

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

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Application for Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2020-035**



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**FINAL DECISION**

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on December 10, 2018, and assigned the case to the staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision dated December 16, 2022, 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 Lieutenant (LT/O-3) on active duty, asked the Board to correct her record by removing a negative CG-3307 (“Page 7”) dated October 31, 2016, regarding her failure to meet Coast Guard weight standards, in addition to correcting her June 2017 Officer Evaluation Report (OER), which included in a required low mark of a 3 for “Health and Well-Being” due to the negative Page 7.<sup>1</sup>

The applicant explained that the Coast Guard recently conducted the RAND Women’s Retention Study, which identified the Coast Guard weight standards for women to be “especially harsh for women when compared to men.” The study further stated, “[m]ethods used to assess body fat do not take into account different female body types—women with wider hips that cannot be reduced by diet and exercise or body changes after childbirth—resulting in standards that are unreasonable and sometimes impossible for some women to meet.” The applicant claimed that based on these findings, the weight standard policy was changed in 2019 to allow those that do not meet the maximum allowable weight or body fat standard by taping to have an abdominal circumference (AC) measurement taken. According to the applicant, women with an AC measurement of less than 35.5 are considered to be in compliance under the new weight and body fat standards.

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<sup>1</sup> On an OER form, officers are evaluated in various performance categories on a scale from 1 (worst) to 7 (best). A middle mark of 4 is the “standard” mark for the level of performance expected of all Coast Guard officers.

The applicant explained that in October 2016, after the birth of her child, despite a rigorous workout routine and healthy eating habits, she was unable to pass the Coast Guard's weight or body fat standards by weighing and taping. As a result, she was placed on weight probation with the requirement to lose 8 pounds or 2% body fat by December 31, 2016. The applicant alleged that this was the first time she had been placed on the weight program and believed it was unjust. The applicant further alleged that at the time of being put on the weight program, her waist had a circumference of 32 inches, which she claimed was well within the newly implemented weight and body fat requirements. The applicant also alleged that because she has been taped at four different units, she can attest to the fact that there are inconsistencies with the taping process throughout the Coast Guard.

The applicant explained that being short in height, muscular, and dense has always made passing the maximum allowable weight difficult for her. However, she claimed that she has always been presentable in uniform and maintained a professional presence. According to the applicant, officers placed on the weight program are mandated by policy to receive no higher than a mark of 3 on their OER for Health and Well-Being. The applicant alleged that with the competitive nature of promotion boards, receiving a "3" is almost guaranteed to be detrimental to an officer's career, which she experienced after being passed over twice for her O-4.

To support her application, the applicant provided the following documentation:

- A personal statement from the applicant's supervisor stating that had the applicant been in compliance with the Coast Guard's weight standards, he would have given her a 5 for the Health and Well-Being portion of her OER, instead of the 3 required by Coast Guard policy. The applicant's supervisor stated that the applicant maintained a healthy lifestyle and always portrayed exemplary military presence. The supervisor explained that he was shocked when the applicant did not meet the required weight standards. He stated that he suspected the applicant's failure to meet weight standards was the result of a change to her body after the birth of her child. The supervisor further stated that he had spoken with a YN1 at the District military personnel division who had conducted measurements for women using the current one-year pilot program, and the YN1 advised the supervisor that the applicant would very likely have been in compliance at that time using the new procedures. The supervisor further explained that a low mark of 3 can be very detrimental to an officer's career.
- A personal statement from the applicant's Captain at the time of the applicant's measurements. The Captain stated that if retroactive administrative record corrections are authorized, in light of the recent changes to the Coast Guard's Weight and Body Fat Program, he fully supports the applicant's request for relief. The Captain stated that as a single mother of a very young child, the applicant worked hard to maintain a healthy work-life balance. According to the Captain, the applicant diligently faced challenges and demands in the office, maintained a rigorous exercise and diet routine, and met all of her obligations at home. The Captain explained that the applicant tried mightily to return to her pre-baby weight to no avail. The Captain stated that the negative entries on the

applicant's July 2017 OER were not a reflection of the applicant's great value to the Coast Guard.

- RAND Women's Retention Study Results: Improving Gender Diversity in the U.S. Coast Guard.

*Weight standards:* Female focus group participants frequently raised weight standards as a factor influencing their retention decisions. They perceived weight standards to be especially harsh for women compared with men. Women criticized the "taping" methods used to assess body fat because they do not take into account different female body types-women with wider hips that cannot be reduced by diet and exercise or body changes after childbirth-resulting in standards that are unreasonable and sometimes impossible for some women to meet. As a result, some women described resorting to crash diets and other unhealthy measures. Women also raised privacy concerns related to the taping process; taping is done by a yeoman and not a medical professional, and women have to undress for the procedure while men do not. Male focus group participants did not raise weight standards except to say they are more difficult for women to meet.

***Consider Modifying the Weight and Body Fat Standards Program to Minimize Potential Negative Impacts on Female Members.*** Women perceived inequity with the current Coast Guard Weight and Body Fat Standards Program and raised concerns regarding body fat measurement through taping. We recommend the Coast Guard reevaluate and consider modifying the current weight standards, assessing the objectives of the program and aligning the standards accordingly. We recommend the Coast Guard also explore alternative measures (e.g., waist circumference, physical fitness test option, fitness-fatness index) to either replace or augment current standards to address perceptions of gender inequity and promote accurate measurements aligned to program objectives.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard to attend Officer Candidate School on December 17, 2008. The applicant was commissioned an ensign on May 6, 2009. On November 6, 2010, she was promoted to lieutenant junior grade, and on May 6, 2013, she was promoted to lieutenant.

On March 20, 2015, the applicant gave birth.

On October 31, 2016, the applicant received a negative Page 7 for failing to meet the weight standards as outline in Article 3.B.1. of the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8. Specifically, the applicant was found to be 8 pounds over her maximum allowed weight and 2% above the maximum allowable body fat percentage of 34%. The Page 7 also states that, at the time of this measurement, the applicant had a waist circumference of 32 inches, 3.5 inches below the allowable 35.5-inch circumference of the pilot weight and body fat standards. The applicant was ordered to lose 8 pounds or drop to at least a 34% body fat before December 31, 2016.

On December 16, 2016, the applicant received a second Page 7 indicating that she had met the standard by having no more than 34% allowable body fat, as required by Coast Guard policy and the October 31, 2016, Page 7.

On July 14, 2017, the applicant was issued her annual OER for the rating period of June 1, 2016, through May 25, 2017, wherein she received the following ratings: one 3 for Health and Well-Being, no 4s, three 5s, twelve 6s, and two 7s. The applicant also received a mark of

“Promote,” and the highest mark (fifth of seven) of “One of the many high performing officers who form the majority of this grade.” The applicant received the following remarks:

**Performance of Duties:** Exceptional planner: superb oversight of \$197K SCIF construction project; facilitated meetings, negotiated SOW /funding needs. Expert management of resources: 168 AY17 SARR reprogramming requests submitted/approved; full utilization of pay account resources maximized workforce capabilities. Exceptional results w/ D8 Sector Infrastructure Fund request for 24 projects totaling \$ 1.25M; two D8 projects totaling \$485K (of -\$825K available CG-wide) approved for funding. In response to expanding workload in Victoria, TX, led Sector Corpus through OMR process to change DD-Victoria staff to an MSD; drafted O'MR memo for Sector, developed billet map, & gained COMDT approval for organizational change. Superior expertise: critical analysis of STA Freeport space requirements led to decision to replace three mold-infested trailers with rehab/replacement of just one trailer; also coordinated effort to use FEMA trailers for STA Lake Charles/STA Freeport as temp facilities during construction w/ significant project savings. Poised/expressive speaker while serving as sr qualified SITL: briefed sr. staff during Hurricane Hermine; trained break in SITL. High quality written work: penned many critical SARR waiver/leasehold improvement/resource request memos.

**Leadership Skills.** Promoted success of units/peers: expertly crafted resource requests/OMR memos on behalf of D8 subunits; nominated GS-7 for QSI & CEOY award. Integral player for PRS beta test team: evaluated new system's ability to process reprogramming requests, while providing challenging role to subordinate GS-7 as new user/evaluator; trained others on system & provided pertinent feedback to system developer which resulted in successful Q2 FYI 7 roll-out. Major contributor to SSM Survey effort: led experts at units through survey process to ensure quality responses will influence SSM & resulting resource decisions w/ accurate workload calculations. Embraced responsibility for workplace climate as active member of D8 LDAC; contributed ideas for full inclusion of staff in D8 PIE program which led to D8 request for COMDT approval/decision for civilian employees to participate while on admin leave. Own OER input very high quality. Evaluation of subordinate civilian employee well-written, accurate, & on-time.

**Personal and Professional Qualities.** Self motivated & resourceful: created new, efficient filing system for dmpl files; organized files dating back over 20 yrs, purged non relevant files, enabled easy retrieval. Keen judgment: dmpl rep for project conference calls & meetings (SCIF, Sec Corpus, STA Freeport projects); clearly communicated 08 program requirements/made valid recommendations to solve difficult issues. Responsibly guided units through difficult billet reprogramming requests to ensure adherence to staffing standards & ultimately gain approval of original/modified requests. Projected high quality CG representation during contentious GSA project meetings to keep SCIF & HV AC mod projects on track. Member on weight probation during reporting period. Dedicated to achieve/maintain standards; formed 5 day/week workout group; inspired peer to begin nutrition program. Ran SK to promote women's history.

**Reporting on Officer Comments:** Excellent performer in largest/busiest CG District. Highest recommendation for promotion w/peers. Honed expertise as essential resource planner; provided invaluable assist to subunits navigating complex resource planning processes; facilitated approvals of position reprogramming actions & acquired AFC43/AC&I funds for vital facilities maintenance/construction projects; enhanced abilities of field commands to protect international borders & safeguard commerce on the nation's MTS. Methodically managed diverse/high volume workload w/skill, character & composure. Competent leader; genuinely concerned about growth/well-being of others. Ideal candidate for follow-on assignments in logistics management positions w/in DOL or Sector Logistics Dept given dedicated experience w/staffing standards, reprogramming actions, workforce/funding restrictions & facility planning processes.

On August 19, 2019, the Coast Guard issued ALCOAST 082/19, which implemented a pilot program with new abdominal circumference standards for both men and women under the Coast Guard Weight and Body Fat Standards Program. These new standards were to take effect on October 1, 2019, and terminate September 30, 2020. Those standards are as follows:

2. General overview: Any military member required to conduct the body composition screening per REF (A) will take the below steps to demonstrate compliance with REF (A) in the listed order.

a. Height and Weight Screening. If a member passes their weight screening, they will be considered compliant. If they fail their weight screening;

b. Body Fat Screening (Standard Tape Method) and Abdominal Circumference (AC) measurement. As part of the one-year pilot program, both tests must be conducted and recorded. If a member passes either measurement they will be considered compliant. If the member fails both measurements;

c. Medical screening for an abeyance and or eligibility to take the Physical Fitness Test (PFT). If the member is eligible to take the PFT and successfully passes, they will be considered compliant.

d. If the member fails the PFT or elects not to take it, and they are not granted a medical abeyance, they will be placed on weight probation.

3. When performing any required body composition screening per REF (A) between 01 OCT 2019 and 30 SEP 2020, all personnel must adhere to the procedures in the order listed in paragraphs 4 through 10 below and In the Body Composition Screening Desk Guide.

4. Height and Weight. Members shall follow procedures in 2.B.4.b and 2.B.4.c of REF (A).

5. Body Fat Screening. Members shall follow procedures in 2.C through 2.F of REF (A).

6. AC Measurement.

a. General: The AC is a circumferential measure of abdominal girth at the iliac crest (top of hipbone). This measurement is highly correlated with internal fat and indicative of true disease risk independent of body mass. Increased health risks associated with overfat are not only related to total body fat, but also more closely to fat distribution. Upper body fat, specifically abdominal fat, presents the greatest health risk; it is highly linked to cardiovascular diseases and metabolic disorders such as diabetes. Reducing abdominal girth or circumference is more important than normalizing body weight. Exercise increases muscle mass and can mask reductions in girth, i.e., with proper exercise body weight may stay the same or even increase, but "belt size 11 will reduce. Since abdominal fat is an independent risk factor for disease, the evaluation of AC is important to a member's health risk.

b. Measuring AC.

(1) Two persons will conduct the AC measurement on the member- the taper and the observer. The taper will take the measurement and the observer will read the taping instructions and ensure that taping is performed correctly. For consistency purposes, spring-loaded tension tape measurers are required to be used when AC measurements and the manufacturer's instructions must be followed. The instructions must be read to the member at the start of an AC measurement procedure, and are found in the Body Composition Screening Desk Guide.

(2) The member will stand facing forward with their arms to their side similar to the position of attention. The taper will take the measurement from member's right hand side. If the member chooses to be measured over bare skin, the member will adjust clothing so it does not fall over their waist during the measurement. The taper will set the end of the tape directly above the hipbone (iliac crest) and ask the member to hold it in place (if desired, the member may assist in locating the measurement landmark by resting the right hand on the hip, using rearward facing right thumb to locate the iliac crest). The taper will walk around to confirm parallel placement of the tape and then kneel down to measure the

AC at the end of the member's normal breath exhalation. The taper shall make sure the member does not hold their breath. The taper will repeat the sequence/order measurement three times and record each measurement rounding down to the nearest 1/2 inch. If any of the measurements differ by more than one inch from the other two, an additional measurement will be taken by the taper. The taper will add up the three closest measurements divide by three, and round down to the nearest 1/2 inch. The taper will record this as the AC measurement. The same gender AC measurement will be conducted for all personnel.

c. The AC Standard. The maximum AC is 39.0 inches for males and 35.5 inches for females. Any measurement at or under the maximum circumference will be considered compliant.

On March 10, 2020, the Coast Guard issued ACN 033/20, which stated the following:

1. This ACN modifies REF (A), the one-year Body Composition Pilot program.
2. The medical screening procedures outlined in REF (B) remain unchanged.
3. COMDT (CG-1) chartered a Wellness and Readiness Workgroup to explore a Service definition of personal readiness and review the Weight and Body Fat Standards policy as well as to address issues raised by internal studies, the Women's Retention Study and Holistic Analysis and feedback from service members. The Workgroup reviewed the objectives of the original policy (to ensure that all Coast Guard military personnel are capable of meeting the organization's operational needs and challenges, maintain a healthy weight and body fat percentage, and present a sharp professional military appearance) and found them still valid.
4. The data from the October 2019 screening period showed that the addition of the Abdominal Circumference (AC) measurement provides a second, scientifically-sound method by which members can be checked for compliance and align the Coast Guard with DoD services. Additionally, we found the use of the AC measurement was well received and we are now prepared to move forward with the formal adoption of that measurement. The pilot has also identified members are not being measured for height once every tour IAW REF (C).
5. As a result of what we have learned, the following changes to the one-year Body Composition Pilot program are effective 01 April 2020.
  - a. If a member has not conducted a height measurement during the current tour one must be completed during the April weigh-in.
  - b. If Maximum Allowable Weight (MAW) is exceeded, there is no longer a requirement to conduct both a Body Fat Screening (Standard Tape Method) and measure AC.
  - c. Compliance and non-compliance standards for AC measurement and the appropriate probationary period have been added.
6. Screening process (in order).
  - a. Height measurement (if not done already during tour).
  - b. Weight is measured.
  - c. A member who exceeds their MAW will be measured for Body Fat Screening (Standard Tape Method) or AC measurement. As a change to the one-year pilot program, members can choose either standard tape method or AC measurement. If a member passes either measurement they will be considered compliant. Members that exceed their chosen measurement can elect to take the second measurement.
  - d. Members who exceed their MAW and do not show compliance by one of the taping methods may have the option to take the Physical Fitness Test (PFT) described in REF (D). Medical pre-screening for an abeyance, or eligibility to take the PFT is required. If the member is positively pre-screened and determined eligible to take the PFT and successfully passes, the member will be considered compliant with the Body Composition Pilot Program.

e. If the member elects not to take the PFT after determined to be positively pre-screened (does not qualify for an abeyance or exemption) or takes the test and does not pass, the member will be processed per REF (C) for weight probation or separation as appropriate.

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#### 10. AC Measurement.

a. The AC is a circumferential measure of abdominal girth at the iliac crest (top of hipbone). This measurement is highly correlated with internal fat and indicative of true disease risk independent of body mass. Increased health risks associated with being overfat are not only related to total body fat, but also more closely to fat distribution. Upper body fat, specifically abdominal fat, presents the greatest health risk as it is highly linked to cardiovascular diseases and metabolic disorders such as diabetes. Reducing abdominal girth or circumference is more important than normalizing body weight. Exercise increases muscle mass and can mask reductions in girth, (i.e., with proper exercise body weight may stay the same or even increase, but "belt size" will reduce). Since abdominal fat is an independent risk factor for disease, the evaluation of AC is important to a member's health risk.

##### b. Measuring.

(1) Two persons, a taper and an observer, will conduct the AC measurement on the member. The gender of the taper, observer, and member will be the same. The taper will take the measurement and the observer will read the taping instructions and ensure that taping is performed correctly. For consistency purposes, spring-loaded tension tape measurers are required to be used when measuring AC, and the manufacturer's instructions must be followed. The instructions must be read to the member at the start of an AC measurement procedure and are found in the Body Composition Screening Desk Guide. A "how to measure" AC video is available at: <https://dcms.uscg.mil/military/Body-Composition-Program/>.

(2) The member will stand facing forward with their arms to their side similar to the position of attention. The taper will take the measurement from members right hand side. AC is measured to skin and the member will adjust clothing so it does not fall over their waist during the measurement. The taper will set the end of the tape directly above the hip-bone (iliac crest) and ask the member to hold it in place (if desired, the member may assist in locating the measurement landmark by resting the right hand on the hip, using rearward facing right thumb to locate the iliac crest). The taper will walk around to confirm parallel placement of the tape and then kneel down to measure the AC at the end of the member's normal exhalation. The taper will make sure the member does not hold their breath. The taper will repeat the sequence/order measurement three times and record each measurement rounding down to the nearest 1/2 inch. If any of the measurements differ by more than one inch from the other two, an additional measurement will be taken by the taper. The taper will add up the three closest measurements divide by three, and round down to the nearest 1/2 inch. The taper will record this as the AC measurement.

c. The Standard. The maximum AC is 39.0 inches for males and 35.5 inches for females. Any measurement at or under the maximum circumference will be considered compliant with Body Composition Standards.

## VIEWS OF THE COAST GUARD

On April 13, 2020, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which she recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the PSC.

The JAG argued that there is no clear violation of a specific statute or regulation to establish that the marks received by the applicant on her July 14, 2017, OER were unjust. According to the JAG, the Coast Guard applied the weight standards in effect at the time correctly. The JAG argued that the applicant failed to show that the Coast Guard committed an error or injustice. The JAG claimed that the applicant's OER for the period ending May 25, 2017, followed all applicable policies provided in the Office Accessions, Evaluations, and Promotions Manual, COMDTINST

M1020.8H, and the Coast Guard Officer Evaluation System Procedures Manual, PSCINST M1611.1.

The JAG further argued that the previous Coast Guard policy was based on Coast Guard specific service needs and did not infringe on any statutory or regulatory rights of the applicant. According to the JAG, the Coast Guard's weight standards in effect at the time of the applicant's weigh-in were "[t]o ensure that all Coast Guard military personnel are capable of meeting the organizations operational needs and challenges; maintain a healthy weight and body fat percentage; and present a sharp professional military appearance." The JAG explained that although the manner of achieving this had changed, these Coast Guard objectives still apply. The JAG stated that the pilot program was part of an effort to further these goals and to respond to feedback from the RAND study. The JAG argued that the fact that the current needs of the Coast Guard warrant a reexamination of the standards for weight and body fat does not "shock the conscience." The JAG further argued that the decision of the Coast Guard to update its policies based upon changing needs, service equities, or other compelling factors does not render the previous policy unjust, nor does it require retroactive application.

The JAG stated that while the changes made in the ALCOAST 082/19 may have benefited the applicant if implemented in 2016, the change in policy does not shock the sense of justice. The JAG argued that the changes are only part of a pilot and may not be the Coast Guard's permanent policy going forward. According to the JAG, the previous standard taping method was not removed from the Coast Guard's Weight and Body Fat Standards Program. The JAG explained that the AC measurement was an addition to, not a replacement for, the standard taping method.

The JAG argued that the decision not to make the policy retroactive does not "shock the sense of justice." The JAG explained that the new policy does not explicitly state that the AC policy should be retroactively applied. According to the JAG, generally in order for a rule or regulation to be retroactive, the rule of regulation must explicitly say so. The JAG argued that U.S. jurisprudence does not favor rules and regulations being applied retroactively. Regardless, however, the JAG claimed that the updates in ALCOAST 082/19 cannot accurately be applied retroactively.

The JAG further claimed that the applicant's allegation that she would have passed the weight standards under the new guidelines is without merit. According to the JAG, under the pilot program, the AC is the circumferential measurement of the abdominal girth at the iliac crest (top hipbone). The JAG explained that standard taping method of the waist is done "at the point of minimal abdominal circumference, usually located about halfway between the navel and the lower end of the sternum (breastbone)." The JAG argued that the applicant's waist measurement in 2016, as recorded on the Page 7, was not done in accordance with how the AC is measured under the pilot program, and therefore cannot be used to determine if the applicant would have passed the AC standards at the time of her weigh-in/measurements.

The JAG argued that the applicant has not alleged a misstatement of a significant hard fact in her OER for the period ending May 25, 2017, nor has she provided any evidence of such. The JAG claimed that the applicant's OER accurately states that the member was on weight probation during the reporting period. Finally, the JAG argued that the applicant has not provided any



evidence to show that the taping performed in October 2016 to measure her body fat percentage did not comply with Coast Guard policy and procedures. As such, the JAG argued that the applicant’s request should be denied.

**APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On May 7, 2020, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited him to respond within thirty days. As of the date of this decision, no response was received.

**APPLICABLE LAW AND POLICY**

The Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8H (series) in effect in 2016, provides the following guidance on Coast Guard weight standards and screening:

**Article 2.A.1. Semiannual (April & October).** All Coast Guard military personnel shall be screened against weight and body fat standards every April and October.

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**Article 2.A.3. Upon Expiration of an Authorized Abeyance or Exemption.** As identified in chapter 5 of this Manual, members shall be evaluated for compliance on the first business day following the expiration of an abeyance or exemption.

...

**Article 2.G.** ... Measure the natural waist circumference, against the skin, at the point of minimal abdominal circumference, usually located about halfway between the navel and the lower end of the sternum (breast bone).

...

**Article 3.A.1. Consequences of Non-Compliance with Weight and Body Fat Standards.** If a member is found noncompliant with weight and body fat standards, the following limitations and restrictions apply:

...

b. Officers may be considered and selected at a promotion board if non-compliant with weight and body fat standards. However, they will not be promoted until they have met these standards.

...

**Article 3.B.1. Requirement for Documentation.** All members found non-compliant with Weight and Body Fat Standards during any weigh-in must sign the form CG-3307 documenting their non-compliance unless covered by an abeyance or exemption as listed in chapter 5 of this Manual.

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**Article 5.B. Maternity Exemptions.**

1. Pregnancy Exemption. A service member is exempt from compliance with weight and body fat standards during pregnancy. Units shall complete a form CG-6050 documenting the exemption that will be reflected in DA during semiannual weight screening periods.

2. Post-Birth/Termination Exemption. Members under this exemption are required to participate in all weight screenings and have their current weight data entered into DA. During this period, members who exceed program standards will be considered compliant. This exemption expires six months from the date of delivery. In cases where the end date of a pregnancy is unclear, a note from a medical provider will be required establishing the date the pregnancy ended.

3. Nursing Exemption. Members, as outlined in paragraph 9.A.4.2 of reference (g), will be granted an additional six-month exemption upon conclusion of the post-birth exemption. This exemption expires 12 months from the date of delivery.

4. Expiration of Exemption. Upon expiration of the exemption period, a screening shall be conducted to determine compliance.

Article 5 of The Coast Guard Officer, Accessions, Evaluations, and Promotions Manual, COMDTINST M1000.3A, provides the following guidance on OER required comments:

**Article 5.A.7.g. Required Comments.**

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2. Weight and Body Fat Non-Compliance. Reported-on officers found non-compliant with weight and body fat standards shall have this documented in their performance evaluation. Reflection of this shall occur during the reporting period to which noncompliance occurred. Commanding officers shall ensure all other required documentation is recorded in the member's PDR in accordance with the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8 (series); is acknowledged by the member; and a copy sent to Commander (CG PSC-OPM-1), Commander (CG PSC-RPM-1) and (CG PSC BOPS-C-MR).

## 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 law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The application was timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
3. The applicant alleged that the October 31, 2016, negative Page 7 she received for being non-compliant with the Coast Guard's weight and body fat standards and mark of 3 she received for Health and Well-Being on her OER for the period ending May 25, 2017, for the same noncompliance were unjust because she had recently had a baby and was unable to lose the added weight, despite vigorous workout routines. 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 military record, and the applicant bears the burden of proving, by a preponderance of the evidence, that the disputed information is erroneous or unjust.<sup>2</sup> Absent

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<sup>2</sup> 33 C.F.R. § 52.24(b).

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.”<sup>3</sup>

4. According to the applicant, the Coast Guard was aware that its weight and body fat standards were especially difficult for women to meet and, to address the problem, they issued ALCOAST 082/19 wherein the standards were adjusted to allow women to be compliant with an abdominal circumference of no greater than 35.5 inches. The applicant argued that had these new standards been in place in 2016, she would have met the weight and body fat standards because she had an abdominal circumference of 32 inches, and so she would not have received the negative Page 7 or the low mark of 3 on her OER. As such, she has requested that the Board apply the newly implemented standards permitted in ALCOAST 082/19 and ACN 033/20 retroactively to her. However, the applicant has failed to prove, by a preponderance of the evidence, that ALCOAST 082/19 was meant to be implemented retroactively. Nothing in that ALCOAST or subsequent publications has authorized retroactive implementation of the new policy, and retroactive implementation of new policies is normally expressly stated when authorized.

5. In addition to failing to prove that the ALCOAST was intended to be applied retroactively, the applicant has also failed to prove that she would have met the standards under ALCOAST 082/19 if they had been in effect in 2016. According to the JAG, the change in ALCOAST 082/19 cannot accurately be applied retroactively because under ALCOAST 082/19 the AC is the circumferential measurement of the abdominal girth at the iliac crest (top hipbone), but the prior standard taping method of the waist was done “at the point of minimal abdominal circumference, usually located about halfway between the navel and the lower end of the sternum (breastbone).” The Board agrees. According to the Coast Guard Weight and Body Fat Standards Program Manual in effect in 2016, COMDTINST M1020.8H, during semiannual screenings, the screener was instructed to “[m]easure the natural waist circumference, against the skin, at the point of minimal abdominal circumference, usually located about halfway between the navel and the lower end of the sternum (breast bone).” Under the ACN 033/20, however, which made the pilot program announced in ALCOAST 082/19 permanent, the “abdominal circumference” is defined as “a circumferential measure of abdominal girth at the iliac crest (top of hipbone),” and the screener is instructed to place the tape measure at the top of the hipbone—not “at the point of minimal abdominal circumference.” Therefore, the Board finds that the applicant’s 32-inch waist measurement documented on the disputed Page 7 in 2016 was not done in accordance with how the “abdominal circumference” is currently measured and therefore cannot be used to determine whether the applicant would have passed the AC standard had it been in effect in 2016.

5. The applicant alleged that her Page 7 and the mark of 3 on her OER for Health and Well-Being were unjust because she had just had a baby. However, Article 5.B.3. of the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8H, provides a 12-month exemption from the Coast Guard’s weight and body fat standards for women who have given birth and who are nursing. This exemption ends one year from the date of delivery. Here, the applicant gave birth on March 20, 2015, which would have given her an exemption from the weight and body fat standards until March 20, 2016. The applicant was not weighed or measured

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

until October 31, 2016, approximately seven months after her exemption ended, or 19-months after the birth of her child. Therefore, the Board finds that the applicant was given the 12-month exemption required by policy. Once it was determined that the applicant had failed to meet the weight and body fat standards, Article 3.B.1. of COMDTINST M1020.8H, and Article 5.A.7.g. of COMDTINST M1000.3A, required that the applicant's noncompliance be documented in a Page 7 and that she receive a mark of 3 on her OER for Health and Well-Being.

6. Finally, the applicant alleged that receiving a mark of 3 on a OER is detrimental to an officer's promotion potential and that receiving a 3 on her OER for the period ending May 25, 2017, caused her to be passed over for promotion. Whether the mark of 3 caused or contributed to her non selection for promotion is unknowable, but regardless, she has not proven by a preponderance of the evidence that the mark of 3 is erroneous or unjust and so there are no grounds for raising the mark or for directing the Coast Guard to convene a Special Selection Board.

7. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice when it issued her the negative Page 7 and mandatory mark of 3 for Health and Well-Being on her OER after she failed to meet Coast Guard weight and body fat standards in 2016. Her request for relief should therefore be denied.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

ORDER

The application of [REDACTED] for correction of her military record is denied.

December 16, 2022

[REDACTED]

[REDACTED]

[REDACTED]