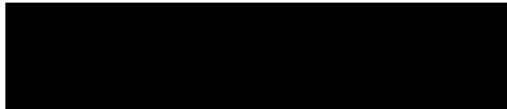


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2015-121



FINAL DECISION

This is a proceeding 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 receipt of the applicant's completed application on June 9, 2015, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April xx, 2016, 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 Coast Guard aviator on active duty, asked the Board to correct his record by changing the date of his Aviation Career Incentive Pay (ACIP) from April 12, 2010, to August 22, 2009, and to pay him the back pay he would be due as a result of this correction. He alleged that he became entitled to ACIP as of August 22, 2009, because his Introductory Flight Screening (IFS) start date was August 22, 2009, and that other aviators that he knows have had their ACIP start dates corrected to their respective IFS start dates. The applicant argued that he is entitled to the ACIP as of August 22, 2009, because COMDTINST 7220.39 states that ACIP is authorized for officers with an aeronautical designation and officers undergoing flight training involved in the frequent and regular performance of operational or proficiency flying duty. Specifically, he noted that paragraph 1.h. of Enclosure (1) to COMDTINST 7220.39 states that "aviation service begins on the date that a member first reported on orders to an aviation facility having aircraft in which the member will receive flight training." He asserted that this enclosure refers to his IFS start date of August 22, 2009, and not when he reported for duty at Naval Air School [REDACTED] on April 12, 2010, for primary military flight training.

In support of his allegations, the applicant submitted a series of emails between other aviators and various yeoman discussing when ACIP begins. A March 3, 2014, email from YNC E to several members stated that "entitlement to flight pay begins when you first begin IFS."

The applicant also submitted a copy of his View Paycheck page from the Coast Guard personnel database (Direct Access), and in the comments section, the applicant highlighted the sections which state that his ACIP entitlement is determined using the standard gate table, and that his OPFLY time as of December 31, 2014, toward Gate 1 (12th year of aviation service) is 04 years, 09 months.

The applicant also submitted a copy of a medical certificate third class and student pilot certificate, which indicates that as of August 4, 2009, he had met the medical standard prescribed in part 67, Federal Aviation Regulations, for this class of medical certificate. He also submitted a copy of a log book from his IFS training which shows that the applicant completed various flight training exercises from August 2009 through September 2009.

SUMMARY OF THE RECORD

The applicant accepted an appointment in the Coast Guard on June 30, 2003, and began his education at the Coast Guard Academy, which he completed in 2007. After serving aboard a Coast Guard cutter for a few years, he received Duty Under Instruction (DUINS) orders for IFS. He began IFS at a civilian facility in [REDACTED] on August 22, 2009, to receive his private pilot's license.

After completing IFS, the applicant attended ground training and then began primary military flight training at NAS [REDACTED] on April 12, 2010. Upon successful completion of primary military flight training, he received his aeronautical designation. His Aviation Service Entry Date (ASED) is recorded in his Coast Guard records as April 12, 2010, and his ACIP began on April 12, 2010, the date he reported to NAS [REDACTED].

APPLICABLE LAW

United States Code

Title 37 U.S.C. § 301a (the ACIP statute) provides the following in pertinent part:

Subsection (a)(1) states that a member is entitled to ACIP while he

- is entitled to basic pay; and
- frequently and regularly performs flying duty required by orders.

Subsection (a)(2) restricts payment of ACIP to Regular and Reserve officers who

- hold or are in training leading to an aeronautical designation; and
- engage and remain in aviation service on a career basis.

Subsection (a)(6) defines "aviation service" as "service performed by an officer ... while holding an aeronautical rating or designation or while in training to receive an aeronautical rating or designation."

Coast Guard Aviation Incentive Pay Instruction, COMDTINST 7220.39

Paragraph 4 of COMDTINST 7220.39 provides that “ACIP is authorized for officers with an aviation designation and officers undergoing flight training involved in the frequent and regular performance of operational or proficiency flying duty. HDIP is authorized for officers and enlisted members not entitled to ACIP who participate in frequent and regular aerial flight as a crew member or a noncrew member.”

Paragraph 1.h. of Enclosure (1) to the instruction states that “[a]viation service begins on the date that a member first reports on competent orders to an aviation facility having aircraft in which the member will receive flight training. If a member in training leading to the award of an aviator designation receives ground training and flight training at separate facilities, aviation service begins on the date the member reports to the flight training facility.”

VIEWS OF THE COAST GUARD

On November 23, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case.

The JAG argued that relief should be denied because the applicant’s request is inconsistent with Coast Guard policy regarding the establishment of an aviator trainee’s Aviation Service Entry Date (ASED). The JAG stated that because the applicant did not have a private pilot’s license when he was selected by the Coast Guard for flight school, he was sent to a civilian facility on August 22, 2009, to complete IFS and receive his private pilot’s license under DUINS, and so August 22, 2009, is not considered his ASED, which is the date a pilot becomes entitled to ACIP. The JAG argued that the applicant’s ASED is April 12, 2010, because that was the date he reported to NAS [REDACTED] for primary military flight training and that at no point in his career was his assignment to IFS ever considered an assignment to an aviation facility having aircraft for aviation training (NAS [REDACTED]).

The JAG noted that an aviator’s ASED is important because under current ACIP regulations, payment of ACIP begins once the ASED is assigned, and any prerequisite training performed prior to an assignment to primary military flight training in military training aircraft does not qualify Student Naval Aviators (SNAs) for ACIP. The JAG noted that current ASED policy contained in COMDTINST 7220.39 states that “[a]viation service begins on the date that a member first reports on competent orders to an aviation facility having aircraft in which the member will receive flight training. If a member in training leading to the award of an aviator designation receives ground training and flight training at separate facilities, aviation service begins on the date the member reports to the flight training facility.” The JAG argued that this instruction is under revision to clarify current policy.

The JAG stated that its determination of an officer’s ASED (the ACIP start date) comports with U.S. Navy policy. The JAG explained that the Navy determined that, while some applicants already have a private pilot’s license before applying for Navy flight training and others do not, having the license “is a reliable predictor of successful primary military flight training completion.” Therefore, the Navy, Marine Corps, and Coast Guard began requiring

applicants for military flight training who do not already have a license to complete IFS at a civilian facility under DUINS before being allowed to start the rigorous ground training and then primary military flight training “once their aptitude for primary military flight training was indicated by earning an FAA private pilot license.” Therefore, the JAG argued, the applicant’s ASED is not the date on which he reported to IFS.

The JAG argued that at no time were any of these contracted civilian aviation training establishments for IFS ever considered to be the flight training facilities having aircraft in which SNAs would receive primary military flight training. The JAG stated that “IFS was and is a prerequisite training requirement intended to save training costs by screening SNAs for flight training aptitude prior to beginning the expensive military aviation ground and flight school process.” In addition, he added, it would be an unintended inequity for SNAs not possessing an FAA private pilot’s license to begin accruing ACIP and aviation service time for future ACIP increases several months prior to those SNAs who have already earned their licenses but must complete a lengthy ground training syllabus prior to assignment to the NAS for primary military flight training.

The JAG stated that a Naval officer does not receive his aeronautical designation upon completing IFS. Instead, the officer receives his aeronautical designation after successful completion of military flight training at the NAS. The JAG noted that this Navy policy is virtually identical to the current Coast Guard policy. Therefore, the JAG concluded, the applicant’s request to change his ASED date to the day he began IFS is “without merit and should be denied.”

APPLICANT’S REPOSE TO THE VIEWS OF THE COAST GUARD

On December 10, 2015, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within 30 days. The BCMR did not receive a response.

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. The application was timely filed.
2. The applicant argued that his ACIP date should be changed from April 12, 2010, to August 22, 2009, because he began IFS on August 22, 2009, and is entitled to ACIP as of the date he started IFS. In 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.¹ Absent evidence to the

¹ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the “clear and convincing” evidence standard recommended by the Coast

contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”²

3. The applicant argued that his ACIP start date, or ASED, should be changed because COMDTINST 7220.39 states that ACIP is authorized for officers with an aeronautical designation and officers undergoing flight training leading to an aeronautical designation involved in the frequent and regular performance of operational or proficiency flying duty. He argued that his aviation service began when he reported to a civilian flight school for IFS on August 22, 2009, and not when he reported for primary military flight training at NAS [REDACTED] on April 12, 2010.

4. Paragraph 1.h. of Enclosure (1) to COMDTINST 7220.39 states that aviation service begins on the date a member first reports on competent orders to an aviation facility having aircraft in which the member will receive flight training, and if the member in training leading to an aeronautical designation receives ground training and flight training at separate facilities, then aviation service begins on the date the member reports to the flight training facility. The record shows that because the applicant did not hold a private pilot’s license at the time he was accepted to flight school, he was sent on orders to a civilian facility for IFS to receive his private pilot’s license before receiving orders for ground training followed by primary military flight training at NAS [REDACTED] on April 12, 2010. He received his aeronautical designation upon completing primary military flight training at the NAS, not upon completing IFS.

5. The JAG argued that the applicant’s ASED is April 12, 2010, the day he reported to NAS [REDACTED] and began primary military flight training to receive his aeronautical designation. The JAG asserted that his civilian pilot training (IFS) is not considered primary military flight training leading to an aeronautical designation, and therefore his ASED is not the date he reported to IFS. The JAG stated that the Coast Guard requires that members heading to flight school obtain a private pilot’s license before attending flight school because it has found that possession of a private pilot’s license is a reliable predictor of success at primary military flight training. Moreover, the JAG stated that its policy regarding ACIP is consistent with the Navy’s policy, and it is the Navy who began requiring members to obtain a private pilot’s license before being sent to ground training and military flight school. The Board notes that there is some degree of ambiguity in COMDTINST 7220.39 because it does not clearly indicate whether the “aviation facility having aircraft in which the member will receive flight training” must involve military flight training at a military facility or whether any training for any type of pilot’s license qualifies the member for ACIP.

6. Title 37 U.S.C. § 301a, the ACIP statute, provides that payment of ACIP is restricted to officers who hold or are in training leading to an aeronautical designator. The applicant started IFS on August 22, 2009, to receive a pilot’s license, but was not considered to be in training to receive his aeronautical designator until he reported for primary military flight

Guard and adopting the “preponderance of the evidence” standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

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

training at NAS ██████████ on April 12, 2010. He received the designator after completing the primary military flight training. Therefore, the Board finds that his date of ACIP eligibility is correctly noted in his record as April 12, 2010, because that is the date he reported to NAS ██████████ on April 12, 2010, for primary military flight training.

7. Although the language in COMDTINST 7220.39 is ambiguous, the Board finds that the Navy's and Coast Guard's interpretation of the ACIP statute and rules is not unreasonable or clearly erroneous. IFS is apparently a recently added preliminary hurdle for members who do not already have a private pilot's license and it does not lead directly to an aeronautical designation because before receiving such a designation, the member must first complete ground training and primary military flight training at an NAS. The Coast Guard's policy about aeronautical designations is not expressly prohibited or contradicted by statute or regulation, and its interpretation of the statute and policy are reasonable.

8. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that Coast Guard's policy regarding the ASED and ACIP is erroneous, and it does not shock the Board's sense of justice.³ Accordingly, the Board finds that the applicant has not proven by a preponderance of the evidence that his ASED should be corrected to August 22, 2009. His request should be denied because he has not proven by a preponderance of the evidence that he began training for his aeronautical designator on August 22, 2009. Instead, that is the date he began training for his private pilot's license. He has not shown that his ASED is incorrect or that he is owed back pay of ACIP.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ For the purposes of the BCMRs, "[i]njustice", when not also "error", is treatment by the military authorities, that shocks the sense of justice, but is not technically illegal." *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976).

ORDER

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

April 8, 2016

