

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2013-027



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 November 20, 2012, and subsequently prepared the final decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 8, 2013, 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 asked the Board to correct the DD 214 that he received upon his discharge from the Naval Academy Preparatory School (NAPS) to show his rate as seaman apprentice (SA) instead of cadet and to show his pay grade as E2 instead of E1C. The applicant attended NAPS from July 6, 2005 to May 19, 2006. After completing the NAPS program, he was appointed a cadet at the Coast Guard Academy. He graduated from the Coast Guard Academy and is currently a LTJG on active duty. The applicant asserted that the changes to his DD 214 will allow him to count the time he spent at NAPS as creditable service for pay purposes.

The applicant stated that while at NAPS he was never considered to be a cadet. He asserted that many current Coast Guard officers who attended NAPS are credited with that time for pay purposes. He stated that Coast Guard personnel advised him to file with the BCMR to have this problem corrected.

The applicant submitted a DD 214 of another Coast Guard officer who attended NAPS during the same time as the applicant. On June 22, 2012, the Coast Guard administratively corrected that applicant's DD 214 to show his rate as SA and his pay grade as E2.

VIEWS OF THE COAST GUARD

On April 10, 2013, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board administratively close the applicant's case as recommended by the Commander, Personnel Service center (PSC). PSC recommended that the application be administratively

closed because the Coast Guard has corrected the applicant's record through the issuance of a DD 215 to show his rate as "cadet candidate" and his pay grade as E2. PSC stated that according to the Coast Guard Academy Scholar Program Administration instruction, COMDTINST 5354.2, that became effective on February 17, 2010, individuals attending Coast Guard Scholar cadet programs shall be enlisted in the regular Coast Guard in pay grade E-2 and have the title "cadet candidate."

Although the JAG agreed that the applicant's case should be administratively closed, the JAG commented that the applicable regulation was the Coast Guard Recruiting Initiative for the Twenty-First Century (CGRIT) to the U.S. Guard Academy, COMDTINST 5354.6a. (1997). The JAG asserted that paragraph 6 of this regulation states that CGRIT students are given the title "cadet candidate." The JAG concluded that because the Coast Guard has accurately corrected the applicant's DD 214 to show his rate as "cadet candidate" and his pay grade as E2, the application should be administratively closed.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On May 14, 2013, the applicant responded to the views of the Coast Guard and argued that his application should not be administratively closed because he was not granted all relief that he had requested. The applicant does not object to the correction of his DD214 to show his pay grade as E2. However, he disagreed with the correction showing his rate as "cadet candidate." He stated that to have his NAPS time calculated into his pay base date, his DD 214 needs to show his rate as SA in addition to showing his pay grade as E2. The applicant argued that SA is the equivalent rate to pay grade E2. He argued that COMDTINST 5354.6A does not state that having the title "cadet candidate" is same as one's rate or rank. He again noted that the Coast Guard administratively corrected another officer's DD214, who had attended NAPS, to show his rate as SA and his pay grade as E2. He argued all members similarly situated should be treated the same.

REGULATIONS

Commandant Instructions (COMDTINSTs)

COMDTINST 1531.2A (Coast Guard Academy Preparation Program (NAPS Program)) issued on October 9, 1997 and cancelled on February 17, 2010, provided information on and solicited applications for enlisted personnel to attend NAPS. It explained that NAPS is operated by the Naval Education and Training Center in Newport, RI and that the Coast Guard has participated in the program since 1978. The regulation does not address what rate, rank, or grade an enlisted holds while in the NAPS program.

COMDTISNT 5354.6A (Administering the Coast Guard Recruiting Initiative for the Twenty-First Century (CGRIT) to the U.S. Coast Guard Academy) was issued on March 25, 1977. The instruction states that the CGRIT is a recruiting program designed to expand the pool of applicants for the Coast Guard Academy and Officer Candidate School.

Paragraph 5 of the instruction states that the CGRIT's major focus is to increase the pool of qualified applicants seeking appointments to the Coast Guard 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 5.B. states that participants in the CGRIT's pre-Academy training program incur an obligation to the Coast Guard of up to two years of enlisted service in the Coast Guard followed by six years of service in the Individual Ready Reserve (IRR), if they do not fulfill program requirements: .

Paragraph 6 of the instruction states that students in the CGRIT program enter the Coast Guard Reserve in pay grade E-2 and have the title "cadet candidate."

COMDTISNT 5354.2 (Coast Guard Academy Scholar Program Administration (Scholar Program)) issued on February 17, 2010, was for the purpose of promulgating procedures to administer the Coast Guard Academy Scholar Programs. The instruction canceled the CGRIT instruction (COMDTINST 5354.6A) and the NAPS Instruction (COMDTISNT 1531.2A).

Paragraph 5 of the instruction states that Coast Guard Academy Scholar candidates will be enlisted in the Regular Coast Guard and incur an obligation to accept an appointment to the Coast Guard Academy if offered. It also states that Coast Guard Academy Scholar cadet candidates enlisting from civilian status will be enlisted into the Coast Guard as active duty in pay grade E-2 and have the title "cadet candidate." The regulation also states that enlisted active duty accepted into the program will have the title "cadet candidate" but they retain their current pay grade and rating specialty for pay and allowances purposes.

Coast Guard Personnel Manual (2005)

Article 2.B.1.c. states that a rate identifies personnel occupationally by pay grade and that within a rating, a rate reflects levels of aptitude training, experience, knowledge, skills, and responsibility. By way of example, the rating of boatswain's mate is reducible to the rates, such as master chief boatswain's mate (pay grade E-9) and boatswain's mate first class (pay grade E-6). Further, the provision states that pay grade E-3, E-2, E-1 are rates.

Article 2.B.2 lists enlisted pay grades with their general titles and in order of precedence. The enlisted pay grades range from a high of E-9 (Master Chief Petty Officer MCPO) to a low of E-1 (General apprenticeship, recruit (SR)). The second lowest pay grade is E-2 (General apprenticeship, apprentice (SA/FA)).

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.

2. The applicant asked that his DD 214 be corrected to show his rate in block 4a as SA instead of cadet and his pay grade in block 4b as E2 instead of EIC. The Coast Guard has corrected the applicant's pay grade in 4b to show E2, as the applicant requested.

3. The Coast Guard also changed the applicant's rate from cadet to "cadet candidate" in block 4a. of the DD 214. The applicant disagreed with this correction and maintained his request for a correction of his DD214 to show his rate as SA. He asserted that the two corrections, if granted, will allow the time he spent in the NAPS program to be included in the calculation of his creditable service for pay purposes.

4. The issue before the Board is whether the applicant's rate in block 4a. of the DD 214 should be corrected from "cadet candidate" to SA. The only regulation the Board found that specifically addresses the NAPS program is COMDTINST 1531.2A (which became effective on October 9, 1997 and was cancelled by the Scholars Program regulation (COMDTINST 5354.2) on February 17, 2010). Nothing in the NAPS Program instruction states that Coast Guard members participating in the NAPS program held the rate, rank, or grade of "cadet candidate." Nor does it state that these members held the title "cadet candidate."

5. Contrary to the advisory opinion, the Board finds that the CGRIT instructions does not control in this situation. The CGRIT regulation states that individuals who participated in that program had the title "cadet candidates." However, the CGRIT regulation also states clearly that its focus was providing one year of funding for students attending Historically Black Colleges and Universities (HBCUs) who were seeking appointments to the Coast Guard Academy. The regulation did not address the NAPS program and NAPS is not an HBCU.

6. Nor is the Board persuaded that the Scholars Program Instruction applies to the NAPS program, particularly during the time the applicant attended the NAPS program. The Scholars Program Instruction became effective on February 17, 2010, well after the applicant was discharged from NAPS on May 19, 2006. In addition, the Scholars Program Instruction does not state that the title "cadet candidate" is a participant's rate, rank or grade, as that term is used in the Personnel Manual and in the DD 214 instruction.

7. The Board has been unable to find a Coast Guard regulation that supports the advisory opinion's contention that individuals who participated in the NAPS program held the rate, rank, or grade of "cadet candidate." Therefore, the Board finds that Article 2.B. of the Personnel Manual (2005) controls the rate the applicant held upon his discharge from NAPS. Article 2.B. lists the pay grades and corresponding titles for enlisted members. This section does not list "cadet candidate" as a pay grade or title. It does list enlisted pay grades from E-1 through E-9. It states that the general title for pay grade E-2 is general apprenticeship, apprentice and the abbreviation is SA or FN.

8. Accordingly, the applicant has proved by a preponderance of the evidence that there was no Coast Guard regulation in effect at the pertinent time establishing his rate, grade, or rank while at NAPS as "cadet candidate." Therefore, the enlisted rates identified in Article 2.B. of the Personnel Manual controls the applicant's rate upon discharge. Further, Chapter 1.E. of the DD 214 instruction states that for block 4a of the DD 214 enter the abbreviation for the grade or rate in which separated and in the case of a cadet enter CADET. Since the applicant was not a cadet,

which is listed as an officer rank in Article 2.A.1. of the personnel Manual, his rate, rank or grade would be not be cadet. Under Article 2.B of the Personnel Manual, the applicant's rate, grade, or rank upon discharge from NAPS would be SA, which corresponds to pay grade E2. Further, it is not clear to the Board that holding a title, as described in the CGRIT and Scholars Program instructions, is the same as having a rate, rank, or grade, as required by the DD 214 instruction. In addition, the Coast Guard administratively corrected another officer's record in manner requested by the applicant and failed to explain why the two officers should be treated differently. The Board can find no reason why the applicant should be treated differently from the officer whose DD 214 was corrected. The Board finds that the applicant should be granted relief.

9. By way of information, it appears that Chapter 2.A. of the Pay Manual addresses the question of creditable service for pay purposes. This provision states to "compute a member's cumulative years of service for the purpose of determining the member's rate of basic pay by adding all periods of active and inactive service as a commissioned officer, warrant officer, or enlisted member in any regular or reserve component of the Uniformed Service." Subparagraph h. states that *cadet service* is creditable in computing pay of enlisted members only. As stated above, cadet is a rank held by those appointed as cadets to the Coast Guard Academy and is listed as an officer rank in the Personnel Manual. While the applicant was in the NAPS program, he was not a cadet. So it appears that the limitation of crediting cadet service only to enlisted members does not apply to the applicant for the period of time he was in the NAPS program. (It would apply for the four years he spent as a cadet at the Coast Guard Academy). The Board recommends that the Coast Guard take a close look at the Pay Manual in determining whether the applicant is entitled to have the time he spent in the NAPS program credited to him for pay purposes.¹

10. The Board finds that the applicant should be granted relief with regard to his DD 214.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹ The Board notes that under the CGRIT regulation and COMDTINST 5354.2, individuals were required to sign a statement of understanding. The contract required a two-year active duty obligation and it advised participants that "[c]reditable service for my two-year active duty obligation begins after I take my oath of enlistment." This term of the agreement makes clear that the two-years of active duty were creditable service. It appears that there should have been a statement of understanding for the applicant's participation in the NAPS program. However, the Coast Guard advised the Board that the applicant's military record does not contain his enlistment documents.

ORDER

The application of [REDACTED], for correction of his military record is granted. His NAPS DD Form 214 dated May 19, 2006, shall be corrected as follows:

- Block 4a shall be corrected to show SA as his rate;
- Block 4b shall be corrected to show E-2 as his pay grade (previously accomplished by the Coast Guard).

No other relief is granted.

