DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-208

[redacted]

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 after receiving the applicant's completed application on September 26, 2014, 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 June 25, 2015, 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, who retired from active duty on June 1, 2015, asked the Board to correct her record to show that she transferred her unused education benefits under the Post-9/11 Veterans' Educational Assistance Act of 2008, "Post-9/11 GI Bill"[1] to her eligible dependents in 2009 and to show that she completed her four-year obligated service requirement in September 2013. She stated that she transferred her unused education benefits to her dependents in 2012 and was told that she did not have to obligate any additional service because she had more than 16 years of active service. However, when she started researching a retirement date in 2015 she discovered that when she transferred the benefits in 2012 she had incurred four more years of obligated service and therefore could not retire until 2016. The applicant stated that if she had been counseled about the benefit transfer program in September 2009 when her first child was born, she would have transferred her unused education benefits at that time and would have been able to complete the additional four years of obligated service by September 2013 and retire upon completing 20 years of service in 2015.

[1] 38 U.S.C. § 3319(a) (authorizing eligible service members to transfer a portion of their entitlement to educational assistance to their eligible dependents).

SUMMARY OF THE RECORD

The applicant graduated from the Coast Guard Academy in 1995 and over the course of her career advanced to the rank of CDR. On May 4, 2012, she transferred her unused education benefits to her dependents, and her record contains an unsigned Transfer of Educational Benefits worksheet which states that as a result of the transfer she would be required to obligate an additional 48 months of service. Her record also contains a May 14, 2012, email to the applicant from a Coast Guard GI Bill Management and Program Specialist at the Coast Guard Personnel Service Center (PSC) notifying her that the benefit transfer had been approved. The email contains the following regarding obligated service:

> By transferring your benefits, you have agreed to obligate an additional 48 months of service from the date your transfer was executed, which was May 4, 2012. As a result, we have updated Direct Access to reflect your obligated service through May 4, 2016.

On October 22, 2014, the applicant submitted a request to PSC to rescind the transfer of her Post 9/11 GI Bill education benefits. In the request, she acknowledged that the revocation would absolve of her any obligated service connected to the benefit transfer and that she could not reapply for the transfer after she retired from the Coast Guard. The applicant voluntarily retired from the Coast Guard on June 1, 2015. There is nothing in the record to show that she was counseled about the Post-9/11 GI Bill program upon her retirement.

APPLICABLE 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 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 of Attachment 2 (Procedures) states that the transferability program is designed to promote recruitment and retention of members of the Armed Forces.

Paragraph 3.a.(1). of Attachment 2 (Procedures) states that a member with at least six years of service on the date of election must agree to serve four additional years from the date of election.

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). There is nothing in the DTM which states that a member with more than sixteen years of active service will not have to obligate additional service upon transferring their unused education benefits to their dependents.

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. The DTM's glossary defines "member of the Armed Forces" as a member serving on active duty or in the Selected Reserve.

Paragraph 3.b.(1) states that "[a]n individual approved to transfer an entitlement to educational assistance under this section may transfer that entitlement to his or her spouse, to one or more of his or her children, or to a combination of his or her spouse and one or more children." Subparagraph (2) states, "the definition of spouse and child are as codified in section 101, [Title 38]. Confirmation of family members will be made using the Defense Eligibility Enrollment Reporting System (DEERS)." The DTM glossary defines "family member" as a "spouse or child as codified in section 101 of the Post-9/11 GI Bill who is enrolled in DEERS."

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.h.(5).a. of Attachment 1 states that if a member fails to complete the required obligated service then the amount of any transferred entitlement that is used by a dependent shall be treated as an overpayment of educational assistance and will be subject to collection by DVA.

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 and obligate required service in accordance with paragraph 3.a. of DTM 09-003. 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 Department of Veterans Affairs 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.

VIEWS OF THE COAST GUARD

On March 18, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief, in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC argued that although the applicant claims that she was misinformed and improperly counseled about her Post-9/11 GI Bill entitlements, this misinformation "does not constitute as an injustice or error" by the Coast Guard and does not excuse her completion of the required obligated service for eligibility to transfer educational benefits. PSC further argued that the applicant had access to DTM 09-003 and the ALCOAST messages regarding the Post-9/11 GI Bill program and had the option of seeking additional guidance from an Educational Service Officer (ESO) or her servicing yeoman.

PSC acknowledged that the Coast Guard is responsible to ensure that all members are aware of their options regarding the Post-9/11 GI Bill, but that it fulfilled this responsibility by releasing numerous ALCOAST messages about the program. Moreover, PSC argued that the applicant was responsible for being diligent and maintaining awareness regarding personal entitlements and Coast Guard policy, and that in this case she relied only "on one member's advice as the basis of her decision." Finally, PSC argued that the applicant's claim that she was not counseled about the obligated service requirement when she transferred her benefits is clearly erroneous because her record contains a Transfer of Educational Benefits worksheet and an email from a GI Bill Management and Program Specialist, both of which indicate that she had incurred another four years of active service upon transferring her unused education benefits to her dependents.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 20, 2015, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. The applicant responded on April 14, 2015, and disagreed with the Coast Guard's recommendation. She argued that although the JAG claims that the Transfer of Educational Benefits worksheet and the email from the GI Bill Management and Program Specialist are proof that she was counseled about the additional obligated service requirement, she was not, in fact, counseled about the requirement until after she transferred her benefits. She noted the benefits worksheet was an internal document used by the PSC Field Support Office and that she did not know the worksheet existed until the JAG referenced it in their advisory opinion. Accordingly, she argued that the worksheet does not qualify as individual counseling about the Post 9/11 GI Bill because she never saw the sheet nor does it contain reviewing or approving signatures. The applicant also argued that the email she received from the GI Bill Management and Program Specialist confirming her benefit transfer and informing her of the four-year obligated service is not proof that she was counseled about the obligated service requirement — it is proof only that she had transferred her benefits. She argued that she did not know about the obligated service requirement until she received the email, and prior to receiving the email she was under the impression that she would not have any obligated service "due to misinformation received by my servicing yeoman and Command Enlisted Advisor."

The applicant also disagreed with PSC's argument that she should have known about the obligated service requirement because she had access to the Post-9/11 GI Bill program as detailed in DTM 09-003 and the ALCOAST messages. She argued that this would have placed all of the responsibility on her to learn about the program and incorrectly assumes that she had access to the ALCOASTs. She argued, however, that she did not see the first three ALCOASTs

regarding the Post-9/11 GI Bill because she was working in an office where 21 people were forced to share one .mil computer and that she did not qualify for priority use of the computer.

The applicant argued that DTM 09-003 requires the Coast Guard to do more than merely announce the Post-9/11 GI Bill transfer program and that the instruction clearly places the responsibility on the Coast Guard to ensure that all eligible active duty members are aware of their eligibility for the program and provide individual counseling on the program's benefits. She further noted that she has learned that the Coast Guard did not implement a formal, individual pre-separation counseling program for the Post-9/11 GI Bill until June 2013, which was a full year after she elected to transfer her unused benefits.

The applicant also disagreed with the JAG's assertion that she should have sought additional guidance from and Education Services Officer or her servicing yeoman. She argued that she indeed relied on the advice of her servicing yeoman and her Command Enlisted Advisor (CEA) but that both of them provided erroneous advice. She stated that after the CEA told her that she should wait until after having kids before transferring her benefits, she went to her servicing yeoman and was specifically told that because she had more than sixteen years of active service she could transfer her unused education benefits without incurring any additional obligated service.

Finally, the applicant provided an explanation regarding her October 22, 2014, memorandum to PSC in which she requested to rescind the transfer of her Post-9/11 GI Bill benefits to her spouse and dependents. She stated that PSC required her to revoke her previous transfer in order to process her retirement request, and her Commanding Officer (CO) and Executive Officer (XO) also pressured her to submit the memo so the Office of Personnel Management (OPM) could "shop" her billet and find a replacement for her upon her retirement. She asked the Board to recognize that she rescinded the benefit transfer "as a matter of process" and to not construe it as an intent to take the benefit away from her dependents.

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 discovery of the alleged error and injustice in her record.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.[2]

3. The applicant alleged that it was an injustice for the Coast Guard not to provide her with personal, documented counseling about the Post-9/11 GI Bill transfer program when it

[2] *See Steen v. United States*, No. 436-74, 1977 U.S. Ct. Cl. LEXIS 585, at *21 (Dec. 7, 1977) (holding that "whether to grant such a hearing is a decision entirely within the discretion of the Board").

became effective on August 1, 2009. In considering allegations of error and injustice, 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 her record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.[3] Absent evidence to the contrary, the Board presumes that Coast Guard officials and Government employees have carried out their duties "correctly, lawfully, and in good faith."[4]

4. The applicant alleged that the Coast Guard should have counseled her about the transferability of her education benefits under the Post-9/11 GI Bill when it first went into effect in August 2009. If it had done so, she alleged, she would have requested to transfer those benefits at that time and would have been able to complete the four years of obligated service necessary to complete the transfer before her voluntary retirement on June 1, 2015. Under the regulations, however, the Coast Guard was not required to initiate and document individual counseling about the program for the applicant in 2009 because she was not separating at that time. Under Paragraph 3.g. of Attachment 1 to DTM 09-003, which was issued on June 22, 2009, the Coast Guard must provide documented, individual counseling about the program only during pre-separation or release from active duty counseling. Otherwise, the Coast Guard has publicized the program through a series of ALCOASTs, made available on the Coast Guard intranet and the internet. The applicant did not request to retire until 2014 and so, in accordance with DTM 09-003, was not entitled to have the Coast Guard initiate individual counseling about the program until then. Although the copy of the military record (EIPDR) received from the Coast Guard does not contain documentation of counseling about the transferability of benefits, the preponderance of the evidence in the record shows that the applicant was counseled about the transferability of her benefits in 2012, when she transferred them, and in 2014, when she rescinded the transfer so that she could retire in 2015.

5. The applicant alleged that she was told by her servicing yeoman in 2012 that she did not have to obligate any additional service upon transferring her unused education benefits because she had more than sixteen years of service and could wait until all of her children were born to transfer them.[5] Assuming her yeoman gave her this erroneous advice, which she has not proved, the email she received approving the transfer shows that the error was fixed because the email informed her of the obligated service requirement. Moreover, when she informed the Coast Guard that she had decided not to serve the required four years of service, she was allowed to rescind her transfer. Therefore, the yeoman's alleged error in this regard must be considered harmless error because she was promptly notified of the service requirement upon transferring her benefits, and she was allowed to rescind the transfer when she decided not to fulfill the requirement.

6. When the applicant transferred her benefits on May 4, 2012, proper counseling would have informed her that, pursuant to Paragraph 3.a.(1). of Attachment 2 to DTM 09-003,

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[3] 33 C.F.R. § 52.24(b).

[4] *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

[5] The Board notes that under DTM 09-003 and its successors, a member may not transfer his or her benefits generically to unborn dependents, may designate as transferees only existing dependents entered in the DEERS database, and must specify the percentage/amount of benefits to transfer to each named dependent.

she would have to serve an additional four years on active duty from the date that she elected to transfer her unused education benefits to her dependents. Therefore, to transfer those benefits, she was required to serve on active duty through May 4, 2016, which she decided not to do. Thus, assuming she was miscounseled, even if the applicant had been accurately counseled regarding her obligated service at the time she transferred her benefits, accurate counseling would not have changed the outcome regarding her eligibility to transfer her benefits because she still would have been required to obligate service through May 4, 2016, and could not retire in 2015 without rescinding the transfer request.

7. The applicant has not proven by a preponderance of the evidence that her record contains an error or injustice. The record shows that she was approved to transfer her benefits upon her request on May 4, 2012, and allowed to rescind the transfer when she decided not to remain in the Service through May 4, 2016. Accordingly, relief should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [redacted], USCG (Retired), for correction of her military record is denied.

June 25, 2015

[redacted]