

**DEPARTMENT OF HOMELAND SECURITY  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2005-016**

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

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**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 November 4, 2004, upon receipt of the completed application.

This final decision, dated November 17, 2005, 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)<sup>1</sup> by correcting his form DD Form 2366 to show that he elected to accept the benefits.

The applicant alleged that on April 10, 2001, he inadvertently signed the form "in both the acceptance and disenrollment lines. I was not properly counseled nor was I requested to make any changes to clarify this decision." The applicant alleged that when he received his first Leave and Earnings Statements (LES), he noticed that there was no \$100 deduction for MGIB, and brought it to the attention of the executive petty officer of his unit, CG Station New York, who said he would look into it. However, about two weeks later, the terrorism of September 11, 2001, caused his problem to be set aside. When his unit's operations slowed down a bit, he again inquired and was told that he had declined MGIB benefits. He tried to submit a new DD Form 2366 in February 2002, but it was declined. He received the same response when he asked at

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<sup>1</sup> 38 U.S.C. § 3001 *et seq.*

his next unit. Therefore, in August 2004, he consulted the District legal office and was advised to submit a request through his chain of command. Although his commanding officer endorsed his request, the Coast Guard Personnel Command (CGPC) denied it. In support of his allegations, the applicant submitted the following:

- a copy of his form DD Form 2366 dated April 10, 2001, with his signature in blocks 2.b.(a) and 3(a), for disenrollment;
- a copy of a DD Form 2366 dated February 8, 2002, with his signature in block 2.b.(a);
- a copy of his letter requesting MGIB enrollment, dated August 31, 2004;
- a copy of his commanding officer's endorsement of his request, dated September 7, 2004, which indicates that the applicant had decided to leave the Coast Guard at the end of his enlistment, attend nursing school, and become a physician's assistant in the Reserve; and
- a copy of a memorandum from CGPC, dated September 27, 2004, in which his request was denied as follows:

Chapter 30, Title 38, U.S. Code, stipulates a member must make an irrevocable decision to participate or not in the MGIB upon entering active duty. In the absence of a member electing not to participate in the MGIB, their participation is automatic. The DD Form 2366 is the document used only to make an election not to participate in the MGIB. The signature in item 2.b.(a) only signifies that the member read the information in item 2.b. regarding the MGIB program. Item 2.b.(2) specifically states that a member will be automatically enrolled unless they exercise the option to disenroll by signing in item 3.a. Based on the review of your official Coast Guard records, you did complete a DD Form 2366 on 10 April 2001, electing not to participate in the MGIB. In view of this, your request to be allowed to participate now cannot be approved based on the provisions of law.

## **SUMMARY OF THE RECORD**

On March 27, 2001, the applicant enlisted in the Coast Guard for four years. Upon enlisting, he signed an Annex I form, in acknowledgement of the following:

1. I am eligible for the Montgomery GI Bill (MGIB) based upon my initial entry on active duty on or after 01 July 1985.
2. I am automatically enrolled in the MGIB and my basic pay will be reduced by \$100 per month for each of the first full 12 months of active duty.
3. I cannot suspend or stop my monthly pay reduction under the MGIB and there is no refund of my money under any circumstances.
4. To be eligible for benefits, I must do all of the following:
  - Complete 48 months of active duty.
  - Complete my high school education (or receive an equivalency certificate before the end of my initial enlistment. ...
  - Receive an honorable discharge.
5. My benefit will be a minimum of \$300 per month for 36 months (minimum total of \$10,800) although the monthly amount may vary from year to year.

6. I am eligible to use my benefits in-service after two years on active duty.
7. I may use my benefits at colleges ...

On April 10, 2001, the applicant signed a DD Form 2366 regarding the MGIB. The form bears two signatures by the applicant and one by a witnessing official, a first class petty officer. The pertinent part of the form appears as follows:

<b>2. STATEMENT OF UNDERSTANDING</b>			
a. Academy/ROTC Scholarship Graduates ...[Information omitted.]			
b. ALL OTHER SERVICE MEMBERS			
(1) I am eligible for the MGIB based on my initial entry on active duty after June 30 1985.			
(2) I understand that I am automatically enrolled unless I exercise the option to disenroll by signing Item 3 below by the date designated by my service.			
(3) I understand that unless I disenroll from the MGIB, my basic pay will be reduced \$100 per month for EACH of the first 12 full months of active duty and this basic pay reduction cannot be REFUNDED, SUSPENDED OR STOPPED.			
[Items (4) through (13) omitted.]			
(a) Service Member Signature /s/	(b) Rank/Grade SR	(c) Date Signed 010410	
<b>3. STATEMENT OF DISENROLLMENT</b>			
I do not desire to participate in the MGIB. I understand that <b>I WILL NOT</b> be able to enroll at a later date.			
(a) Service Member Signature /s/	(b) RANK/GRADE SR	(c) DATE SIGNED 010410	
4. SERVICE UNIQUE EDUCATION ASSISTANCE OPTIONS			
<b>5. WITNESSING OFFICIAL</b>			
a. TYPED OR PRINTED NAME [Name omitted.]	b. RANK/GRADE SK1/E-6	c. SIGNATURE /s/	(d) DATE SIGNED 010410

## VIEWS OF THE COAST GUARD

On February 25, 2005, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request. The JAG stated that the "record supports a finding that Applicant affirmatively declined enrollment" and that the "Coast Guard believes no error exists and that no relief is warranted."

The JAG attached and adopted as part of his advisory opinion a memorandum on the case prepared by CGPC. CGPC recommended that no relief be granted and stated that "[w]hile it is plausible that applicant mistakenly or unknowingly declined MGIB enrollment, this is not supported by the record, which indicates a properly completed document to disenroll the Applicant from the MGIB."

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

On March 1, 2005, the Chair sent the applicant a copy of the Coast Guard's advisory opinion and invited him to respond within 30 days. The applicant requested and was granted an extension of the time to respond through July 15, 2005. However, no response was ever received.

## 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. Under 38 U.S.C. § 3011(b), upon enlistment, a member is automatically enrolled for MGIB benefits and deductions are made from his basic pay, unless the member makes an election under subsection (c)(1). Subsection 3011(c)(1) states that a member "may make an election not to receive educational assistance under this chapter. Any such election shall be made at the time the individual initially enters active duty as a member of the Armed Forces. Any individual who makes such an election is not entitled to educational assistance under this chapter."

3. The record indicates that upon his enlistment, the applicant was informed when he signed Annex I that he would be automatically enrolled in MGIB unless he affirmatively declined enrollment. Within two weeks, the applicant affirmatively declined enrollment by completing a DD Form 2366. Although the applicant alleged that his two signatures on the form indicate both acceptance and rejection of MGIB benefits, he is mistaken. His first signature was in acknowledgement of the information about MGIB benefits provided in block 2—including the information that he was automatically enrolled and could disenroll only by signing in block 3. His second signature, in block 3, constituted an affirmative disenrollment. Moreover, his signature was witnessed by a first class petty officer in block 5. Absent evidence to the contrary, the Board must presume that the form was completed correctly to reflect the applicant's intention to disenroll. 33 C.F.R. § 52.24(b).

4. While it is possible that the applicant ignored the information provided on the Annex I and DD Form 2366 and completed the latter form not knowing that doing so would disenroll him from MGIB benefits, he has not submitted any evidence to support his allegation that this is the case. His current commanding officer's letter in support of his request is not probative of whether the applicant intended to disenroll from MGIB when he signed block 3 of the DD Form 2366 on April 10, 2001.

5. Accordingly, the applicant's request should be denied because he has failed to prove by a preponderance of the evidence the existence of any error or injustice with respect to his disenrollment from MGIB benefits.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

