

DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-149

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION



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 docketed on September 29, 2003, upon receipt of the completed application.

This final decision, dated May 20, 2004, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his records to make him eligible for educational benefits under the Montgomery GI Bill (MGIB)¹ by allowing him to complete a new form DD 2366 for his record and to return money that was returned to him from his MGIB account.

The applicant alleged that on April 24, 2001, he tried to restart his educational benefits account in accordance with ALCOAST 047/01 by signing an Allotment Worksheet so that his old Veterans Educational Assistance Program (VEAP)² account would

¹ 38 U.S.C. § 3001.

² 38 U.S.C. § 3201. The VEAP was replaced by the MGIB for members first enlisting in 1985 and thereafter. 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 In addition, almost twice as much money can be withdrawn each month from an MGIB account for educational costs. Congress has periodically allowed members to convert VEAP accounts to MGIB accounts. *See* 38 U.S.C. § 3018C.

be converted to an MGIB account. However, he alleged, on a separate form, DD 2366, he accidentally signed block 3(a), "Statement of Disenrollment," instead of block 2(b)(a), "Statement of Understanding." The applicant alleged that neither he nor the Coast Guard noticed the discrepancy, and the proper monetary allotments were deducted from his base pay to pay for the conversion of his account and enrollment in MGIB. However, because his signature is in the wrong block on the DD 2366, he is now being denied MGIB benefits by the Department of Veterans' Affairs (DVA). Moreover, the \$2,700.00 that had been deducted from his pay for his MGIB account has now been returned to him.

In support of his allegations, the applicant submitted the following:

- a copy of his Allotment Worksheet dated April 24, 2001, requesting a monthly deduction of \$180.00 from his base pay and total deduction of \$2,700.00 for his MGIB account;
- a copy of his form DD 2366 dated April 24, 2001, with his signature in block 3(a), for disenrollment, instead of in the block immediately above, for enrollment;
- a copy of a PMIS/JUMPS Payroll Control Report dated February 14, 2001, showing that he was eligible to convert from VEAP to MGIB;
- a copy of the Rapidraft Letter by which he forwarded the above documents to the Human Resources and Services Information Center (HRSIC) on April 24, 2001, "for enrollment in MGIB as per ALCOAST 047/01" and asked that his command be notified if there were "any discrepancy";
- a copy of an email from the Coast Guard Personnel Command (CGPC) stating that under the provisions of ALCOAST 047/01, his Allotment Worksheet and DD 2366 should have been returned to him by CGPC because they were inconsistent and because no "witnessing official" signed the form;
- a copy of a letter from CGPC dated January 23, 2003, informing the applicant that a "review of your records shows that the Coast Guard erroneously processed your participation in the MGIB" under the Veterans Benefits and Health Care Improvement Act of 2000³ and advising him to apply to the BCMR for the correction of his DD 2366; and
- a copy of a letter from the DVA dated January 30, 2003, informing the applicant that his claim for educational benefits had been denied because information received from the Coast Guard indicated that he had "specifically declined to participate" in MGIB.

VIEWS OF THE COAST GUARD

On January 15, 2004, the Judge Advocate General of the Coast Guard recommended that the applicant's request for relief be granted. He based his recommenda-

³ Pub. L. 106-419, which amended 38 U.S.C. chap. 30.

tion on a memorandum on the case prepared by CGPC.

CGPC stated that the record indicates that although the applicant signed a DD 2366 in the block for disenrolling from MGIB, the remaining documentation dated April 24, 2001, shows that he clearly intended to convert his VEAP benefits to MGIB benefits. CGPC noted that “[h]ad a witnessing official signed the form, the applicant’s error may have been discovered before the form was processed.” Moreover, CGPC stated, the applicant’s Allotment Statement was processed and his payroll statements show that a total of \$2,700 was deducted for his MGIB account from his basic pay. CGPC recommended that the Board grant relief and noted that, since the \$2,700 has been refunded to the applicant in the interim, he will need to repay that sum. CGPC submitted copies of parts of the Veterans Benefits and Health Care Improvement Act of 2000, the applicant’s payroll statements showing his VEAP and MGIB contributions, and a Modall Documentation Sheet, showing that he was credited back the \$2,700.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 26, 2004, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited him to respond within 30 days. On February 11, 2003, the applicant responded that his case was ready for decision by the Board.

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 Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant has proved by a preponderance of the evidence that on April 24, 2001, he intended and attempted to convert his VEAP account into an MGIB account in accordance with ALCOAST 047/01 by submitting a form DD 2366 and Allotment Worksheet to HRSIC. The record further indicates that although he mistakenly signed the DD 2366 in the wrong block, his forms were processed for enrollment in MGIB and \$2,700 was deducted from his basic pay for that purpose. He has also proved that he is now being denied MGIB benefits by the DVA and has been refunded the \$2,700 because he accidentally signed the DD 2366 in the wrong block.

3. The applicant has proved by a preponderance of the evidence that his signature in block 3(a) of the DD 2366 is erroneous in that he intended to sign the form in the block above to enroll in MGIB. The form should be corrected and he should be allowed to remit the \$2,700 and be eligible for MGIB benefits.

4. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted.

The Coast Guard shall correct his records to make him eligible for MGIB benefits. The DD form 2366 dated April 24, 2001, with his signature in block 3.a., shall be removed from his record. The Coast Guard shall allow the applicant to remit the \$2,700 that was refunded to him and, if he does so, it shall place in his record a new DD form 2366 showing that he accepted enrollment in MGIB on April 24, 2001.

