

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-035

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LT

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 January 26, 2022, 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 May 12, 2023, 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 three negative CG-3307s (“Page 7s”) concerning her weight. The first, dated October 31, 2016, documents her having failed the semiannual weigh-in. The second, dated April 28, 2017, shows that she was again counseled for her failure to meet Coast Guard weight standards. And the third, dated June 21, 2017, states that her weight probationary period had come to an end because she had successfully met Coast Guard weight standards. Finally, the applicant requested that her Officer Evaluation Report (OER) for the rating period of February 1, 2016, through May 31, 2017, be removed from her record. The applicant alleged that these three Page 7s resulted in her non-selection for promotion to Lieutenant Commander (LCDR) during the August 2, 2021, LCDR selection board. The applicant asked the Board to convene a Special Selection Board for each year that she was not selected for LCDR.

The applicant explained that between 2012 and 2014, she served aboard a medium sized cutter. In June of 2013, the applicant gave birth to her first son and within six months was required to return to this cutter and deploy twice before finishing her tour. The applicant stated that she gained a significant amount of weight when she was pregnant and was not given adequate time or resources to safely lose the weight while assigned to the cutter. The applicant further stated that shortly after transferring to another unit in the summer of 2014, she discovered she was pregnant with her second son. After his birth in July 2015, she alleged that she felt overwhelmed with being the sole financial provider for her family, while simultaneously caring for a toddler and newborn.

According to the applicant, in 2016, she and her husband were in the beginning stages of separating, which led to their divorce in August 2019. The applicant explained that she believes that the personal, professional, and occupational stress and circumstances caused her to have an unhealthy relationship with food. The applicant failed the weigh-in in October 2016 and was placed on weight probation. The applicant alleged that by the time she realized she needed help with her eating habits and mental health, she was already on weight probation. The applicant further alleged that because of the limited resources the Coast Guard offers, in addition to the culture surrounding weight probations, she had to seek help from outside the Coast Guard.

The applicant stated that following the release of the RAND's Homeland Security Operational Analysis Center Report in 2019, "*Improving the Representation of Women and Racial/Ethnic Minorities Among United States Coast Guard Active-Duty Members (URM) Study*," the Coast Guard developed the 2019-2023 Diversity and Inclusion Action Plan. According to the applicant, this plan resulted in policy changes to mitigate identified barriers to female retention utilizing input from focus groups across the service. The applicant stated that ALCOAST 033/20, issued by the Coast Guard in March 2020, updated the weight and body fat standards to include the abdominal circumference (AC) and physical fitness test as options to pass the semi-annual requirement. The applicant explained that under this ALCOAST, the AC measurement must not exceed 30 inches for males, and 35.5 inches for females. The applicant alleged that at the time her measurements were taken in 2016, her waist measurement was 35.5 inches. The applicant argued that with these measurements she would have met weight standards if the new Coast Guard standards had been in effect in 2016. Furthermore, the applicant alleged, a separate directive, ALCOAST 144/21, which was implemented in December 2021, allowed shipboard deployments to be deferred for a year following the birth of a child. The applicant argued that had this policy been in effect when she gave birth to her first son, it would have afforded her the opportunity to safely lose the weight she gained during her first pregnancy.

The applicant stated that in 2019, she was diagnosed with hypothyroidism and lichen planopilaris, neither of which has a cure. The applicant further stated that she was placed on several different medications to manage these diseases and that hypothyroidism is commonly associated with weight gain/obesity, fatigue, sensitivity to cold, muscle and joint issues, and depression. The applicant alleged that under the Coast Guard's Weight and Body Fat Standards Program Manual, COMDTINST M1020.8, hypothyroidism is a qualifying disease for weight abeyance. In addition, the applicant explained that lichen planopilaris is a rare dermatological disease that has inflammatory and autoimmune properties, which have been correlated to weight gain. The applicant alleged that she was most likely undiagnosed during the time of her weight probation and had she known about these diseases, she would have requested a weight abeyance for both conditions.

The applicant stated that she would love the opportunity to continue to serve and promote the Coast Guard and that despite the challenges from her divorce, medical conditions, and raising two children alone, she has persevered and proven to be an exceptional officer and female role model. The applicant explained that since her probation, she has undergone psychological and behavioral work that contributed to the successful maintenance of her weight loss. She has also participated in unit wellness programs, passed physical fitness tests, and led unit physical fitness activities to ensure the health and well-being of herself and others. Finally, the applicant stated

that all of her evaluations display outstanding performance and increased responsibility over her nearly twelve year tenure. The applicant argued that her weight probation is not an accurate representation of her or her performance as an officer and is directly hindering her career in the Coast Guard.

To support her application, the applicant provided medical records indicating that she has been diagnosed with “hypothyroid/subacute” and “lichen planopilaris.” These medical notes indicated that the medical provider had a discussion with the applicant about the “nature of medical waiver requirements and retention standards.” The medical provider noted that the applicant sent an email on January 14, 2020, requesting a Medical Evaluation Board (MEB) and informing the medical provider that she did not wish to request a waiver of the medical retention standards. The applicant also submitted lab results.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on June 8, 2010.

In June 2013, the applicant gave birth to her first son, followed by her second son in July of 2015.

On October 31, 2016, during the semiannual weigh-in, the applicant received a negative Page 7 for failing to meet the weight standards as outlined in Article 3.B.1. of the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8. Specifically, the Page 7 reported the following personal statistics for the applicant: 29 years old, 64 inches tall, 194 pounds, and 39% body fat. She was therefore 34 pounds over her maximum allowed weight and 7% above the maximum allowable body fat percentage of 32%. The Page 7 also states that, at the time of this measurement, the applicant had a “waist circumference”¹ of 35.5 inches. The applicant was ordered to lose 34 pounds or drop to no more than 32% body fat by May 31, 2017, to comply with the Coast Guard’s standards.

On April 28, 2017, during the semiannual weigh-in, the applicant received a second negative Page 7 for failing to meet weight standards as outlines in Article 3.B.1. of the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8. Specifically, the Page 7 reported the following personal statistics for the applicant: 29 years old, 63 inches tall, 181 pounds, and 38% body fat. She was therefore found to be 26 pounds over her maximum allowed weight and 6% above the maximum allowable body fat percentage of 32%. The Page 7 also states that, at the time of this measurement, the applicant had a waist circumference of 34.5 inches. The applicant was reminded that she needed to lose 26 pounds or drop to no more than 32% body fat before June 26, 2017.

On June 21, 2017, the applicant received a third Page 7 documenting her successful completion of weight probation. The Page 7 states that she had met the weight standards by having 31% body fat.

¹ COMDTINST M1020.8H, Article 2.G., states that to measure “waist circumference” the command should “[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).”

On June 29, 2017, the applicant received her annual OER for the rating period of February 1, 2016, through May 31, 2017, wherein she received the following ratings: one mark of 3 for Health and Well-Being,² no 4s or 5s, fourteen 6s, and three 7s.³ The applicant also received a mark of “Promote,” and the highest of three marks described as “One of the many high performing officers who form the majority of this grade,” which is the fifth highest of seven possible marks overall. The marks of 6 and 7 are all supported by laudatory comments, but the low mark of 3 for Health and Well-Being is supported by the following comment: “Failed to meet weight standards; accepted responsibility & utilized health coach to gain compliance/improve lifestyle.”

Two years later, 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 though 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

² On the OER form, CG-5310A, to receive a higher “standard” mark of 4 for Health and Well-Being, the officer must have maintained the Coast Guard’s weight standards during the reporting period for the OER. Prior to this OER, the applicant had consistently received 5s in “Health and Well-Being.”

³ On an OER form, CG-5310A, officers are evaluated in 18 performance “dimensions” on a scale from 1 (worst) to 7 (best). They also receive one of seven possible marks on an officer comparison scale and one of eight possible marks on a promotion scale.

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” 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 August 23, 2022, a Judge Advocate (JAG) for the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The Coast Guard PSC argued that the applicant's application for relief was untimely. PSC further argued that the applicant's unit followed all procedures correctly and documented the applicant's non-compliance with weight/body fat standards correctly in the form of a Page 7. Regarding ALCOAST 033/20, PSC argued that this policy went into effect on March 10, 2020, and was not granted retroactively. PSC explained that like ALCOAST 033/20, ALCOAST 144/21, which granted post-partum members a twelve-month deferment from shipboard assignments, was not retroactive. Accordingly, PSC argued that the applicant failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice, and her request for relief should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 31, 2022, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited her to respond within thirty days. The Chair received the applicant's response on October 31, 2022.

The applicant stated that she respectfully disagreed with the Coast Guard's advisory opinion. The applicant argued that her application was not untimely as argued by the Coast Guard but was submitted immediately following her discovery that she was not selected for LCDR in September 2021. The applicant further argued that her application and evidence was reinforced following her second non-selection to LCDR during the August 1, 2022, promotion board. The applicant explained that her two non-selections initiated her involuntary separation, scheduled for June 30, 2023, despite demonstrating superb performance and completing an advanced education degree and mastery level qualifications.

The applicant alleged that her Sector did not follow all procedures correctly. According to the applicant, the probationary period provided in her October 31, 2016, negative Page 7 was calculated inaccurately. The applicant alleged that the policy in effect at the time stated, "The

probationary period shall equal the amount of time it would take the member to lose all excess body fat at an average of one percent body fat per month or one pound per week, whichever is greater, unless the probationary period would exceed 35 weeks.” The applicant further alleged that her height was randomly re-measured during her probationary period, which caused her maximum allowable weight and body fat measurements to be lowered and more restrictive. The applicant alleged that the policy in effect at the time stated, “Because height does not change appreciably over time, it may not be necessary to re-measure height during every assessment. Commands shall verify height once during a member’s tour.” The applicant argued that these errors are established when comparing the October 31, 2016, and April 28, 2017, negative Page 7s she received.

The applicant further alleged that she was not required to complete monthly weigh-ins as outlined in policy, until four months into her probationary period. According to the applicant, she asked her supervisor to serve as a weekly accountability partner to her, to which he allegedly responded, “You really need that?” The applicant stated that the applicable policy at the time stated that supervisors are required to “[t]ake a proactive approach to ensure personnel remain in compliance with weight & body fat standards. Encourage all members to exercise, make healthy food selections, and maintain a healthy lifestyle.” The applicant alleged that five months into her probationary period, the Sector Commander told the Response Department Head and the Command Center Chief (her supervisor) that he was considering processing the applicant for separation due to a lack of reasonable progress. However, the applicant explained that she was never questioned on how in the first six months of her probationary period, she only lost one percent body fat, but in the last two months of the probationary period, she was able to lose seven percent body fat. The applicant alleged that the only thing that appeared to matter to her Command was that she was in compliance with standards. The applicant stated that the lack of care during her weight probation was disheartening, especially considering the personal struggles she faced.

FURTHER PROCEEDINGS

On March 28, 2023, a BCMR staff attorney assigned to the applicant’s case reached out to the applicant and requested contemporaneous medical documents that showed she suffered from hypothyroidism at the time of her 2016 weigh in. The applicant responded with a memorandum which states that she was diagnosed with hypothyroidism on April 9, 2019, by her primary care manager, and although she experienced symptoms of hypothyroidism, she was not diagnosed with hypothyroidism until 2019.

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.

...

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.

...

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 Page 7s dated October 31, 2016, April 28, 2017, and June 21, 2017, which she received for being non-compliant with the Coast Guard's weight and body fat standards, and the mark of 3 she received for Health and Well-Being on her OER for the period ending May 31, 2017, for the same noncompliance were unjust because she had recently had a baby and was unable to lose the added weight and because she would not have failed the weight standards if those standards had been amended in 2016, instead of 2019. 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.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁵
4. The applicant stated that ALCOAST 033/20, issued by the Coast Guard, adjusted weight standards to allow women to be compliant with an abdominal circumference of no greater than 35.5 inches. According to the applicant, 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 35.5 inches, and so she would not have received the negative Page 7s 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 033/20 retroactively to her. However, the applicant has failed to prove, by a preponderance of the evidence, that ALCOAST 033/20 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 033/20 if they had been in effect in 2016. The change in ALCOAST 033/20 cannot

⁴ 33 C.F.R. § 52.24(b).

⁵ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

accurately be applied retroactively because under ALCOAST 033/20 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 circumference was done “at the point of minimal abdominal circumference, usually located about halfway between the navel and the lower end of the sternum (breastbone).” 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 (breastbone).” 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 35.5-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 new AC standard had it been in effect in 2016.

6. 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 in June 2013, which would have given her an exemption from the weight and body fat standards until June 2014. The record shows that the applicant gave birth to her second son in July 2015. This would have given her an exemption from the weight and body fat standards until July of 2016. The applicant was not weighed or measured until October 31, 2016, approximately three months after her exemption ended, or 15-months after the birth of her second 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, that she be placed on weight probation, and that she receive a mark of 3 on her OER for Health and Well-Being.

7. The applicant alleged that she was diagnosed with hypothyroidism and lichen planopilaris in 2019. The applicant explained that knowing what she now knows about hypothyroidism and lichen planopilaris, she most likely had these diseases in 2016, when she was first put on weight probation. However, the Board reached out to the applicant on March 28, 2023, and requested a note from a medical doctor stating that the applicant had suffered from hypothyroidism at the time of her weigh ins, and the applicant was unable to do so. Although the doctor stated that she had symptoms of hypothyroidism in 2016, such as obesity, and the applicant stated she “most likely” suffered from hypothyroidism at the time of her weigh ins, but the applicant was unable to provide evidence that she should have been diagnosed earlier. Without such medical evidence, the Board is not persuaded that the waiver of the standards accorded members who have a medical condition that physiologically causes weight gain should have been granted to the applicant in 2016. The Board notes in this regard that by June 21, 2017, the applicant

was able to lose the necessary weight before her probationary period ended and keep it off for about two years before she was diagnosed with hypothyroidism, and her records indicate that she was not placed on weight probation during the two years before she received her diagnoses. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that she suffered from medical conditions in 2016 for which she should have received a waiver of the weight and body fat standards.

8. The applicant also argued that her command committed errors in that her height was recorded first as 64” and later as 63” and that her probationary period was initially miscalculated. The record shows, however, that the applicant’s probationary period was corrected on the Page 7 dated April 28, 2017, and she has not shown how the extension of the end date or the change in the measurement of her height prejudiced her. She has not shown that if her height had been consistently recorded as 63” or 64”, she would not have received the three disputed Page 7s or the mark of 3 on her OER.

9. 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 her non-selection for promotion is unknowable, but it was required by Coast Guard policy because an officer who has been on weight probation during a reporting period cannot meet the standard for a higher mark of 4. Because the applicant has not proven, by a preponderance of the evidence, that the mark of 3 is erroneous or unjust, there are no grounds for raising the mark or for directing the Coast Guard to convene a Special Selection Board.

10. 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 7s 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 and 2017. Her request for relief should therefore be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

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

May 12, 2023

[REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.15 09:14:14 -04'00'

[REDACTED]

[REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.15 09:43:00 -04'00'

[REDACTED]

[REDACTED] Digitally signed by [REDACTED]
Date: 2023.05.15 10:29:42 -04'00'

[REDACTED]