

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
Coast Guard Record of:

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

BCMR Docket
No. 2000-082

FINAL DECISION

ULMER, Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was docketed on March 9, 2000, upon the Board's receipt of the applicant's complete application for correction of her military record.

The final decision, dated February 8, 2001, is signed by three duly appointed members who were designated to serve as the Board in this case.

The applicant, a XXXXXXXXXXXXX in the Reserve asked the Board to correct her record to show that she was discharged by reason of physical disability with severance pay rather than being released from active duty into the Reserve.

At the time the alleged error occurred, the applicant was a Reserve officer on active duty. On December 14, 199X, the applicant was released from active duty (not discharged) into the Reserve after completing her active duty obligation.

SUMMARY OF RECORD AND SUBMISSIONS

After serving for approximately five years in the Army, on August 9, 199X, the applicant enlisted for four years in the Coast Guard Reserve as a candidate for a commission as an officer. After completing officer candidate school (OCS), she attended, but failed to complete, flight school. However, before beginning flight training, she signed a statement acknowledging, in part, the following:

I understand that I incur five years of obligated service upon completion of flight school. This obligation is with my consent and is in addition to any other contractual agreement under which I may be serving. *Further, I will be released from active duty at the end of all my obligated service unless I have integrated into the Regular Coast Guard.* (Emphasis added.)

After being disenrolled from flight training, the applicant was assigned to duty as a XXXXXXXXXXXXXXXXXXXXXXXX. According to the applicant, her problems began when she requested an assignment to a cutter. During her meeting with the executive officer (XO) to discuss her request for an afloat assignment, the applicant's use of the anti-depressant Zoloft was brought up for discussion by the XO. The applicant was later informed that she had to undergo a medical board before she would be allowed to go to sea.

The applicant underwent an initial medical board (IMB) that found her fit for duty. However, she has alleged that it was not authorized by regulation. In this regard, she stated that nothing in Coast Guard regulations called for a medical board solely for the use of an antidepressant (Zoloft) in treating a physical condition. Zoloft was prescribed to treat the applicant for chronic fatigue syndrome (CFS).¹

The applicant stated that when the medical board process began in February 199X, she thought that she would have been discharged before the end of her obligated service on December 14, 199X. She further stated as follows:

I . . . did not expect that CG officials would . . . invoke [the] presumption in the medical instruction - clearly intended to prevent a medical board from ever being initiated, nor to suspend them mid-stream for the fiscal convenience of the government - to dodge making a clear-cut decision and avoid dealing with the central issues of medical science, fiscal conservatism, public safety and due process that I had raised. Even after both I and my . . . CO [commanding officer] tried to point out that the medical board was improperly initiated, done without my ever being examined by a physician . . . and that I was willing to stay in the CG if cleared for operational assignments as evidenced by my June 1999 extension,² we continued to face officials in an entrenched position rather than a real review process to work. I never expected to find myself without both a job and compensation after 15 years of solid service because I tried to convince the Coast Guard that it did not need to lose productive, committed people in my initial circumstances.

Initial Medical Board

¹ CFS is defined in the Merck Manual as a long-standing severe fatigue without substantial muscle weakness and without proven psychologic or physical causes.

² Enclosure (1) to the Coast Guard's advisory opinion indicates that on September 20, 1999, Coast Guard letter 1851, informed the applicant that she was fit for full duty and also approved her voluntary, unqualified resignation from the U.S. Coast Guard scheduled for December 14, 1999. Enclosure (1) further states that pursuant to Article 12.A.7.B of the Coast Guard Personnel Manual . . . "Reserve officers not serving under active duty agreements and who have no outstanding obligation for continued active service will be released automatically to inactive duty when their period of active duty expires."

On February 25, 199X, an IMB was held in the applicant's case and it was signed by two officers of the Public Health Service. The physician who prepared the IMB wrote that the applicant "was evaluated on an ambulatory basis . . . with the diagnosis of mild depression associated with hypersomnia, decreased ability to concentrate, and chronic fatigue." The physician wrote that the applicant's hypersomnia and fatigue began during her teenage years and that she had incurred some career failures due to her ability to concentrate. He also stated that the applicant has suffered two closed head injuries, one in 198X and one in 198X. The Coast Guard granted the applicant a waiver for the closed head injury in 199X based on normal neurologic examination.

The IMB listed the applicant's medical evaluations, as follows:

In November 199X, an infectious disease specialist prescribed Zoloft for the applicant's fatigue and hypersomnia. The applicant was diagnosed with Cat Scratch Disease in 198X. The infectious disease specialist thought this could be the cause of her hypersomnia and fatigue.

In June 199X, the applicant was diagnosed by a psychiatrist as having Axis I-depression in remission secondary to Zoloft and Axis III - Chronic Fatigue Syndrome.

In July 199X, the applicant underwent a sleep analysis report, which revealed no apnea or snoring and noted the presence of alpha intrusion and an overall pattern of normal sleep.

On February 24, 199X, a psychologist diagnosed the applicant as having "a general medical condition, affecting mood" and advised a neuropsychiatric consultation.

The IMB physician made the following findings:

[The applicant] has experienced control of symptoms from Zoloft (100 mg each morning). She has suffered no significant side effects. She reports a normal sleep pattern without hypersomnia. The chronic fatigue no longer exists. She has no difficulty with maintaining her concentration. All benefit has been maintained since the introduction of Zoloft on 08Feb98.

It is the opinion of the Board that the diagnosis of the patient is based upon several symptoms. The unifying concept of hypersomnia, decreased ability to concentrate, chronic fatigue is mild depression. This condition has many confounding variables such as a traumatic childhood, Cat Scratch Disease, and two separate Closed Head Injuries. The patient has responded to therapy and remains open to the various non-medicinal options. She is fit for full duty.

After the Medical Board met, the applicant underwent a neuropsychological evaluation on April 2, 199X. The consultation report offered the following diagnoses: "Axis I . . . Occupational Problem [,] Axis II No Condition [, and] Axis III Chronic Fatigue Syndrome and Fibromyalgia³ (by record)".

On May 5, 199X, the applicant rebutted the IMB in which she objected to its findings. She stated that the Coast Guard violated its regulations in convening the IMB and denied her due process. She stated that even if she were retained on active duty, she would not request a further extension.

The applicant also stated in her rebuttal, that there were several critical flaws in the manner in which the Coast Guard system deals with individuals taking Zoloft. The applicant described those flaws, as follows:

- "Though my medical condition - CFS - is not listed any where in the medical standards for retention . . . I do find it relevant that narcolepsy, symptoms of which are even more dramatic and mission-endangering than CFS if untreated, is mentioned. [The Medical Manual] indicates that narcolepsy may precipitate a board and disqualify one for retention 'when attacks are not controlled by medication.' It would seem logical to regard CFS in a similar light The only difference appears to be in the type of medication prescribed for the two conditions: For CFS it is typically an antidepressant, while for narcolepsy it is Ritalin, which is not classified as an antidepressant, but as a psychotherapeutic agent."

- "CFS is not an affective (mood) disorder under paragraph 16.b. [of the Medical Manual]. It is a general medical condition (GMC) that would go under paragraph 15 if included in the regulation at all. However, 16.b is the section the medical officer conducting my board has pointed to in trying to justify the direction he was given by his superiors at CGPC-adm to conduct a board on me because of my known use of Zoloft. Though depression is a common symptom/result of CFS, and I have certainly suffered from it, it is not my primary diagnosis, nor have I been "recurrently hospitalized" for it. . . . [T]he only explanation I can come up with for potentially discharging a member under . . . paragraph [16.b.] if taking a Zoloft tablet once a day is construed to be "recurrent treatment. . . ."

- "I DO NOT HAVE DEPRESSION. The report prepared by the neuropsychology clinic [dated April 2, 199X] . . . rebuts the supposed diagnosis of depression. Yet a primary diagnosis of "mild depression" is what the medical officer came up with in his attempt to "help" me "beat" the board. [The IMB physician] knew the neuropsychology report was in progress but he chose to write up the [IMB] without waiting for a copy of it. Apparently virtually 100% of those members in situations similar to mine have been discharged and the Coast Guard doctor felt my only chance of staying on active duty

³ Fibromyalgia is a group of common nonarticular disorders characterized by achy pain, tenderness, and stiffness of muscles, areas of tendon insertions, and adjacent soft tissue structures. See the Merck Manual.

lay in convincing CGPC-adm that my use of Zoloft had been short-term and likely to end soon. I told him numerous times I did not want to stop taking the medication that had helped me greatly in coping with my medical condition despite producing nightly nightmares (another fact that was glossed over in the board narrative); nor did I want to beat the board – I wanted to stop it. . . . "

-"[T]he regulation on medical boards . . . lays out the triggering mechanisms for convening an initial medical board (IMB). None of them are remotely applicable in my case; it was only the authority improperly assumed by CGPC-adm that caused this board to be started. I never even met the medical officer in person, let alone received a "thorough physical examination" conducted by him as paragraph 3-F-1 [of the Physical Disability Evaluation Manual (PDES)] requires, and though signed by two medical officers, only one was involved in the actual process of producing the board. The presumption of regularity typically afforded organizations following their own regulations is further rebutted by the standard Coast Guard practice of including xerox copies of pertinent consultations with a board narrative. Not only are they not necessarily legible as required by paragraph 3.G.1.d. [of the PDES Manual], but paragraph 3.G.2 clearly states that "pertinent consultations, in particular, shall be presented in typewritten form."

-"[I]f the Coast Guard is willing to send its members to Department of Defense (DoD) medical facilities, it must be willing to consider applying DoD standards in certain cases such as this one. My Air Force Doctor at the infectious diseases clinic at . . . XXXXXXXXX feels terrible that putting me on medication that does not trigger discharge in his service has so undermined my future in the Coast Guard, while I feel that the Coast Guard squarely bears the burden for such disconnects between our two medical systems."

-"I keep wondering what yellow line I'll cross and whose family I will kill when I've been 'weaned' off of Zoloft for the sake of my Coast Guard career. That is a choice I cannot accept, and so it's time for me to hang up my Coast Guard blue. But I will continue to fight that others do not have to make that sacrifice."

Review by the Central Physical Evaluation Board (CPEB)

The applicant's medical board along with her rebuttal was forwarded to the CPEB for determination. The CPEB met on May 21, 199X and found the applicant fit for full duty. It provided the following amplifying statement:

Coast Guard policy requires that a medical board be convened "[I]n any situation where fitness for continuation of active duty is in question." The CPEB may order a Disposition Medical Board (DMB), if the evaluatee's condition or impairments are not sufficiently resolved to make a final determination or recommendation as to fitness for duty. The evaluatee's expiration of obligated active service is December 199X. In rebuttal to the

medical board, the evaluatee reports she does not plan to request extension on active duty. The evaluatee is not now subject to normal unrestricted world-wide reassignment afloat or ashore. A military member scheduled for non-disability separation and performing assigned duties adequately is presumed fit for duty even though the medical evidence indicates he or she has impairments.

Opinion: Evaluatee's symptoms and provisional diagnoses, as well as long-term use of and apparent therapeutic response to anti-depressant medication, clearly justify convening a medical board. This record does not clearly support separation by reason of disability at this time, nor does the record clearly demonstrate fitness for duty and worldwide deployability. The evaluatee is performing adequately in her current duties, and will not be reassigned to a new duty station. A DMB to narrow, substantiate, or rule out specific diagnoses is not now appropriate. Presumption of the evaluatee's fitness for duty now exists, and the presumption is not overcome. The evidence of record, while giving rise to reasonable questions regarding the evaluatee's fitness and deployability, does not overcome the presumption of fitness that applies to members scheduled for separation. Should the evaluatee request and be approved for retention, or otherwise voluntarily extend her military service, a new Initial Medical Board should be convened by competent authority, in accordance with Coast Guard policy.

The applicant submitted a letter along with the April 2, 199X neuropsychological consultation, dated June 14, 199X, rebutting the findings and recommendation of the CPEB. She requested that her case be forwarded to a disposition medical board (DMB) "in light of additional medical concerns regarding my health and my decision to request extension on active duty." She informed the CPEB that she had never been examined by a physician as part of the disability evaluation process.

The applicant further stated as follows: "Very little work was done at the time of my chronic fatigue syndrome (CFS) diagnosis in early 199X to rule out other diseases and conditions. Especially because I fit the patient profile so well, and I found the Zoloft prescribed by my XXXXXXXX doctor to work in reducing the most disturbing symptom - extreme fatigue - I was content to leave it at that. However, in the past month I have become increasingly concerned between CFS, fibromyalgia, and Crohn's disease." She stated that even though she had had two surgeries for XXXXXXXXXXXX, she was not aware at that time that recurring XXXXXXXX are a sign of Chron's disease.⁴ She also stated that the alpha wave intrusion detected during her sleep study is one of the indicators of fibromyalgia. The applicant's medical record contains entries with respect to the surgeries for the fistulas and the neuropsychologist diagnosed the applicant as having fibromyalgia. The applicant's CO supported her request for a DMB.

⁴ Crohn's disease is an inflammation at various sites in the GI tract. It may cause diarrhea, which may be severe profuse and bloody. See the Merck Manual.

On June 30, 199X, the Commander of the Coast Guard Military Personnel Command (CGPC) determined that the applicant's rebuttal was insufficient to support a change to the CPEB's findings and recommendation. The CPEB was forwarded to the Physical Review Council (PRC) for review.

On July 14, 199X, the PRC concurred with the CPEB's findings and recommended disposition.

On August 9, 199X, the CGPC approved the findings and recommendation of the CPEB. He stated that "[p]ursuant to the authority contained in 49 C.F.R. § 1.45(a), it is directed that [the applicant] not be retired or separated by reason of physical disability."

Proposed Changes to the Medical Manual

Due to the efforts of the applicant, the Director of the office of Health and Safety has recommended that the Commandant include in the Medical Manual an adequate articulation of the symptoms and treatment associated with CFS. The proposed changes are:

"a. Section 3-D-39 [of the Medical Manual]: Chronic Fatigue Syndrome, Fibromyalgia, and Myofascial Pain syndrome will be listed as causes of rejection for appointment, enlistment and induction"

"b. Section 3-F-19 [of the Medical Manual]: Chronic Fatigue Syndrome, Fibromyalgia, and Myofascial Syndrome will be listed in the Miscellaneous Conditions subsection to read Chronic Fatigue Syndrome, Fibromyalgia, and Myofascial Syndrome when not controlled by medication or with reliably diagnosed depression."

Views of the Coast Guard

On September 6, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard, recommending that the Board deny relief to the applicant.

The Chief Counsel stated that the applicant failed to prove that the Coast Guard did not have the authority to convene an initial medical board (IMB). He stated that the Coast Guard followed the procedures as required by COMDTINST M1850.2C (Physical Disability Evaluation System Manual (PDES)) in convening the IMB. The Chief Counsel stated that the Commandant convened the medical board for the purpose of determining the applicant's fitness for duty, which was questionable. See Articles 1.C.1 and 3.B.1, COMDTINST (PDES Manual) M1850.2C. An IMB was necessary when the Commandant became aware of the applicant's "CFS [and] her use of an antidepressant [that] raised an issue of fitness for continuation on active duty"

The Chief Counsel stated that the Coast Guard followed the regulation in the PDES processing and the applicant received all the due process to which she was entitled. In this regard, the Chief Counsel stated that the IMB was composed of two medical officers as required; the applicant's mental and physical condition was properly evaluated prior to the convening of the IMB; the applicant was properly informed of, and provided a copy of the IMB's findings; the applicant submitted a rebuttal to the IMB; and the applicant's rebuttal received consideration, even though it was submitted three months late. The applicant was also given the opportunity to review (with assigned counsel) and rebut the CPEB's findings.

The Chief Counsel stated that the applicant's request that her case be referred to a disposition medical board (DMB) was properly denied. Article 4.A.7. of the PDES states that a DMB may be ordered if the evidence is insufficient for the CPEB to make a judgment as to fitness for duty or to rate an impairment. The Chief Counsel stated that in the instant case, the applicant's CPEB concluded that she was fit for duty. Therefore, there was no need for a DMB. The CPEB finding that the applicant was fit for duty, along with the applicant's rebuttal, was sent to the Physical Review Council (PRC) for review. The PRC agreed with the CPEB.

The Coast Guard conceded that the applicant did not receive a physical examination by the IMB on the convening date of the Board as provided by Article 3.F.1. of the PDES Manual, but he stated that the applicant's "extensive record of evaluations preceding the 25 February 199X convening date more than adequately provided the IMB with a clear and unambiguous picture of the applicant's physical condition."

The Chief Counsel stated that the applicant has not proved that she had a physical disability that rendered her unfit for duty, and therefore was not entitled to a disability evaluation. He stated that pursuant to Article 2.C.2.b. of the PDES Manual, "[c]ontinued performance of duty until a service member is scheduled for separation or retirement for reasons other than physical disability creates a presumption of fitness for duty." Although such a presumption can be overcome, the Chief Counsel stated that the applicant failed to do so by showing: "1) [that she], because of disability, was physically unable to perform adequately in her assigned duties; or 2) [that] acute, grave illness or injury, or other deterioration of the [her] physical condition occurred immediately prior to or coincident with processing for separation or retirement for reasons other than physical disability which rendered the service member unfit for further duty. Id., Art. 2.C.2.b.(1)." The Chief Counsel, citing several portions of the PDES Manual, further stated as follows:

Service members referred to an IMB for a disability evaluation shall be found fit for duty unless their physical condition reasonably prompts doubt that they are fit to continue to perform adequately in their assigned duties. . . . If the evidence establishes that service members adequately

performed the duties of their office, grade, rate or rating until the time they were referred for physical evaluation, they might be considered fit for duty even though medical evidence indicates they have impairments. . . . The PDES Manual goes on to specify certain standard and criteria that will not be used in any determination for physical disability. Those prohibited standards and criteria include 1) the presence of one or more physical defects that are sufficient to require referral for evaluation or that may be unfitting for service members in a different officer, grade, rank or rating, and; 2) pending voluntary separation, retirement, or release from active-duty. . . .

In the instant case, Applicant has not presented any evidence she was unable to fulfill her duties while on active-duty prior to and coincident with her IMB or voluntary request for separation from the service. The fact that her medical evaluation records reveal the potential presence of a physical defect is immaterial to Applicant's request for relief. Per the PDES Manual . . . [a]pplicant must show, by a preponderance of the evidence that she was unable to perform adequately in her assigned duties. The record shows Applicant performed her duties in a highly satisfactory manner during her tenure up to and including the time of her separation from the service. Therefore, there was no legal basis to place Applicant on the temporary disability retirement list (TDRL).

Applicant's Response to the Coast Guard Views

On September 28, 2000, the Board received the applicant's response to the views of the Coast Guard. She disagreed with them.

The applicant stated that the Coast Guard has continued to gloss over the fact that she did not have a physical evaluation as part of the IMB. She stated that "**I was never evaluated on 25 February 199X in an ambulatory basis at CG Station Corpus Christi by two medical officers for purposes of an [IMB].**" She further stated that her medical records were not available to the IMB because they were in her possession the entire time prior to and at the time of the IMB. She alleged that "it is a fundamental element of the due process required to be afforded a member having a constitutionally protected property interest in continued employment, one I did not receive despite repeated requests."

The applicant stated that she has experienced significant side effects from the Zoloft, which were denied by the IMB in its report. In this regard, she stated that the Zoloft produces nightmares that are almost as bad as the CFS itself.

The applicant stated that in January 199X she wanted nothing more than a successful Coast Guard career, but the stress of fighting this process left her a "basket

case." "Accepting discharge was a last ditch effort to save myself and my marriage[.]"
The applicant further stated as follows:

Had this medical board been dropped when I initially asked for that, I would still have believed my self to be fully fit for duty despite CFS. However, in mid-199X my Coast Guard counsel pointed out that the amplifying statement accompanying the "fully fit" board determination reserved all the moves to the medical staff at CGPC, allowing them to reinitiate another medical board the moment they realized I had either extended or intended to PCS. Though I had already applied for extension, his input renewed my fear that the issue, bogus to begin with, had not been fully laid to rest and could continue to hurt my career, having already denied me the opportunity to go afloat. By August and September as I continued to not receive answers or see action that would allow me to make reasonable and informed career moves, I became what I would call a "basket case." I was unable to complete a prestigious Air Force sponsored internship at Patrick AFB, and had begun to question my will to live. . . .⁵

[A]sking for a medical discharge and severance pay, along with a complete severing of ties from the Coast Guard does not seem outrageous; it strikes me as a non-litigious and fair compromise.

The applicant submitted entries from her medical record that show she was under a great deal of stress during September and October 199X. A psychologist recommended that she receive a period of medical leave.

FINDINGS AND CONCLUSIONS

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

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code. The application is timely.
2. The Chairman has recommended disposition of this case without a hearing. 33 CFR 52.31. The Board concurs in that recommendation.
3. The applicant's allegation that the IMB was convened in violation of Coast Guard regulations is without merit. While her illness may not be one of those

⁵ The applicant's last active duty OER shows that she performed her duties in a very competent manner. She received average to above average marks and complimentary comments.

specifically listed in the Medical Manual as disqualifying for retention, Article 3.F.2. of the Medical Manual makes it clear that the list of disqualifying conditions is not an all-inclusive list. In addition this section states that "listed conditions or defects (and any others not listed) considered as disqualifying shall be referred to an Initial Medical Board."

4. Under Articles 1-D-1 and 3-B-1 of the PDES Manual, the Commandant may convene a medical board. Article 1-D-1 states that "a member is introduced into the PDES when a commanding officer (or medical officer or higher authority. . .) questions an individual's fitness for continued duty due to physical and/or mental impairments and directs that a medical board be convened. . . ." The IMB in this case was ordered by CGPC (on behalf of the Commandant), a higher authority, and as such, it was in accordance with the PDES Manual. To limit the Commandant's authority in this regard would interfere with his responsibility to maintain a vital and fit military organization. The Board finds that the higher authority acted within the regulation in ordering an IMB to determine the applicant's fitness for duty once it became known that she suffered from CFS and was taking the drug Zoloft, an antidepressant.

5. The applicant was not denied any procedural due process with respect to her PDES processing. She was given an opportunity to review and rebut the medical board and the CPEB.

6. There is some validity to the applicant's argument that she did not receive the benefit of a "thorough physical examination to evaluate [her] general health" by the medical board pursuant to Article 3-F-1 of the PDES. This provision also states that "all impairments noted shall be separately evaluated, in accordance with the "VA Physician's Guide for Disability Evaluation . . ." The IMB physician wrote that the applicant was "evaluated on an ambulatory basis at [Air Station Corpus Christi]," but such an evaluation is not a physical examination.

7. The Chief Counsel acknowledged that the applicant did not have a physical examination as part of the medical board, but he stated that the "extensive record of evaluation preceding the 25 February 199X convening date more than adequately provided the IMB with a clear and unambiguous picture of the applicant's physical condition." The applicant's PDES record contains several reports and evaluations of her CFS condition and Zoloft treatment.

8. However, the applicant complained that she had other medical conditions, in addition to the CFS and Zoloft treatment that she was concerned about long-term, such as the fistulas and the fibromyalgia. However, the IMB, the CPEB, the CGPC, and the PRC were aware of these conditions through copies of entries from the applicant's medical record and by her rebuttal to the CPEB. Even with the knowledge of these other conditions, none of these entities changed their findings or ordered a physical examination of the applicant. The Board concludes that since the medical personnel involved in the PDES processing ordered no further medical examination of the

applicant, particularly after she brought these other conditions to their attention, those involved must have determined these conditions (XXXXXX and fibromyalgia) had no bearing on the applicant's fitness for duty.

9. Moreover, the applicant has not presented any evidence that she had any other conditions, not disclosed in her medical record, that caused her to be unfit to perform her duties. If such evidence had been presented to this Board, it might have reached a different conclusion on the issue of impact of the Coast Guard's failure to perform a "thorough physical examination" of the applicant during the PDES process.

10. The applicant alleges that in August/September 199X, the stress created by the PDES process caused her CFS to worsen and she became a "basket case." Therefore, she stated that she was not able to complete an Air Force internship. She further noted that any attempt to remain in the Coast Guard would probably have resulted in another medical board. However, the applicant did not remain in the Coast Guard and chose separation or at least acquiesced in the Coast Guard's expressed intent to separate her at the end of her obligated active duty service on December 14, 199X. Since she continued to perform her duties until the time of separation, there is a presumption that she was fit for duty. See Article 3.D.7, PDES Manual. This presumption can be rebutted by a preponderance of evidence showing that the member was not able to perform the duties of her office, grade, or rank or that she suffered a grave or other deterioration of her physical condition coincident with her processing for separation. The applicant presented evidence that she suffered from increased stress during the months of September and October 199X, but she did not submit medical evidence showing that she suffered from an injury or illness that caused her to be unfit to perform the duties of her office, grade, or rank.

11. Moreover, her last performance evaluation for the period August 1, 199X to December 14, 199X, shows the applicant to have satisfactorily performed her duties until her separation. She received average to above average grades and a very complimentary written description of her performance.

12. In conclusion, the Board finds that the Coast Guard properly convened an IMB in the applicant's case, and she received all the due process required by regulation. The Board further finds that the applicant has failed to prove by a preponderance of the evidence that she has been prejudiced by the Coast Guard's failure to conduct a "thorough physical examination" of her during the PDES process. Nor has she shown that the Coast Guard's finding that she was fit for duty to be in error or unjust. The applicant has also failed to rebut, by a preponderance of the evidence, the fitness for duty presumption created by the fact that she satisfactorily performed her duties until she was separated from the active duty Coast Guard. Accordingly, the Board finds no basis on which to grant relief. The applicant's request should be denied.

13. If the applicant's condition interferes with her ability to obtain and keep civilian employment, she should file a claim with the DVA. Lord v. United States, 2 Cl. Ct. 749, 754 (1983). The applicant stated that she has done this.

14. The applicant also indicated a desire to completely sever her ties with the Coast Guard. She should request to be discharged from the Coast Guard Reserve, if she no longer desires to be a part of this Service.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXX, 230 13 0661, USCGR, for correction of her military record is denied.

Laura A. Aguilar

Harold C. Davis, M.D.

Astrid Lopez-Goldberg