

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-011



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 after receiving the applicant's completed application on October 21, 2015, and assigned the case to [REDACTED] who prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated July 21, 2016, 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, a former [REDACTED] who was honorably discharged from active duty on May 18, 2015, asked the Board to correct his record to show that he completed the transfer of his unused education benefits under the Post-9/11 Veterans' Educational Assistance Act of 2008 ("Post-9/11 GI Bill")¹ to his dependent before being discharged from active duty. He stated that at the time of his discharge he was approximately 30 days shy of satisfying his obligated service requirement to transfer his unused education benefits and alleged that if he had been properly counseled then he would have appealed his command's decision to not allow him to reenlist so that he could remain on active duty long enough to complete the obligated service. The applicant stated that he would have done everything he could to complete the obligated service requirement because it was extremely important to him that he transfer his unused education benefits to his dependent.

The applicant also asked the Board to issue him a discharge certificate and to correct the separation and reenlistment codes on his travel orders because they do not match the separation and reenlistment codes on his DD 214.

¹ 38 U.S.C. § 3319 (2010) (authorizing members on active duty with at least six years of active service to transfer part of their educational benefits to their dependents if they agree to obligate four more years of service or "the years of service as determined in regulations pursuant to subsection (j), which authorizes the Secretary of Defense to prescribe regulations for purposes of this section).

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 14, 2000. On June 27, 2011, his request to transfer his unused education benefits to his dependent was approved by the Coast Guard Personnel Service Center (PSC). The letter notifying the applicant that his request had been approved states that he would have to obligate an additional 48 months of service to effectuate the transfer. The letter states that as a result of the benefit transfer the Coast Guard Personnel Database (Direct Access) would be corrected to show that he had obligated another 48 months of service, through June 27, 2015.

On November 24, 2014, a Page 7 was placed in the applicant's record documenting counseling that he was ineligible to reenlist because his command did not give him a positive recommendation for reenlistment after he failed to meet the minimum standards for boat crew and coxswain certifications at the unit. The Page 7 also states that he had the right to present the case and appear before a reenlistment board and be represented by counsel. The applicant signed the Page 7 indicating that he acknowledged that he had met the eligibility criteria for reenlistment but had not received a positive recommendation from his commanding officer.

On December 2, 2014, the applicant completed a Career Intentions Worksheet indicating that he wanted to sell 23 days of unused leave and take 60 days of terminal leave from March 18, 2015, to May 18, 2015, which was when his enlistment was ending.²

On December 10, 2014, the applicant was notified by his command via memorandum that he was being denied the opportunity to reenlist because of his unsatisfactory performance. The applicant responded via memorandum on the same day and indicated that he waived his right to counsel, his right to submit a written statement, and his right to an administrative separation board (reenlistment board).

The Coast Guard issued the applicant separation orders on February 25, 2015, which show that his discharge date would be May 18, 2015; his reenlistment code would be RE-4; and his separation code would be KBK.³

The applicant was discharged on May 18, 2015, and his DD 214 indicates that he was separated pursuant to Article 1.B.1 of the Military Separations Manual, COMDTINST M1000.4. His DD 214 shows that he received an honorable discharge; a JBK⁴ separation code; and an RE-3 reenlistment code (eligible to reenlist with a waiver).⁵

On September 28, 2015, the applicant's dependent was notified by the Department of Veterans Affairs (DVA) that his claim for educational benefits had been denied because the applicant did not complete the additional period of obligated service required for the transfer.

² This enlistment contract is not in the record.

³ The Separation Program Designator (SPD) Handbook states that KBK is used for a member who is voluntarily discharged upon completion of required service.

⁴ The SPD Handbook states that JBK is an involuntary discharge upon completion of required service.

⁵ Although the SPD Handbook authorizes only an RE-1 or RE-4 code for the KBK and JBK separation codes, ALCOAST 125/10 authorizes an RE-3 "when commanding officer does not recommend reenlistment."

VIEWS OF THE COAST GUARD

On March 16, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG adopted the findings and recommendation provided in a memorandum submitted by the PSC.

PSC argued that relief should be granted because the applicant suffered an injustice and the loss of his ability to transfer his unused education benefits shocks the sense of justice. PSC stated that after the applicant was denied the opportunity to reenlist he could have brought his case to a reenlistment board which would have extended his service enough to satisfy the obligated service necessary to effectuate the benefits transfer, but that he chose to forgo the appeal. PSC stated that it is reasonable to expect that the applicant would have chosen to appeal the command's decision and thus delay his discharge if he had been properly counseled about the potential loss of his Post-9/11 GI Bill transfer eligibility.

PSC agreed with the applicant that he should have received an Honorable Discharge Certificate and that the separation and reenlistment codes on his travel orders should match the separation and reenlistment codes on his DD 214. Accordingly, PSC recommended that the applicant's record be corrected by issuing him an Honorable Discharge Certificate and amending his separation orders to reflect the separation code (JBK) and reenlistment code (RE-3) currently listed on his DD 214.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 25, 2015, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATION

Directive Type Memorandum (DTM) 09-003

DTM 09-003, issued by the Department of Defense (DoD) on June 22, 2009, sets forth the policies and procedures for carrying out the Post-9/11 GI Bill, which became effective on August 1, 2009. 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 of Homeland Security. The DTM defines "Military Departments" and "Military Services" as the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Paragraph 3 of Attachment 1 (Responsibilities) to DTM 09-003 states that the Secretaries of the Military Departments "shall ... b. 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]. ... g. Provide active duty participants and members of Reserve Components 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.a.(1). of Enclosure 3 to Department of Defense Instruction (DoDI) 1341.13 states that members may transfer their unused education benefits to their eligible dependents if they have at least 6 years of service on the date of approval and agree to serve 4 additional years on active duty.

Paragraph 3.g. of Enclosure 3 to DoDI 1341.13 states that if a member transferring entitlement under this section fails to complete the service agreed to consistent with paragraph 3.a. of this enclosure in accordance with the terms of the agreement, the amount of any transferred entitlement that is used as of the date of such failure shall be treated as an overpayment of educational assistance and shall be subject to collection by DVA.

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 is timely.

2. The applicant asked the Board to correct his record to show that he completed the transfer of his unused education benefits to his dependent under the Post-9/11 GI Bill before he was discharged on May 18, 2015. He alleged that if he had been properly counseled then he would have appealed his command's decision to not allow him to reenlist and thus delay his discharge by enough time to complete the obligated service necessary to effectuate the transfer of his education benefits. When considering such allegations of error or 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.⁶ 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."⁷

3. The record shows that on June 27, 2011, the Coast Guard approved the applicant's request to transfer his unused education benefits and that he was notified that he would be required to obligate an additional 48 months of service, through June 27, 2015. However, the applicant was not allowed to reenlist and was discharged on May 18, 2015, before serving 100% of the obligated service necessary to complete the transfer of his unused education benefits. He alleged that if he had known that his early discharge would prevent him from transferring his education benefits, he would have delayed his discharge by appealing his command's decision not to allow him to reenlist.

4. The Board agrees with the JAG that relief should be granted. The applicant applied to transfer his unused education benefits to his dependent in 2011 and willingly incurred

⁶ 33 C.F.R. § 52.24(b).

⁷ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

another four years on active duty, so he clearly intended for his dependent to receive the benefit after he separated from the Coast Guard. If the applicant had exercised his right to appeal his command's decision to not allow him to reenlist and had demanded a hearing before an administrative separation board then he would likely have remained on active duty long enough to satisfy the obligated service necessary to successfully complete the benefit transfer. The JAG recommends granting relief and PSC argued that it shocks the sense of justice for the applicant to lose a benefit he wanted to retain because he waived his right to a reenlistment board. The Board agrees, and finds that the applicant's record should be corrected to show that he completed the necessary obligated service following the June 27, 2011, approval of his request to transfer his unused Post-9/11 GI Bill benefits. The Coast Guard may make this correction by backdating the approval of his transfer request from June 27, 2011, to May 18, 2011.

5. The applicant also asked the Board to ensure that he receives an Honorable Discharge Certificate and that his separation orders be corrected to match the reenlistment code and separation code on his DD 214. The record shows that the Coast Guard issued separation orders on February 25, 2015, and they erroneously indicate that he should receive an RE-4 reenlistment code and a KBK separation code. This information is presumably incorrect because the applicant's DD 214 indicates that he received an RE-3 reenlistment code and a JBK separation code. Pursuant to the SPD Handbook and ALCOAST 125/10, the JBK separation code and RE-3 reenlistment code on his DD 214 are correct and the codes on his separation orders are incorrect. The JAG agreed with the applicant and recommended that the separation orders be corrected to match the information on the DD 214. Therefore, because the applicant has proven by a preponderance of the evidence that his separation orders are incorrect, the Board will order the Coast Guard to correct the separation orders to reflect an RE-3 reenlistment code and JBK separation code.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] [REDACTED] USCG, for correction of his military record is granted. His record shall be corrected to show that before being discharged from active duty on May 18, 2015, he completed four years of obligated service and successfully transferred his Post-9/11 GI Bill educational benefits to his eligible dependent. If necessary to effect this correction, the Coast Guard shall backdate the approval of his transfer request to May 18, 2011. The Coast Guard shall also issue him an Honorable Discharge Certificate and correct his separation orders to show that he received an RE-3 reenlistment code and a JBK separation code.

July 21, 2016

