

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 100-97

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on April 16, 1997, upon the Board's receipt of the applicant's application for correction.

This final decision, dated March 12, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a ██████████ (pay grade E-5) on active duty, asked the Board to correct his record to "revoke my statement of disenrollment in the Montgomery GI Bill [MGIB] (DD Form 2366) as signed during the first two weeks of boot camp."

SUMMARY OF RECORD AND SUBMISSIONS

The applicant alleged that he was incorrectly advised by personnel at recruit training that paramedic training offered by technical schools was not covered under the MGIB. The applicant claimed that this erroneous advice led to his decision to disenroll from the MGIB.

The applicant enlisted in the Coast Guard on August 15, 1988. He stated that he became aware that he had been erroneously advised on November 15, 1989.

The applicant stated that as a recruit in boot camp he relied on his leaders for information. The applicant stated that after recruit training he researched the MGIB issue and learned that the paramedic training that he intended to pursue was covered by the MGIB. He stated that after learning that the course was covered by the MGIB, he contacted various Coast Guard personnel trying to re-enroll in the MGIB. Each time he was told that the choice he made in recruit training to disenroll was irrevocable. He stated that it has taken him nearly eight years to discover that the BCMR could change his record to show that he did not elect to disenroll from the MGIB program.

The applicant's record does not contain the DD Form 2366 showing his disenrollment from the MGIB program. His record does contain a signed statement of

understanding with respect to the MGIB. By signing this document, the applicant acknowledged the following: (1) He was eligible for the MGIB. (2) He was automatically enrolled in the program. (3) He would receive a certain monthly monetary benefit if he completed a certain amount of active duty. (4) He could use the benefits at colleges, universities, business or technical schools, or for correspondence courses, apprenticeship or on-the-job training programs. (5) He could make a one-time-only election to disenroll during the first two weeks of active duty.

Views of the Coast Guard

The Coast Guard recommended that the applicant's request be denied because he had failed to provide prime facie evidence of an error or injustice in his record.

The Service stated that the MGIB specifically provides that election not to participate in the program may only be made when the member initially enters on active duty. The Coast Guard stated that any member, such as the applicant, who elects not to participate is not entitled to benefits. The Service stated that the applicant admitted that he elected to disenroll from the program, although he blamed the decision to disenroll on the alleged erroneous advice of an instructor.

The Coast Guard stated that the applicant signed a statement acknowledging that he could use the MGIB benefits at colleges, universities, and technical schools. Accordingly, the Coast Guard argued that the applicant was correctly advised by Coast Guard personnel regarding the use of MGIB benefits.

The Service stated that absent strong evidence to the contrary, Coast Guard officials are presumed to have exercised their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). The Service stated that the applicant provided no evidence to rebut this presumption, other than his own recollection, more than seven years later, that he was misinformed by an unidentified instructor at recruit training.

The Coast Guard also argued that the applicant's request should be barred under the equitable doctrine of laches, because of the applicant's unreasonable delay in filing this application. The Service stated that, even if the Board were to somehow conclude that the applicant had made a prima facie showing of error or injustice entitling him to relief, the Coast Guard can not presently prove what was said to a recruit by an instructor more than seven years ago. The Service stated that it has been disadvantaged in its ability to verify or rebut the applicant's claim by his delay in raising this error. See Sargisson v. United States, 12 Cl. Ct. 539, 542 (1987).

Applicant's Response to the Views of the Coast Guard

On August 1, 1997, a copy of the views of the Coast Guard was mailed to the applicant, with a request for a response. He did not submit a response.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, the Coast Guard's submission, and applicable law:

1. The BCMR has jurisdiction over this matter pursuant to section 1552 of title 10, United States Code.

2. The applicant admitted that he signed the necessary form disenrolling himself from the MGIB program. He alleged that he disenrolled because he was advised by personnel, whom he did not identify, at recruit training that the paramedic training he intended to pursue at a technical school was not covered under the MGIB. This allegation is contradictory to a statement the applicant signed, on October 10, 1988, acknowledging that he had been advised that he could use the MGIB for business or technical schools.

3. The applicant has not provided any evidence, other than his own statement, that he was provided erroneous advise with respect to MGIB by Coast Guard personnel. This evidence is insufficient to rebut the presumption that military authorities in this case exercised their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992).

4. The applicant has failed to prove an error or injustice in this case.

5. Accordingly, his application should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of
of his military record is denied.

USCG, for correction

