

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

---

Application for Correction  
of Coast Guard Record of:

XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

---

BCMR Docket  
No. 2001-103

**FINAL DECISION**

 Chair:

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 July 3, 2001, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated May 30, 2002, is signed by three duly appointed members who were designated to serve as the Board in this case.

The applicant, a former seaman recruit (SR; pay grade E-1), stated, "I was misinformed by the [United States Coast Guard] verbally & by documents that I had a 10 [year] limitation of [Veterans Education Assistance Program (VEAP)] benefits for education."<sup>1</sup> The Board has interpreted this request as one for the correction of his record to show that he participated in the VEAP program while on active duty. He stated that he needed documentation that he was told there "was a 10-year limitation on education benefits."

The applicant enlisted in the Coast Guard on October 28, 1980 and was discharged on July 30, 1983. He served a total of two years, seven months, and 14 days on active duty. His DD Form 214 states in block 15 that he did not contribute to the VEAP program.

---

<sup>1</sup> VEAP was the education program available for service members between January 1, 1977 and June 30, 1985.

The applicant stated that he discovered the alleged error on January 1, 2001. He stated that in the interest of justice the Board should waive the three-year statute of limitations and consider his application because "I'm married with 2 children to support and I'm in school now to be re-trained in the computer industry & need Chapter 30 G.I. Bill benefits!"

### **Views of the Coast Guard**

On December 16, 2001, the Chief Counsel of the Coast Guard recommended that the applicant's request for relief be denied. He stated that no error or injustice occurred in this case.

The Chief Counsel stated that the applicant alleged that the Coast Guard failed to inform him that VEAP benefits expired 10 years from the date of discharge. He stated that the applicant had produced no evidence that he ever enrolled in or made the necessary contribution to the VEAP program. The Chief Counsel stated that the applicant failed to prove that the Coast Guard had a duty to provide him with VEAP eligibility counseling. He stated that the Coast Guard had no duty to individually counsel members regarding their VEAP educational eligibility or to document such counseling.

The Chief Counsel also argued that this claim is more than 18 years old and should be barred by the doctrine of laches. The Chief Counsel further stated:

This alleged "error" occurred over eighteen years ago and is now nearly impossible to confirm independently from the Applicant's allegations. Applicant took no action to correct the alleged "error" then, and instead waited over twelve years to challenge it before the BCMR. Where an applicant's unexcused delay has caused substantial prejudice to the government, the claim for relief is generally barred under the doctrine of laches. See, e.g. Sargisson v. United States, 12 Cl. Ct. 539, 542 (1987). . . .

In the present case, the Coast Guard's ability to reconstruct the relevant evidence on this case has been severely hampered by the presumed destruction of key unit documents that have been destroyed or disposed of per paperwork disposition regulations. See, e.g. Paperwork Management Manual, COMDTINST M5212.12. (Most documents may be destroyed after 3 years.) Therefore, considering the substantial delay between the "error" and date of application in this case and that the Applicant has the burden of production and proof, the Board should

dismiss Applicant's claim with prejudice.

A memorandum from the Commander, Coast Guard Personnel Command (CGPC), was attached as an enclosure to the advisory opinion. He stated, "It was routine Coast Guard practice to indoctrinate new recruits concerning VEAP benefits and other programs available to them during recruit training." He also stated that there was no requirement for service record entries to be made to acknowledge any type of counseling concerning VEAP.

### **Applicant's Response to the Views of the Coast Guard**

On November 26, 2001, a copy of the views of the Coast Guard was sent to the applicant for a reply. He did not submit a 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 of the United States Code.
2. Although the Chief Counsel argued that laches should bar the applicant's claim, the Board finds that the application is simply not timely.
3. To be timely, an application for correction of a military record must be submitted within three years after the applicant discovered or should have discovered the alleged error or injustice. See 33 CFR 52.22.
4. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for and the length of the delay and the likelihood of success on the merits of the claim. See Allen v. Card, 799 F. Supp 158 (D.D.C. 1992).
5. Although the alleged error in this case occurred approximately 18 years ago, the applicant claimed that he did not discover it until 2001. He should have discovered it at the time of his discharge in 1983, because his DD Form 214 (discharge document)

clearly states that he did not participate in the VEAP program while on active duty. He has not explained why he could not have discovered the alleged error sooner.

6. Even if the Board were to find the request to be timely, it is not likely that the applicant would have prevailed on the merits of this claim for which he bears the burden of proof. The applicant was not entitled to educational benefits since he never participated in the VEAP program. He has not presented any evidence showing that he ever attempted to enroll in the VEAP program.

7. Moreover, the applicant has not presented any evidence that the Coast Guard had a duty to advise him that VEAP benefits would expire 10 years from the date of his discharge. Nor is the Board aware of any regulation or law that required VEAP counseling during the period the applicant was on active duty. There are no VEAP counseling entries in the applicant's military record.

8. In light of the above findings, the Board finds that it is not in the interest of justice to waive the statute of limitations in this case.

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

**ORDER**

The application of former XXXXXXXXXXXXXXXXXXXX USCG, for the correction of his military record is denied.

