


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-249

 LCDR

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on August 18, 2017, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 28, 2018, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a Lieutenant Commander (LCDR) currently serving on active duty in the Coast Guard, asked the Board to correct her record by creating a DD 214 showing that she served on Initial Active Duty for Training (IADT) in the Coast Guard Reserve from July 13, 2001, to May 31, 2002. She alleged that this information is missing from her record and that the same thing happened to all of her classmates from the Naval Academy Preparatory School (NAPS). In support of her application, she submitted a copy of her transfer orders, which show that she was ordered to report to NAPS from July 13, 2001, to May 31, 2002, as a reservist on IADT.

SUMMARY OF THE RECORD

On April 22, 2001, the applicant received a letter from the Coast Guard Academy stating that she had been accepted to attend the NAPS program and should expect travel orders to report to the Academy on July 11, 2001. The applicant actually enlisted in the Coast Guard Reserve on July 13, 2001, and attended NAPS until May 18, 2002, as a reservist on IADT orders. She was discharged from the Reserve on May 18, 2002, upon graduating from NAPS, and authorized to travel home.

The applicant's record contains leave and earnings statements (LESEs) which show that she received the amount of pay of a cadet from July 13, 2001, to May 18, 2002, but the pay grade

shown on the LESEs is E-1C, which is not a pay grade that appears in the published pay charts.¹ Her record does not contain a DD 214 reflecting her time at NAPS.

The applicant reported to the Coast Guard Academy as an enrolled cadet on July 1, 2002. On May 17, 2006, she graduated from the Coast Guard Academy and received her commission as an active duty officer.

VIEWS OF THE COAST GUARD

On April 24, 2018, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief in accordance with the findings and analysis provided in a memorandum submitted by Commanding Officer, Coast Guard Personnel Service Center (PSC).

PSC stated that the applicant should receive a DD 214 reflecting her time in the NAPS program because while there is no clear Coast Guard policy stating that NAPS cadets are in an enlisted status during their tenure at the preparatory school, current Coast Guard and Navy policy clearly state that they are. PSC noted that COMDTINST 5354.6A officially replaced the NAPS program and states that members at the preparatory school are enlisted. PSC argued that it stands to reason that NAPS students were in fact enlisted as well, which would align with the Navy's practice of considering NAPS students as enlisted. Moreover, PSC noted, pursuant to the Navy policy in BUPERSINST 1900.8D and a March 7, 2018, email from the Coast Guard's NAPS Command Services Director, members graduating from NAPS are to be given a DD 214 documenting their time at NAPS as active duty when they graduate and become a cadet at either the Coast Guard or Naval Academy.

In addition to recommending that the applicant be issued a DD 214 reflecting her time in the NAPS program, PSC suggested that other corrections be made to her record before creating the DD 214. First, PSC recommended that the applicant's July 13, 2001, Reserve enlistment contract be corrected to show that her beginning pay grade is CADET vice NAPS. Second, PSC recommended that the applicant's correct pay grade during her time in the NAPS program be determined and that she receive back pay if she was underpaid during her time in NAPS. PSC noted that the applicant's LESs for her time in NAPS state that she was paid as an E-1C but that she actually received Cadet pay instead of E-1 pay, which is considerably higher. Finally, PSC recommended that a Statement of Creditable Service be created for the applicant to verify her dates of service in NAPS.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 30, 2018, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. The BCMR did not receive a response.

¹ The official DoD basic pay charts effective July 1, 2001, and January 1, 2002, do not list a pay grade E-1C. They do, however, list a Cadets/Midshipmen pay grade of \$600.00 and \$734.10 per month, respectively. They also show that E-1 pay is higher than cadet pay. <https://www.dfas.mil/militarymembers/payentitlements/military-pay-charts.html> (last visited on July 31, 2018).

APPLICABLE LAW AND POLICY**10 U.S.C. § 101**

Title 10 U.S.C. § 101(d)(1) defines “active duty” as including “full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.”

37 U.S.C. § 203

Title 37 U.S.C. § 203(c) states that cadets at the United States Naval Academy are entitled to monthly cadet pay at the monthly rate equal to 30% of the basic pay of a commissioned officers in the pay grade O-1 with less than two years of service.

Title 37 U.S.C. § 203(e)(1) provides that students at the United States Naval Academy Preparatory School selected to attend the preparatory school from civilian life are entitled to monthly student pay at the same rate as provided for cadets and midshipmen under subsection (c).

Coast Guard Personnel Manual, COMDINST M1000.6A

Chapter 12 states that the Commander, (CGPC) may authorize or direct an enlisted member to separate for the convenience of the Government to accept a commission or appointment or acceptance into a program leading to a commission or appointment in any Armed Forces branch, for active duty only.

COMDTINST 1531.2A, Coast Guard Academy Preparatory Program

Issued on October 9, 1997, and applicable to enlisted personnel seeking to attend NAPS, this instruction states that the Coast Guard has participated in the U.S. Navy’s NAPS program since 1978 and that the course of instruction at NAPS is designed to provide qualified personnel with an appointment to the Coast Guard Academy.

ALCOAST 403/08, Coast Guard Academy Scholarship

ALCOAST 403/08 was issued on August 22, 2008, cancels COMDTINST 1531.2 and states that the Coast Guard Academy Scholarship Program replaces CGRIT² and NAPS. It states that scholars accepted to the program are enlisted at the rank of E-2 (or current enlisted pay grade if higher).

² COMDTINST 5354.6A., issued on March 25, 1997, concerns the Coast Guard Recruiting Initiative (CGRIT) for the Twenty-First Century to the Coast Guard Academy. Paragraph 5.a. states that CGRIT’s major focus is to increase the pool of qualified applicants seeking appointments to the Academy by providing one year of funding to students for their collegiate education at Historically Black Colleges and Universities (HBCUs) and minority institutions (MIs) enrolled in the program. Paragraph 6 states that CGRIT program students enter the Coast Guard Reserve in pay grade E-2 as a “cadet candidate.” CGRIT candidates are entitled to an active duty armed forces identification card and the appropriate pay and benefits prescribed by Congress.

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. Although the application was not filed within three years of the applicant's discharge from NAPS, it is considered timely because she has remained on active duty in the interim.³

2. The applicant alleged that her record is erroneous because it does not include a DD 214 showing that she served on Initial Active Duty for Training (IADT) in the Coast Guard Reserve from July 13, 2001, to May 31, 2002. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁴ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁵

3. The record shows that the applicant enlisted in the Coast Guard Reserve and began serving on IADT orders on July 13, 2001, for the purpose of attending NAPS. She continued serving on IADT until she completed NAPS and was discharged on May 18, 2002. Under 10 U.S.C. § 101(d)(1), the applicant's time at NAPS counted as active duty⁶ and so the Board finds that the applicant should receive a DD 214 documenting this period of active duty from July 13, 2001, through May 18, 2002. Although the applicant's initial orders to NAPS stated that the orders would end on May 31, 2002, her separation orders show that she was discharged and authorized travel home on May 18, 2002.

4. The applicant's LESes show her pay grade as E-1C, which is not a pay grade shown in the pay tables or Pay Manual. PSC recommended that her LESes be corrected to the appropriate pay grade and that she be granted any back pay owed to her, but PSC did not state what the applicant's pay grade should have been during her time at NAPS. The Board has encountered paygrade E-1C before, however,⁷ and it is not clear how the E-1C shown on the applicant's NAPS LESes is prejudicial to her. The dollar amounts on her LESes show that while at NAPS she received pay in an amount that equaled the pay for cadets and midshipmen on the basic pay chart. This pay rate was correct because in accordance with 37 U.S.C. § 203(e)(1), students at NAPS were entitled to monthly pay at the same rate as that provided for cadets and

³ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

⁴ 33 C.F.R. § 52.24(b).

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

⁶ The Board notes that if an officer receives a commission upon graduating from the Coast Guard Academy, the officer's time as a cadet does not count toward their total active duty time. 10 U.S.C. § 971.

⁷ In BCMR Docket No. 2013-027, the applicant's paygrade while attending NAPS was denoted as E-1C.

midshipmen. Therefore, the Board finds that the preponderance of the evidence shows that the applicant was properly paid at the rate of a cadet even though she was not a cadet while she attended NAPS, and there are no grounds for correcting her LESes or awarding her back pay.

5. What rank and paygrade the applicant held during NAPS and after completing NAPS and being discharged are different questions, however. It is her rank and pay grade after completing NAPS that should appear on her DD 214 documenting her discharge from active duty. In BCMR Docket No. 2013-027, the applicant had received a DD 214 showing that his rank upon graduating from NAPS was cadet and his pay grade was E-1C even though he was not a cadet and had enlisted in the Reserve to attend NAPS, as this applicant did. That applicant showed that the Coast Guard had corrected a fellow student's DD 214 to show that his rate and paygrade upon graduating from NAPS were SA/E-2—the same rate and paygrade that current graduates receive—and the Board granted his request for the same correction. Therefore, because the applicant is entitled to a DD 214 documenting her active duty from July 13, 2001, to May 18, 2002, the Board finds that the Coast Guard should issue her a DD 214 covering this period and showing that her rate and paygrade upon her release from active duty on May 18, 2002, were SA and E-2, respectively. As PSC recommended, the Coast Guard should also prepare a Statement of Creditable Service for her.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of LCDR [REDACTED], USCG, for correction of her military record is granted as follows:

The Coast Guard shall issue her a DD 214 showing that she served on active duty from July 13, 2001, to May 18, 2002, and was an SA/E-2 upon her release from active duty on May 18, 2002. The Coast Guard shall also prepare a Statement of Creditable Service and ensure that it accurately reflects all of her military service including her time in NAPS.

September 28, 2018

