DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-052

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 case after receiving the completed application on January 25, 2017, and assigned it to staff attorney ██████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 21, 2017, 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 Reserve ██████ who was involuntarily discharged from active duty on September 30, 2011, due to non-selection for promotion, and retired from the Reserve on July 1, 2013, asked the Board to correct her record by expunging her time in the Individual Ready Reserve (IRR) from October 1, 2011, to June 30, 2013, and correcting her Reserve retirement date to October 1, 2011. She stated that in order for her children to receive the Post-9/11 GI Bill education benefits that she transferred to them in November 2010, her time in the IRR must be removed from her record. She acknowledged that she would lose 16 retirement points that she had earned in the IRR, but stated that the loss would in no way affect her retirement eligibility.

The applicant claimed that she was unaware that being placed in the IRR for administrative purposes following her discharge from active duty would create a four-year service obligation. She stated she was informed that the service obligation was waived because she "was passed over twice and forced to separate." When the Coast Guard Personnel Service Center's Reserve Personnel Management Office (PSC-rpm) recommended that she retire in 2013, she claimed, she was unaware that she had incurred any service obligation just by entering the IRR after her discharge from active duty.

The applicant stated that she learned of this issue when her daughter submitted paperwork in May 2016 to access the Post-9/11 GI Bill benefits and was denied. She stated it was at that time that she was informed that she had incurred a service obligation and had failed to complete it.

With her application, the applicant provided a timeline of events. The applicant stated that on November 12, 2010, her Post-9/11 GI Bill benefits transfer to her children was approved. On November 15, 2010, she received an email from a GI Bill processor, who stated that because the applicant had been passed over twice for promotion and was "forced to separate," the applicant would not be required to fulfill an obligated service requirement to transfer the benefits. On June 11, 2011, the applicant's pre-separation physical examination revealed that she had a "significant illness." As a result, her discharge from active duty was delayed from June 30, 2011, to September 30, 2011. Around that time, the applicant stated, she was told by PSC-rpm that she had to be placed in the IRR following her discharge from active duty in order to receive her 20-Year Satisfactory Service Letter, despite the fact that she had 24 years of satisfactory service for Reserve retirement purposes.[1]

The applicant stated that she was informed that she would not be expected to drill for pay or points because billets would be given to members who were not retirement eligible. She added that for the two years she was in the IRR, she contacted the PSC-rpm multiple times and she was consistently told there were no billets for her to fill. In addition, she was still recovering "from the major physical change that occurred with [her] body due to the illness." In March 2013, the applicant again spoke with PSC-rpm, and she was told "it was probably a good idea to retire since [she] was stagnant for two years." She stated that she asked about the education benefits and was told that nothing had changed from 2010. The applicant retired from the Reserve on July 1, 2013.

In May 2016, the applicant's daughter submitted paperwork to activate her Post-9/11 GI Bill benefits. On August 22, 2016, the applicant received notice from the Department of Veteran's Affairs that her education benefits were denied because the applicant had not met her service obligation. She stated that after submitting paperwork to the VA, she was directed to speak with the Coast Guard. The applicant stated the Coast Guard told her that her time in the IRR should be expunged and her Reserve retirement date should be changed to October 1, 2011, in order for her children to receive the Post-9/11 GI Bill benefits. On October 11, 2016, the applicant was instructed to submit an application to this Board for correction of her record.

SUMMARY OF THE RECORD

The applicant received an email from the GI Bill processor on November 15, 2010, regarding transfer of her education benefits. The email included the following:

> This is to inform you that your request to transfer educational benefits under the new "Post 9/11 GI Bill" was approved on 15 Nov 2010. Your application has been updated at the Defense Manpower Data Center's Transfer of Educational Benefits (TEB) Portal.
>
> As your application has been "Approved," your dependents can now follow the necessary steps to apply for benefits…
>
> By transferring your benefits, you have agreed to obligate an additional 48 months of service from the date your transfer was executed, which was 12 Nov 2010. As a result, we have updated your Direct Access to reflect your obligated service through 12 Nov 2014.

[1] The applicant had 14 years of active duty and nearly 10 years of qualifying reserve service.

> The key point here is that "agree to obligate service" is not the same as "extend or reenlist." Once your transfer of benefits is approved, we go into DA and update a data field called "Obligated Service." It's only visible to Career Mangers, and it doesn't change your EOE [end of enlistment]. What it does however, is allow us to screen all discharges, retirements, etc., to ensure that you don't have obligated service.

About an hour later on November 15, 2010, the applicant received another email from the GI Bill processor. It included the following:

> Your obligated service is based upon your active duty base date. If you feel as though your active duty base date is incorrect, and or does not reflect your reserve time you have two options. You can have an interim statement of creditable service which is a quick way to rework the date or do a normal statement of creditable service through your yeoman. Since you have been passed over twice for promotion, and forced to separate you will not be responsible for the remaining obligated service when you separate on June 30, 2011.

The applicant was discharged from active duty on September 30, 2011. She received an honorable discharge with the narrative reason for separation as "Non-Selection, Permanent Promotion." The applicant had been serving on active duty since December 28, 1998, following many years of Reserve duty, and so her DD 214 shows 12 years, 9 months, and 3 days of "active service this period"; 1 year, 7 months, and 12 days of prior active service; and 9 years, 11 months, and 1 day of prior inactive service.

VIEWS OF THE COAST GUARD

On June 27, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant alternative relief. The JAG stated that it is "the Coast Guard's view that the [applicant] is eligible to transfer her Post-9/11 GI Bill education benefits and that she never should have incurred a service obligation."

The JAG first stated that the application is timely because it was submitted within three years of the applicant discovering the alleged error. The JAG then stated that according to the Department of Defense Instruction (DoDI) 1341.13, Post-9/11 GI Bill, eligible members may transfer unused education benefits to a family member. The member must have at least six years of service and must transfer the benefits while they are still on active duty or assigned to the Selected Reserve. Transferring benefits obligates a member to serve up to four additional years. However, the JAG stated, if a member has at least ten years of service and is precluded by policy or law from committing to an additional four years, then the amount of obligated time would be the time allowed by the policy or law.[2]

The JAG pointed out that section 3.a.(3) of Enclosure 3 of DoDI 1341.13 contains a provision that members who are retirement eligible on August 1, 2009, incur no additional service obligation. The JAG argued that this provision of DoDI 1341.13 was in effect when the applicant's benefit transfer request was approved on November 15, 2010. At that time, the applicant was

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[2] For example, DoDI 1341.13 states that members who are retirement eligible *prior* to August 1, 2009, incur no additional service obligation. Members who become retirement eligible between August 1, 2009, and August 1, 2010, must obligate one year. Members who become retirement eligible between August 2, 2010, and August 1, 2011, must obligate two years. This pattern continues until August 1, 2013, after which date members must obligate four years to transfer their benefits.

retirement eligible, as she had reached 20 years of satisfactory service on June 14, 2007. The JAG stated that she was retirement eligible, despite not having 20 years of active duty service because retirement eligibility can be achieved through 20 years of active duty service or through qualifying service for a Reserve retirement under 10 U.S.C. § 12732.[3] The JAG therefore argued that because the applicant was eligible for a Reserve retirement and had transferred her unused education benefits prior to her mandatory discharge from active duty, she should not have been transferred to the IRR or incurred an additional service obligation.

According to the applicant's Direct Access (DA) database entries, her service obligation from November 12, 2010, to November 12, 2014, was never removed from her record. Therefore, when she retired from the Reserve before November 2014, her DA showed that she had not completed her obligated service requirement for the benefits transfer. The JAG stated that there was sufficient evidence to find that she should never have had that entry placed into her DA record. Therefore, the JAG recommended that the Board grant alternative relief by removing this data entry from the applicant's DA record, and ensuring that her record is updated to reflect that she does not have any additional service obligation barring her or her family from receiving education benefits under the Post-9/11 GI Bill.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, the Chair sent the applicant a copy of the Coast Guard's views and invited her to respond within 30 days. The applicant responded on July 7, 2017, and indicated that she had no objection to the Coast Guard's recommendation.

APPLICABLE REGULATIONS

The Directive-Type Memorandum (DTM) 09-003: Post-9/11 GI Bill,[4] section 3.a., states that a member of the military is eligible to transfer benefits if she has at least 6 years of service; if she has at least 10 years of service and agrees to commit to an additional 4 years of service; or if she is retirement eligible prior to August 1, 2009, by having completed at least 20 years of qualifying service. If the member is retirement eligible prior to August 1, 2009, she is not required to obligate any additional service.

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:

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[3] Title 10 U.S.C. § 12732 states that any year a member spends in a Reserve components and receives at least 50 retirement points is a qualifying year. Every year in which the applicant was in the Reserve, she earned well over 50 retirement points.

[4] The Coast Guard References DoDI 1341.13, specifically Enclosure 3, it its advisory opinion and stated that the provisions therein were in effect when the applicant's request to transfer education benefits was approved in November 2010. However, Enclosure 3 is dated May 31, 2013, and was therefore not in effect in 2010. The applicable policy is Directive-Type Memorandum (DTM) 09-003: Post-9/11 GI Bill, which was effective on June 22, 2009, and amended on September 14, 2011. The applicant was discharged on September 30, 2011, but was placed on the IRR on November 12, 2010. However, the applicable provisions of DTM 09-003 were unchanged by the 2011 amendment. Therefore, this section will simply refer to the Memorandum as DTM 09-003.

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.[5] The applicant alleged, and the Coast Guard agreed, that she became aware that her daughter had become ineligible to use her transferred Post-9/11 GI Bill education benefits in May 2016. It is not likely that the applicant would have discovered the problem with the transfer of her education benefits before her child applied to use them. Therefore, the preponderance of the evidence shows that the applicant discovered the alleged error in her record in May 2016, and her application is timely.

3. The applicant alleged that she was erroneously placed in the IRR following her discharge from active duty after being told that she would not incur any additional service obligation. 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.[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]

4. The Coast Guard has agreed that it erroneously placed a four-year service obligation on the applicant. The applicant was retirement eligible with over 20 years of qualifying service prior to August 1, 2009. Therefore, according to DTM 09-003, section 3.a., the applicant was not required to obligate any additional service to transfer her education benefits to her children. The applicant was also counseled via email on November 15, 2010, that she would not be required to obligate additional service.

5. Therefore, the Board finds that the applicant has proven by a preponderance of the evidence that she received erroneous advice and that, pursuant to DTM 09-003, section 3.a., a four-year service obligation should not have been entered in her record when she had transferred her Post-9/11 MGIB benefits to her children. Accordingly, the Board finds that the alternative relief recommended by the Coast Guard should be granted. The applicant's record should be corrected to remove the incorrect four-year obligated service entry from her DA record and from anywhere else in her record so that her dependents may use the transferred education benefits.

(ORDER AND SIGNATURES ON NEXT PAGE)

[5] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.
[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).

ORDER

The application of ██████ USCGR (Retired), for correction of her military record is granted as follows:

The Coast Guard shall correct her record by removing the four-year service obligation that was entered in Direct Access when she transferred her Post-9/11 MGIB benefits to her dependents in November 2010. The four-year service obligation shall also be removed from any other databases or records where it might have been entered so that all of her records shall show that upon her retirement she did not have any additional service obligation barring her or her dependents from receiving education benefits under the Post-9/11 GI Bill.

July 21, 2017