

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-230



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 application after receiving the applicant's completed application on December 2, 2014, and subsequently 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 July 10, 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 the Coast Guard on June 30, 2010, asked the Board to correct his record to show that he transferred his unused Post-9/11 GI Bill¹ benefits to his two dependent children before retiring from active duty.

The applicant alleged that before he retired, he was aware of the Post-9/11 GI Bill that went into effect in 2009, which allowed for active duty members of the military to transfer their educational benefits to dependents. (The Coast Guard released five official messages regarding the Post 9/11 GI Bill program.²) He alleged that he was "told that [he] was not eligible since [he] was processing for retirement and the program required that [he] obligate additional years of service." The applicant stated that he made several inquiries into transferring his benefits before he retired, but was repeatedly told he was not eligible since he was processing for retirement and the program required an obligation of additional years of service. Additionally, he noted, he never received individual, pre-separation counseling about his Post-9/11 GI Bill benefits.

¹ Public Law 110-252, § 5001, 122 Stat 2323 (June 30, 2008) (authorizing the Secretary of Defense in coordination with the Secretary of Veterans' Affairs to prescribe regulations so that members serving in the Armed Forces may transfer a portion of their entitlement to educational assistance under the Montgomery GI Bill program to their eligible dependents as of August 1, 2009, if the members have at least six years of service and agree to serve four more years or the amount of time prescribed by the regulations).

² ALCOASTs 447/08, 004/09, 250/09, 337/09, and 443/09.

The applicant alleged that he discovered that he had been erroneously counseled about his right to transfer his benefits on May 8, 2014.

SUMMARY OF THE RECORD

The applicant, a lieutenant, retired from the Coast Guard on June 30, 2010, after serving more than 23 years on active duty. His record does not contain documentation of individual, pre-separation counseling regarding his eligibility for the benefits.

VIEWS OF THE COAST GUARD

On April 13, 2015, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG adopted the facts and analysis provided in a memorandum on the case prepared by the Coast Guard Personnel Service Center (PSC).

PSC argued that the application is untimely but that the Board should review the applicant's case in the interest of justice because he was not aware of the error until recently. PSC asserted that the applicant was eligible to transfer benefits prior to retirement without obligating additional service. PSC noted that a Page 7³ in the applicant's record states that he was "counseled regarding retirement rights, benefits, and responsibilities on 30 June 2010," but that it did not specifically confirm that the applicant was counseled on his right to transfer his education benefits.

PSC argued that since the applicant attempted to transfer his benefits while on active duty and was erroneously denied, the requirement that the applicant be on active duty to transfer should be waived in this case. PSC recommended that the applicant be granted relief to transfer his benefits despite his current non-active duty status.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 15, 2015, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant responded on April 23, 2015, and indicated that he had no objection to the Coast Guard's recommendation.

APPLICABLE REGULATIONS

On June 22, 2009, the Department of Defense set forth the policies and procedures for carrying out the Post-9/11 GI Bill in Directive Type Memorandum (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. Paragraph 3.a of Attachment 2 defines an "eligible individual" as "Any member of the Armed Forces on or after August 1, 2009, who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, is eligible for the

³ An Administrative Remarks record entry, form CG-3307, better known as a "Page 7," is used to document a member's notification of important information, achievements, or counseling about positive or negative aspects of a member's performance in the member's military record.

Post-9/11 GI Bill, and . . . For those individuals who have an approved retirement date after August 1, 2009, and before July 1, 2010, no additional service is required.”

Paragraph 3.g of Attachment 1 of the DTM requires the “Secretaries of the Military Departments [to] . . . Provide active duty participants . . . individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and [to] document accordingly.”

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.
2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.⁴ The applicant alleged, and the Coast Guard agreed, that he became aware that he had been erroneously counseled about his eligibility to transfer his education benefits in May 2014. Therefore, the preponderance of the evidence shows that the applicant discovered the alleged error in his record in May 2014, and his application is timely.
3. The applicant alleged that he was misadvised about his eligibility to transfer his unused Post-9/11 GI Bill benefits to his dependents while on active duty, and he retired on June 30, 2010, without having made the transfer. When considering allegations of error and injustice, the Board begins its analysis 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.⁵ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁶
4. The Coast Guard has agreed that it failed to counsel the applicant properly. The Coast Guard should have provided the applicant with individual Post-9/11 GI Bill counseling and documented that counseling in accordance with Paragraph 3.g. of Attachment 1 to DTM 09-003, which requires documentation or other evidence of individual, pre-separation counseling about the program. The lack of such documentation is strong evidence that the applicant was not properly counseled. Although the Coast Guard issued several ALCOASTs regarding the benefit-transfer program, the Board and the Deputy General Counsel have determined that the issuance of general ALCOASTs, which do not provide all the rules for the transfer program, did not meet the requirements of the DTM and that documented individual pre-separation counseling is required.⁷

⁴ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ See, e.g., BCMR Docket Nos. 2012-054, 2013-101, 2013-111, 2014-010, 2014-202,

5. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that he was not properly counseled about his eligibility to transfer his unused education benefits under the Post-9/11 GI Bill. If the Coast Guard had provided proper counseling, the applicant presumably would have learned that he had to transfer his unused education benefits to his eligible dependents before retiring on June 30, 2010. Accordingly, the Board finds that the applicant has proven by a preponderance of the evidence that his record contains an error and he is entitled to relief.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of LT [REDACTED] USCG (retired), for correction of his military record is granted. His record shall be corrected to show that before retiring from active duty on June 30, 2010, he transferred his Post-9/11 GI Bill educational benefits to his eligible dependents. The Coast Guard shall assist him with the paperwork necessary to accomplish this transfer of benefits.

July 10, 2015

