

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 1998-031

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FINAL DECISION

████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 18, 1997, upon the receipt by the BCMR of the applicant's request for correction of his military record.

This final decision, dated November 20, 1998, was signed by three duly appointed members who were designated to serve as the Board in this case.

APPLICATION FOR RELIEF

The applicant, a ██████████; pay grade E-4), asked that his DD Form 214 be changed to show that he had contributed to the Post-Vietnam Veterans Educational Assistance Program (VEAP). He asked that Box 15a on that form be changed from "no" to "yes" because he had contributed 12 monthly payments of \$100 to this program.

The applicant originally enlisted in the Coast Guard on January 26, 1993 for four years. ). On the same date, he signed a "Statement of Understanding, 4-year Active Service Obligation" for the "Montgomery GI Bill." According to this form, MGIB benefits were \$300 per month for 36 months (total \$10,800), and to "be eligible for benefits . . . [a person must] [c]omplete 48 months of active duty. . . ."

He was honorably separated from the Coast Guard on January 1, 1996 after 2 years, 11 months, and 6 days of active service. He was separated due to a reduction in force, with separation code MCC (voluntary release due to reduction in force). About two weeks after he enlisted, the applicant signed an MGIB eligibility

form. Clause (4) of that form reads as follows: "I must complete 36 months of active duty service before I am entitled to \$300 per month for a period of 36 months." Clause (10) of that form reads as follows: "I may use benefits in-service after 24 months of active duty. Benefits are limited to the cost of tuition and fees or the amount of assistance authorized, whichever is less."

### **VIEWS OF THE COAST GUARD**

On April 6, 1998, the Chief Counsel of the Coast Guard recommended to the BCMR that it deny the applicant the relief he requested because the applicant had never contributed to VEAP.

The Chief Counsel said that the applicant did not contribute to VEAP "because of the date of his original enlistment."

The Chief Counsel said that the applicant was eligible for and contributed to the MGIB but that "he did not serve the minimum 36 months required to receive MGIB benefits, based on his initial term of enlistment of 4 years."

### **RESPONSE OF THE APPLICANT TO THE VIEWS OF THE COAST GUARD**

A copy of the advisory opinion of the Coast Guard was sent to the applicant on April 7, 1998. The applicant was invited to respond to any matters on which he disagreed with the Coast Guard.

The applicant did not submit any response to the Board.

### **APPLICABLE STATUTE (38 U.S.C. 3011)**

This section is entitled "Basic educational assistance entitlement for service on active duty." The section provides, inter alia, that:

"(a) Except as provided in subsection (c) of this section, each individual

"(1) [W]ho

"(A) after June 30, 1985, first becomes a member of the Armed Forces . . . and  
(I) who (1) serves, as the individual's initial obligated period of active duty, at least three years of continuous active duty in the Armed Forces . . .

"(3) is entitled to basic educational assistance under this chapter."

### FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction to determine the issues in this proceeding under section 1552 of title 10, United States Code. The application was timely.

2. The Board, in BCMR Docket No. 1996-104, held that block 15 (contribution to VEAP) of a discharge form (Form 214) should be marked "No" for a person who contributed \$1,200 to the Montgomery GI Bill program but who did not contribute to the VEAP program.

3. The fact pattern in the existing case is the same as that in BCMR 1996-104. On January 26, 1993, the applicant signed a "statement of understanding" stating, inter alia, that he was automatically enrolled in the Montgomery GI Bill and must serve 48 months to be eligible for benefits. On February 11, 1993, he signed another form stating that he was enrolled in the Montgomery GI bill benefits program and must serve 36 months to be eligible for benefits.

4. The Coast Guard was correct in saying the applicant did not contribute to VEAP. He contributed to MGIB instead.

5. Since the applicant has not asked for MGIB benefits and has not alleged that he failed to receive such benefits, the Board will not enter a finding with respect to MGIB benefits.

6. However, the Board notes that the Coast Guard may have committed an error because the document signed by the applicant on January 26, 1993, provided that the applicant must serve 48 months on active duty in order to be eligible for educational benefits under the MGIB. This was erroneous since section 3011 of title 38, U.S. Code said that "three years of continuous active duty" is enough for basic educational assistance. The Board also notes that the Coast Guard may have corrected that error by having the applicant sign a statement on February 11, 1993 that provided that he had to serve only 36 months of active duty service to be eligible for benefits.

6. The applicant was separated voluntarily, during a reduction in force, approximately 24 days short of the 36 month requirement. In view of the error in

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the statement of understanding, the applicant may be entitled to MGIB benefits. The Coast Guard may have committed an injustice if it denied benefits.

7. If he has not already done so, the applicant should apply to the Department of Veterans Affairs for MGIB benefits. If benefits are denied, the applicant may reapply to this Board.

8. Notwithstanding, the applicant's current request should be denied without prejudice.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

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ORDER

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

