

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-081

FINAL DECISION

██████████ Deputy Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on May 12, 1998, upon the BCMR's receipt of the applicant's request for correction of her military record.

This final decision, dated April 22, 1999, is signed by three duly appointed members who were designated to serve as the Board in this case.

The applicant, now a ██████████ was a ██████████ ██████████ pay grade E-6) when she filed her application for correction. She enlisted in the Reserve on February 18, 1972, and entered active duty on January 28, 1985. She stated that when she was called to active duty she was not offered the opportunity to accept or decline the Montgomery GI Bill (MGIB). She asked the Board to correct her record to show that she was eligible to receive benefits under the MGIB.

The applicant stated that she had been told that she is not eligible for any education benefits and that she was "out of luck". She alleged, however, that someone in a similar situation to her own was given the opportunity to participate in the MGIB through a BCMR action. (She did not provide the Docket number or a name for this person.)

Views of the Coast Guard

On February 9, 1999, the Chief Counsel of the Coast Guard recommended that the applicant's request for relief be denied. The Chief Counsel stated that since the

applicant was never eligible for the MGIB, the alleged improper advice that she may or may not have received was not error. He further stated that the mere fact that the applicant may or may not have received erroneous advice on the MGIB, does not entitle her to the benefits of a program for which she was not eligible.

The Chief Counsel argued that the Board should dismiss the pending case for lack of jurisdiction. He relied on comments that he had submitted in an earlier case, BCMR Docket No. 1997-082, wherein he recommended that the Board dismiss that case for lack of jurisdiction. The Chief Counsel stated that both the Post-Vietnam Era Veterans Educational Assistance program (VEAP) and the MGIB program are administered by the Department of Veterans Affairs (DVA) and neither the Coast Guard nor the BCMR has the authority to act on a DVA record. Thus, the Coast Guard argued that VEAP and MGIB are DVA programs, which are beyond the purview of the Board.

The Board did not dismiss BCMR Docket No. 1997-082, but administratively closed it because that applicant had not exhausted her administrative remedies by applying to the DVA, before applying to the Board.¹

Attached to the advisory opinion was a memorandum from the Commander, Coast Guard Personnel Command (CGPC). CGPC stated that VEAP, not MGIB, was the education program in effect when the applicant entered active duty on January 28, 1985. CGPC stated that there was no requirement that members be counseled on VEAP.

When VEAP expired on June 30, 1985, it was replaced by the MGIB. MGIB was available to members who entered active duty on or after July 1, 1985. CGPC stated that the MGIB requires that members be counseled on the MGIB program and affirmatively memorialize their election not to participate in the program.

CGPC stated that in November 1986 VEAP was re-opened, until March 31, 1987, only for those members entering active duty between January 1, 1977 and June 30, 1985. Members who were eligible for VEAP, but had not taken advantage of the

¹ In Docket No. 1997-082, the applicant had an established VEAP account, but the applicant needed to fund or have funded the VEAP account to be eligible to convert that account to a MGIB account. The applicant alleged, and the Coast Guard conceded, that the applicant "has provided sufficient proof to show that she did initiate a timely request to re-deposit funds in her VEAP account and that the Coast Guard failed to process her request." However, the Coast Guard argued in Docket No. 1997-082 that these education accounts are administered by the DVA and therefore, the applicant should apply to that agency for relief.

opportunity to enroll in VEAP could do so during the open enrollment period. He further stated that there was no requirement to document counseling during the open enrollment period, but commanding officers were to ensure that every member was aware of the change. Members of the Coast Guard were to acknowledge that they had been informed of the VEAP open enrollment period by placing their initials next to their names on a unit roster.

CGPC stated that it was not aware of any previous BCMR decisions granting relief in cases similar to that of the applicant.²

The Coast Guard also attached a memorandum from the Chief of its General Law Division stating that the Coast Guard does not have the authority to allow retroactive enrollments in VEAP. The Chief, General Law, said that the BCMR had the authority to effect the restoration of a financial benefit to members after the enrollment period expired. He stated that the Coast Guard has no mechanism for allowing a member to enroll in a program that provides a financial benefit after the enrollment period had expired.

Applicant's Response to the Views of the Coast Guard

On March 18, 1999, the Board received the applicant's response to the views of the Coast Guard. She stated that she entered the Coast Guard Reserve on February 18, 1972, and did not attend a boot camp, because there was no boot camp for enlisted women at that time. She stated that VEAP was offered to inductees going through boot camp, and not to Reservists, like herself, integrating into the regular force.

The applicant claimed that even though she performed periods of active duty from 1972 to 1984, she was not eligible for the "old MGIB" because Reservists performing active duty for training could not participate in that program. The applicant stated that when the new MGIB was offered to VEAP enrollees, she was ineligible to participate in it because she had not contributed to VEAP.

² The Board did find a case where the Coast Guard, itself, corrected the record of an applicant (BCMR Docket No. 1998-014). This applicant, a Reservist, alleged that "she was not offered the opportunity to accept or decline the Montgomery GI Bill upon becoming active duty military. In his letter to that applicant, dated March 31, 1998, the Commandant stated: "It appears that through no fault of your own, in the absence of you declining, your participation by an automatic payroll reduction of \$100 a month for twelve months, totaling \$1200 was not competed upon your initial entry on active duty on 26 July 1990. Therefore, I am authorizing your participation in the MGIB at this time."

The applicant concluded her statement with the following: "It just seems bizarre that a person with continuous, honorable service for over 27 years would not have any education benefits."

In an additional statement dated March 19, 1999, the applicant stated that she did not remember being offered the opportunity to enroll in VEAP during the open enrollment period from November 1986 through March 1987.

Supplemental Views of the Coast Guard

On April 13, 1999, the Board received the Chief Counsel's supplemental views. He stated that the applicant had two periods in which she could have enrolled in VEAP. They were from January 28, 1985, through June 30, 1985, and from November 14, 1986, through March 31, 1987.

The Chief Counsel stated that the applicant had over 12 years of military service, in 1985, and was personally responsible for determining her eligibility for VEAP. The Chief Counsel stated that her failure to exercise due diligence should not serve as a basis for granting the requested relief. The Chief Counsel stated that VEAP was available to any Coast Guard member at the that time, not just active duty members attending boot camp.

The Chief Counsel argued that the Board should presume that the Coast Guard acted in accordance with the Commandant's instruction to require each member to initial next to his name on unit roster when informed of the VEAP open enrollment period. The Chief Counsel stated that to the best of his knowledge these rosters are no longer maintained.

Applicant's Supplemental Response

A copy of the supplemental views of the Coast Guard was telexed to the applicant on April 14, 1999. She informed the Deputy Chairman by telephone that same day that she would not submit a supplemental response.

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 Chief of the General Law Division, in the office the Chief Counsel of the Coast Guard admitted as much in his enclosure to the Coast Guard's advisory opinion. The application is timely.

2. The applicant was not eligible for the MGIB, because it was not in effect in January 1985, when she began active duty. The MGIB became effective on July 1, 1985 and was available to servicemembers who entered active duty on or after that date.

3. The applicant entered the Reserve on February 18, 1972. As a Reservist, performing inactive duty and occasional periods of active duty for training, she was not eligible to participate in any of the education programs, until January 1985 when she began active duty. See Chapter 32 of title 38 U.S.C. She was called to active duty, from her Reserve status, on January 28, 1985, and has served on active duty continuously since that time.

4. Once the applicant began an extended period of active duty, she was eligible to participate in VEAP, which was the education assistance program in effect at that time. If the applicant had participated in VEAP, and if she had had funds in her VEAP account on October 9, 1996, she could have converted her VEAP account into a MGIB account between October 9, 1996, and October 8, 1997. See 38 U.S.C. § 3081C. During this period, the applicant did not have a VEAP account and, therefore, was not eligible to convert to VEAP during the period October 9, 1996 to October 8, 1997.

5. Unlike the MGIB, the VEAP law did not require that the Services counsel members about the program. There was nothing in the law at that time that indicated how a member should be notified about VEAP. Since the law did not impose a duty on the Coast Guard to counsel members about VEAP and the Board is not aware of a regulation that requires such counseling, the Board cannot say that the Coast Guard committed an error or injustice by not counseling the member about VEAP upon her entry to active duty.

6. The applicant has failed to establish that she was provided improper advice with respect to her eligibility for VEAP. The Board notes that the applicant did not state that she never became aware of VEAP during her early active duty career, but rather she did not learn of it in "boot camp". Although the applicant stated that she was told that she did not qualify for any of the education programs, she did not inform the Board who told her this or when. There is insufficient evidence before the Board to determine if the Coast Guard committed an injustice by giving the

applicant erroneously advised with regard to her eligibility to participate in VEAP.

7. In legislation creating an open enrollment period for eligible VEAP members, from approximately November 14, 1986 until April 1, 1987, Congress imposed a duty on the Services to notify eligible members. This open enrollment period applied to those members who entered the Service prior to July 1, 1985. Section 309(d) of Pub. L. 99-576 provided: "[T]he Secretary of Transportation . . . shall carry out activities for the purpose of notifying, to the maximum extent feasible, individuals [who were eligible to enroll in the program on June 30, 1985] of the opportunity [to enroll in the program by April 1, 1987]." According to CGPC, the Coast Guard chose to ensure that members were informed of the VEAP open enrollment period by having each member's initial next to their names on a unit roster. The applicant had been on active duty for approximately one year when an open enrollment was held for members with potential VEAP eligibility. The applicant has stated that she does not recall being offered the opportunity to participate in VEAP during the open enrollment period. Her statement that she does not recall being informed of the VEAP open enrollment period is an insufficient basis for the Board to find that the Coast Guard committed an error or injustice in this case.

8. The applicant is not eligible for MGIB because she did not participate in VEAP, and because she did not convert a VEAP account into an MGIB account by October 8, 1997.

9. Accordingly, the applicant's request should be denied.

ORDER

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

