

**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. 2008-140**

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XXXXXXXXXXXXXXXXXXXXX

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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on May 23, 2008, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated February 26, 2009, is approved and 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 show that upon his enlistment he disenrolled himself from eligibility for educational benefits under the Montgomery GI Bill (MGIB)<sup>1</sup> and to order the Coast Guard to stop deducting his allotments and to reimburse him for allotments already deducted from his pay.

The applicant alleged that he was miscounseled about how to disenroll from the MGIB program during boot camp. He alleged that the yeoman who counseled him advised him to sign block 2 if he wanted to disenroll, so he did. He later learned that he was supposed to sign block 5 of the form to disenroll.

In support of this allegation, the applicant submitted copies of e-mail messages indicating that the Personnel Services Center could not stop his MGIB allotment because he had not signed

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<sup>1</sup> 38 U.S.C. § 3001 *et seq.* Under 38 U.S.C. § 3011(b), upon enlistment on active duty, 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." Under 38 U.S.C. § 3011(b), unless members purposefully disenroll themselves from the program at the time they first enlist on active duty, the Service deducts \$100 from their pay each month for the first 12 months or until a total of \$1,200 has been deducted, and they become eligible for educational benefits.

the form properly to disenroll. The e-mails also indicate that the applicant believed that he was ineligible because of his prior service in the National Guard, but that service in the National Guard is not “qualifying service” and does not render someone ineligible for MGIB benefits.

### SUMMARY OF THE RECORD

On December 4, 2007, the applicant enlisted in the Coast Guard. He had previously served in the Army National Guard of Ohio for six years. On the day he enlisted, the applicant and his recruiter signed a “Statement of Understanding for Four Year Active Service: Montgomery G.I. Bill (MGIB,” which stated 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, universities ...

However, contrary to the above Statement of Understanding, while at boot camp on December 17, 2007, the applicant signed a Basic Enrollment form, DD 2366, for the MGIB in block 2.a. Block 2.a. is for members who are ineligible for MGIB benefits because they disenrolled when enlisting on active duty at some time in the past or because they have already received educational benefits through a Service academy or the ROTC. The applicant’s signature in block 2.a. was witnessed by a first class yeoman as the certifying official. The Basic Enrollment form appears in the applicant’s record as follows in pertinent part:

<b>2. STATEMENT OF UNDERSTANDING FOR INELIGIBLE MEMBERS</b>		
I am <b>NOT</b> eligible for the MGIB because (a) I am a service academy graduate, or (b) I am an ROTC scholarship graduate who received more than the current minimum amount allowed for enrollment in MGIB, or (c) I am a prior service member who disenrolled during my previous term of active duty.		
<b>a. SERVICE MEMBER SIGNATURE</b> [The applicant signed this block.]	<b>b. RANK/GRADE</b> SR/E-3	<b>c. DATE SIGNED (YYYYMMDD)</b> 20071217
<b>3. STATEMENT OF UNDERSTANDING FOR ALL ELIGIBLE MEMBERS</b>		
(1) I am automatically enrolled unless I exercise the option to <b>DISENROLL</b> by signing item 5 below. (2) <b>UNLESS I DISENROLL</b> from the MGIB, my basic pay will be reduced \$100 per month, or the current monthly rate until \$1,200 has been deducted; this basic pay reduction <b>CANNOT</b> be <b>REFUNDED, SUSPENDED OR STOPPED</b> , this is an <b>IRREVOCABLE DECISION</b> .		
[Items (3) through (10) omitted.]		

(a) Service Member Signature	(b) Rank/Grade	(c) Date Signed	
<b>4. SERVICE UNIQUE EDUCATION ASSISTANCE OPTIONS</b>			
<b>5. STATEMENT OF DISENROLLMENT</b>			
I <b>DO NOT</b> desire to participate in the MGIB. I understand the benefits of the MGIB program and that I <b>WILL NOT</b> be able to enroll at a later date.			
a. <b>DATE SIGNED</b> (YYYYMMDD)	b. <b>RANK/GRADE</b>	c. <b>SERVICE MEMBER SIGNATURE</b>	
<b>6. CERTIFYING OFFICIAL</b>			
a. <b>TYPED OR PRINTED NAME</b> [Name omitted.]	b. <b>RANK/GRADE</b> YN1/E-6	c. <b>SIGNATURE</b> [Signed.]	d. <b>DATE SIGNED</b> (YYYYMMDD) 2007Dec17

The applicant's Leave and Earnings Statements show that \$100 was deducted from his pay each month for the MGIB program after he completed boot camp.

### VIEWS OF THE COAST GUARD

On October 14, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Command (CGPC). CGPC recommended that the Board grant relief by ordering the Coast Guard to ensure that the applicant is

properly counseled regarding his MGIB entitlement and be afforded the opportunity to elect either to participate in the MGIB or disenrollment from the MGIB. The applicant should make such election on DD Form 2366 as though he had made such election on December 17, 2007. If the applicant elects disenrollment, the Coast Guard should suspend further contributions and refund any amounts paid under the erroneously executed DD Form 2366.

CGPC stated that the applicant's DD 2366 was completed erroneously to indicate that the applicant was not eligible for MGIB benefits and yet was signed by a certifying official. In this regard, CGPC submitted a copy of Enclosure (1) to COMDTINST 1760.9A, which provides the eligibility criteria for the MGIB program. Paragraph 1.A. states that to be eligible, "Service members must have entered on active duty for the first time on or after 1 July 1985. Periods of Initial Entry Training (IADT) and Annual Training (AT) of former members of Reserve Components do not count as active duty when determining eligibility to participate in the MGIB program."<sup>2</sup>

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<sup>2</sup> Title 38 U.S.C. § 3002 states the following regarding what counts as "active duty" for the purpose of the MGIB program:

(6) The term "active duty" does not include any period during which an individual ... (C) served under the provisions of section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve.

(7) The term "active duty" includes full-time National Guard duty first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

CGPC further stated that “[s]ince the applicant indicated that he was ineligible and the Coast Guard certified such, he made no further election regarding either accepting or declining MGIB.” CGPC noted that under Chapter 7.E.2. of the Pay Manual, “[e]ligible members are automatically enrolled [in MGIB] unless they elect not to receive educational benefits within the first 2 weeks of active duty.” Therefore, because the applicant actually was eligible for MGIB benefits and because he did not disenroll by signing the DD 2366 in block 5, his enrollment in the MGIB program and the deductions from his pay were automatic under the law.

CGPC concluded that the Coast Guard “improperly certified that the applicant was not eligible to participate in the MGIB at the time of execution of the DD Form 2366. Since subsequent inquiry determined that the applicant was in fact eligible for the MGIB, the DD Form 2236 is in error.” CGPC noted that under Article 5.3. of DOD Directive 1332.16, all eligible members must be counseled about MGIB benefits and given an opportunity to disenroll from the program within 2 weeks of their enlistment on active duty.

### **APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 16, 2008, the Chair sent the applicant a copy of the Coast Guard’s advisory opinion and invited him to respond within 30 days. No response was 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 because it was filed within three years of the applicant’s discovery of the alleged error in his record, as required by 10 U.S.C. § 1552(b).

2. The applicant has proved by a preponderance of the evidence that he was erroneously counseled about his MGIB eligibility during boot camp. His Basic Enrollment form, DD 2236, is erroneous in that it indicates that he was ineligible for MGIB benefits. Under 38 U.S.C. § 3002, the applicant was eligible for MGIB benefits when he enlisted in the Coast Guard because he had never served on “active duty” as defined in that statute. The first class yeoman who was responsible for counseling the applicant, however, certified this erroneous form with his signature. Because of this misinformation, the applicant was deprived of the opportunity mandated under 38 U.S.C. § 3011(c)(1) to disenroll from the MGIB program, and \$100 allotments have been deducted from his pay each month without his consent. Moreover, the Board notes that it is possible that the applicant was not fully informed of the benefits of the MGIB program because the counselor apparently believed that the applicant was ineligible. Therefore, the Board finds that the relief recommended by CGPC is appropriate in this case.

3. Accordingly, relief should be granted by affording the applicant proper counseling regarding his MGIB benefits and also the opportunity to elect either to participate in the MGIB program or to disenroll from it. The applicant should make this election on a DD Form 2366 as

though he had made it on December 17, 2007. If the applicant elects disenrollment, the Coast Guard should stop further MGIB deductions from his pay and refund any amounts paid under the erroneously executed DD Form 2366. In addition, the erroneous DD Form 2366 should be removed from his record.

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

**ORDER**

The application of SN xxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall provide him accurate counseling about MGIB benefits and his eligibility for them. After this counseling, he shall be afforded an opportunity to elect on a new DD Form 2366 either to participate in the MGIB program or to disenroll from it, and this election shall be made as though he had made it on December 17, 2007. The Coast Guard shall remove the old, erroneous DD Form 2236, which he signed in block 2.a., from his record.

If he elects disenrollment from the MGIB program by signing block 5.c. of the new DD Form 2366, the Coast Guard shall stop deducting MGIB allotments from his pay and shall refund to him any allotments previously deducted from his pay for the MGIB.

