

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-054

FINAL DECISION

ANDREWS, Attorney-Advisor:

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. It was docketed on January 11, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated October 12, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a seaman apprentice (SA; pay grade E-2) who served 20 months on active duty in the Coast Guard, asked the Board to correct his records so that the Coast Guard would repay him the \$1,200.00 that was withheld from his pay under the Montgomery GI Bill (MGIB).¹ He made no allegations of error other than that he should be allowed to recoup the money.

SUMMARY OF THE RECORD

The applicant enlisted as a seaman recruit in the Coast Guard on xxxxx, 1998, for a term of four years. On that day, he signed a Statement of Understanding, form CG-3301I, regarding the MGIB program, which stated the following:

2. I am automatically enrolled in the MGIB and my basic pay will be reduced by \$100 per month for each of the first full 12 months of active duty.

¹ 38 U.S.C. § 3001 et seq.

3. I cannot SUSPEND or STOP my monthly pay reduction under the MGIB, and there is NO REFUND of my monies under any circumstances.

4. To be eligible for benefits, I must do the following:
a. Complete 48 months of active duty.

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8. I can make a one-time-only election to disenroll during the first two weeks of active duty.

I HAVE READ AND UNDERSTOOD EACH OF THE STATEMENTS ABOVE. I UNDERSTAND THAT IF I DECIDE TO DISENROLL, IT MUST BE DONE DURING THE FIRST TWO WEEKS OF ACTIVE DUTY.

On June 2, 1998, the applicant signed another statement regarding the MGIB program (form DD 2366), with somewhat different terms, which appear as follows:

(1) I am eligible for the MGIB based on my initial entry on active duty after June 30, 1985.

(2) I understand that I am automatically enrolled unless I exercise the option to disenroll by signing Item 3 below by the date designated by my Service.

(3) I understand that unless I disenroll from the MGIB, my basic pay will be reduced \$100 per month for EACH of the first 12 full months of active duty and this basic pay reduction cannot be REFUNDED, SUSPENDED OR STOPPED.

(4) I must complete 36 months of active duty service before I am entitled to \$439.86 per month of benefits for 36 months.

(5) If my obligation is less than 36 months, I understand that I must complete 24 months of active duty to receive \$250 per month of benefits for a period of 36 months.

(6) I must complete 24 months of active duty service and join the Selected Reserve for a minimum of a 48 month service agreement and serve honorably in the Selected Reserve to begin receiving \$300 per month for up to 36 months.

The DD 2366 also included a place for the applicant to sign if he wished to disenroll from MGIB. Because the applicant did not sign the "Statement of Disenrollment," he was automatically enrolled in MGIB, and \$100 was withdrawn from his monthly pay for each of his first 12 months on active duty.

The applicant was honorably discharged from the Coast Guard on xxxxx, 2000. His DD 214 indicates that he was discharged due to "alcohol rehabilitation failure."

APPLICABLE LAW

Statutory requirements for entitlement to MGIB benefits appear at 38 U.S.C. § 3011 (1994). The statute reads as follows:

(a) Except as provided in subsection (c) of this section, each individual –

(1) who –

(A) after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces and –

(i) who (I) serves, as the individual’s initial obligated period of active duty, at least three years of continuous active duty in the Armed Forces, ... ; or

(ii) who serves in the Armed Forces and is discharged or released from active duty (I) for a service-connected disability, for a medical condition which preexisted such service on active duty and which the Secretary determines is not service connected, for hardship, or for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations ... ; (II) for the convenience of the Government, ... in the case of an individual who completed not less than 20 months of continuous active duty, if the initial obligated period of active duty of the individual was less than three years; or (III) involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned ...;

(2) who [receives a high school diploma or the equivalent]; and

(3) who, after completion of the service described in clause (1) of this subsection –

• • •

(B) is discharged from active duty with an honorable discharge;

...

is entitled to basic educational assistance under this chapter.

(b) The basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection (c)(1) of this section shall be reduced by \$ 100 for each of the first 12 months that such individual is entitled to such pay. Any amount by which the basic pay of an individual is reduced under this chapter shall revert to the Treasury and shall not, for purposes of any Federal law, be considered to have been received by or to be within the control of such individual.

(c) (1) An individual described in subsection (a)(1)(A) of this section may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters on active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter.

Title 31 U.S.C. § 3702(a) provides that “[e]xcept as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows: (1) The Secretary of Defense shall settle – (A) claims involving

uniformed service members' pay, allowances, travel, transportation, retired pay,
and survivor benefits”

VIEWS OF THE COAST GUARD

On July 12, 2000, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel stated that the Board should dismiss this case for lack of jurisdiction because the applicant has not identified any error in his record for the Board to correct. Under 31 U.S.C. § 3702, he alleged the Comptroller General shall settle all claims of or against the United States. Moreover, he argued the Comptroller General has held that the BCMR statute 10 U.S.C. § 1552 does not grant the Board authority to grant monetary benefits because "such entitlements 'depend solely on a proper application of the statutes to the facts or purported facts as shown by the corrected record in a particular case.'" 34 Comp. Gen. 7, No. B-117367 (July 7, 1954); *accord, In re Garcia*, 1982 U.S. Comp. Gen. LEXIS 367, No. B-20299 (October 6, 1982).

The Chief Counsel also argued that the applicant has failed to prove that the Coast Guard committed any error or injustice by deducting the disputed amount from his basic pay pursuant to his voluntary enrollment in MGIB or by not refunding that money to him upon his early discharge. He alleged that the forms signed by the applicant upon his enrollment prove that he voluntarily enrolled in MGIB and was informed that the money deducted from his basic pay could not be refunded.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 12, 2000, the Chairman sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. The applicant did not respond.

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 application was timely.
2. The Chief Counsel alleged that the Board has no jurisdiction over this case and cannot grant the relief requested by the applicant because there is no error in the applicant's record for the Board to correct. However, the Coast Guard clearly has duties with respect to the MGIB program and retains records concerning its members' allotments and participation in those programs. Under

10 U.S.C. § 1552, the Board is authorized to correct errors and remove injustices in Coast Guard records. Therefore, the Board has jurisdiction over the Coast Guard's records concerning the applicant's allotments and participation in MGIB.

3. The Chief Counsel argued that the Board cannot grant relief in this case because under 31 U.S.C. § 3702, only the Comptroller General has authority to settle purely monetary claims against the United States. However, that statute has been amended. Under 31 U.S.C. § 3702(a), the Secretary of Defense settles members' monetary claims against the Coast Guard that do not involve any alleged error or injustice in their military records.

4. In signing the CG-3301I and DD 2366 at the time of his enlistment, the applicant voluntarily agreed to participate in MGIB and have the money deducted from his basic pay. Both forms clearly state that the money deducted from his pay would not be refunded under any circumstances. Although the eligibility criteria listed on the two forms differ as to the number of months he was required to serve to become eligible for MGIB benefits, neither form stated that 20 months of active service would be sufficient to make him eligible. The applicant has not alleged or proved that the Coast Guard coerced him to sign these forms or committed any fraud against him with respect to his enrollment in MGIB. He has not proved that there is any error in his record with respect to his MGIB enrollment. Nor has he proved that the Coast Guard committed any error or injustice in deducting the required allotments for enrollment from his basic pay or in failing to refund the money to him when he was discharged early for alcohol rehabilitative failure.

5. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of former XXXXXX, USCG, for correction of his military record is hereby denied.

Nancy Lynn Friedman

Robert H. Joost

Karen L. Petronis