

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2001-071

FINAL DECISION

ANDREWS, Deputy Chair:

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 case was docketed on April 10, 2001, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated February 14, 2002, 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 chief aviation maintenance technician (AMTC; pay grade E-7), asked the Board to correct his records by enrolling him for educational benefits under the Veterans' Educational Assistance Program (VEAP).¹ He alleged that, contrary to regulation, he was never offered the opportunity to enroll. He alleged that he did not discover the error until February 10, 2001.

SUMMARY OF THE RECORD

On May 7, 1979, the applicant enlisted in the Coast Guard for four years, through May 6, 1983. On April 22, 1983, he extended his enlistment for one year, through May 6, 1984. On May 2, 1984, he extended his enlistment for another two years, through May 6, 1986.

On May 3, 1985, the applicant was discharged and reenlisted for four years to receive a selective reenlistment bonus. The discharge form he was issued and signed, DD Form 214, shows that he was not enrolled as a contributor to VEAP. He has served continuously on active duty since that time.

¹ 38 U.S.C. § 3201. Money deposited by a servicemember in a VEAP account is matched two to one by the government.

APPLICABLE LAW

Under 38 U.S.C. § 3201, the purpose of VEAP was

(1) to provide educational assistance to those men and women who enter the Armed Forces after December 31, 1976, and before July 1, 1985, (2) to assist young men and women in obtaining an education they might not otherwise be able to afford, and (3) to promote and assist the all volunteer program of the United States by attracting qualified men and women to serve in the Armed Forces.

The statute also stated that “[e]ach person entering military service on or after January 1, 1977, and before July 1, 1985, shall have the right to enroll in the educational benefits program provided by this chapter ... at any time during such person’s service on active duty before July 1, 1985.” 38 U.S.C. § 3221. Servicemembers were supposed to be advised about VEAP, but there was no requirement that VEAP counseling be documented in their records.

On November 14, 1986, the Commandant issued ALCOAST 056/86, concerning VEAP. The ALCOAST announced a new enrollment period for members who first enlisted between January 1, 1977, and June 30, 1985, but who failed to enroll in VEAP during that time. The new enrollment period lasted until March 31, 1987. The ALCOAST included the following instructions:

3. Personnel Reporting Units will be provided with a list of eligible personnel. This listing will be forwarded to the units. Eligible members shall sign the roster indicating their intention to participate or not. Personnel absent from the unit shall be so noted with their current status. New personnel and personnel present on [temporary active duty] shall be added to the list by the unit. The completed list shall be forwarded by the unit to Commandant {G-PE-3}.
4. Commanding officers and officers in charge shall assure that this information is brought to the attention of all personnel.

VIEWS OF THE COAST GUARD

On September 21, 2001, the Chief Counsel of the Coast Guard recommended that the applicant’s request for relief be denied.

The Chief Counsel argued that the doctrine of laches should bar the applicant’s claim because the passage of time has prejudiced the Coast Guard’s ability to respond since the claim is based on events that occurred more than 14 years ago. The delay in the applicant’s claim, he alleged, has caused substantial prejudice to the government because it is now difficult to confirm or rebut his allegation that he was not offered an opportunity to enroll in VEAP. *See, e.g., Sargisson v. United States*, 12 Cl. Ct. 539, 542 (1987). The Chief Counsel further argued that 10 U.S.C. § 1552 authorizes the Board to correct a record only when it is “necessary to correct an error or remove an injustice.” In this case, he stated, the Board should exercise its discretion not to grant relief based on the doctrine of laches.

The Chief Counsel stated that the applicant could have enrolled in VEAP anytime between his enlistment and June 30, 1985, or under ALCOAST 056/86, from October 28, 1986, through March 1987. He stated that there is no evidence in the record that the applicant ever enrolled in VEAP during those periods. Moreover, he argued, the applicant was issued a DD 214 before VEAP expired indicating that he was not enrolled in the program. Therefore, the applicant knew or should have known that he was not enrolled in VEAP before it expired on June 30, 1985, and during the later enrollment period under ALCOAST 056/86.

The Chief Counsel further argued that, under ALCOAST 056/86, units were instructed to inform their members about VEAP and then have them initial a roster to indicate whether they wanted to participate or not. The Paperwork Management Manual, COMDTINST M5212.12, dictates that such unit records may be destroyed after three years. Therefore, the roster the applicant would have initialed to indicate whether or not he wanted to enroll in VEAP is presumably destroyed. However, under the presumption of regularity, the Chief Counsel argued, the Board must assume that the applicant's unit properly implemented ALCOAST 056/86. He argued that the applicant has failed to meet his burden of proving that he was never offered the opportunity to enroll in VEAP.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 25, 2001, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. No response was received.

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 over this matter pursuant to 10 U.S.C. § 1552.
2. Under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 525, statutes of limitations are tolled during periods in which members serve on active duty. *See Sherengos v. United States*, 214 Ct. Cl. 749, 750 (1977); *Bickford v. United States*, 228 Ct. Cl. 321, 323-24 (1981). Because the applicant in this case has continued to serve on active duty, the Board's three-year statute of limitations has not begun to run on his claim. Therefore, his request was technically timely.
3. The Chief Counsel urged the Board to deny relief pursuant to the doctrine of laches. Under that doctrine, an applicant who inexcusably delays his application to the Board may be denied relief if the delay has prejudiced the government's ability to verify or refute his claims. *See Braddock v. United States*, 9 Cl. Ct. 463, 470 (1986). The Chief Counsel alleged that the delay has prejudiced the Coast Guard's case because the unit records reflecting the applicant's decision not to participate in VEAP required by ALCOAST 056/86 would have been destroyed after approximately three years pursuant to the COMDTINST M5212.12. The Board finds that the long, inexcusable delay has prejudiced the Coast Guard's case because pertinent

records have been lost. Therefore, the applicant's request should be denied under the doctrine of laches.

4. Even if the doctrine of laches did not bar the applicant's claim, it would fail for lack of merit. He has submitted no evidence whatsoever to overcome the presumption of regularity accorded government officials under *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992), and *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). Under ALCOAST 056/86, the applicant's command was ordered to inform members of the opportunity to enroll in VEAP and to have each member of the unit initial a roster confirming his or her decision. With no evidence to the contrary in the record, the Board assumes that the applicant's command obeyed this order and implemented the ALCOAST properly.

5. Accordingly, the applicant's request should be denied under the doctrine of laches and for lack of merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of
denied.

, USCG, for correction of his military record is

Coleman R. Sachs

Jacqueline L. Sullivan

Nilza F. Velázquez