

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-115

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. The case was docketed on May 19, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated February 24, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a chief warrant officer (CWO2) on active duty in the Coast Guard, asked the Board to correct his records to make him eligible for educational benefits under the Veterans' Educational Assistance Program (VEAP).¹

APPLICANT'S ALLEGATIONS

The applicant alleged that when he contacted the Department of Veterans' Affairs (DVA) regarding educational benefits in March 1999, he was told that he was ineligible because he did not elect to participate in VEAP when he first enlisted. The applicant alleged that he does not remember signing any document electing not to participate in VEAP.

Furthermore, the applicant alleged, the DVA advised him that he should have been counseled in 1985 and 1987 concerning his right to transfer the funds in his VEAP account to a new account providing benefits under the Montgomery G.I. Bill (MGIB).² The applicant alleged that he never received this counseling.

¹ 38 U.S.C. § 3201. Money deposited by a servicemember in a VEAP account is matched two to one by the government.

² 38 U.S.C. § 3001. Funds deposited in an MGIB account are matched approximately twelve to one.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 1, 1979, for a term of four years. On September 12, 1983, he extended his enlistment for two years, through September 30, 1985.

On May 1, 1985, the applicant signed an administrative (page 7) entry in his record, which stated the following: "I have been advised about the Veterans' Educational Assistance Program (VEAP). I do not desire to participate in VEAP."

On October 1, 1985, the applicant was discharged and immediately reenlisted for a term of three years. He was issued a DD 214 which indicates in block 15 that he did not contribute to VEAP during his first enlistment.

On September 29, 1988, the applicant was discharged and issued a DD 214 that indicates in block 15 that he did not contribute to VEAP. He immediately reenlisted and has served continuously on active duty since that time.

VIEWS OF THE COAST GUARD

On January 6, 2000, the Chief Counsel of the Coast Guard recommended that the applicant's request for relief be denied.

The Chief Counsel argued that the doctrine of laches should bar the applicant's claim because the passage of time has prejudiced the Coast Guard's ability to respond since the claim is based on events that occurred more than twelve years ago. The twelve-year delay in the applicant's claim, he alleged, has caused substantial prejudice to the government because it is impossible to confirm his allegations. *See, e.g., Sargisson v. United States*, 12 Cl. Ct. 539, 542 (1987). The Chief Counsel further argued that 10 U.S.C. § 1552 authorizes the Board to correct a record only when it is "necessary to correct an error or remove an injustice." In this case, he stated, the Board should exercise its discretion not to grant relief based on the doctrine of laches.

Moreover, the Chief Counsel argued, the Coast Guard had no duty to counsel members individually regarding their VEAP eligibility. He alleged that the only time members had to be informed of their VEAP eligibility was in November 1986, when ALCOAST 056/86 was issued. The ALCOAST required that every member of each unit sign a roster and indicate whether they wanted to participate in VEAP. VEAP participation was determined by those rosters, which, he alleged, no longer exist because, under the Paperwork Management Manual (COMDTINST M5212.12), most unit documents may be destroyed after three years. However, he argued, under the presumption of regularity, the Board must assume that the applicant's command properly implemented ALCOAST 056/86 with regard to his VEAP participation.

The Chief Counsel further argued that the applicant could have enrolled in VEAP anytime between his enlistment on October 1, 1979, and June 30, 1985,

when VEAP expired, or during the open enrollment period from October 28, 1986, to March 31, 1987. The Chief Counsel alleged that, by signing a page 7 entry on May 1, 1985, the applicant acknowledged that he was informed of his eligibility to enroll in VEAP but decided not to enroll.³

Finally, the Chief Counsel argued, any relief the Board could grant would be ineffective in this case because the Coast Guard does not administer VEAP accounts. VEAP accounts are administered by the DVA. See 38 U.S.C. § 501(a) and 38 C.F.R. § 21.5001.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 7, 2000, 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

Under 38 U.S.C. § 3201, the purpose of VEAP is

(1) to provide educational assistance to those men and women who enter the Armed Forces after December 31, 1976, and before July 1, 1985, (2) to assist young men and women in obtaining an education they might not otherwise be able to afford, and (3) to promote and assist the all volunteer program of the United States by attracting qualified men and women to serve in the Armed Forces.

The statute also states that "[e]ach person entering military service on or after January 1, 1977, and before July 1, 1985, shall have the right to enroll in the educational benefits program provided by this chapter ... at any time during such person's service on active duty before July 1, 1985." 38 U.S.C. § 3221.

On November 14, 1986, the Commandant issued ALCOAST 056/86, concerning VEAP. The ALCOAST announced a new enrollment period for members who first enlisted between January 1, 1977, and June 30, 1985, but who failed to enroll in VEAP during that time. The new enrollment period lasted until March 31, 1987. The ALCOAST included the following instructions:

3. Personnel Reporting Units will be provided with a list of eligible personnel. This listing will be forwarded to the units. Eligible members shall sign the roster indicating their intention to participate or not. Personnel absent from the unit shall be so noted with their current status. New personnel and personnel present on [temporary active duty] shall be added to the list by the unit. The completed list shall be forwarded by the unit to Commandant (G-PE-3).
4. Commanding officers and officers in charge shall assure that this information is brought to the attention of all personnel.

³ The Chief Counsel stated that the page 7 entry in the applicant's record was a proactive step taken by his command and was not required by any regulations.

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 cannot grant relief in this case because VEAP accounts are administered by the DVA. However, the Coast Guard clearly has duties with respect to VEAP and retains records concerning its members' participation in the program. 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 participation in VEAP.
2. Under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 525, statutes of limitations are tolled during periods in which members serve on active duty. See *Sherengos v. United States*, 214 Ct. Cl. 749, 750 (1977); *Bickford v. United States*, 228 Ct. Cl. 321, 323-24 (1981). Because the applicant in this case continues to serve on active duty, the Board's three-year statute of limitations has not begun to toll on his claim.
3. The Chief Counsel urged the Board to deny relief pursuant to the doctrine of laches. Under that doctrine, an applicant who inexcusably delays his application to the Board may be denied relief if the delay has prejudiced the Coast Guard's case. See *Braddock v. United States*, 9 Cl. Ct. 463, 470 (1986).
4. The record indicates that the applicant knew or should have known of his non-participation in VEAP on May 1, 1985, when he signed a page 7 entry stating that he did not wish to participate in VEAP. The applicant also received discharge forms that indicated he did not contribute to VEAP on October 1, 1985, and September 29, 1988. Therefore, the Board concludes that the applicant has inexcusably delayed his application to the Board by more than ten years.
5. The Chief Counsel alleged that the delay has prejudiced the Coast Guard's case because the unit records reflecting the applicant's decision not to participate in VEAP required by ALCOAST 056/86 would have been destroyed after approximately three years pursuant to the COMDTINST M5212.12. The Board finds that the long, inexcusable delay has prejudiced the Coast Guard's case because pertinent records have been lost. Therefore, the applicant's request should be denied under the doctrine of laches.
6. The Chief Counsel further argued that the Coast Guard had no duty to inform its members individually about VEAP. However, in light of the statutory purpose of VEAP and members' statutory right to participate in the program, the Board believes that the applicant had a right to be informed about VEAP in some manner. Congress's goals in establishing VEAP could not be attained if the military departments did not inform recruits and members, and the right to participate in VEAP would be meaningless if members were not properly informed.

7. Information regarding whether the applicant was informed of VEAP benefits when he first enlisted is unavailable due to the long delay. However, the record indicates that the Coast Guard fulfilled its duty to advise him of VEAP on May 1, 1985, when he signed a page 7 entry confirming his decision not to participate in the program. Furthermore, under ALCOAST 056/86, the applicant's command was ordered to have each member of the unit sign a roster confirming his or her decision. Absent evidence to the contrary and under the presumption of regularity, the Board assumes that the applicant's command obeyed this order and implemented the ALCOAST properly. Therefore, even if the applicant's request were not to be denied under the doctrine of laches, it should be denied on the merits because the record indicates that the applicant was informed about VEAP and intentionally elected not to participate in the program.

8. The applicant has not proved by a preponderance of the evidence that there is any error or injustice in his military records regarding his lack of participation in VEAP.

9. Accordingly, the applicant's request should be denied under the doctrine of laches and on the merits.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of JSCG, is hereby denied.

