

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket No. 2000-129

FINAL DECISION

██████████ Chairman:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on May 15, 2000, upon the receipt by the BCMR of the applicant's complete application for correction of his military record.

This final decision, dated March 22, 2001, was signed by three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a ██████████; pay grade E-4), asked that his records be changed to enable him to sign up for the Montgomery GI Bill (MGIB). He alleged that he "was misinformed on the GI Bill benefits and on how to use these benefits." The applicant said that he "was led to believe that the GI Bill could only be used for undergraduate degrees and not for graduate degrees."

SUMMARY OF RECORD

The applicant enlisted in the Coast Guard on October 8, 1996. On October 10, 1996, the applicant and his recruiter signed a "Statement of Understanding for Enlistment in an Advanced Pay Grade." The checked words "College Student" on the form were followed by the handwritten word "Grad." The applicant and his recruiter also signed a "Statement of Understanding/4 Year Active Service Obligation/Montgomery GI Bill." It included the following statements of understanding on the part of the applicant:

1. I am eligible for the Montgomery GI Bill . . .

2. I am automatically enrolled under the MGIB

7. I can use my benefits at colleges, universities, business or technical schools, or for correspondence courses, apprenticeship or on-the-job training programs that are approved for VA training."

8. I can make a one-time-only election to disenroll during the first two weeks of active duty.

On October 10, 1996 , the applicant signed a page 7 Administrative Remarks (CG-3307) certifying that his recruiter had "fully explained" many items to him specifically including "educational benefits."

On October 22, 1996 the applicant signed a statement of disenrollment on DD Form 2366 (Montgomery Bill Act of 1984 (MGIB)). The words that he affirmed by his signature were "I do not desire to participate in the MGIB. I understand that I WILL NOT (emphasis in original) be able to enroll at a later date."

VIEWS OF THE COAST GUARD

On September 18, 2000, the Commander of the Coast Guard Personnel Command (CGPC) recommended that no relief be granted to the applicant. On November 22, 2000, the Chief Counsel of the Coast Guard also recommended denying relief to the applicant.

The Chief Counsel said that 38 U.S.C. § 3011 provides that an election not to receive MGIB educational benefits, if made when the member initially enters active duty, cannot be undone. The applicant admitted making this negative election by signing DD Form 2366 on October 22, 1996. The applicant said he did so because he "was led to believe" that the GI Bill "could only be used for undergraduate degrees and not for graduate degrees."

Prior to disenrolling from the Montgomery GI Bill, the Chief Counsel said the applicant signed a Statement of Understanding with respect to its provisions. Paragraph 8 of the statement provided that the applicant's benefits can be used at "colleges, universities" and other described schools, courses, apprenticeships, and approved job training programs. The Chief Counsel said the applicant had "read and understood" the words "colleges, universities" in paragraph 8. In the words of the Chief Counsel, paragraph 8 "does not indicate that MGIB educational benefits could not be applied towards a graduate degree."

The Chief Counsel stated that Coast Guard officials are presumed to have exercised their duties correctly, lawfully, and in good faith. Arens v. United States, 969 F.2d 1034, 1037 (1992). The applicant offered no evidence to rebut that presumption. The Chief Counsel also argued that even if the Coast Guard provided the applicant

with erroneous advice "the Government is not estopped from repudiating the advice" of one of its officials if it were erroneous.

RESPONSE OF THE APPLICANT TO THE VIEWS OF THE COAST GUARD

A copy of the views of the Coast Guard was sent to the applicant on November 27, 2000. 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.

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 applicant enlisted in the Coast Guard on October 8, 1996 for four years beginning in pay grade E-2.

3 On October 8, 1996, the applicant signed a Page 7 (CG-3307) stating that educational benefits, MGIB, and tuition benefits had been fully explained to him by his recruiter.

4. On or about August 6, 1996, the applicant signed a "Statement of Understanding . . . Montgomery GI Bill." The applicant, inter alia, acknowledged that he was eligible for MGIB benefits, that to receive benefits he must complete 48 months of active duty, and that he can use MGIB benefits at colleges, universities . . . or on-the-job training programs that are approved for VA (Veterans Administration) training.

5. On October 22, 1996, two weeks after his enlistment, the applicant signed a statement of disenrollment from MGIB on a DD Form 2366. This was a binding statement that he did not want MGIB benefits and was aware that he could not change his mind and enroll later. By his signature on October 22, he subscribed to the following: "I do not desire to participate in the MGIB. I understand that I WILL NOT be able to enroll at a later date."

6. The applicant alleged that he was "led to believe" that MGIB benefits "could only be used for undergraduate degrees and not for graduate degrees." He introduced no evidence to support this view.

7. The statement of understanding which was signed by the applicant rejects that

view. It provides that MGIB benefits can be used at colleges, universities, business or technical schools. A university consists of a graduate school and may include an undergraduate college, a business school, and a technical school such as engineering.

8. The applicant read and understood that MGIB benefits can be used at universities. As a future graduate student, he is presumed to understand that grad schools are parts of universities. On October 22, 1996, the applicant signed his name to a line of type that said he did not desire to participate in MGIB and that he could not change his mind and enroll at a later date.

9. The applicant failed to show an error or injustice on the part of the Coast Guard. Accordingly, the applicant's request for a change in his records to enable him to sign up for the GI Bill should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

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

