

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-095

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 July 22, 1998, upon the BCMR's receipt of the applicant's request for correction of his military record.

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

The applicant, now a retired lieutenant (LT), asked for the "correction of [his] record, in order to secure education benefits."

The applicant stated as follows with respect to his request for correction of his record:

When I commenced active duty Coast Guard service at the Reserve Training Center, Yorktown, I should have been required to complete Form DD 2366 in triplicate, indicating my intention to enroll or disenroll in the Montgomery GI Bill (MGIB) program. Per COMDTINST 1760.9, failure to permit me to complete the Form should have automatically enrolled me in the program. . . . The Veterans Administration has been using Yorktown's failure to offer me the opportunity to enroll in the MGIB as a pretext for denying me all VA education benefits.

Background

Prior to receiving a commission in the Coast Guard, the applicant served in the Navy for approximately 10 years and 4 months. He joined the Navy on August 6, 1976, and was discharged on November 30, 1986, because he failed to be selected for promotion to lieutenant commander (LCDR). At the time the applicant began active duty with the Navy, Chapter 34 of title 38 (the Veterans' Educational Assistance program (G.I. Bill)) was in effect. That Program expired on December 31, 1989.

On May 5, 1987, the applicant entered active duty in the Coast Guard as a lieutenant junior grade (LTJG). He retired on June 30, 1997, because he failed to be selected for promotion to LCDR. After retirement he was recalled to active duty for a period of one month from July 1, 1997 to July 31, 1997.

Evidence Submitted by the Applicant

The applicant submitted a letter from the Department of Veterans Affairs [DVA] denying his claim for education benefits under the MGIB. The DVA stated that to be eligible for benefits under the MGIB, a person, like the applicant, must have:

- 1) Served continuously on active duty for at least 181 days beginning after January 31, 1955, but before January 1, 1977 (or before January 2, 1978, if entered by delayed entry contracted before January 1, 1977);
- 2) Been on active duty on October 19, 1984, and served without a break in service from that date through June 30, 1985; and
- 3) Served continuously on active duty after June 30, 1985, and through at least June 30, 1988, unless:
 - a. Discharged any time after June 30, 1985, for service-connected disability, for a medical condition which pre-existed service, or for hardship;
 - b. Discharged for convenience of the government on or after December 31, 1987;
 - c. Involuntarily separated for convenience of the government after September 30, 1987, because of a qualifying reduction in force;

or

d. Discharged on or after June 30, 1987, and, within one year of separation from that service, entered a reserve or guard unit under an obligation to serve at least 4 years in the Selected Reserve.

Views of the Coast Guard

On June 18, 1999, the Chief Counsel of the Coast Guard recommended that the applicant's request for relief be denied. The Chief Counsel stated section 3011 of title 38 of the United States Code provides that "service members who were eligible for and had remaining entitlements for VA educational benefits under Chapter 34 on 31 December 1989, were converted to Chapter 30 benefits if 1) they were on active-duty any time between 19 October 1984, and 30 June 1985, and 2) they remained on continuous active-duty for a period of three years after 30 June 1985 or on continuous active duty for 30 months after 30 June 1985." The Chief Counsel stated that the applicant had a five month break in service from December 1986 through April 1987 that disqualified him from converting to Chapter 30 benefits when he entered OCS in May 1987. Therefore, the Chief Counsel stated that there was no duty on the part of the Coast Guard to complete the DD Form 2366.

Attached to the advisory opinion was a memorandum from the Commander, Coast Guard Personnel Command (CGPC). CGPC stated for the reasons given above, the applicant is not eligible for Chapter 30 MGIB benefits. CGPC also stated that the applicant was not eligible for Chapter 32 Post-Vietnam Era Veteran's Educational Assistance Program (VEAP) or benefits under Chapter 34 (Veteran's Educational Assistance).

Applicant's Response to the Views of the Coast Guard

On June 29, 1999, the Board received the applicant's response to the views of the Coast Guard. He stated that if the Board confirmed the following, he would confirm whether he objected to the Coast Guard's recommendation.

a. It is solely my date of discharge from the Navy which disqualifies me from ever receiving one cent of veterans' education benefits;

b. Due to the service dates set forth in the governing legislation, there is no way that I will ever be entitled to such benefits, now that I

am retired and ready to go back to school after 21 years of active duty military service;

c. There was no mistake or error by the Coast Guard, the Navy, the Veterans Administration or me.

On June 8, 1999, in a telephone conversation with a member of the BCMR staff, the applicant stated that this was his response to the Coast Guard views.

APPLICABLE LAW AND REGULATION

Section 3011 of title 38 states in pertinent that the following members are entitled to basic educational assistance under Chapter 30:

(a) . . . each individual --

(1) who --

(A) after June 30, 1985, first becomes a member of the Armed Forces for first enters on active duty as a member of the Armed Forces

...

* * *

(B) as of December 31, 1989, is eligible for educational assistance benefits under Chapter 34 of this title and was on active duty at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and --

(1) after June 30, 1985, serves at least three years of continuous active duty in the Armed Forces.

Section 3011(b) states that "[t]he basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election under subsection [not to receive educational assistance] shall be reduced by \$100 for each of the first 12 months that such individual is entitled to such pay."

COMDTINST 1760.9A implemented the Active Duty Education Assistance Program (MGIB) for the Coast Guard. The eligibility requirements for non-prior service members (those who initially entered active duty on or after July 1, 1985) are contained in Enclosure (1) to COMDTINST 1760.9A. The main eligibility

requirement for non-prior service members is their entry on active duty for the first time on or after July 1, 1985, although they are required to serve on active duty for a certain period of time before they are eligible to receive benefits.

Enclosure (2) to COMDTINST 1760.9A contains the requirements for those service members eligible for benefits under the Vietnam era G.I. Bill (Chapter 34) to convert to the MGIB. This provision states the following:

1. ELIGIBILITY CRITERIA.

A. Service member must have been eligible for and had remaining entitlement under the Vietnam Era G.I. Bill on 31 December 1989.

B. Service member must have been on active duty any time between 19 October 1984 through 30 June 1985 and remained on active duty for 36 months after 30 June 1985, or on continuous active duty for 30 months after 30 June 1985 and be separated for convenience of the Government.

2. BENEFITS

A. Benefits for Vietnam Era G.I. Bill eligible personnel expired on 31 December 1989 and any entitlement the member had remaining, as long as they met the conversion requirements, were converted to the MGIB on 1 January 1990.

Sections 2.b.(1) and (2) of the DD Form 2366 (Montgomery GI Bill Act of 1984) provide the following advice, in pertinent part: " (1) I am eligible for the MGIB on my initial entry on active duty after June 30, 1995. (2) I understand that I am automatically enrolled unless I exercise the option to disenroll by signing item 3 below by the date designated by my service."

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 is timely.

2. Notwithstanding the fact that the applicant did not sign a DD Form 2366, he was not automatically enrolled in the MGIB Program as a non-prior service member would be. The automatic enrollment provision applied to members of the Service who initially entered active service on or after July 1, 1985. 38 U.S.C. § 3011(b). The applicant began his initial period of service on August 6, 1976. He was initially covered under the Vietnam Era G.I. Bill, which expired on December 31, 1989. He could have converted to the MGIB if he had met certain requirements.

3. COMDTINST 1760.9A, which implements Chapter 30 of title 38 (MGIB) for the Coast Guard, addresses, in relevant part, two classes of members who are eligible for benefits under the MGIB. One class is made up of non-prior service members, who are eligible for the MGIB by virtue of their entry on to active duty on or after July 1, 1985. The other class consists of the prior service members, like the applicant, who entered active duty under the Vietnam Era G.I. Bill. According to COMDTINST 1760.9A, those members who entered active duty under the old GI bill could convert to the "new" MGIB if they met certain requirements. (DD Form 2366 does not speak to this class.) Both the DVA and the Coast Guard stated that the applicant did not meet the necessary requirement that he remain on active duty for three continuous years after June 1985 to have his Vietnam Era benefits converted to the "new" MGIB. In other words he had a break in service from December 1, 1986, until May 5, 1987.

4. Even if the Coast Guard had given the applicant a DD Form 2366 when he entered the Coast Guard on May 5, 1987, he still would not have been eligible for benefits under the "new" MGIB. The pertinent law and regulation require that servicemembers covered under the Vietnam Era G.I. Bill meet certain requirements before their benefits would be converted to the MGIB. The applicant did not fulfill the requirement that he complete three years continuous active duty after June 30, 1985. Therefore, as a service member who entered active duty under the "old" G. I. Bill, the applicant was not eligible for the MGIB because he did not meet the statutory eligibility requirements.

5. The applicant has not shown that the Coast Guard was wrong in its interpretation of the law or committed other error or injustice.

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

ORDER

The application to correct the military record of

