

**DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for the Correction of  
the Coast Guard Record of:

BCMR Docket No. 1999-028

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**FINAL DECISION**

**Attorney-Advisor:**

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced on November 25, 1998, upon the BCMR's receipt of the applicant's application.

This final decision, dated August 19, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**RELIEF REQUESTED**

The applicant, a yeoman second class (YN2; pay grade E-5) on active duty in the Coast Guard, asked the Board to correct his records to make him eligible for educational benefits under the Montgomery GI Bill (MGIB).<sup>1</sup>

**APPLICANT'S ALLEGATIONS**

The applicant alleged that on September 10, 1996, he timely applied to restart his account under the Veterans Educational Assistance Program (VEAP)<sup>2</sup> by signing an Allotment Worksheet so that the account could be converted to an MGIB account under the Veterans' Benefits Improvement Act of 1996 (VBI Act).<sup>3</sup> However, he alleged that the Coast Guard delayed processing his paperwork until after the statutory deadline for conversion, October 9, 1996. He alleged that other members who applied at the same time as he in September 1996 were not

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<sup>1</sup> 38 U.S.C. § 3001.

<sup>2</sup> 38 U.S.C. § 3201. Money deposited in a VEAP account is matched two to one by the government, whereas funds deposited in an MGIB account are matched approximately twelve to one. In addition, almost twice as much money can be withdrawn each month from an MGIB account for educational costs.

<sup>3</sup> 38 U.S.C. § 3018C.

denied MGIB benefits because the Coast Guard processed their paperwork in a timely manner. Moreover, he was wrongly counseled that his ineligibility for conversion to MGIB was due to the fact that there was no money in his VEAP account on October 9, 1996.

The applicant alleged that in September 1997, he learned that he should have been eligible for the MGIB conversion because he had signed his Allotment Worksheet to reopen his VEAP account prior to October 9, 1996. Therefore, he reapplied, but was unjustly denied educational benefits by the Department of Veterans Affairs (DVA) because the Coast Guard had not reopened his account the first time he applied, in September 1996. The applicant provided copies of electronic communications concerning his application to restart his VEAP account to support his allegations concerning the delay.

### SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 17, 1986, after having served several years in the Marine Corps and the Marine Corps Reserve. A copy of a DVA Chapter 32 Participant Account Summary indicates that, while serving in the Marine Corps, the applicant participated in VEAP, but he was permitted to withdraw his money in September 1981 due to hardship.

On September 28, 1996, Congress passed the VBI Act. Under that Act and ALDIST 001/97, members who were enrolled or re-enrolled in VEAP not longer than October 9, 1996, could have their VEAP accounts converted to MGIB accounts if they applied for conversion by October 9, 1997.

On September 10, 1996, the applicant signed an Allotment Worksheet to restart his VEAP account by depositing \$50. His request was emailed to his PERSRU (unit personnel office) on September 12, 1996. On September 17, 1996, the PERSRU forwarded it to the Coast Guard's Human Resources Service & Information Center, which denied his request on September 24, 1996. His request was denied because they did not find a record for his participation in VEAP since his participation in VEAP had occurred when he was in the Marine Corps rather than the Coast Guard. The applicant was stationed in Guam and received the denial on September 26, 1996. On that day, he contacted the DVA for proof of his participation in VEAP during his service in the Marine Corps. The DVA provided that proof on September 30, 1996. He immediately forwarded it to his PERSRU. The applicant's PERSRU signed an affidavit to the effect that the applicant had applied to reopen his VEAP account prior to October 9, 1996, and should therefore be eligible to enroll in MGIB.

On October 30, 1996, the applicant signed an Allotment Worksheet to have his VEAP account converted to an MGIB account under the VBI Act. The chief yeoman of his unit forwarded the Allotment Worksheet to the PERSRU. In response, the chief yeoman received the following message:

Chief, appreciate your proactiveness on this, but we need to ask you to hold these types of requests for the time being. ... HQ ... is attending

meetings with DOD and the VA to iron out the specifics of the new legislation, and develop policy and procedures. There are still several unanswered questions ... Anyway, we need to wait until we get a promulgating ALDIST and a VA Program Infrastructure set up before we can begin enrollments in this new program.

On September 23, 1997, the applicant reapplied to have his VEAP account reopened because, for reasons not apparent in the record, the Allotment Worksheet he signed on September 10, 1996, had never been processed. On October 6, 1997, the applicant was informed that his VEAP account had been reopened.

On October 7, 1997, the applicant applied to have his VEAP account converted to an MGIB account. His application was rejected on October 21, 1997, because his VEAP account had not been reopened prior to October 9, 1996.

### VIEWS OF THE COAST GUARD

On July 22, 1999, the Chief Counsel of the Coast Guard recommended that the applicant's request for relief be dismissed "without prejudice for lack of jurisdiction and because effective relief cannot be granted by the BCMR."

The Chief Counsel stated that the applicant's request was similar to those of several other BCMR applicants who had alleged that "the Coast Guard failed to take timely action on an allotment request to redeposit VEAP funds prior to the cut-off date of 9 October 1996." The Chief Counsel admitted that the allegations had merit but argued that the Coast Guard and the BCMR are "without authority to effect the relief requested because the critical record, the member's VEAP account, is not administered by the Coast Guard, but by the Department of Veterans Affairs (DVA)." He cited 38 U.S.C. § 501(a) and 38 C.F.R. § 21.5001 as the basis for this position. He stated that it is "beyond the jurisdiction of both the Coast Guard and the Board to 'correct' this account so as to make applicant eligible for the MGIB conversion." The Chief Counsel further argued that "even if the Board had the authority to change his VEAP account, the Board lacks authority to allow Applicant to participate in a program which has statutorily expired, and is administered by the DVA."

The Chief Counsel stated that other Coast Guard members in the applicant's position had been granted relief by the DVA. Therefore, he recommended that the Board include the following finding in its Final Decision in this case:

The Coast Guard failed to timely process the Applicant's initial pay deduction into the Department of Veterans Affairs VEAP account fund prior to October 9, 1996. This error was solely the result of an administrative error on the part of the Coast Guard and was not due to any error on the part of the Applicant. The Applicant should be directed to apply to the DVA for MGIB education benefits and if denied, Applicant should petition the Secretary of the Department of Veterans Affairs (DVA Office of General Counsel, 202-273-6438) for equitable relief under 38 U.S.C. § 503(a) and should present this decision, in part, as evidence of administrative error on the part of the Coast Guard.

The Chief Counsel appended to his advisory opinion a memorandum dated January 8, 1998, from the Chief of the Coast Guard Office of General Law to the Master Chief Petty Officer of the Coast Guard. The memorandum includes the following statements:

[The DVA] General Counsel has determined that service members who have had a VEAP account, but have withdrawn all their funds, are not participants in the VEAP. ... The Coast Guard determined that members who did not have a valid allotment in effect on 9 October 1996, providing for the deposit of money to their VEAP accounts, did not have money in their VEAP accounts on 9 October 1996, and therefore, were not VEAP participants on that date. ... [T]his Office has asked the VA General Counsel for a ruling on whether allotments that were initiated prior to 9 October 1996 to deposit money in VEAP accounts, but due to administrative error were not processed and made effective until after 9 October 1996, constitute participation in the VEAP. ...

The Chief Counsel also appended to his advisory opinion a letter, dated February 18, 1998, from the Acting General Counsel of the DVA answering the inquiry by the Chief of the Coast Guard's Office of General Law. The letter states the following:

Although the individuals [whose allotments were not timely processed] do not appear to meet the requirements of [38 U.S.C. § 3018C], based on your description, they, nevertheless, may be able to obtain relief as further explained below. ... At issue here is the meaning of the term "participant." ... In other words, participation is linked to and manifested by contribution to the fund. A service member does not become a participant merely by electing to participate, but only by actually making a monthly contribution from military pay ... . [O]nly those who, at any give point in time, have money on account in the fund are considered by VA to be VEAP participants. ...

However, having reached that conclusion, we note that if the affected members had made an election to participate under VEAP prior to October 9, 1996, and the Coast Guard failed to timely process the initial pay deduction to the VEAP fund, such members may be entitled to equitable relief under 38 U.S.C. § 503(a). That section grants VA's Secretary discretionary authority to provide appropriate relief, including granting the benefits sought, if those benefits were not provided because of administrative error on the part of the Government (or any employee thereof). Thus, if your members had agreed to the requisite pay deduction (in accordance with 38 U.S.C. § 3222) within sufficient time for Coast Guard staff to have effectuated it prior to October 9, 1996, but the Coast Guard failed to act timely, the individual may request that VA consider providing equitable relief.

## APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 23, 1999, the Chairman sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. The applicant did not respond.

## APPLICABLE LAW

On October 9, 1996, the President signed the VBI Act, Public Law 104-275. Section 106 of the Act (38 U.S.C. § 3018C) includes the following under the sub-heading "Opportunity for certain VEAP participants to enroll [in MGIB]":

(a) Notwithstanding any other provision of law, an individual who—

(1) is a participant on the date of the enactment of the [VBI Act] in the educational benefits program provided by chapter 32 of this title [VEAP];

(2) is serving on active duty ... ; ... and

(5) during the one-year period beginning on the date of the enactment of the [VBI Act], makes an irrevocable election to receive benefits under this [MGIB] section in lieu of benefits under chapter 32 of this title, pursuant to procedures which ... the Secretary of Transportation shall provide for such purpose with respect to the Coast Guard ... ;

may elect to become entitled to basic educational assistance under this chapter.

On January 3, 1997, the Commandant issued ALDIST 001/97, which announced the MGIB conversion program and stated that "active duty members who signed an Allotment Worksheet ... prior to 9 Oct 96, to restart their VEAP contribution, will be eligible for this offering."

Title 38 U.S.C. § 501(a) states that "[t]he Secretary [of DVA] has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department and are consistent with those laws, including—(1) regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws ..."

Title 38 C.F.R. § 21.5001(a), entitled "Administration of benefits: 38 U.S.C. Chapter 32," states that "Except as otherwise provided, authority is delegated to the Under Secretary for Benefits [of DVA] and to supervisory or administrative personnel within the jurisdiction of the Education Service, Veterans Benefits Administration, designated by him or her to make findings and decisions under 38 U.S.C. Chapter 32 and applicable regulations, precedents, and instructions, as to the program authorized by subpart G of this part."

Title 38 U.S.C. § 503(a) states, "If the Secretary [of DVA] determines that benefits administered by the Department have not been provided by reason of administrative error on the part of the Federal Government or any of its employ-

ees, the Secretary may provide such relief on account of such error as the Secretary determines equitable, including the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys."

### 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 submissions, and applicable law:

1. The Chief Counsel alleged that the Board has no jurisdiction over this case and cannot grant the relief requested by the applicant because the MGIB program is administered by the DVA. However, the Coast Guard clearly has duties with respect to VEAP and MGIB and retains records concerning its members' allotments and participation in those programs. Under 10 U.S.C. § 1552, the Board is authorized to correct errors and remove injustices in Coast Guard records. Therefore, the Board has jurisdiction over the Coast Guard's records concerning the applicant's allotments and participation in VEAP and MGIB. The application was timely.

2. The applicant timely completed an Allotment Worksheet to reopen his VEAP account on September 10, 1996. The Coast Guard failed to reopen and fund his VEAP account in a timely manner. The applicant completed an Allotment Worksheet to convert his VEAP account to an MGIB account on October 30, 1996, within the proper statutory period. The Coast Guard failed to act on this request as well. These administrative errors were caused solely by the Coast Guard and were not due to any mistake or omission on the part of the applicant.

3. Had the Coast Guard processed the applicant's Allotment Worksheets in a timely manner, he would have been eligible to participate in MGIB, pursuant to the Veterans' Benefits Improvement Act of 1996. Because of the Coast Guard's errors, the applicant was unjustly denied participation in MGIB when he applied on October 7, 1997.

4. Therefore, the Coast Guard's records concerning the applicant's participation in VEAP and conversion to MGIB should be corrected to reflect his timely allotments and participation in these programs. The Coast Guard should inform the DVA of these corrections to the applicant's records.

5. Because the MGIB program is administered by the DVA, the applicant is advised to petition the Secretary of the Department of Veterans Affairs (DVA Office of General Counsel [REDACTED]) for equitable relief under 38 U.S.C. § 503(a) with respect to his eligibility for the MGIB program based on a corrected record.

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

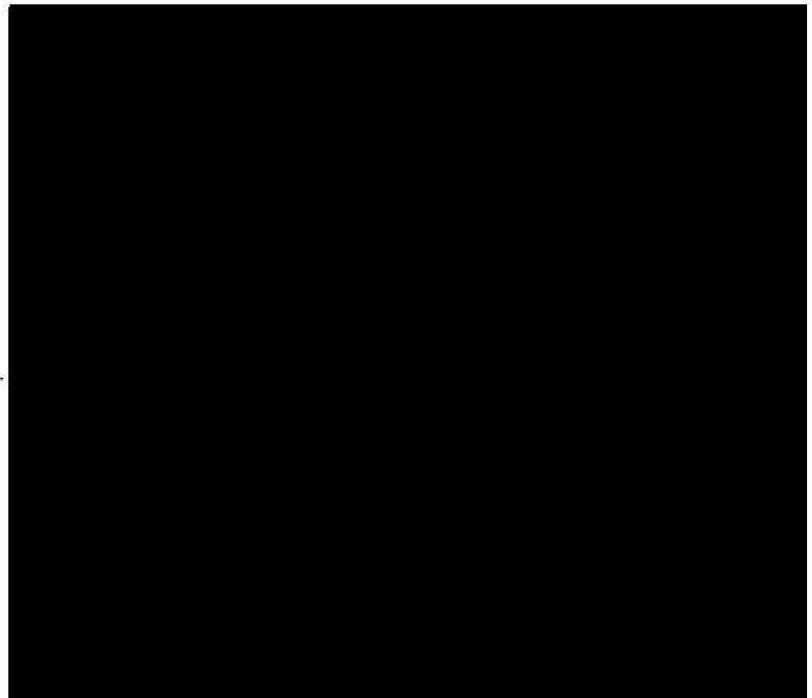
**ORDER**

The application for correction of the military record of [REDACTED]  
[REDACTED] hereby granted.

The Coast Guard shall correct its records to reflect that the applicant's Worksheet Allotment dated September 10, 1996, was timely processed and that his VEAP account was reopened and funded by his allotment with the minimum qualifying sum on September 30, 1996.

The Coast Guard shall correct its records to reflect that the applicant's Worksheet Allotment dated October 30, 1996, was processed and that his VEAP account was thereby converted to an MGIB account, funded by his allotment with the minimum qualifying sum, prior to October 9, 1997.

The Coast Guard shall advise the DVA that it has corrected the applicant's record in accordance with this order and forward a copy of this final decision to the appropriate office at the DVA.



ORDER

The application for correction of the military record of [REDACTED]  
[REDACTED] JSCG, is hereby granted.

The Coast Guard shall correct its records to reflect that the applicant's Worksheet Allotment dated September 10, 1996, was timely processed and that his VEAP account was reopened and funded by his allotment with the minimum qualifying sum on September 30, 1996.

The Coast Guard shall correct its records to reflect that the applicant's Worksheet Allotment dated October 30, 1996, was processed and that his VEAP account was thereby converted to an MGIB account, funded by his allotment with the minimum qualifying sum, prior to October 9, 1997.

The Coast Guard shall advise the DVA that it has corrected the applicant's record in accordance with this order and forward a copy of this final decision to the appropriate office at the DVA.

[REDACTED]