

7/18/98

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-055

FINAL DECISION

██████████ Attorney-Advisor:

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's application on February 6, 1998. The application was completed and docketed on June 9, 1998, upon receipt of the applicant's military records.¹

This final decision, dated June 15, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S ORIGINAL ALLEGATIONS AND REQUESTED RELIEF

The applicant, a former ██████████; pay grade E-4), asked the Board to correct her record by changing the separation code (SPD code) and narrative reason for discharge in blocks 26 and 28, respectively, on the DD 214 discharge form issued upon her release from active duty. At the time of her release, on October 1, 1993, she had served two years, two months, and three days on active duty.

Initially, the applicant alleged that the LDM separation code (which means involuntary early release under an authorized program or circumstance) and the narrative reason for separation ("convenience of the government") shown on her DD 214 are inaccurate and unjust. She asked that they be changed to show that she was discharged pursuant to a reduction in force.

The applicant alleged that her veterans' benefits have been "very limited" because of the inaccurate information on her DD 214. In addition, she alleged the

¹ On April 29, 1999, the applicant waived her right to a decision within 10 months of the completion of her application under 14 U.S.C. § 425 in order to reconsider and modify her requested relief.

following: "My total understanding at the time of [her] separation from the USCG was for the sole purpose of 'Reduction in Force' as an offer from my superiors in the Coast Guard. I should not lose my veterans benefits because of this discharge and if I had been explained all the ramifications, I would not have given up all my benefits." She also alleged that "I was told after I accepted early release for a Reduction in Force that I was offered that my discharge was for the Government's convenience."

The applicant alleged that she did not discover the errors until November 20, 1997. She stated that on that date, a "Veterans Service Officer informed me that I may have been given the wrong SPD code [at the] time of discharge."

IEWS OF THE COAST GUARD

Advisory Opinion of the Chief Counsel

On February 25, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion, based on the applicant's original application, in which he recommended that the Board grant relief.

The Chief Counsel alleged that the Coast Guard had committed no errors with respect to the applicant's SPD code. He stated that, at the time of the applicant's discharge on October 1, 1993, LDM was the proper SPD code for members who were voluntarily discharged during a reduction in force. The Chief Counsel explained that a few months after the applicant's discharge, the SPD Handbook was revised and the LDM code was eliminated. Under the new SPD Handbook issued in 1994, members being voluntarily discharged during a reduction in force receive an SPD code of KCC (voluntary discharge; reduction in force) and a narrative reason for separation of "reduction in force." Therefore, the Chief Counsel stated that the Coast Guard would "not contest a Board decision to correct Applicant's record to reflect a 'KCC' SPD in lieu of the 'LDM' SPD assigned."

The Chief Counsel attached to his advisory opinion a memorandum on the applicant's case submitted by the Coast Guard Personnel Command (CGPC).

Memorandum of the Coast Guard Personnel Command

On February 9, 1999, the CGPC sent the Chief Counsel of the Coast Guard a memorandum advising him that no relief was warranted in the applicant's case because no error had been made.

The CGPC explained that the SPD code LDM (early release under an authorized program or circumstance) was correct under COMDTINST M1900.4C, which was issued on March 12, 1990. On the date of the applicant's discharge, October 1, 1993, LDM was the code "used for voluntary discharge in reduction in force discharge cases."

The CGPC opined that the applicant was probably confused because of the revised version of the SPD Handbook, which was issued on January 13, 1994,

after the applicant's discharge. In this new handbook, SPD codes with the letters "DM" in the second and third positions signify discharges under holiday release programs. The code LDM no longer exists in the new handbook. Had the applicant been discharged after the new handbook came into force, she would have received an SPD code of KCC (reduction in force).

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On February 25, 1999, the Chairman of the BCMR sent a copy of the views of the Coast Guard to the applicant and invited her to respond within 15 days.

On April 8, 1999, the applicant called the BCMR and stated that she wanted to waive her entitlement to a decision within 10 months under 14 U.S.C. § 425 because she was uncertain of the effect the KCC separation code proposed by the Chief Counsel would have on her entitlement to veterans' benefits. She stated that she needed more time in which to consult the Department of Veterans Affairs (DVA), which administrates MGIB benefits. On May 5, 1999, the BCMR received written confirmation of the applicant's waiver of the 10-month deadline.

APPLICANT'S REVISED REQUEST

On June 2, 1999, the applicant submitted a revised request for relief. She asked that the narrative reason for separation in block 28 of her DD 214 be changed to "Involuntary REFRAD—Reduction in Strength." She also asked that the Block 25 be changed to reflect the part of the Personnel Manual that authorized the reduction in force. She indicated that these changes should make her eligible for educational benefits under the Montgomery G.I. Bill (MGIB).²

COAST GUARD'S RESPONSE TO THE REVISED REQUEST

On June 9, 1999, the BCMR forwarded the applicant's revised request for relief with a request to respond within 60 days.

On May 23, 2000, the Chief Counsel responded to the applicant's revised request. He did not recommend granting the requested relief and reaffirmed his recommendation that the Board change her SPD code to KCC. He indicated that the applicant's revised request, if granted, would make her eligible for MGIB benefits under 38 U.S.C. § 3011 (1993).

The Chief Counsel argued that the applicant voluntarily applied for release under the early release program authorized by ALCOAST 069/93. Paragraph 8 of that announcement, he alleged, "specifically addressed Applicant's situation and put her on notice that an early release might have an adverse effect on her MGIB eligibility." In addition, he stated, paragraph 11 of the announcement "clearly indicated that this early release program is strictly voluntary." Therefore, he argued, she "has failed to prove by a preponderance of the evidence that she was involuntarily separated under a reduction in force program."

² 38 U.S.C. § 3001.

The Chief Counsel further argued that when the applicant enlisted in 1991, she signed a CG-3301I form acknowledging that she understood she would have to complete at least 48 months of active service before she would be eligible for MGIB benefits. Therefore, he alleged, no injustice has been committed in this case.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On May 24, 2000, the BCMR sent the applicant a copy of the Chief Counsel's supplemental recommendation and invited her to respond within 15 days. The applicant did not respond.

SUMMARY OF THE RECORD

On July 29, 1991, the applicant enlisted in the Coast Guard for a term of four years. Prior to her enlistment, on July 16, 1991, the applicant signed a statement of understanding (form CG-3301I) concerning MGIB benefits. Pertinent parts of the statement read as follows:

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.
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.
 - • •
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 August 15, 1991, the applicant signed another statement of understanding regarding MGIB (form DD 2366) with somewhat different terms, which appear as follows:

2. f. I must complete three years of active duty service before I am entitled to \$300 per month for 36 months.
 - • •
- h. I must complete two years of active duty and join the Selected Reserve for a minimum four year service agreement before I am entitled to \$300 per month for 36 months.

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

On July 26, 1993, the Coast Guard issued ALCOAST 069/93, entitled "Voluntary Early Release Program for Active Duty Enlisted Personnel." It announced a program "to mitigate the negative effects of high retention rates," by permitting enlisted members to submit requests for voluntary early release from active duty. The deadline for submission was August 16, 1993.

Paragraph 4 of ALCOAST 069/93 stated that members whose requests were approved would be separated by reason of the "convenience of the government" in accordance with Article 12-B-12-A(6) of the Personnel Manual (COMDTINST M1000.6A). These members would be released from active duty or discharged between October 1, 1993, and June 1, 1994.

Paragraph 8 of ALCOAST 069/93 stated that "[c]ommands shall ensure members who request early release from active duty under this program are counseled [in accordance with COMDTINST 1760.9, the MGIB instruction] on the consequences their actions may have on MGIB eligibility."

Paragraph 10 stated that "separation program designator 'LDM' for [members being released from active duty] and 'JDM' for [members being discharged] shall be assigned."

Paragraph 11 stated that "[t]his early release program is strictly voluntary and will not be used in lieu of administrative separation processing."

On October 1, 1993, the applicant was released from active duty into the Coast Guard Reserve. Her DD 214 indicates that the separation authority for her release was Article 12-B-12 of the Personnel Manual. That article authorizes the Commandant to separate members for the "convenience of the government" under various circumstances, including general demobilizations and reductions in authorized strength. The DD 214 also shows a narrative reason for separation of "convenience of the government," an SPD code of LDM (involuntary early release under an authorized program or circumstance), and a reenlistment code of RE-1 (eligible to reenlist).

APPLICABLE LAW

Montgomery G.I. Bill

Statutory requirements for entitlement to MGIB benefits did not change from the time the applicant enlisted (38 U.S.C. § 1411 (1988 Supp. II)) until she was released (38 U.S.C. § 3011 (1988 Supp. IV)). The statute read 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 ... ; (II) for the convenience of the Government, ... in the case of an individual who completed not less than 30 months of continuous active duty if the initial obligated period of active duty of the individual was at least 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 in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; ...

(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—

• • •

(D) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service;

is entitled to basic educational assistance under this chapter.

Commandant Instruction M1900.4C

On March 12, 1990, the Commandant issued revised instructions for filling out the DD 214. This instruction was in force until September 28, 1993, three days before the applicant's release from active duty. Chapter 1.C. of the instruction stated that the "Commandant (G-PE) will specify [the narrative reason for separation] entries to be made in [block 28] by pertinent letter or orders issued."

Chapter 2.C. of the instruction lists the following various possible SPD codes, narrative reasons, and reenlistment codes that can be assigned to enlisted members who are discharged or released from active duty pursuant to a reduction in force:

SPD Code	Narrative Reason for Separation	Reenlistment Code	Authority	Explanation
JCC	General demobilization/reduction in authorized strength	RE-R1, RE-1, or RE-4	12-B-12	Involuntary discharge
KCC	General demobilization—Reduction in authorized strength	RE-R1, RE-1, or RE-4	12-B-12	Voluntary discharge
LCC	General demobilization, reduction in authorized strength	RE-R1 or RE-1	12-B-12	Involuntary release
MCC	General demobilization—Reduction in authorized strength	RE-R1 or RE-1	12-B-12	Voluntary release
JDM	Early separation under an authorized program or circumstance	RE-R1, RE-1, or RE-4	12-B-12	Involuntary discharge
KDM	Early separation under an authorized program or circumstance	RE-R1, RE-1, or RE-4	12-B-12	Voluntary discharge
LDM	Early release under an authorized program or circumstance	RE-R1 or RE-1	12-B-12	Involuntary release
MDM	Early release under an authorized program or circumstance	RE-R1 or RE-1	12-B-12	Voluntary release

Commandant Instruction M1900.4D and the SPD Handbook

On September 28, 1993, three days before the applicant's release from active duty, the Commandant issued revised instructions for filling out the DD 214 in COMDTINST M1900.4D. Chapter 1.E. provided that "the appropriate separation code (SPD) associated with a particular authority and reason for separation as shown in the SPD Handbook or as stated by the [Military Personnel Command] in the message granting discharge authority" shall be entered in block 26 of the DD 214. In addition, the Military Personnel Command would specify the narrative reason for separation to be entered in block 28 "by pertinent letter or orders issued."

The provisions of former Chapter 2.C. were revised and issued in a separate SPD Handbook. The handbook was initially issued in draft form, and was issued in final form with minor revisions on January 13, 1994. The handbook, in effect on October 1, 1993, does not contain an LDM separation code. It includes the following:

SPD Code	Narrative Reason for Separation	Reenlistment Code	Authority	Explanation
JCC	Reduction in force	RE-1 or RE-4	12-B-12	Involuntary discharge
KCC	Reduction in force	RE-1 or RE-4	12-B-12	Voluntary discharge
LCC	Reduction in force	RE-1 or RE-4	12-B-12	Involuntary release
MCC	Reduction in force	RE-1	12-B-12	Voluntary release
MDM	Holiday Early Release Program	RE-1	12-B-12	Voluntary release

Personnel Manual (COMDTINST M1000.6A)

Article 12-B-12.a.(6) of the Personnel Manual, entitled "Convenience of the Government," states that the Commandant may authorize or direct the separation of enlisted personnel "[t]o provide for early separation of personnel under various authorized programs and circumstances." Separations for "[g]eneral demobilization, reduction in authorized strength or by an order applicable to all members of a class of personnel specified in the order" are permitted under Article 12-B-12.a.(1).

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 section 1552 of title 10 of the United States Code.

2. The applicant stated that she did not discover that the separation code on her DD Form 214, LDM, did not reflect the actual circumstances of her release from active duty until November 20, 1997. Therefore, the Board finds that her application was timely.

3. The preponderance of the evidence indicates that the applicant voluntarily sought to be released from active duty on October 1, 1993, pursuant to the provisions of ALCOAST 069/93, issued on July 26, 1993. ALCOAST 069/93, seemingly anomalously, required applicant to be released with a separation code of LDM, which signified an involuntary release under an authorized program. COMDTINST M1900.4C, Chapter 2.C. By the time of the applicant's release on October 1st, however, the separation code LDM had been discontinued since COMDTINST M1900.4C was cancelled on September 28, 1993, and the new draft SPD Handbook did not include an LDM separation code.

4. The Chief Counsel of the Coast Guard alleged that the LDM code was not in error but recommended that the Board grant relief by assigning the applicant a KCC separation code. The Chief Counsel stated that the applicant would have received a KCC separation code had she been separated after the new SPD Handbook was issued. However, both COMDTINST M1900.4C and the new SPD Handbook show that the KCC separation code should be used when a member is voluntarily discharged under a reduction in force. Because the applicant was not discharged but instead released into the Reserve, the Board finds that the use of the KCC code would be inaccurate.

5. Because the early release program authorized under ALCOAST 069/93 was actually voluntary, it should have required the applicant to be assigned the separation code MDM, not LDM, in accordance with the provisions of COMDTINST M1900.4C. However, by the time members could be released under ALCOAST 069/93, COMDTINST M1900.4C and the LDM separation code had been cancelled, and the meaning of the MDM separation code had been modified to indicate an early release due to a holiday. When the applicant was released on October 1, 1993, the separation code most closely describing the conditions of her release under the new SPD Handbook was MCC, which means voluntary release due to a reduction in force.

6. The applicant alleged that she did not know that she would be giving up certain veterans' benefits by requesting release under ALCOAST 069/93. A voluntary separation from military service is rendered involuntary if it results from misrepresentation or deception on the part of government officers. See *Tippett v. United States*, 185 F.3d 1250, 1255 (Fed. Cir. 1999); *Scharf v. United States*, 710 F.2d 1572, 1574 (Fed. Cir. 1983). ALCOAST 069/93 clearly indicates that members requesting release under its terms may forgo MGIB benefits. Moreover, it required that such members be counseled concerning the MGIB educational benefits they might be forgoing. The applicant has not presented any evidence to overcome the presumption that her superior officers acted correctly, lawfully, and in good faith with respect to counseling her under ALCOAST 069/93. See *Arens v. United States*, 969 F.2d 1034, 1037 (1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). Moreover, when she enlisted in

1991, the applicant signed two documents describing the requirements for MGIB benefits. Although the documents, CG-3301I and DD 2366, were inconsistent with each other, under neither of them nor under the statute, 38 U.S.C. § 3011, would her two years, two months, and three days of active service have qualified her for MGIB benefits. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence that her release from active duty was rendered involuntary by any misrepresentation or deception on the part of the Coast Guard.

7. Hoping that the DVA would find her eligible for MGIB benefits under 38 U.S.C. § 3011, the applicant asked that her SPD code, narrative reason for separation, and authority for separation be changed to show she was involuntarily released from active duty during a reduction in force. The Chief Counsel indicated that the program devised under ALCOAST 069/93 was indeed a reduction in force. However, the record proves that her release from active duty was voluntary.

8. It is not clear from the record whether ALCOAST 069/93 (under which the applicant received the LDM separation code) was intended to overrule COMDTINST M1900.4C (under which she would have received an MDM separation code) or COMDTINST M1900.4D (under which she should have received an MCC separation code). Nothing in the text of the ALCOAST indicates such an intent, but her command apparently followed its dictates regardless of the standing regulations in the COMDTINSTs. The applicant has not proved by a preponderance of the evidence that her command committed an error or injustice in following the requirements of ALCOAST 069/93. Moreover, if her command had followed the terms of COMDTINST M1900.4C or COMDTINST M1900.4D, she would have received a separation code indicating a voluntary release (MDM or MCC), rather than the involuntary code, LDM, she now has. Voluntary releases during a reduction in force do not qualify a member for MGIB benefits under 38 U.S.C. § 3011. Therefore, with respect to MGIB benefits, the applicant would have been no better off if her command had followed the terms of the COMDTINSTs rather than those of the ALCOAST.

9. The applicant has not proved by a preponderance of the evidence that her DD 214 should reflect an involuntary release during a reduction in force. Furthermore, it is not apparent to the Board that she would benefit in any way by having her separation code changed to MDM or MCC.

10. If the terms of paragraph 2.h. of the form DD 2366 signed by the applicant on August 15, 1991, are correct, she may be eligible for MGIB benefits upon completion of four years in the Reserve since she served more than two years on active duty.

11. Accordingly, the Board should deny the requested relief. However, if the applicant applies to the Board for reconsideration of her case, requesting that her separation code be changed to MCC, the Board shall docket her application.

ORDER

The application of
for correction of her military record is hereby denied.

, USCG,

