


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-038


MKC (former)

FINAL DECISION

This proceeding is conducted according to the provisions of 10 U.S.C. § 1552. The Chair docketed the case after receiving the completed application on January 31, 2024, and assigned it to an attorney to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision dated January 16, 2025, 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, through counsel, is seeking removal of his discharge and to be granted retirement. The applicant requests to be added to the retirement announcement list dated August 25, 2012 with appropriate backpay.

The applicant's discharge for failure to meet Coast Guard prescribed weight standards occurred on January 9, 2012. The applicant served nineteen (19) years, four (4) months, and sixteen (16) days on active duty. He enlisted on August 25, 1992, and would have reached twenty (20) years of active-duty service within seven (7) months of his discharge.

The applicant asserts his administrative separation is in error and an injustice. The applicant asserts there was an error in the discharge because he objected to being separated and therefore it was involuntary, which should have been protected. Under 10 USC 1176¹, the applicant argues that he was within the protected time period to avoid involuntary separations, but this section was not applied by the Coast Guard in 2012.

The applicant asserts that separating a service member with less than seven months till full retirement is an injustice. The applicant has less than seven (7) months left of active-duty service to achieve full retirement benefits. As a strong performer, the applicant earned impressive awards throughout his career. The applicant shares being capable of doing his job as a mechanic and the chief in charge of his section despite his weight gain not meeting Coast Guard standards. Numerous

¹ Enlisted members: retention after completion of 18 or more, but less than 20, years of service have a protection under subsection (a) for active-duty members, which applies to various DOD services, but not the Coast Guard.

service members enjoyed learning from the applicant to become better mechanics themselves in service to the Coast Guard.

The applicant committed to running several miles each week according to the fitness plan encouraged but struggled to keep the weight off. He states his wife pregnancy created numerous illnesses for his wife placing her on bedrest. He became the sole caretaker of his three kids during the evenings after work. The stress of the circumstances made it challenging to keep his diet in check to achieve the weight standards at that time. The applicant feels that in the totality of his service career he served with honor and continued effort that should have earned him a military retirement.

SUMMARY OF THE RECORD

On August 25, 1992, the applicant enlisted in the Coast Guard. The applicant led an honorable career accumulating numerous awards including the Armed Forces Expedition Medal, a Coast Guard "E" Ribbon, Achievement Medal with Gold Star, Letter of Commendation with Bronze Star, Global War on Terrorism Service Medal, National Defense Service Medal, Department of Transportation Outstanding Unit Award, Navy Meritorious Unit Commendation Ribbon, and six (6) Good Conduct Medals are the most notable.

In 2005 and 2009, the applicant struggled to maintain weight standards, but after a probationary period met the Coast Guard prescribed weight standards. The applicant did have diagnosed depression documented as early as 2005 for which he began medications to support his mental health. The applicant advanced to the rank of Chief (E7), which permitted him to train other Coast Guardsmen on mechanical knowledge to better serve the Coast Guard.

On November 16, 2010, the applicant failed to meet the standards for his mandatory weigh-in and command placed him on a probationary status requiring the applicant to successfully meet the mandatory weight standards by July 15, 2011, or he would be recommended for separation.²

In April of 2011, the applicant failed to the standards for his mandatory weigh-in and continued to remain on probationary status.

On July 15, 2011, the applicant completed a mandatory weigh-in initiated by his probationary period. He successfully met the requirements of the weight/physical fitness standards for Coast Guard military personnel under COMDTINST M1020.8. The applicant signed the administrative remarks acknowledging his successful weigh-in.

On October 31, 2011, the applicant failed his weigh-in and the command treated this failure as his third consecutive failure, which served as the basis for the separation. Command recommended the applicant for discharge.

On November 10, 2011, the applicant received a Notification of Intent to Discharge, which he signed acknowledging receipt and objected to the discharge. The applicant provided a statement on his behalf explaining the challenges of his homelife during this period of time. His wife became

² Administrative Remarks "PAGE 7" within the applicant's file.

bed ridden during her pregnancy, leaving the applicant the sole provider of his three kids during the evenings when he got home. Between the stress of worrying for his spouse and unborn child, the weight of running a household of cooking, cleaning, and childcare after an eight-hour work day weighed heavy on the applicant. The applicant reiterated that he is great at his job and represent the Coast Guard with great pride. There are no documents to attest that the weight gain inhibited the work product of the applicant or his ability to lead others.

On January 9, 2012, the applicant was separated for convenience of the government with an honorable discharge and a narrative that reads failure to maintain weight. The applicant's failure to meet weight standards appears to be the only disciplinary action taken against the applicant in his entire career.

VIEWS OF THE COAST GUARD

On September 13, 2024, a Judge Advocate (JA) 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 on July 21, 2023, prepared by the Coast Guard Personnel Service Center (PSC).

The JA concurred with the PSC evaluation of the applicant's request. PSC determined no error or injustice had occurred and the applicant's request should be denied.

The JA argued that the applicant failed to prove an error or injustice because his command properly conducted his separation in accordance with Coast Guard Policy. The JA cites that the Coast Guard permits separation when a member fails three consecutive weigh-ins, conducted biennially in accordance with Coast Guard policy. Additionally, the JA highlights the applicant's right to re-enlist after coming into compliance with weight regulations within 24 months of his separation date, but the applicant did not apply for re-enlistment.

The JA argued that the statute cited by the applicant, 10 USC 1176 subsection (b), does not grant the applicant a retirement sanctuary for having more than nineteen (19) years in service but less than twenty (20) years. The JA states that the section only applies to reservist on active duty and that subsection (a) applies to some military branches, but not the Coast Guard for granting relief. Additionally, COMDTINST 1000.4A Chapter 10.C.1 which does adopt 10 USC 1176 offering protection to enlisted service members with more than eighteen (18) years but less than twenty (20) years of active-duty time protection against involuntary separation was not in effect at the time of the applicant's discharge and therefore should not apply to the applicant.³

The JA asserts that the delay in the applicant's request for relief prejudices the Coast Guard because it has been twelve (12) years since the applicant's discharge. Documents surrounding the applicant's discharge are not all available, particularly the April 2011 failed weigh-in documentation, which includes a date used to create the timeline for three consecutive failed weigh-ins to support the involuntary separation of the applicant. Lastly, the JA does not support that discharging the applicant for failure to meet weight standards seven (7) months from his

³ COMDTINST 1000.4A promulgated in 2023.

twenty (20) year mark of active-duty service to the Coast Guard shocks the sense of justice because there is no evidence of abuse of discretion by military authorities.

The JA confirmed that the command correctly administratively separated the applicant within the rights and authority granted to the command.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 24, 2024, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty (30) days. As of the date of this decision, no response has been received.

APPLICABLE LAW AND POLICY

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a).

(1) Error can be defined as either legal and/or factual.

(2) Injustice, when not also error, is treatment by the military authorities that "shocks the sense of justice."⁴ In addition, the Board has the authority to decide whether an injustice exists in an applicant's record on a case-by-case basis. The application must file within three years after discovery or reasonably should have discovered the alleged error or injustice for a correction or relief.⁵ However, the Board may waive timeliness in pursuit of justice.

The Coast Guard Weight Body Fat Standards Program Manual: COMDTINST M1020.8G published June 2008 and remained in effect during 2012.

The Coast Guard Military Separations Manual: COMDTINST 1000.4 published September 2011 was in effect at the time of the applicant's discharge, and did not adopt the "sanctuary" rule in 10 U.S.C. § 1176.

The Coast Guard Military Separations Manual: COMDTINST 1000.4A published March 2023 and currently in effect adopts 10 U.S.C. § 1176 for Coast Guard enlisted members as a matter of policy.

10 USC § 1176(a). Enlisted members: retention after completion of 18 or more, but less than 20, years of service. Applies to reserve component enlisted members being involuntarily separated from active duty with more than 18 years of creditable service toward regular retirement.

⁴ *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976).

⁵ 33 C.F.R. § 52.22

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.
2. The applicant brings this request outside of the three years of its occurrence making the application untimely for review. However, the Board has the authority to waive timeliness to best serve justice and the Board will do so in this case.
3. The applicant is requesting his discharge be changed to retired and for his name to be placed on the retirement roster for August 25, 2012 with full back pay for retirement payments the applicant would have been entitled to but for the involuntary separation.
4. The Board, in full view of all facts, assertions, and applicable laws, views this case as one of error and injustice. The error in question is the concept of three *consecutive* weigh-in failures should result in separation. The applicant failed a weigh-in during November 2010 and subsequently placed on a probationary period with a required weigh-in scheduled July 2011. The applicant failed a weigh-in in April of 2011, though the appropriate record to support this evidence has not been produced. The Coast Guard fairly asserts that the timeliness of the applicant's request creates a prejudice in locating documents that can be lost to time. In granting the presumption of correct conduct by the Coast Guard, the Board accepts that the applicant failed his weigh-in during April of 2011 based on the other supporting documents and despite not having the correct record. Then, the applicant passed his probationary weigh-in period required in July 2011. Finally, the applicant failed a weigh-in in October 2011 and command treated this as his third consecutively failed weigh-in. However, the applicant did not fail three weigh-in periods consecutively since he achieved a passing score during a required weigh-in period in July 2011. Why would the Coast Guard policy create a weigh-in that could only contribute to the separation of a member, but not be used to re-start the members success with meeting the Coast Guard weight standards? It is unlikely that the Weight Standards manual held that intention, which reads in part:

A member shall not be placed on three successive probationary periods within any fourteen-month period. In lieu of a third probationary period, the member will be processed for separation. In addition, members found non-compliant for 3 consecutive weigh-in periods shall be processed for separation.

The applicant never served three successive (one after the other) probationary periods, nor did the applicant remain non-compliant for three consecutive (one after the other)

- weigh-in periods. The manual does not state that the weigh-in period does not include the probationary period. In fact, the JA argues that the manual permits counting the probationary mandatory weigh-in period as part of the three consecutive weigh-in periods to permit separation of a member. It stands to reason that the manual supports the probationary weigh-in as a mandatory weigh-in period and thus a passing score bringing a member into compliance with the weight standards would sever any previous consecutive failed weigh-ins. The applicant passed a mandatory weigh-in in July 2011, which means the only failed weigh-in that could be counted against the applicant would be October 2011.
5. The Board finds the separation by command for counting November 2010, April 2011, and October 2011 as three consecutive failed weigh-ins as an error of the prescribed Coast Guard policy. The letter of intent to separate the applicant shared with higher levels of authority never mentions the applicant's passing July 2011 score, which was a mandatory weigh-in that would have counted towards his separation had he failed. The applicant passed and yet the command treated the weigh-in as if it had never happened.
 6. The Coast Guard may disagree that this constitutes error, based on a definition of weigh in "period" that does not appear in the record or the applicable COMDTINST. However, for a regulation to have such potentially devastating financial impacts on a member, it imperative that such terms are carefully and clearly defined. Any failure by the Coast Guard to do so should not be construed by this Board to the applicant's detriment. The applicant was significantly overweight in his fall 2011 weigh-in. He clearly misperceived the precarious position he was in. It is inexplicable why – knowing that a single additional weigh-in failure following his successful completion of probation would result in his immediate separation and loss of retirement – he would choose not to submit a voluntary request for retirement as it was his right to do, or that the command would not approve it. But even without error, this Board must also consider justice in this case.
 7. The applicant faithfully served the Coast Guard for nineteen (19) years, four (4) months, and sixteen (16) days with less than seven (7) months from a full retirement. The applicant has a decorated record any retiree would be proud to display and without one tarnished incident of misconduct. The applicant appears to be a hard worker and committed to the mission despite his diagnosed depression, which the Board only learns of through medical records. The applicant does not make outlandish statements of harm by the Coast Guard or a mental health outcry. He appears sensible and respectful. The applicant takes responsibility that he struggled to meet weight requirements, but felt he continued to serve the Coast Guard with honor. He shared in his personal statement, during his objection to the involuntary separation, that his wife's health placed her on bed rest during her pregnancy, and he became the primary care giver to his three children. He worked during the day and came home at night to complete all the tasks of running a household and caring for children while juggling the worry for his wife

- and unborn child's health. The applicant committed to running three times a week but, to cope with stress, he struggled to create a healthy diet. While the Board understands that every member must be responsible for their home life situations while still meeting Coast Guard standards, the applicant does not appear well supported at this time especially as an individual who had proven his work ethic for many years before. The applicant served the Coast Guard honorably for years and the Coast Guard failed to be there for the applicant when he clearly needed additional support. There are no remarks regarding a negative impact on the applicant's work performance or ability to lead others due to his weight gain. To deprive a solid performer with no negative performance reviews over a nineteen-year long career the opportunity to receive their retirement certainly shocks the sense of justice.
8. The applicant's request for relief comes after the implementation by the Coast Guard of "retirement sanctuary" for reserve enlisted members serving more than eighteen (18) years but less than twenty (20). This instruction was promulgated in 2023 and therefore unavailable to the applicant at the time of his separation. In relevant part to the applicant specifically, COMDTINST 1000.4a is below in part:

Non-Regular Retirement Sanctuary. In accordance with 10 U.S.C. § 12646 and § 1176, a Reserve officer or enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), ... and who on the date on which the member is to be discharged or transferred from an active status has at least 18 but less than 20 years of satisfactory qualifying federal service as computed in accordance with 10 U.S.C. § 12732, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before...

(1) The date the member is entitled to be credited with 20 years of service; or

(2) The second anniversary of the date the member would otherwise be discharged or transferred from an active status.

9. The applicant argues that the involuntary discharge of a service member with less than seven months until earned retirement is an offense to justice. Based on the changes in Coast Guard policy in protection for reservist retirement, it appears the Coast Guard would agree that protecting service members retirement is the ethical path forward. Organizational policy changes occur for a variety of reasons that do not always have a justice driven directive and therefore the Board would not apply all policy changes as evidence that the Coast Guard is correcting an injustice. However, given that the current policy change only benefits the member who once would have been without their retirement and who would be treated unequally to other military branch members who achieve a service record of over eighteen (18) years but less than twenty (20) for protection of their retirement, it is clear the Coast Guard understood the injustice

occurring to their members and implemented a policy to correct such a harm, at least for reservists. It is likely in time this will be viewed for the benefit of active duty as well.

10. Additionally, this begs the question as to why the command would not have encouraged the applicant to apply for a voluntary retirement.⁶ He meets the requirements of having served at least eighteen (18) years and could have remained at his current unit to complete the final seven (7) months to reach full retirement. While the command must initiate recommendations for discharge when a member fails for weight, there are no restraints on the chain of command reviewing the separation request to be obligated to accept the recommendation to discharge. The command has a level of discretion at a certain point to review a member's specific situation and to make an ethical determination as to whether separation is appropriate. It does not appear that any part of the chain of command took a moment to review the hardship placed on the applicant having only seven (7) months until retirement to administratively discharge him due to a weight failure. There were no performance issues such as late to work or underperformance of duties. The record is devoid of any misconduct issues. The applicant could maintain all aspects of proficiency to complete their assigned job but failed one mandatory weigh-in (October 2011) and command took the applicant's retirement for this failure. The Board finds this to be exceptionally harsh and unrealistic to assume this outcome happens uniformly across commands throughout the Coast Guard.
11. The Board also notes that, had the applicant been accused of misconduct and considered for separation on that basis, he would have been provided a separation hearing, which would have included a right to appear in person, present witnesses, and be represented by counsel. While the applicable COMDTINST is clear that applicant was not entitled to such a hearing when being separated on the basis of being overweight, it strikes the Board as particularly unfair that he had fewer procedural rights than if he was being considered for separation due to misconduct where a hearing would have been required, given the identical and substantial property interest he had in his retirement. The applicant in this case had no documented duty performance problems, and no allegations of even minor misconduct.
12. After full review of the applicant's application, service record, and applicable law and policy, the Board finds it in the best interest of justice and to correct an administrative error to grant the applicant full relief. Constructive service credit time will be granted to back pay the applicant as if he completed 20 years of creditable service for regular retirement. Pursuant to Article 1.C.1.b. of the Military Separations Manual, COMDTINST M1000.4 (September 2011)⁷ the Board finds that the Coast Guard

⁶ COMDTINST 1000.4 at section 1.C.11.a. Requests for Voluntary Retirements.

⁷ 1.C.1.b. Effective Retirement Date- Commander (CG PSC-EPM) or (CG PSC-OPM) issues orders containing the effective retirement date, the laws governing the retirement, and travel authorization. Under 5 U.S.C. §8301, all non-disability retirements occur on the first day of a calendar month with the member usually detaching on the last day

should grant the applicant constructive credit for time in service as active duty from his date of separation to his natural retirement date of September 1, 2012. The Board finds that as a result of this change, the applicant is also entitled to retroactive retirement pay with his name added to the retirement roster with a retirement date of September 1, 2012. Finally, the Coast Guard should issue the applicant a new DD-214 that reflects a narrative reason of separation as “Retired” and a reenlistment code of RE-2. The Board finds that these changes are necessary to ensure that a full restoration of justice is achieved.

(ORDER AND SIGNATURES ON NEXT PAGE)

of the preceding month. If the member detaches earlier, the time between detachment and the effective retirement date is charged as annual leave.

ORDER

The application of former MKC [REDACTED], USCG, for correction of his military record, back pay, and removal of adverse files against the applicant is fully granted. Constructive service credit time will be granted to back pay the applicant as if he completed twenty (20) years of creditable service for regular retirement for time in service as active duty from his date of separation to his natural retirement date of September 1, 2012. The applicant is also entitled to retroactive retirement pay with his name added to the retirement roster with a retirement date of September 1, 2012. Finally, the Coast Guard shall issue the applicant a new DD-214 (not a DD-215) that reflects a narrative reason of separation as “Retired” and a reenlistment code of RE-2.

January 16, 2025

