

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-001

**XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case upon receiving the completed application on October 5, 2011, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 15, 2012, 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 reservist who served on continuous active duty from July 31, 2006, until she was released from active duty (RELAD) on October 22, 2010, asked the Board to correct her record to show that she was RELAD on May 31, 2011, instead, and to award her back pay and allowances from October 23, 2010, through May 31, 2011. The applicant stated that she became incapacitated while serving on active duty and was RELAD even though she was unfit for duty or civilian work and about to undergo surgery. In addition, she alleged that she was denied a pre-separation physical.

The applicant explained that while serving on active duty on August 26, 2006, she was in a traffic accident and “sustained a lumbar sprain to the neck,” which was diagnosed in a local emergency room. The next day, a Coast Guard clinic referred her for physical therapy. For the next four years, she attended physical therapy whenever a pinched nerve in her neck was painful. The therapy would relieve the pain for a while, but it would return. Then in August 2010, her left hand began “locking up,” and she was referred to a neurologist. An MRI of her neck incidentally revealed that she also had thyroid disease, and she was scheduled for thyroid surgery on October 26, 2010. In addition, the applicant noted that while on active duty, a dentist began treating her for periodontal gum disease.

The applicant stated that her active duty orders were supposed to end on September 17, 2010, and she was told there was no more work for her. The applicant alleged that because of

her medical conditions, she should have been “placed on medical hold” when her orders ended so that she could continue receiving dental treatment and therapy for her pinched nerve.

The applicant stated that her supervisor extended her active duty through September 30, 2010, but told her that the decision about whether she would be placed on medical hold would be made by two other officers and that he had taken care of it and she did not need to worry or to contact those officers. She heard nothing from the officers, and when the extension ended on September 30, her supervisor issued her another extension through October 22, 2010, and told her not to worry, that it would be taken care of, and that she would receive medical hold orders by October 22. However, she did not receive any orders, and her supervisor went on leave from October 18 through 22 without informing anyone else about the status of the orders and did not respond when others in the office tried to contact him on her behalf.

The applicant alleged that when she went to the office on October 22, 2010, another staff member called their Servicing Personnel Officer (SPO), who said that the applicant would receive orders to work at the District office in the Deepwater Horizon Awards Unit. However, 45 minutes later, her supervisor called another member and told that member to tell the applicant that “today is her last working day with the Coast Guard.” Therefore, she was RELAD without warning or a pre-separation physical examination after serving more than four years on continuous active duty.

The applicant alleged that her supervisor knew about her medical issues long before she was RELAD and “that is why he told me to make sure to get them taken care of. He told me to set up my demo [pre-separation] physical, which I did. The demobilization physical was never completed. I did not receive a complete demobilization physical prior to being discharged. I never signed off on any physician’s report to be released from active duty.”

The applicant alleged that she underwent thyroid surgery on October 26, 2010, as scheduled but could not get her prescription for pain medication filled because she had no TriCare coverage since she had been discharged. She did not receive a Notice of Eligibility (NOE) for the surgery until November 5, 2010. After the surgery, she was incapacitated and could not communicate verbally for at least four months, and yet she had no income and was often denied insurance coverage.

The applicant alleged that when she reported for speech therapy in January 2011, she was denied treatment by TriCare, but the therapist told her about some exercises she could do at home. The applicant stated that she also could not apply for unemployment benefits or food stamps because the Coast Guard did not issue her a DD 214 until January 2011. Therefore, she used up all of her savings and relied on her credit card. Although the Coast Guard told her she would be covered for 180 days after her discharge under a TriCare TAMP, she was sometimes told that she was not covered and so could not get treatment. For example, she was not authorized any physical therapy for the pinched nerve in her neck and she was refused coverage when she visited the neurologist on April 6, 2011, to get the results of nerve conduction studies that had been conducted on December 7, 2010. A lieutenant told her she was not eligible for TAMP because Hurricane Katrina Salvage and Debris Operations, pursuant to which her active duty

orders were issued, was not a Contingency Operation. Therefore, she began receiving medical care through the Department of Veterans' Affairs (DVA).

The applicant stated that on February 18, 2011, she submitted Physician's Report/Disability Certification forms that the Coast Guard had sent her to be completed by her doctors so that she could get back on active duty and receive insurance coverage, but she never received any kind of response from the Coast Guard. In support of her allegations, the applicant submitted various military and medical records, which are included in the summary below.

SUMMARY OF THE RECORD

The applicant was called to active duty on July 31, 2006. On August 26, 2006, she strained her neck and left shoulder when another vehicle rear-ended her vehicle. Her medical records show occasional tests and treatment for neck and shoulder pain thereafter.

A February 13, 2007, ultrasound of the applicant's neck, performed following an abnormal MRI result, revealed "benign multinodular goiter with dominant mixed cystic and solid lesion noted. Will refer to endo for further evaluation." Another ultrasound on November 19, 2009, also showed the goiter and a history of thyroid disease.

A December 18, 2009, MRI of the left shoulder showed "tendinitis and possible small partial tear of the anterior supraspinatus tendon, rotator cuff. Complete tear and retraction is not seen. Small inferior spur at the AC joint noted. The inflammation is more prominent than seen on the prior study of 09 January 2007."

A January 15, 2010, MRI of the cervical spine showed disc protrusion at C5-C6 with mild canal stenosis but no cord impingement; disc protrusion at C6-C7 with no significant stenosis; a stable 1-centimeter lipoma in the C3 vertebral body; and a 3.3-centimeter multinodular goiter with a multicystic mass.

A May 4, 2010, TriCare Referral/Authorization form authorized treatment for the applicant's goiter and chronic shoulder pain.

On July 26, 2010, the applicant visited a Primary Care Clinic to undergo a pre-separation physical examination.

In an email dated August 16, 2010, a Coast Guard health services technician reminded the applicant that she needed to see the medical officer to get "labs, pap, mammo and a cg-4057 [on which a member agrees or disagrees with the physician's finding of fitness] filled out" to complete her separation physical. In an email dated August 20, 2010, the applicant was reminded that she had an appointment on August 24, 2010.

In an email dated August 23, 2010, the applicant's supervisor sent her an email telling her to schedule an appointment with the chief health services technician "regarding coordination of your currently scheduled surgery with your scheduled demobilization" and to "go over your medical condition which requires surgery and also discuss the post-surgery prognosis within the

context of your scheduled demobilization date. The doctor will then provide me with guidance when and if you can be scheduled for demobilization and discharge. Your current orders schedule you for discharge on 17 September. If your condition requires that additional orders be issued, we will take care of that in house. I just need medical to provide me with the appropriate date.”

On October 24, 2010, the Eighth District Commander issued the applicant a Notice of Eligibility (NOE) for “medical care and treatment appropriate for thyroid surgery and the accompanying post-operative period for four (4) weeks. ... The continued provisions of this NOE are contingent upon final determination of service connection and the absence of misconduct or fraud regarding your condition. Treatment and medication are authorized only for the condition covered by this NOE at the treatment facility designated by this command. You are required to obtain updated prognosis and duty status information from your designated provider. ... This NOE shall remain in effect no longer than four weeks unless extended by me or by Coast Guard Personnel Command.”

An October 26, 2010, surgical report shows that the applicant underwent a robotic trans-axillary subtotal thyroidectomy because of a “multinodular goiter with suspicious nodule and compressive symptoms.” One of the risks of the surgery discussed with the applicant was “injury to the recurrent laryngeal nerve with temporary or permanent hoarseness of voice.” Medical records show follow-up appointments on November 1, 2010, and November 19, 2010.

A January 11, 2011, memorandum ordered the applicant’s command to perform a line of duty determination for her. A January 29, 2011, report from the investigating officer found that the applicant’s injury was incurred in the line of duty when her vehicle was rear-ended by another vehicle in August 2006. The investigating officer recommended that the applicant’s orders be extended, that she be placed on medical hold until her medical issues were resolved, and that she receive incapacitation pay starting from her RELAD date.

On January 28, 2011, a petty officer wrote an email stating that the applicant’s supervisor advised her in July 2010 that she would be “demobed due to lack of work available for her.” The applicant was given instructions on how to get a “demob physical,” but the applicant “expressed concerns regarding her pending surgery and believed that she could not complete her demob because of it. ... In November 2010, [the applicant] contacted me regarding an error on her DD 214. I informed her that [another petty officer] was the person to contact, and I sent an email to [that petty officer] regarding the error.”

On January 28, 2011, another petty officer wrote an email stating that in early 2010 the applicant began mentioning medical issues she wanted to have taken care of and was diligent in going to appointments. However, the applicant’s supervisor stopped by their office more than once asking the applicant whether she had completed her demob physical, and the applicant told him that “it was being taken care of.”

On February 18, 2011, a doctor completed Physician’s Report and/or Disability Certification forms on which he noted that the applicant’s post-thyroidectomy prognosis was excellent

but that she needed speech therapy. He reported that she was medically incapacitated and would be unfit for military duties through April 18, 2011.

A March 1, 2011, TriCare Referral/Authorization form authorized treatment for a neurological consultation, motor nerve conduction test, and muscle test in one limb due to a cervical disc disease and left arm weakness.

On March 14, 2011, following a speech pathology evaluation, a doctor noted that the applicant had experienced “moderate dysphonia and voice dysfunction” following the thyroidectomy and that her speech therapy had been delayed due to insurance problems. The doctor recommended weekly speech therapy for four weeks. Medical reports show that the applicant began speech therapy on March 16, 2011.

On March 22, 2011, the District Commander extended the applicant’s NOE through May 31, 2011.

Medical records show that the applicant was scheduled for tests at a Radiology Imaging Center on April 27 and May 3, 2011.

On August 29, 2011, the applicant submitted a request for transfer to Retired Awaiting Pay status instead of electing to receive retired pay prior to age 60.

Undated claims for incapacitation pay show that the applicant requested incapacitation pay for the periods November 24, 2010, to December 24, 2010, and December 25, 2010, to January 25, 2011, and submitted affidavits from her civilian employer, the U.S. Post Office, that she did not work during those periods. Statements of Earnings and Leave show that the applicant received incapacitation pay for October 24, 2010, to January 25, 2011.

VIEWS OF THE COAST GUARD

On July 15, 2012, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief in this case. In so doing, the JAG adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC first summarized the facts as follows. The applicant “completed 17 separate voluntary orders issued under the authority of Title 10 USC § 12301(h) with no break in service from July 31, 2006, through October 22, 2010,” when she was RELAD to the Individual Ready Reserve (IRR). PSC stated that if the applicant had not had a pending medical issue, she would have been RELAD to the inactive status list pending her request for retirement because she had more than 30 years of service.

PSC stated that pursuant to COMDTINST M6150.3, since December 2008, reservists on active duty have been required to schedule and undergo an annual Periodic Health Assessment (PHA) during their birth month. PSC stated that there is no evidence that the applicant ever scheduled or underwent a PHA between December 2008 and her RELAD date but she was

treated for a variety of medical conditions while on active duty. PSC stated that on only three occasions, the applicant was released from the Coast Guard clinic with temporary work/duty limitations: From December 28, 2006, through January 11, 2007, she was not to lift more than 20 pounds due to cervicalgia; from February 2 to 23, 2007, she was not to do physical therapy, sports, heavy lifting, or prolonged standing or sitting due to cervicalgia; and on January 29, 2009, she began 72 hours of sick in quarters status due to a back muscle spasm.

PSC stated that the applicant initiated a demobilization physical examination on July 26, 2010. PSC stated that the Report of Physical Examination does not indicate whether any elements of the examination were left incomplete, "but there are indications that the demobilization physical was not completed due to Applicant's scheduled thyroidectomy surgery." PSC stated that the thyroidectomy was apparently not required because a doctor's note dated May 7, 2010, states that the applicant "desires thyroidectomy rather than continued follow-up or repeat FNA."

PSC stated that the applicant was officially informed that she would be RELAD in July 2010 and was provided a Career Intentions Worksheet, but she never submitted it. PSC stated that this notice was adequate pursuant to the Personnel and Pay Procedures Manual, which requires 45 days' notice.

PSC stated that the applicant's thyroidectomy was originally scheduled for September 30, 2010, and her active duty orders were extended past that date. However, on Friday, October 22, 2010, PSC learned that the surgery had not occurred and had been postponed until Tuesday, October 26, 2010. On Monday, October 25, 2010, PSC issued a Notice of Eligibility (NOE) for authorized medical care to cover the applicant's surgery and recovery. The NOE "provided the applicant with medical care and treatment and with the ability to receive incapacitation pay for any documented loss of civilian earned income during the authorized period. The initial NOE was issued for 30 days ... with the caveat that District Eight would provide the required medical documentation and line of duty determination. PSC-rpm did not receive a line of duty determination from District Eight until February 2, 2011—well over three months after the initial NOE authorization was issued." In response, on March 22, 2011, PSC extended the NOE through May 31, 2011, in particular to cover the applicant's speech therapy, which was needed as a consequence of the thyroidectomy.

PSC stated that on March 22, 2011, the applicant was advised that she would be transferred to an inactive status as of June 1, 2011, and was eligible to request early receipt of her retired pay pursuant to ALCOAST 399/09. However, on August 29, 2011, PSC received the applicant's request to be placed in Retired Awaiting Pay status as of December 1, 2011, and her request was approved.

PSC stated that the applicant was paid incapacitation pay for the original, 30-day NOE in the amount of \$3,704.09. Her request for incapacitation pay for the following 60 days, from November 24, 2010, through January 25, 2011, was never received, but she provided copies in the fall of 2011. On December 5, 2011, however, PSC learned that the transfer of \$6,990.34 had been returned because the applicant had closed her bank account. On December 6, 2011, the

sum was transferred to the applicant's new bank account, and she verified that she had received it.

PSC argued that the applicant's request for medical hold orders and full credit and pay for active duty through May 31, 2011, should be denied because there is no evidence that she was incapacitated when she was RELAD even though she was pending surgery. PSC noted that although there is no signed demobilization physical in the record, the applicant was presumptively fit for duty and submitted no documentation showing that she was unable to perform her duties when she was RELAD.

PSC stated that the applicant's release from active duty with an NOE to make her eligible for medical care and incapacitation pay from her RELAD date through May 31, 2011, "was consistent with established policies and procedures" for someone pending treatment for a condition incurred in the line of duty. PSC noted that the "maximum amount of incapacitation pay the Applicant can receive would be equal to full active duty pay and allowances (minus federal and state taxes)." PSC stated that the applicant has received a total of \$10,694.43 in incapacitation pay, after taxes, for the first 90 days of her NOE and has not yet submitted any request for incapacitation pay for the remainder of the NOE.

PSC stated that through the NOE, the applicant was authorized medical care and treatment from her RELAD date through May 31, 2011, and was eligible for incapacitation pay for the same period, although she only requested incapacitation pay for the first 90 days. She is eligible to request early receipt of retired pay but has not done so. PSC concluded that the applicant "has failed to substantiate any error or injustice with regard to her record" and so her request should be denied.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 21, 2012, the Board sent the applicant a copy of the views of the Coast Guard and invited her to respond within 30 days. The applicant requested an extension through December 31, 2012, but provided no reason for the extension. The Chair granted an extension through August 31, 2012, and asked the applicant to let her know the reason if she needed a longer extension. No reply to this inquiry was received, and no response to the views of the Coast Guard was received by August 31, 2012. On September 18, 2012, the Deputy Chair sent the applicant an email noting that no response had been received and informing her that she could request another extension if necessary. The Deputy Chair advised her that if no response was received by September 30, 2012, her case would be considered ready for deliberation and decision by the Board. The Board has received no further communications from the applicant.

APPLICABLE LAW

Title 10 U.S.C. § 1074 states that a member on active duty "is entitled to medical and dental care in any facility of any uniformed service" pursuant to joint regulations prescribed by the Secretaries.

Title 10 U.S.C. § 12301(h) states that a member may be voluntarily ordered to active duty or retained on active duty to receive authorized medical care.

Title 37 U.S.C. § 204(g) states the following:

(1) A member of a reserve component of a uniformed service is entitled to the pay and allowances provided by law or regulation for a member of a regular component of a uniformed service of corresponding grade and length of service whenever such member is physically disabled as the result of an injury, illness, or disease incurred or aggravated--

(A) in line of duty while performing active duty; ...

(2) In the case of a member who receives earned income from nonmilitary employment or self-employment performed in any month in which the member is otherwise entitled to pay and allowances under paragraph (1), the total pay and allowances shall be reduced by the amount of such income. In calculating earned income for the purpose of the preceding sentence, income from an income protection plan, vacation pay, or sick leave which the member elects to receive shall be considered.

Provisions of the Personnel Manual

Article 12.B.6.a. requires reservists being RELAD to undergo a pre-separation physical examination. Article 12.B.6.b. states that “[w]hen the physical examination is completed and the member is found physically qualified for separation, the member will be advised and required to sign a statement on the reverse side of the Chronological Record of Service, CG-4057, agreeing or disagreeing with the findings.” Article 12.B.6.c. states that “[i]f a member objects to a finding of physically qualified for separation, the Standard Form 88 together with the member’s written objections shall be sent immediately to [PSC] for review.”

Provisions of the Medical Manual

Article 3.F.1.c. of the Medical Manual states that members “are ordinarily considered fit for duty unless they have a physical impairment (or impairments) which interferes with the performance of the duties of their grade or rating. A determination of fitness or unfitness depends upon the individual’s ability to reasonably perform those duties.”

Article 3.B.5. provides that when a member objects to a finding of qualified for separation or release, PSC will review the record to make a final determination as to whether the officer will be separated or processed under the Physical Disability Evaluation System (PDES).

Article 3.B.6. provides that “[w]hen a member has an impairment (in accordance with section 3-F of this Manual) an Initial Medical Board shall be convened only if the conditions listed in paragraph 2-C-2.(b) [of the PDES Manual] are also met. Otherwise the member is suitable for separation.”

Provisions of the PDES Manual

Chapter 2.A.15. of the PDES Manual defines “fit for duty” as “[t]he status of a member who is physically and mentally able to perform the duties of office, grade, rank or rating.”

Chapter 2.A.38. defines “physical disability” as “[a]ny manifest or latent physical impairment or impairments due to disease, injury, or aggravation by service of an existing condition, regardless of the degree, that separately makes or in combination make a member unfit for continued duty.”

Chapter 2.C.2. states the following:

b. The law that provides for disability retirement or separation (10 U.S.C., chapter 61) is designed to compensate members whose military service is terminated due to a physical disability that has rendered him or her unfit for continued duty. That law and this disability evaluation system are not to be misused to bestow compensation benefits on those who are voluntarily or mandatorily retiring or separating and have theretofore drawn pay and allowances, received promotions, and continued on unlimited active duty status while tolerating physical impairments that have not actually precluded Coast Guard service. The following policies apply.

(1) Continued 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. This presumption may be overcome if it is established by a preponderance of the evidence that:

(a) the member, because of disability, was physically unable to perform adequately in his or her assigned duties; or

(b) acute, grave illness or injury, or other deterioration of the member’s 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.

(2) A member being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the conditions in paragraphs 2.C.2.b.(1)(a) or (b) are met.

c. If a member being processed for separation or retirement for reasons other than physical disability adequately performed the duties of his or her office, grade, rank or rating, the member is presumed fit for duty even though medical evidence indicates he or she has impairments.

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e. An evaluatee whose manifest or latent impairment may be expected to interfere with the performance of duty in the near future may be found “unfit for continued duty” even though the member is currently physically capable of performing all assigned duties. Conversely, an evaluatee convalescing from a disease or injury which reasonably may be expected to improve so that he or she will be able to perform the duties of his or her office, grade, rank, or rating in the near future may be found “Fit for Duty.”

Provisions of the Reserve Policy Manual

Chapter 6.A.1. of the Reserve Policy Manual (RPM) provides that

[m]edical and dental care shall be provided for reservists incurring or aggravating an injury, illness, or disease in the line of duty, and physical examinations shall be authorized to determine fitness for duty or disability processing. Pay and allowances shall be authorized, to the extent permitted by law, for reservists who are not medically qualified to perform military duties, because of an injury, illness, or disease incurred or aggravated in the line of duty. Pay and allowances shall also be authorized, to the extent permitted by law, for reservists who are fit to perform military

duties but experience a loss of earned income because of an injury, illness, or disease incurred or aggravated in the line of duty.

Under Chapter 6.A.2, “earned income” is defined as “[i]ncome from nonmilitary employment, including self-employment. This includes normal wages, salaries, professional fees, tips, or other compensation for personal services actually rendered, as well as income from taxable unemployment benefits, income protection plans, vacation pay, and sick leave that the member elects to receive.”

Under Chapter 6.A.3.a., a “reservist who incurs or aggravates an injury, illness, or disease in the line of duty is entitled to medical and/or dental treatment as authorized by 10 U.S.C. 1074 or 1074a in an approved medical treatment facility or authorized civilian healthcare provider.” However, Figure 6-1 states that the reservist is entitled to “medical and dental care *appropriate for the disability* until it cannot be materially improved by further hospitalization or treatment.”

Chapter 6.A.3.b. provides the following:

Medical and dental care shall be provided until the member is found fit for military duty, or the injury, illness, or disease cannot be materially improved by further hospitalization or treatment and the member has been separated or retired as the result of a Coast Guard Physical Disability Evaluation System (PDES) determination (See Physical Disability Evaluation System, COMDTINST M1850.2 (series)). Each case in which the member is projected to remain incapacitated for more than six months shall be referred to the PDES.

According to Chapter 6.A.4. of the RPM,

b. A reservist who is unable to perform military duties due to an injury, illness, or disease incurred or aggravated in the line of duty is entitled to full pay and allowances, including all incentive and special pays to which entitled, if otherwise eligible, less any earned income as provided under 37 U.S.C. 204(g). ...

c. A reservist who is able to perform military duties but demonstrates a loss of earned income as a result of an injury, illness, or disease incurred or aggravated in the line of duty is entitled to pay and allowances, including all incentive and special pay to which entitled, if otherwise eligible, but not to exceed the amount of the demonstrated loss of earned income or the amount equal that provided by law or regulation for an active duty member of corresponding grade and length of service, whichever is less. ...

d. Pay and allowances shall be paid only during the period a member remains not fit for military duties or demonstrates a loss of earned income as a result of an injury, illness, or disease incurred or aggravated in the line of duty. The member’s entitlement to incapacitation pay shall terminate on the date that one of the following actions occurs:

- (1) The member is found FFFD,
- (2) The member no longer demonstrates a loss of earned income,
- (3) The member is separated or retired, or
- (4) Commandant (G-WTR) determines that it is no longer in the interest of fairness and equity to continue pay and allowances under 37 U.S.C. 204(g) or 204(h).

e. Payment in any particular case may not be made for more than six months without review of the case by Commandant (G-WTR) to ensure that continuation of military pay and allowances is warranted. In making the determination whether pay and allowances should continue beyond the initial six months, Commandant (G-WTR) shall consider if the member has resumed his or her

civilian occupation, undertaken a new position in the same occupation, or taken a position in a new occupation. These factors are to be used when determining if it is in the interest of fairness and equity to continue benefits.

Under Chapter 6.B.3.a., a “Notice of Eligibility (NOE) for authorized medical treatment is issued to a reservist not serving on active duty, to document eligibility for medical care as a result of an injury, illness, or disease incurred or aggravated in the line of duty.” NOEs should be issued “as soon as possible but not later than three working days after the initial medical evaluation and prognosis is completed.” RPM, Chap. 6.B.3.b. Under Chapter 6.b.3.c., “[u]pon determination that the member will require treatment beyond the first three-month period of the NOE, commands shall notify the servicing ISC (pf) and may request extensions in one-month increments. ... ISC (pfs) may not authorize extensions to allow an NOE to exceed six months.” Chapter 6.B.3.d. provides that “[a]s soon as a medical officer or designated authority determines that a reservist is expected to remain incapacitated for more than six months, the case shall be referred to the Coast Guard Physical Disability Evaluation System (PDES).”

Chapter 6.B.4. provides the following instructions for claiming incapacitation pay:

Claims for incapacitation pay shall be submitted to the servicing ISC (pf) via the chain of command. ... If submitting a claim for pay and allowances due to a NFFD status (unable to perform military duties), the member must submit a statement declaring any earned income ... , enclose a copy of the NOE, medical officer’s certification ... , and a letter from his or her civilian employer containing:

- (1) The employer’s mailing address,
- (2) Supervisor’s name and phone number,
- (3) Certification and reason that the member has not returned to work, and
- (4) Documentation of any normal wages, salaries, professional fees, tips, vacation pays, sick leave, disability insurance, or other compensation (if any) that the member has received.

ALCGRSV 058/10 was issued on October 19, 2010, to “outline when a medical hold is appropriate. ... Retention under [10 USC 12301(h) and the Reserve Policy Manual] may be appropriate for reservists who become ill or are injured while serving on orders for a period of 31 days or more. Medical hold determinations will include the following: the severity of illness/injury, prognosis/expected recovery time, anticipated time for return to available for full duty (AFFD) status, line of duty (LOD) determination, input from the medical officer (e.g., assessment of member’s medical condition, identification of disqualifying or pre-existing condition, referral to MEB, interim LOD determination), and the member’s documented consent to be retained on active duty. Medical holds shall not be used to complete individual medical readiness (IMR) elements such as Periodic Health Assessments (PHA), dental examinations or immunizations.” PSC-rpm was designated as the approval authority for medical holds.

Chapter 8.B.4. of the Reserve Policy Manual states that enlisted reservists “shall be removed from active status after completing 30 total years of service,” although the Commandant may defer the transfer to inactive status to satisfy a specific Service need.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's release from active duty.

2. The applicant alleged that her RELAD on October 22, 2010, was erroneous and unjust and that she should have been retained on active duty through May 31, 2011. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust. 33 C.F.R. § 52.24(b). 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." *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The applicant alleged that her RELAD was erroneous and unjust because she never completed a pre-separation physical or signed a CG-4057 form agreeing or disagreeing with the findings of such a physical as required by Article 12.B.6. of the Personnel Manual. However, the preponderance of the evidence shows that the applicant did undergo a pre-separation physical examination on July 26, 2010, although it is not clear whether all of the necessary laboratory and gynecological tests were performed. In addition, although the medical records show that the applicant had a goiter and had suffered from occasional neck and shoulder pain since a motor vehicle accident in 2006, there is insufficient evidence of permanent disability for the Board to conclude that the applicant was not fit for duty at the time she was RELAD. Under Chapter 3.F.1. of the Medical Manual and Article 2.C.2. of the PDES Manual, members are presumptively fit for duty and may be found fit for separation and administratively separated even if they have impairments. Moreover, the Board notes that there is some evidence that the applicant desired to and did delay completion of her pre-separation physical despite repeated reminders to complete it and specifically to complete a CG-4057. Therefore, the Board is not persuaded that the applicant's RELAD was rendered erroneous or unjust just because she apparently failed to timely complete all the elements of her pre-separation physical and a CG-4057 before her RELAD date even though it was extended for more than a month.

4. The applicant alleged that she should have been retained on active duty instead of being issued an NOE. The Board can find no statute or regulation that entitled the applicant to retention on active duty. Whether a reservist is retained on active duty or RELAD and issued an NOE providing eligibility for medical care and incapacitation pay is a discretionary decision to be made by PSC based on the severity of the impairment and the prognosis. The applicant has not proved that PSC abused its discretion in determining that she should be RELAD and issued an NOE instead of being retained on active duty. Moreover, whether she was on active duty or RELAD with an NOE, the applicant was entitled to no more pay than her active duty pay and allowances offset by any civilian pay she received. Correcting her record to show that she was retained on active duty would not legally entitle her to both her active duty pay and her civilian pay from the U.S. Post Office. 10 U.S.C. § 204(g)(2). The Board notes that the applicant has already applied for and received incapacitation pay through January 25, 2011, and may be eligible for it from January 26 through May 31, 2011, if she did not receive civilian pay equal to or in excess of her military pay and allowances during that period.

5. The applicant complained that she was denied TriCare coverage for treatment of her neck and shoulder pain while the NOE was in effect. However, the NOE was issued only for the applicant's thyroidectomy and recovery therefrom. She was not entitled to TriCare coverage for other service-connected medical conditions under the NOE. Therefore, the command's delay of the line of duty determination and the expiration of the NOE did not cause the applicant to be denied TriCare coverage for her neck and shoulder pain. However, the applicant was eligible to seek medical care through the DVA for her neck and shoulder and other service-connected medical conditions that were not covered by the NOE.

6. To the extent that the applicant forwent medical care because she was denied insurance between her RELAD date and May 31, 2011, changing her status during that period from RELAD with an NOE to active duty would not help her. To the extent that she paid for medical care for expenses related to her thyroidectomy, such as expenses for speech therapy, without reimbursement between her RELAD date and May 31, 2011, the applicant is equally entitled to reimbursement whether under an NOE or on active duty. The applicant has not proved that she paid out of pocket for thyroidectomy-related medical expenses for which she has not been reimbursed, but if she did, those medical bills are covered under the NOE and so should be covered and reimbursed through TriCare.

7. Therefore, the applicant has not proved by a preponderance of the evidence that her RELAD with an NOE on October 22, 2010, constituted an error or injustice, and her request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR (Retired), for correction of her military record is denied.

Christopher M. Dunne

Randall J. Kaplan

Jennifer A. Mehaffey