

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2012-123

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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 application upon receipt of the applicant's completed application on April 14, 2012, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 CFR § 52.61(c), with the assistance of staff member D. Hale.

This final decision, dated February 1, 2013, is 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 seaman (SN) currently serving on active duty in the Coast Guard, asked the Board to correct his record to show that he had no break in service from his original enlistment on September 24, 2007, until his discharge on June 27, 2010. Specifically, he asked the Board to remove from his record his discharge form DD 214 dated July 23, 2009, and his July 24, 2009, 2-year reenlistment contract. He alleged that it was erroneous for the Coast Guard to discharge him on July 23, 2009, and immediately reenlist him the following day.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 24, 2007, obligating himself to serve 6 years of active duty, through September 23, 2013. His record contains emails which show that following his acceptance to a Coast Guard Academy preparatory school through the Coast Guard Academy Scholar Program,¹ the Enlisted Personnel Management Branch (EPM-1) of the Coast Guard Personnel Service Center advised him that each member accepting an appointment to the one-year program had to submit a letter requesting to be released from active

¹ Coast Guard Academy Scholar cadet candidates study for ten months at a military preparatory school specified by the Superintendent of the Coast Guard Academy. Article 1.4.a. of COMDTINST 5354.2.

duty pursuant to Article 12.B.12.a.2. of the Personnel Manual.² On June 24, 2009, the applicant submitted a letter to EPM-1 asking to be released from active duty so he could attend the school.

On July 6, 2009, the applicant received a letter from the Coast Guard Academy Scholar Program manager, congratulating him on being selected as an Academy scholar. The letter ordered him to report to the Coast Guard Academy on July 24, 2009, before reporting to the xxxxxxxxxxxx. Although the applicant's original enlistment was not scheduled to end until September 23, 2013, he was released from active duty (RELAD) on July 23, 2009. His DD 214 states that he was being discharged for miscellaneous/general reasons and sold 22.5 days of leave.³ On July 24, 2009, he signed a two-year reenlistment contract, through July 23, 2011, to attend NMMI.

The applicant attended xxxxxxxxxxxx until June 2010, and was discharged from the Coast Guard on June 27, 2010. His DD 214 states that he was discharged for "enrollment in service academy" and sold 28.5 days of leave. On June 28, 2010, the applicant took an oath of office and entered the Coast Guard Academy as a fourth class cadet.

On February 13, 2012, the applicant was disenrolled from the Coast Guard Academy for substandard performance and issued a DD 214 showing that he had completed 1 year, 7 months, and 16 days of active duty at the Academy⁴ and sold 51 days of accrued leave.⁵ On February 14, 2012, a chief warrant officer at the Academy had him sign a 1-year, 29-week reenlistment contract. The Coast Guard's Direct Access database states that the applicant's reenlistment contract, "since he has been reverted from Cadet status back to his 6 year original contract, will be for a period of 1 year and 29 weeks ending on 09/23/2013." His "Contract Expected End Date" in Direct Access is September 23, 2013. Thereafter, the applicant was transferred to xxxxxxxx as a seaman.⁶

² Article 12.B.12.a. of the Personnel Manual in effect in 2009 states that enlisted members may be separated for the convenience of the Government for acceptance into a program leading to an active duty commission or appointment in any branch of the Armed Forces.

³ Under Article 7.A.11.a. of the Personnel Manual, members earn 2.5 days of leave per month of continuous active duty. Under Chapter 10.A.1. of the Pay Manual, each member may sell a maximum of 60 days of accrued, unused leave during his military career. Leave may be sold on any date the member is being released or discharged from active duty. Members may not carry more than 75 days of accrued leave from one fiscal year to the next, and any accrued leave in excess of 75 days is lost at the start of a new fiscal year. Personnel and Pay Procedures Manual, PPCINST M1000.2A, Chapter 5.D.2.1. Chapter 1.E. of the manual for preparing DD 214s, COMDTINST M1900.4D, states that block 16 of a DD 214 should contain "the number of days [of accrued leave] for which the member was paid. If no lump-sum payment is made, the PERSRU will enter 'None.'" Chapter 1.D.2.a. states that "[a]ll entries [on a DD 214], unless specified otherwise (i.e., blocks 7a, 7b), are for the current period of active duty only from date of entry as shown in block 12a through the date of separation as shown in block 12b. (Note exception, block 13)."

⁴ Under 10 U.S.C. § 101(d)(1), "active duty" is defined as "full-time duty in the active military service of the United States. Such term includes 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."

⁵ Under Chapters 10.A.1. and 10.A.3.d. of the Pay Manual, COMDTINST 7220.29B, Coast Guard Academy cadets may not sell leave when they are discharged and no member may sell more than 60 days during his career. However, 51 is the total of the days of leave sold on the applicant's prior two DD 214s, so it appears to be a cumulative entry.

⁶ Under 14 U.S.C. § 182(b) and (c)(1), a cadet who does not complete the course of instruction at the Coast Guard Academy may be transferred to the Reserve and "order[ed] to active duty for such period of time as the Secretary prescribes (but not to exceed four years)."

Summary of Past Actions

| Month | Action | Reported Purpose for Action |
|------------|---|--|
| Sept. 2007 | Enlisted for 6 years of active duty | |
| July 2009 | Discharged (DD 214) and reenlisted for 2 years | To enter the Scholar Program at xxxxxxxxxxxx |
| June 2010 | Discharged (DD 214) and appointed a cadet | To enroll in the Coast Guard Academy |
| Feb. 2012 | Disenrolled, discharged (DD 214), and reenlisted through September 23, 2013 | To complete his prior original 6-year active duty obligation |

VIEWS OF THE COAST GUARD

On September 26, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant's request. In so doing, he adopted the findings and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC).

PSC stated that that the applicant should not have been discharged and reenlisted in July 2009 upon entering the Scholar Program. PSC also alleged that he should not have been discharged on June 27, 2010, before entering the Academy. PSC stated that for an enlisted member, "[a]ll time served at the CG Scholar Program and the Academy counted as creditable Active Duty service towards his original enlistment contract." Therefore, PSC recommended removing the following documents from the applicant's military record:

- July 23, 2009, DD 214
- July 24, 2009, two-year reenlistment contract
- June 27, 2010, DD 214

PSC did not address the applicant's DD 214 documenting his disenrollment from the Academy or his reenlistment contract with a term of 01 year, 29 weeks. (The Board received copies of these two documents from the applicant's unit, and Coast Guard Headquarters may have been unaware of them when the advisory opinion was prepared.)

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 12, 2012, 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 REGULATIONS

COMDTINST 5354.2, Coast Guard Academy Scholar Program Administration

Paragraph 4.a. states that "cadet candidates" study for ten months at a military preparatory school and, if they meet certain eligibility criteria, receive appointments to the Coast Guard Academy in accordance with Article 1.E. of the Personnel Manual.

Paragraph 5.b. states that a civilian entering the Scholar Program must be enlisted on active duty. Paragraph 5.d. states that reservists entering the program must be discharged from

their Reserve obligation and enlisted on active duty. Paragraph 5.j. states that for enlisted members entering the Scholar Program, PSC issues temporary duty orders to leave their assigned units and attend the program. Paragraph 5.h. states that enlisted members entering the Scholar Program must have sufficient obligated service to complete the program before leaving their prior units but does not state that they must be discharged and reenlisted.

Paragraph 5.o. states that cadet candidates who complete the Scholar Program and earn an appointment to the Coast Guard Academy will be issued permanent transfer orders to attend the Academy, which “will discharge members at the convenience of the government and matriculate them into the Coast Guard Academy as cadets.”

Paragraph 5.h. states that enlisted members must sign the Statement of Understanding provided in Enclosure (1) before beginning the Scholar Program. Paragraph 3 of Enclosure (1) states that if a prior enlisted member is disenrolled from the Coast Guard Academy, the member “will return to active duty to complete the remainder of service obligated under my enlisted contract, calculated from the time I detached my prior unit to report for duty under instruction.”

Paragraph 7.b.(11) states that before appointing a cadet candidate as a Coast Guard Academy cadet, the Superintendent of the Academy must ensure that the cadet candidate signs the Page 7 (CG-3307) provided in Enclosure (2). Enclosure (2) states in pertinent part, “If I am appointed to cadet status from prior enlisted service status and disenrolled from the Academy prior to graduation, my cadet service is creditable for longevity for pay purposes and retirement if I return to enlisted status [unless later appointed to commissioned or warrant officer status].”

COMDTINST M1000.3, Officer Accessions, Evaluations, and Promotions

Article 1.E.4.i.1.b. of this manual states that fourth or third class cadets who are disenrolled from the Coast Guard Academy and “who entered the Academy as a member of the Coast Guard or Coast Guard Reserve will revert to their prior status and complete the remainder of their duty obligation. All time served in a cadet status is counted as service under any preexisting enlistment or service obligation.”

PPCINST M1000.2A, Personnel and Pay Procedures Manual

Chapter 3.B. of this manual states the following regarding processing a member from enlisted to cadet status:

When transferring an enlisted member to the Academy for appointment as a Cadet, the member’s SPO [servicing personnel officer] shall:

- Prepare and transmit the Statement of Intent transaction and verify/enter mailing address information in Direct Access at least 45 days prior to the Cadet swearing-in date.
- Approve and endorse the member’s PCS orders in Direct Access.
- The Academy SPO will input a Direct Access Discharge transaction to discharge the member from enlisted status, and submit an Accession transaction to enlist the member as a cadet.

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.

2. The applicant asked the Board to correct his record to show that he had no break in service between his September 24, 2007, 6-year enlistment and June 27, 2010, discharge to enter the Academy. He alleged that he was erroneously discharged and reenlisted in July 2009 before starting the Coast Guard's Scholar Program, and he asked the Board to expunge his July 2009 DD 214 documenting the discharge and the 2-year reenlistment contract. The applicant's separation on July 23, 2009, and immediate reenlistment on July 24, 2009, did not actually constitute a break in service.⁷ However, the Coast Guard recommended granting relief, and under the regulations, the discharge and reenlistment in July 2009 were unauthorized because the applicant had ample obligated service to complete the Scholar Program, as required by paragraph 5.h. of COMDTINST 5354.2. Article 12.B.12.a.2. of the Personnel Manual states that members may be discharged for acceptance into a program leading to an active duty commission—as the applicant was when he entered the Academy. But the Scholar Program does not lead directly to an active duty commission; it leads to potential admission into the Academy. And unlike Academy cadets, cadet candidates in the Scholar Program are supposed to be regular enlisted members, so there is no reason to discharge them from an enlistment that is already long enough to fulfill the requirements of paragraph 5.h. of COMDTINST 5354.2. Finally, the Board notes that, while members may be discharged early if they are to be immediately reenlisted, the reenlistment must be for a period longer than the existing obligation,⁸ which was not what happened in this instance since the applicant's remaining service obligation was reduced from more than 4 years to 2 years. Therefore, the Board agrees with the Coast Guard that the applicant's July 2009 discharge and 2-year reenlistment contract should be removed from his record as null and void.

3. The Coast Guard argued that the applicant's discharge and DD 214 dated June 27, 2010, should be removed from his record so that his original 6-year enlistment would still be in effect when he was disenrolled from the Academy. Article 1.E.4.i.1.b. of COMDTINST M1000.3 states that when a third class cadet with prior enlisted service is disenrolled, the cadet reverts to his enlisted status and “[a]ll time served in a cadet status is counted as service under any preexisting enlistment or service obligation.” However, paragraph 5.o. of COMDTINST 5354.2 and Chapter 3.B. of the Personnel and Pay Procedures Manual require and Article 12.B.12.a.2. of the Personnel Manual authorizes enlisted members to be discharged from their preexisting enlistments before being appointed cadets. To the Board's knowledge, none of the Coast Guard's policies and regulations spell out exactly how the reversion to enlisted status and attribution of time at the Academy to the prior enlistment prescribed by Article 1.E.4.i.1.b. of COMDTINST M1000.3 is supposed to happen. Academy personnel presumably make this happen whenever a prior enlisted member is disenrolled from the Academy, and in the applicant's case, they discharged him, prepared a DD 214 to document his time at the Academy as active duty service, and reenlisted him through September 23, 2013, which would have been the end of his original, 6-year enlistment had he not been discharged to enter the Academy. These actions

⁷ “For regular reenlistments, a member must reenlist within three months from discharge date to remain in a continuous service status.” Personnel Manual, Article 1.G.8.a. “If accomplished within 24 hours after discharge at the unit from which discharged, reenlistment is a continuation of the member's status.” Personnel Manual, Article 1.G.13.a.

⁸ Personnel Manual, Article 12.B.12.a.4.

taken by Academy personnel are presumptively correct,⁹ and they achieved the goal of Article 1.E.4.i.1.b. by documenting the applicant's time at the Academy as active duty service and obligating him to serve out the same term of service he originally obligated himself to serve. Moreover, removing the DD 214 dated June 27, 2010, from the applicant's record would make the DD 214 documenting the applicant's disenrollment from the Academy for substandard performance in February 2012 the only DD 214 in his record, which is unjust given that the applicant would not have been accepted into the Scholar Program or the Academy had his performance as an enlisted member been poor. Therefore, the Board finds that it would be both erroneous and contrary to the interest of justice to remove the DD 214 dated June 27, 2010, from the applicant's record because the applicant was properly discharged on that date to be enrolled in the Academy.

4. Because the DD 214 documenting the applicant's service from September 24, 2007, through July 23, 2009, is being removed from his record, the DD 214 dated June 27, 2010, must be revised to include those 22 months of service. Specifically, the following corrections should be made so that the DD 214 will accurately document all of the applicant's service from September 24, 2007, through June 27, 2010:

- The place of entry into active duty in block 7.a. should be corrected to "Gunter Annex, AL," where the applicant originally enlisted.
- The date of entry on active duty in block 12.a. should be corrected to September 24, 2007.
- The net active service this period in block 12.c. should be corrected to 02 years, 09 months, and 04 days.
- The total prior active service in block 12.d. should be corrected to 00 years, 00 months, and 00 days.
- The remarks in block 18 should be corrected to include the remarks required by the manual for preparing DD 214s, COMDTINST M1900.4D, such as MGIB information and the applicant's home of record.

5. Block 16 of the applicant's three DD 214s shows that he sold 22.5 days of leave when he was discharged in 2009, 28.5 days of leave when he was discharged in 2010, and 51 days—the sum of 22.5 and 28.5—when he was discharged from the Academy. However, under Chapters 1.D.2.a. and 1.E. of COMDTINST M1900.4D, the entry in block 16 should not be cumulative and should reflect only the amount of leave sold on the date of the discharge documented by the DD 214.¹⁰ The number in block 16 on the applicant's February 2012 DD 214 is clearly cumulative because it is the sum of the leave sold shown on his two prior DD 214s, it would otherwise raise his total days of leave sold above the maximum of 60,¹¹ and cadets may

⁹ 33 C.F.R. § 52.24(b); *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979) (noting that absent evidence to the contrary, Government officials are presumed to have carried out their duties "correctly, lawfully, and in good faith.")

¹⁰ COMDTINST M1900.4D, states that block 16 of a DD 214 should contain "the number of days [of accrued leave] for which the member was paid. If no lump-sum payment is made, the PERSRU will enter 'None.'" Chapter 1.D.2.a. states that "[a]ll entries [on a DD 214], unless specified otherwise (i.e., blocks 7a, 7b), are for the current period of active duty only from date of entry as shown in block 12a through the date of separation as shown in block 12b. (Note exception, block 13)."

¹¹ Pay Manual, Chap. 10.A.1.a.

not sell leave when they are discharged.¹² If the applicant had not been erroneously discharged in 2009, he would not have been allowed to sell 22.5 days of leave at that time, but he could have sold it when he was discharged in June 2010, instead.¹³ Therefore, the Board finds that the 22.5 days of leave that the applicant sold in July 2009 should be attached to his discharge on June 27, 2010, and the number in block 16 of that DD 214 should be corrected to show the sum of all days of leave for which he was paid pursuant to his discharges in July 2009 and June 2010 (51 days). Finally, the Coast Guard should correct block 16 of the applicant's DD 214 dated February 13, 2012, to show zero because, under COMDTINST M1900.4D, block 16 is not supposed to reflect cumulative days of leave sold.

6. Pursuant to these corrections, the applicant's record will show that he enlisted for 6 years of active duty on September 24, 2007; was discharged to be appointed a cadet at the Academy and sold leave 51 days of leave on June 27, 2010; was discharged from the Academy on February 13, 2012, and sold no days of leave; and reenlisted on February 14, 2012, through September 23, 2013, to complete his original service obligation in accordance with paragraph 5.h. of COMDTINST 5354.2 and Article 1.E.4.i.1.b. of COMDTINST M1000.3. The Board notes that if the applicant ever accepts an appointment as a chief warrant officer or a commission as an officer, his time at the Academy will no longer count as active duty time.¹⁴

7. Accordingly, relief should be granted. The applicant's military record should be corrected by expunging his July 23, 2009, DD 214 and his July 24, 2009, 2-year reenlistment contract as null and void; changing the entries on his June 27, 2010, DD 214 as explained in findings 4 and 5 above; and by changing block 16 of his February 13, 2012, DD 214 to show that he sold zero days of leave.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

¹² Pay Manual, Chap. 10.A.3.d.

¹³ The Board notes that under Chapter 5.D.2.1. of PPCINST M1000.2A, members may not carry over more than 75 days of accrued leave from one fiscal year to the next, but because members accrue leave at a rate of 2.5 days per month and at the end of fiscal year 2009, the applicant had served on active duty for only 24 months, it is not possible that he had accrued enough leave by October 1, 2009, to lose any leave, and so the accrued leave he sold in July 2009 would still have been available for him to sell when he was discharged in June 2010.

¹⁴ 10 U.S.C. § 971(b)(3) (prohibiting time spent as an Academy cadet from being included when computing the length of service of a Coast Guard officer for any purpose, such as pay or retirement).

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted. The Coast Guard shall

1. remove from his record as null and void his July 23, 2009, discharge and DD 214 and his 2-year reenlistment contract dated July 24, 2009, and change the date of his sale of leave to his discharge on June 27, 2010;
2. correct block 16 of his DD 214 dated February 13, 2012, to show that he sold zero days of leave at that time; and
3. correct his DD 214 dated June 27, 2010, as follows:
 - a. The place of entry on active duty in block 7.a. shall be corrected to Gunter Annex, AL.
 - b. The date of entry on active duty in block 12.a. shall be corrected to September 24, 2007.
 - c. The net active service this period in block 12.c. shall be corrected to 02 years, 09 months, and 04 days.
 - d. The total prior active service in block 12.d. shall be corrected to 00 years, 00 months, and 00 days.
 - e. The days of accrued leave paid in block 16 shall be corrected to 51.
 - f. The remarks in block 18 shall be corrected to include the remarks required by Chapter 1.E. of COMDTINST M1900.4D, such as MGIB information and his home of record.

The Coast Guard shall also pay him any amount due as a result of these corrections.

