

**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. 2012-183**

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██████████ ██████████

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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. The Chair docketed the application upon receipt of the applicant's completed application on July 2, 2012, and subsequently prepared the final decision as required by 33 CFR § 52.61(c), with the assistance of staff member ██████████

This final decision, dated April XX, 2013, 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, who retired as a Machinery Technician First Class (MK1) after serving more than 25 years on active duty in the Coast Guard, asked the Board to correct his record to show that he transferred his benefits under the Post-9/11 Veterans Education Act of 2008 (Post-9/11 GI Bill)<sup>1</sup> to his dependent children before retiring from active duty. He stated that he was on terminal leave from April 24, 2009, until his retirement from active duty on July 31, 2009, and was not informed about his eligibility to transfer his unused educational benefits to his dependents before his retirement. The applicant stated that he would have delayed his retirement for another 30 days so he could transfer his benefits to his son, because "[w]hat would be one month compared to the twenty-five and a half years that I served?"

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on January 9, 1984, although he was eligible to retire with 20 years of active military service on January 9, 2004, he retired on July 31, 2009, after serving more than 25 years. The applicant stated that he was on terminal leave from April 24, 2009, until his retirement on July 31, 2009. He did not transfer his Post-9/11 GI Bill educational benefits to his dependents before he retired, and there is nothing in the record to

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<sup>1</sup> The Post-9/11 GI Bill provides financial support for education and housing to individuals with at least 90 days of aggregate service after September 10, 2001, or individuals discharged with a service-connected disability after 30 days. An individual must have received an honorable discharge to be eligible for the Post-9/11 GI Bill, [http://gibill.va.gov/benefits/post\\_911\\_gibill/index.html](http://gibill.va.gov/benefits/post_911_gibill/index.html).

show that the Coast Guard counseled him about his Post-9/11 GI Bill educational benefits or his eligibility to transfer his educational benefits before his retirement.

### **VIEWS OF THE COAST GUARD**

On December 19, 2012, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief because the applicant did not receive individual pre-separation counseling related to his Post-9/11 GI Bill benefits. The JAG noted that in BCMR Docket No. 2012-054, the Board held that the absence of individual, documented counseling on the Post-9/11 GI Bill program is sufficient to justify granting relief.

The JAG adopted the facts and analysis provided in a memorandum on the case prepared by the Personnel Service Center (PSC), and PSC recommended not granting relief. The PSC argued that the Coast Guard released five official messages about the Post-9/11 GI Bill program, and it's likely that the applicant was on terminal leave when the fifth official ALCOAST on the Post-9/11 GI Bill was released on July 29, 2009. He argued that even though the applicant was on terminal leave when the fifth ALCOAST was released, he "was still eligible for the benefit as he was still on active duty."

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

On December 26, 2012, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. He responded on January 22, 2013, and indicated that he agreed with the Coast Guard's recommendation.

### **APPLICABLE LAW AND REGULATIONS**

#### **Directive Type Memorandum (DTM) 09-003, June 22, 2009**

On June 22, 2009, DoD set forth the policies and procedures for carrying out the Post-9/11 GI Bill in DTM 09-003. The DTM states that it is effective immediately and that it is applicable to the Office of the Secretary of Defense and the Military Departments including the Coast Guard by agreement with the Department. It states that the effective date of the Post-9/11 GI Bill is August 1, 2009. The regulation defined "Military Services" as the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Paragraph 3.a.(3) of Attachment 2 (Procedures) states that members eligible to transfer education benefits includes those members in the Armed Forces who are or become retirement eligible from August 1, 2009, through August 1, 2013, and agree to serve the additional period, if any, specified in paragraphs 3.a.(3)(a) through 3.a.(3)(e) of this attachment. A Service Member is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under section 12732 of Reference (b).

Paragraph 3.a.(3)(a) of Attachment 2 states that for those members eligible for retirement on August 1, 2009, no additional service is required.

Paragraph 3.b. of Attachment 1 (Responsibilities) to the DTM states that the Secretaries of the Military Departments shall "Ensure that all eligible active duty members . . . are aware that

they are automatically eligible for educational assistance under the Post-9/11 GI Bill program upon serving the required active duty time established in Chapter 33 of [title 38 of the United States Code].”

Paragraph 3.g. of Attachment 1 states that the Secretaries of the Military Departments shall “provide active duty participants . . . with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly.”

Paragraph 3.g.(1) of Attachment 2 (Time of Transfer) states that an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual’s family member only while serving as a member of the armed forces.

Paragraph 3.j.(1) of Attachment 2 (Regulation) states that the Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section. (2) Such regulations shall specify □ (A) the manner of authorizing the transfer of entitlement under this section; (B) the eligibility criteria in accordance with subsection (b); and (C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

### **DTM 09-003 Glossary**

“Member of the Armed Forces. For the purpose of this DTM, those individuals serving on active duty or in the Selected Reserve. Does not include other members of the Ready Reserve (such as the Individual Ready Reserve, standby Reserve, or retired members of the Armed Forces).”

Secretary of the Military Department concerned . . . For a member of the Coast Guard, when the Coast Guard is operating as a Service of the DHS, the term means, “the Secretary of Homeland Security has jurisdiction over the service member.”

### **Coast Guard ALCOAST 377/09, June 26, 2009**

The Coast Guard released ALCOAST 377/09 on June 26, 2009 (internet release was authorized) announcing the Department of Defense and Coast Guard policy concerning Post-9/11 GI Bill benefits and the transferability of unused benefits to family members. Paragraph 6 of the ALCOAST states that to be eligible to transfer unused education benefits to a family member, an individual must be a member of the armed services (active duty or selected reserve) on or after August 1, 2009. Paragraph 7.B. states that online applications for the transfer of benefits would be accepted beginning on June 29, 2009. The ALCOAST also states that the DVA is the authority for the Post-9/11 GI Bill, but that transferability policy is directed by the Office of the Secretary of Defense and the Under Secretary of Defense.

### **Precedent Decision Issued November 7, 2012**

In BCMR Docket No. 2012-054, the Deputy General Counsel for the Department of Homeland Security affirmed the Board’s decision that the Coast Guard erred when it did not provide individual pre-separation counseling to a retiring member about his Post-9/11 GI Bill

benefits. In that case, the applicant was on terminal leave from June 30, 2009, until his retirement on October 31, 2009, and did not receive pre-retirement counseling on the Post-9/11 GI Bill prior to his retirement. The Board found that the Coast Guard committed an error by not providing individual, pre-separation counseling, as required by the DTM, which became effective on June 22, 2009. The instant case is similar, because the applicant alleged that the Coast Guard provided erroneous pre-separation counseling when it told him that he did not need to obligate more service before he could transfer his unused educational benefits.

### **Previous BCMR Decision Issued January 18, 2013**

In BCMR Docket No. 2012-121, the Board cited facts similar to those in BCMR No. 2012-054, in which the Principal Deputy General Counsel approved the Board's findings that the Coast Guard committed an error by not counseling that applicant about his Post-9/11 GI Bill benefits prior to his retirement on October 31, 2009, as required by the DTM that became effective on August 1, 2009.

### **Similar Air Force BCMR Decision issued on October 5, 2010**

In BC-2009-02935, the Air Force BCMR granted relief to an applicant who did not transfer his unused Post-9/11 GI Bill benefits to his dependents prior to his August 1, 2009, retirement date. The Board held that the Air Force failed to counsel the applicant about his eligibility for the benefits and the steps necessary to transfer the benefits to his dependents. In granting relief, the Board ordered the Air Force to correct the applicant's record to show that he elected to transfer his Post-9/11 GI Bill educational benefits to his dependents on July 31, 2009, with an effective date of August 1, 2009.

## **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 submission and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant's retirement.<sup>2</sup>

2. The applicant asked the Board to correct his record to show that he transferred his educational benefits to his dependent children under the Veterans Educational Assistance Act of 2008, commonly referred to as the Post-9/11 GI Bill, which became effective on August 1, 2009.<sup>3</sup> He alleged that he was not told that he could transfer his unused educational benefits prior to retiring from active duty. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.<sup>4</sup> Absent evidence to the contrary, the Board

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<sup>2</sup> 10 U.S.C. § 1552(b).

<sup>3</sup> 38 U.S.C. § 3319(a) (authorizing eligible service members to transfer a portion of their entitlement to educational assistance to their eligible dependents); and § 3319(j) (directing the Department of Defense to prescribe implementing regulations on the transferability of educational benefits).

<sup>4</sup> 33 C.F.R. § 52.24(b).

presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”<sup>5</sup>

3. The applicant served on continuous active duty in the Coast Guard for more than 25 years until he retired on July 31, 2009, and stated that he was not told that that he could transfer his Post-9/11 GI Bill benefits to his dependent children prior to his retirement from active duty. He did not transfer his educational benefits before he retired, and after he retired he was no longer eligible to transfer those benefits.<sup>6</sup>

4. Paragraph 3.a.(3) of Attachment 2 (Procedures) to the DTM states that members eligible to transfer education benefits are those who are or become retirement eligible from August 1, 2009, through August 1, 2013.<sup>7</sup> Paragraph 3.a.(3)(a) of Attachment 2 to the DTM states that for those members eligible for retirement on August 1, 2009, no additional service is required if they want to transfer the benefits to their dependents. The applicant would have been retirement eligible on August 1, 2009, but he retired on July 31, 2009. The Coast Guard should have provided him with Post-9/11 GI Bill counseling and documented it in accordance with Paragraph 3.G. of Attachment 1 to the DTM instructions.<sup>8</sup> There is no documentation or other evidence of individual, pre-separation counseling in the record, and the JAG admitted that the applicant did not receive proper, individual pre-separation counseling. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that he was not properly counseled about the Post-9/11 GI Bill. If the Coast Guard had provided counseling on Post-9/11 GI Bill benefits, the applicant would have learned that he had to be on active duty on or after August 1, 2009, to transfer his unused educational benefits. Armed with this information, he would have had the opportunity to delay his retirement so he could do so. In his response to the JAG’s advisory opinion, the applicant stated that he would have gladly remained on active duty for another month if it had been necessary to transfer his educational benefits to his dependents.

5. In a similar case, BCMR No. 2012-054, the Deputy General Counsel of the Department determined that DTM 09-003 requires the Coast Guard to counsel eligible individuals about their Post-9/11 GI Bill educational benefits before they separate and to document that counseling. Because the Coast Guard erred by failing to provide such counseling, the Deputy General Counsel approved the relief granted by the Board in that case, which was to correct the applicant’s record to show that he had transferred his benefits to his dependents before he retired.

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<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

<sup>6</sup> DTM 09-003, Attach. 2, para. 3.g.(1) (“An individual approved to transfer entitlement of educational assistance . . . may transfer such entitlement to the individual’s family member only while serving as a member of the armed forces.”); DTM 09-003, Glossary (defining members of the Armed Forces as those individuals serving on active duty or in the Selected Reserve and not including individuals in a retired status).

<sup>7</sup> DTM 09-003, Attach. 2, para. 3.a.(3) (a member is eligible to transfer his benefits if he is or becomes retirement eligible during the period from August 1, 2009, through August 1, 2013, and agrees to serve the additional period, if any, specified in paragraphs 3.a.(3)(a) through 3.a.(3)(e) of this attachment. A Service Member is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under section 12732 of Reference (b)).

<sup>8</sup> DTM 09-003, Attach. 1, para. 3.b. of Attachment 1 (the Secretaries of the Military Departments shall “Ensure that all eligible active duty members . . . are aware that they are automatically eligible for educational assistance under the Post-9/11 GI Bill program upon serving the required active duty time established in Chapter 33 of [title 38 of the United States Code]”).

Like the applicant in 2012-054, the applicant in this case was eligible to transfer his educational benefits before he retired, was entitled to counseling about his eligibility, and was not counseled. The applicant in 2012-054 was eligible to transfer his benefits based on the date of his retirement and 20 years of service and this applicant is also eligible based on his date of retirement and more than 25 years of service. Therefore, the applicant in this case is entitled to the same relief that the applicant in 2012-054 received.

6. In its advisory opinion for this case, the Coast Guard recommended granting relief based on the reasoning of the Board's decision in BCMR No. 2012-054—that constructive notice through the issuance of ALCOASTs does not satisfy the counseling requirements in DTM 09-003. As the Board noted in its decision in 2012-054, a general announcement, such as an ALCOAST or ALDIST, does not equal individual pre-separation counseling,<sup>9</sup> and the Deputy General Counsel did not find that ALCOASTs satisfied the DTM's counseling requirements in 2012-054. Likewise in this case, the Board finds that the Coast Guard's issuance of ALCOASTs in 2008 and 2009 did not satisfy the applicant's entitlement to documented, individual, pre-separation counseling requirement under DTM 09-003.

7. Accordingly, the Board finds that the applicant has proven by a preponderance of the evidence that his record contains an error. He is entitled to relief.

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

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<sup>9</sup> See, e.g., BCMR Docket Nos. 224-87, 121-93 (decisions of the delegate of the Secretary holding that general messages, such as ALDISTs and ALCOASTs, do not satisfy the Coast Guard's requirement for documented, individual counseling about a member's eligibility for a selective reenlistment bonus).

**ORDER**

The application of [REDACTED] (Retired), for correction of his military record is granted. His record shall be corrected to show that before retiring from active duty on July 31, 2009, he transferred his Post-9/11 GI Bill educational benefits to his eligible dependents, effective August 1, 2009. The Coast Guard shall assist him with the paperwork necessary to accomplish this transfer of benefits.

