

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:



BCMR Docket
No. 1997-172

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on September 5, 1997, upon the receipt of an application for relief by the Board for Correction of Military Records (Board).

This final decision, dated January 14, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant, a former seaman apprentice (SA; pay grade E-2), enlisted in the Coast Guard for four years on October 14, 1985. She enrolled in the Montgomery GI Bill (MGIB) on October 24, 1985. She was discharged on April 1, 1987 with a separation code of KBG (Not listed in separation program designator handbook) and a reenlistment code of RE-1 (eligible for reenlistment).

She submitted an application to the Board after finding out that she was ineligible to receive MGIB benefits and that she could not receive a refund of the \$1,200.00 she had paid into the program. In her application, she stated that she was not aware of the limitations of the MGIB. She further stated as follows: "[The determination that I am ineligible for MGIB benefits] is unjust because I expected to use this money to continue my education. Now, I am told that I never even qualified for it in the first place and was told that my \$1200 investment is not refundable either."

The applicant claimed that she discovered her ineligibility for MGIB benefits in January 1997. She gave the following statement as her reason why the Board should find it in the interest of justice to waive the three year statute of limitations in her case: "waited until my kids were in school full time to return to school myself and found out that my GI bill would not pay me a dime - not even refund my initial \$1,200.00."

Views of the Coast Guard

The Coast Guard recommended that the applicant's request be denied. The Coast Guard stated the following:

On October 24, 1985, she signed DD Form 2366, acknowledging her understanding that the amount deducted from her pay to establish MGIB eligibility would not be refunded, that she was required to complete at least three years of service to receive MGIB benefits, and that she was required to use the benefits within 10 years of separation from the Coast Guard. She also acknowledged that she had the opportunity to disenroll at that time, but she declined to do so. Applicant subsequently requested, and received an early separation from the Coast Guard for convenience of the government after less than one year and six months of active duty service. Therefore, she is ineligible for MGIB education benefits. 38 U.S.C. § 3011. While applicant considers these statutory limitations unfair, she has not shown an error or injustice affecting her military record regarding her MGIB eligibility.

Applicant's Response to Coast Guards Views

On May 29, 1998, the Board mailed a copy of Coast Guard's views to the applicant. It was returned to the Board marked "attempted not known."

Applicable Regulations

Enclosure (1) to COMDTINST 1760.9A sets forth the eligibility criteria for participating in the MGIB program. To be eligible, a person must have entered on active duty for the first time on or after July 1, 1985 and must have served for at least three continuous year on active duty.

COMDTINST 1760.9A also states that a member's decision to participate or not participate in MGIB is irrevocable and amounts paid in cannot be refunded for any reason.

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code.
2. The BCMR application is untimely. To be timely, an application for correction of a military record must be submitted within three years after the discovery of the alleged error or injustice. The applicant alleged that she discovered the injustice in 1997, but she submitted no evidence in support thereof. See 33 CFR 52.22. The Board may still consider the application on the merits, however, if it finds that it is in the interest of justice. Id.
3. The applicant enlisted in the Coast Guard on October 14, 1985 and was discharged on April 1, 1987. She contributed \$1,200.00 to the MGIB program.
4. The applicant has failed to establish that the Coast Guard committed an injustice by denying her MGIB benefits and by refusing to return the \$1200.00 she paid into the program. Although she claimed that she was unaware of the limitations of the MGIB program, she signed a DD Form 2366 (document in her military record) acknowledging that the \$1200.00 paid into the program would not be refunded.
5. The applicant also acknowledged that to be eligible for MGIB benefits she was required to serve three years on active duty. The applicant was discharged after approximately one year and six months of active duty.
6. The applicant is ineligible to receive MGIB benefits. She has not met the required length of service. The applicant is also not entitled to a refund of the money contributed to the program. Therefore, it is not in the interest of justice to waive the three year statute of limitations in this case.
7. Accordingly, the application should be denied on the merits and because it is untimely.

ORDER

The application to correct the military record of former
USCG, is denied.

