



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

MEH
Docket No. 9894-09
17 Feb 2010

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NAVADMIN 187/09 of 26 June 2009
(3) NAVADMIN 203-09 of 11 July 2009
(4) BUPERS memo 1780 BUPERS-262G of 10 Nov 09
(5) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that she transferred Post-9/11 GI Bill benefits to her dependents prior to her retirement on 1 September 2009.

2. The Board, consisting of Messrs. George, Pfeiffer, and Zs Salman, reviewed Petitioner's allegations of error and injustice on 1 February 2010 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The Post-9/11 Veterans Education Assistance Act (Post 9-11 GI Bill, Public Law 110-252) was signed into law on 30 June 2008 and became effective on 1 August 2009. The bill provides financial support for education and housing for service members

with at least 90 days of service on or after September 11, 2001. The act also includes a provision for qualifying service members to transfer educational benefits to dependents.

c. The Navy's guidance implementing the Post 9-11 GI Bill was published by NAVADMIN 187/09, released on 26 June 2009, and NAVADMIN 203-09, released 11 July 2009. Under the guidance, an election to transfer benefits to dependents must be made prior to retirement or separation from active duty. See enclosures (2) and (3).

d. Petitioner was scheduled to retire on 1 September 2009. She began terminal leave in June 2009.

e. Petitioner met the eligibility requirements for transferring her Post-9/11 GI Bill benefits to her dependents. She was still on active duty during the release of both aforementioned NAVADMINs.

f. Petitioner states that, while still on active duty, she twice attempted, unsuccessfully, to make the transfer selection via the Department of Veterans Affairs (VA) website.

g. Petitioner was placed on the retired list effective 1 September 2009. She had not completed the appropriate actions necessary to transfer benefits before her retirement.

h. On 17 September 2009, Petitioner filed the instant application seeking to change the record to show that, prior to her transfer to the retired list, she properly requested to transfer Post-9/11 GI Bill benefits to her dependents. Petitioner argues, in effect, that she was not aware of the proper procedures required to transfer the benefits because the Post 9/11 GI Bill program was new, implementing guidance had just been published and she was on terminal leave and in the process of transitioning out of the service while the program was ramping up.

i. In correspondence attached as enclosure (4), the Bureau of Naval Personnel (PERS 262-G) has recommended the request be denied. In PERS 262-G's view, although Petitioner was on terminal leave when NAVADMINs 187-09 and 203-09 were published, that does not relieve her of her responsibility to know of government programs that affect her. Additionally, although the Navy's specific implementing guidance was not published until summer 2009, the general features of the Post-9/11 GI Bill had been widely publicized, both before and after it was signed into law in June 2008. Thus, it was incumbent upon Petitioner to

stay informed of the latest policy updates especially as she desired to transfer her benefits to her dependents.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (4), the Board concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosure (4) regarding Petitioner's responsibility to keep herself informed of the rules that govern federal programs as they affect her. However, the Board found that the following factors militated in favor of relief: The Post 9-11 GI Bill program is "new" and, as with many new programs, some implementation difficulties are to be expected. Specific guidance about the program was not available until summer 2009. By that time, Petitioner had already begun the transition to retired status, including terminal leave. Petitioner was otherwise eligible to transfer benefits, but, in spite of two unsuccessful attempts, failed to properly transfer benefits prior to retirement as required by the implementing guidance. Thereafter, Petitioner made a timely request to this Board seeking to rectify her failure. The Board concluded that Petitioner sufficiently demonstrated a desire and intent to transfer benefits prior to her retirement. And even though the record is clear that she failed to complete the ministerial steps necessary to properly transfer the benefits, that failure should be excused because of the special circumstances described above.

RECOMMENDATION:

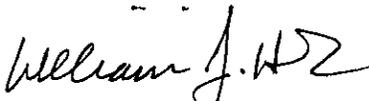
That Petitioner's naval record be corrected, where appropriate, to show that:

a. Prior to her 1 September 2009 retirement from the armed forces she successfully completed the online election request to transfer her unused Post-9/11 GI Bill benefits to her dependents.

b. Petitioner should contact the Bureau of Naval Personnel (PERS 262-G) to execute the documents necessary to complete the transfer.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


WILLIAM J. HESS, III
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and Approved

 2/23/10
Assistant General Counsel
(Manpower and Reserve Affairs)