

3. The applicant has not proven by a preponderance of the evidence that he was entitled to an MEB and medical retirement under the PDES due to PTSD. The record shows that the applicant began complaining of insomnia, anxiety, and "triggers" in the summer of 2016. And with his consent, the Coast Guard sent him to a 35-day inpatient treatment program not run by the Coast Guard, which began in October 2016. According to the medical records, the applicant's psychiatrist during this program later reported to Dr. J at the Base clinic that the applicant did not meet the criteria for a diagnosis of PTSD, although the applicant told Dr. J that he had been diagnosed with PTSD during the inpatient program. In late November and December 2016 and January 2017, the applicant attended a post-hospitalization program; continued his therapy sessions with a psychologist through the Coast Guard, and consulted a psychiatrist for prescriptions, and according to the available records, none of them diagnosed the applicant with PTSD. Instead, the applicant was diagnosed with an adjustment disorder with anxiety and depressive symptoms, and that diagnosis is entitled to a presumption of regularity.[4]

4. According to Dr. J's notes, the applicant's psychiatrist during the 35-day treatment program reported somewhat contrarily that he was suffering from Major Depressive Disorder upon his discharge from the inpatient program in November 2016 and that his diagnosis was adjustment disorder with anxiety and depressive symptoms. And a psychiatrist involved in the post-hospitalization program told the applicant that he might have bipolar disorder. But bipolar disorder was apparently ruled out, and there is insufficient evidence for the Board to conclude that the applicant was entitled to an MEB because of Major Depressive Disorder in January 2017 while he was being processed for an administrative discharge for obesity. In January 2017, a PA noted that he would *recommend* an MEB because of the Major Depressive Disorder diagnosis in November 2016 and that the administrative and medical separation procedures could run concurrently. But the record shows that the applicant was being treated by both a psychologist and psychiatrist in January 2011 and there is no evidence showing that they diagnosed the applicant with Major Depressive Disorder at that time. Instead, they diagnosed him with an adjustment disorder with symptoms of anxiety and depression. Therefore, although the VA diagnosed the applicant with service-connected PTSD within months of his discharge, the preponderance of the evidence—i.e., of the available diagnoses—shows that the applicant did not meet the diagnostic criteria for a PTSD or Major Depressive Disorder diagnosis when he was being discharged from the Coast Guard. The preponderance of the evidence shows that in the weeks before his discharge, the applicant had an adjustment disorder with symptoms of anxiety and depression.

---

[3] 33 C.F.R. § 52.24(b).

[4] *Id.*

5. According to Chapter 5.A.1.a. of the Medical Manual, treatable mental health conditions may be grounds for separation "if a successful outcome (availability for worldwide assignment) is not realized within six months of the initiation of therapy." And according to Chapter 5.A.3. of the Medical Manual, adjustment disorders with anxiety and "depressed mood" are generally treatable but if not, are grounds for administrative separations under the Military Separations Manual, rather than medical separations under the PDES Manual. Therefore, the preponderance of the evidence shows that if the applicant had been separated because of his mental health, he would have been discharged for unsuitability due to his adjustment disorder.

6. The applicant has not proven by a preponderance of the evidence that his discharge for weight control failure was erroneous or unjust because he was taking medications, including Seroquel, with weight gain listed as a reported side-effect. Chapter 5.A.2. of the Weight and Body Fat Standards Program Manual authorizes abeyances of the standards therein for members who have medical conditions or are taking medications "that directly contribute to weight gain." The examples provided are polycystic ovarian syndrome, hypothyroidism, and prescribed corticosteroids, which physiologically cause weight gain regardless of calorie intake. Many medications list weight gain or loss as a reported side-effect, including Seroquel, but that does not prove that they physiologically cause weight gain like the cited examples. And on a Command Weight Referral form dated December 9, 2016, Dr. J certified that the applicant did not have any medical conditions and was not taking any medications that could be contributing to his excess weight. Dr. J certified that the applicant could lose weight through diet and exercise. Although in his application, the applicant claimed that he could not lose weight in 2016 despite increasing his exercise and reducing his calorie intake, the applicant admitted to his doctors in 2016 that he had been binge-eating because of emotional distress. Therefore, the applicant has not shown that he was entitled to an abeyance of the standards or that the Coast Guard committed an error or injustice by applying its weight and body fat standards in his case.

7. Chapter 4.A.1. of the Weight and Body Fat Standards Program Manual states that if a member is ineligible for a probationary period because it would exceed both 8 months (based on body fat) and 35 weeks (based on weight), the member must be processed for separation. The Page 7 dated December 13, 2016, states that the applicant weighed 261 pounds, which was 59 pounds over his maximum allowed weight according to the charts in the manual. Therefore, a weight probationary period based on his weight, calculated at one pound per week, would have been longer than 35 weeks. And with 32% body fat, instead of the 22% maximum allowed for his age and gender according to the charts, a weight probationary period based on his body fat percentage, calculated at 1% body fat per month, would have been longer than 8 months. Therefore, the Board finds that the applicant was ineligible for a weight probationary period in December 2016, and he has not proven by a preponderance of the evidence that the Coast Guard committed an error or injustice in administratively discharging him when he was 59 pounds over his maximum allowed weight and had body fat that was 10% higher than his maximum allowed percentage of body fat.

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

ORDER

The application of former SK3 [redacted] USCG, for correction of his military record is denied.

July 24, 2020

[redacted]

Digitally signed by [redacted]
Date: 2020.07.24 17:46:06 -04'00'

[redacted]

Digitally signed by [redacted]
Date: 2020.07.24 18:54:58 -04'00'

[redacted]

Digitally signed by [redacted]
Date: 2020.07.27 10:40:51 -04'00'

[redacted]