

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2024-080


LT (O-3)

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 March 12, 2024, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 27, 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

The applicant is Lieutenant (O-3) who was direct commissioned as a Judge Advocate (JA) on June 29, 2021. Prior to commissioning, applicant served for approximately seven years on active Coast Guard duty and was honorably discharged as a AET1/E6 on September 17, 2011. While serving as an enlisted member, the applicant was found to have exceeded allowable body fat standards and disenrolled from the Instructor Development Course in October 2010. He was placed on probation, and again failed to meet weight standards in January 2011. He successfully met weight standards in April 2011. This was documented by three separate CG-3307s corresponding to those dates, and applicant's training history reflects the disenrollment. Applicant asks that these CG-3307s ("Page 7s") be removed or masked from his personnel file so that they cannot be visible to promotion boards. He also contends that the October 2010 weigh-in was erroneous because the January 2011 weigh-in showed he had gained weight but lost body fat, something he contends is evidence that the October weigh in was "incorrect."

SUMMARY OF THE RECORD

The applicant served as an enlisted member of the Coast Guard for approximately seven years, from October 18, 2004 – September 17, 2011. During that time, he attained the rank of AET1/E6. He was released into the Individual Ready Reserve (IRR) and apparently discharged one year later.

During this period of service, the applicant attended the Instructor Development Course in October 2010. His training records reflect that he was disenrolled from this course because of failure to meet the Coast Guard's weight and body fat requirements. This is documented in his record by a CG-3307 dated October 12, 2010 indicating a weight of 212 pounds and a body fat percentage of 27%, which is in excess of Coast Guard requirements. He was again weighed on January 11, 2011, where his weight was 220 pounds with a body fat percentage of 23%. He was weighed a third time on April 1, 2011. His weight was not documented, but he did achieve a passing body fat of 22% and was removed from weight probation. Each of these weigh-ins was documented by a corresponding CG-3307 in his record.

In 2021, the applicant obtained a direct commission as a Judge Advocate in the Coast Guard and reentered the service as a commissioned officer. All records from applicants enlisted service remain in his personnel file, including the three CG-3307s for weight failure and the removal from the Instructor Development Course.

There is no evidence in the record that the applicant has been considered by a promotion or selection board, or that he challenges the results of such a board for considering these documents.

VIEWS OF THE COAST GUARD

On December 15, 2024, a JA for the Coast Guard submitted an advisory opinion which adopted program input from the Personnel Service Center (PSC) recommending that the Board deny relief in this case.

The PSC argued that the documents referenced by the applicant remain a part of the military record, although not considered by officer promotion boards. These boards are instructed not to consider matters in the record prior to the officer's commissioning date, in accordance with COMDTINST 1410.2. The PSC further stated that the allegations of error in the October 2010 weigh in were not supported by any evidence, and were undisputed at the time. The PSC contended that the disenrollment from the Instructor Development Course was proper and should remain part of applicant's service record. Lastly, the PSC asserted that the application was untimely.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

The applicant replied to the Coast Guard's advisory opinion on February 9, 2025. He asserted that his application was timely, because he didn't realize until recently that these records would be visible to his officer promotion boards. He alleged that the Coast Guard misinterprets COMDTINST 1410.2 because it requires documents to be masked from view, versus board members being ordered to disregard such documents as "standard practice." He claims that the Coast Guard fails to address his claims of error in the CG-3307s in the record. He also claims that promotion board instructions are an insufficient remedy for these errors, along with several other additional considerations. He asks this Board to not consider the Coast Guard's advisory opinion because it is untimely, and reiterates his request that this Board (1) find advisory opinion untimely, (2) find his application timely, (3) order the masking of the CC-3307's from promotion

board view, and (4) direct removal of the Instructor Development Course disenrollment entry from applicant's training record so that is not visible to future promotion boards.

APPLICABLE LAW AND POLICY

33 C.F.R. § 52.21 provides the general requirements for docketing applications to this Board:

(c) No application shall be docketed or processed until it is complete. An application for relief is complete when all of the following have been received by the Board:

- (1) A signed DD Form 149, providing all necessary responses, including a specific allegation of error or injustice, accompanied by substantial evidence or information in support of such allegation;

33 C.F.R. § 52.22 sets for the time limits for applying for correction of a record with this Board.

An application for correction of a record must be filed within three years after the applicant discovered or reasonably should have discovered the alleged error or injustice. If an application is untimely, the applicant shall set forth reasons in the application why it is in the interest of justice for the Board to consider the application. An untimely application shall be denied unless the Board finds that sufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file timely.

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 over this matter under 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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice. If Applicant were contesting his disenrollment from the Instructor Development Course based on his failure to meet weight and body fat requirements, the application would be considered untimely. The applicant received the records at issue in this case in 2010 and 2011 and did not apply to this Board until March 12, 2024. While the applicant claims that he was not aware of the error or injustice until recently, the mistakes he alleges with regard to the weight and body fat measurements and resulting disenrollment presumably would have been apparent to him at the time they were executed. This application is therefore untimely. However, the Board waives the timeliness requirement in the interest of justice in this case.

3. The applicant makes several allegations of error and injustice in this case not related to his prior disenrollment and discharge, but his instant claim of error or injustice is not ripe for this Board's review because applicant has not yet suffered actual injury. The applicant's main concern is a simple one: he doesn't want service records from his time as an enlisted Coast Guardsman to be viewable by a future officer promotion board and alleges that Coast Guard policy is insufficient to prevent an injustice to him, or that the PSC is misinterpreting that policy to his detriment. However, at no point does the applicant allege that he has failed to be selected at a promotion board. He has not challenged a past board's results, for example, through the established Coast Guard processes for convening special selection boards (SSB). This Board also notes that the applicant's prior record as an enlistee did not prevent him from being commissioned in 2021 as a Judge Advocate.

4. In light of the above, the applicant is substantially asking this Board to order prophylactic remedies to prevent a hypothetical error or injustice from occurring at a future promotion board – one for which he would have other administrative remedies available to pursue relief. His allegation of error is not chiefly with the records themselves, but the way a future Coast Guard promotion board may view or consider those records. As noted by the Coast Guard JA, a promotion board would not consider the applicant's weight and body fat measurements as a prior enlistee, in accordance with COMDTINST 1410.2. Applicant will have the opportunity to contest any hypothetical non-selection arising from a selection board's alleged errors at the appropriate occasion.

5. The Board next considers the applicant's claims that there were errors in his body fat calculations related to his October 2010 weight screening (i.e., the errors with the records themselves referenced in the paragraph above). This allegation is untimely, but the Board waives that requirement in the interest of justice. The applicant argues that the October 2010 weigh-in was erroneous because a subsequent January 2011 weigh-in shows that the applicant gained weight while having a lower body fat percentage. This allegation is unsupported by any evidence, and was apparently not made until more than a decade after the body fat calculations at issue were taken. The applicant asks this Board to find error because an increase in body weight with a corresponding lowering of body fat is a factual impossibility or improbability.

6. Body fat calculations are based on circumference measurements of the neck and waist, both of which are obviously somewhat subjective and may fluctuate based on numerous factors. It is impossible to determine now, almost 15 years later, why the applicant's weight went up while his body fat went down. There could have been error in one or more measurements. He also may have gained muscle weight or availed himself of one of the many techniques to increase neck circumference or decrease waist circumference in preparation for a weigh-in. What the applicant ignores in his arguments is that both CG-3307s show that he exceeded allowable body fat standards. Additionally, even if this Board accepts his premise that measurement error is the only explanation for the discrepancy, it is equally likely from the record that his January weigh-in erroneously resulted in an artificially low body fat percentage. This Board won't speculate, and it doesn't need to. The burden is on the applicant to support his claims of error or injustice with substantial evidence, and he fails to do so.

ORDER

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

February 27, 2025

