

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-227

[REDACTED]
[REDACTED]

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. After receiving the applicant's completed application on December 2, 2014, the Chair docketed the application and assigned it to [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June 25, 2015, 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 block 12a, "date entered Active Duty (AD) this period," of his DD Form 214 (DD 214) to show an entry date of February 20, 1990, instead of January 5, 1994, which is currently listed. The applicant also requested that the Board correct block 12c, "net active service," to show a net service of over 24 years. The applicant alleged that at the time he was preparing for his retirement in 2014, he failed to realize that his four years spent as a cadet at the U.S. Coast Guard Academy were not recorded on his DD 214. The applicant stated that the error adversely affects his total creditable service for pay purposes.

The applicant stated that he originally enlisted in the Coast Guard on February 20, 1990; was discharged as an E-3 on July 6, 1992; and was immediately sworn in as a cadet at the Academy. Therefore, he alleged, he had no break in service.

In support of his application, the applicant submitted a copy of his orders to TRACEN Cape May showing his effective enlistment date as February 20, 1990, a copy of his Statement of Intent showing his intent to be discharged in order to accept his appointment as a cadet on July 6, 1992, and a copy of his DD 214.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard Reserve on December 28, 1989, under the Delayed Entry Program. He remained in the Delayed Entry Program until February 20, 1990, when he enlisted on active duty in the Coast Guard and began recruit basic training.

On August 1, 1991, the applicant was assigned to study at the Naval Academy Preparatory School (NAPS). On July 6, 1992, he successfully completed the NAPS program and entered the Coast Guard Academy as a cadet.

On May 22, 1996, the applicant graduated from the Academy and received his commission. The applicant's DD 214 states that he retired from the Coast Guard on April 1, 2014, with 20 years, 2 months, and 27 days of active service.

VIEWS OF THE COAST GUARD

On April 13, 2015, the Judge Advocate General (JAG) submitted an advisory opinion recommending that the Board grant alternative relief in this case in accordance with the findings and analysis provided in a memorandum submitted by the Commanding Officer, Coast Guard Personnel Service Center (PSC).

PSC contended that the applicant was mistaken in his belief that his time as a cadet at the Academy is creditable for computing length of service. However, both PSC and the JAG acknowledge that the applicant's DD 214 is incorrect, as it states that the applicant entered into active duty on January 5, 1994, which is a reconstructed active duty base date inclusive of the applicant's prior service before his time at the Academy. Upon the applicant's completion of NAPS, the applicant was discharged and should have received a DD 214 accounting for his service, excluding his time in the Delayed Entry Program. Therefore, both PSC and the JAG recommended that the applicant be issued a DD 214 for this time from his entry on active duty on February 20, 1990, through his discharge on July 6, 1992, to enter the Academy. PSC stated that this period amounts to 2 years, 4 months, and 17 days of active service before the applicant became a cadet. PSC also recommended that the applicant's DD 214, issued on March 31, 2014, be corrected to correctly reflect his active duty service upon graduation from the Academy, and show a total creditable service for retirement as 20 years, 2 months, 27 days. According to PSC, the updated DD 214 should show:

- Block 12a, Date Entered Active Duty This Period: 22 May 1996
- Block 12c, Net Active Service This Period: 17 years, 10 months, 10 days
- Block 12d, Total Prior Active Service: 2 years, 4 months, 17 days

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 13, 2015, the Chair of 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.

APPLICABLE LAW AND POLICY

10 U.S.C. § 971 – Service credit: officers may not count service performed while serving as cadet or midshipman.

(a) **Prohibition on Counting Enlisted Service Performed While at Service Academy or in Navy Reserve.**—The period of service under an enlistment or period of obligated service while also performing service as a cadet or midshipman or serving as a midshipman in the Navy Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force or an officer in the Commissioned Corps of the Public Health Service.

(b) **Prohibition on Counting Service as a Cadet or Midshipman.**—In computing length of service for any purpose, service as a cadet or midshipman may not be credited to any of the following officers:

- (1) An officer of the Navy or Marine Corps.
- (2) A commissioned officer of the Army or Air Force.
- (3) An officer of the Coast Guard.
- (4) An officer in the Commissioned Corps of the Public Health Service.

COMDTINST 5354.2. Coast Guard Academy Scholar Program Administration

Paragraph 5.c. states that Coast Guard members who are accepted into the Scholar Program retain their pay grades and receive transfer orders to attend the program. Paragraph 5.o. states the following:

Scholar cadet candidates who complete the preparatory school program and successfully compete and earn cadet appointment to the Coast Guard Academy will be issued PCS orders by PSC-epm-2 to the Coast Guard Academy. The Coast Guard Academy will discharge members at the convenience of the government and matriculate them into the Coast Guard Academy as cadets.

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 retirement.¹

2. The applicant alleged that his DD 214 is incorrect in that his time spent at the Academy as a cadet was not properly recorded on his DD 214. 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.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and

¹ 10 U.S.C. § 1552(b).

² 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 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)).

other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³

3. Pursuant to 10 U.S.C. § 971, the applicant’s time as a cadet at the Academy from July 7, 1992, through May 21, 1996, does not count as active duty and so should not be included in the calculation of active duty shown in either block 12c or 12d on his DD 214. However, the JAG and PSC acknowledged that the date of entry and calculation of his active service on his DD 214 are erroneous and should be corrected.

4. The record shows that the applicant graduated from the Academy and was commissioned an officer on May 22, 1996. Because time spent as an Academy cadet does not count as active duty for purposes of Title 10, the “date entered active duty this period” in block 12a of the applicant’s DD 214 should be the date of commissioning, May 22, 1996. The current date in block 12a, January 5, 1994, is clearly erroneous and should be corrected.

5. The applicant served on active duty from his commissioning on May 22, 1996, until his retirement on March 31, 2014. Therefore, the “net active service this period” in block 12c of his DD 214 should be 17 years, 10 months, and 10 days, as the Coast Guard stated in the advisory opinion, instead of 20 years, 2 months, and 27 days.

6. Before the applicant matriculated as a cadet at the Academy, he served on active duty from February 20, 1990, through July 6, 1992, when he successfully completed NAPS. Therefore, instead of showing zero prior active service in block 12d, the applicant’s DD 214 should be corrected to show 2 years, 4 months, and 17 days of prior active service in block 12d.

7. The Board notes that adding the 17 years, 10 months, and 10 days of service in block 12c and the 2 years, 4 months, and 17 days of service in block 12d results in a total of 20 years, 2 months, and 27 days of active duty, which is the same total currently reflected on the applicant’s DD 214.

8. Accordingly, the applicant’s request to have his time spent as a cadet at the Coast Guard Academy reflected on his DD 214 should be denied, but alternative relief should be granted by correcting his DD 214 to show the following:

- Block 12a (Date Entered AD This Period): May 22, 1996, the day the applicant graduated from the Academy and received his commission.
- Block 12c (Net Active Service this Period): 17 years, 10 months, 10 days
- Block 12d (Total Prior Active Service): 2 years, 4 months, 17 days

(ORDER AND SIGNATURES ON NEXT PAGE)

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

ORDER

The application of former [REDACTED], USCG, for correction of his military record is denied, but the following alternative relief is granted. His DD 214 issued on March 31, 2014, shall be corrected to show the following:

- Block 12a (Date Entered AD This Period): May 22, 1996;
- Block 12c (Net Active Service this Period): 17 years, 10 months, 10 days;
- Block 12d (Total Prior Active Service): 2 years, 4 months, 17 days.

June 25, 2015

