

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-054

██████████
████████████████████

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the application on December 13, 2016, and assigned it to staff member ██████████ to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 22, 2017, 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 in 2012 as a Senior Chief ██████████, E-8) after serving more than 30 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)¹ to his dependent children before retiring from active duty. He stated that he received training about transferring his unused GI Bill education benefits in 2009, attended a Transition Assistance Program (TAP)² class in 2010, and attempted to transfer his unused education benefits under the Post-9/11 GI Bill in 2011, before his retirement in 2012.

In support of his application, the applicant submitted a copy of two separate undated Submit Transfer Request forms which show that he made two attempts to transfer 45 months of unused Post-9/11 GI Bill education benefits to five of his dependents using the Defense Man-

¹ 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 (last visited on September 12, 2017).

² TAP prepares members separating or retiring from the Coast Guard for their transition to civilian life. All eligible members are required to complete the standardized components of the TAP, including pre-separation counseling, the transition seminar, encompassing the transition goals, plans, and Success (GPS) core curriculum, <http://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Health-Safety-and-Work-Life-CG-11/Office-of-Work-Life-CG-111/Transition-Assistance-Program/> (last visited on September 12, 2017).

power Data Center (DMDC) website. He stated that his first request did not go through because he had failed to mark the box indicating which education program he wanted to transfer his benefits from. Also, there is a printed message at the top of the transfer request form stating that the total number of transfer months cannot exceed 36 and it directs the applicant to adjust those months so the total allocation is not greater than 36. The second transfer request form that he submitted shows that he marked the box indicating that he wanted to transfer his benefits from the Post-9/11 GI Bill but it also contains a message at the top stating that the total number of months cannot exceed 36. The applicant stated that he adjusted the number of months in the transfer column to 36 and submitted the form a third time. He stated that he did not receive any error messages after submitting the form a third time so he assumed that his transfer request had been successfully submitted. The applicant stated that only after his daughter was unsuccessful in using the Post-9/11 GI Bill education benefits did he realize that his third transfer request had never been processed.

The applicant also asked the Board to correct Block 15.a. of the DD 214 that he received for his service from May 17, 1982, through October 15, 1987. He alleged that the block is currently marked to indicate that he contributed to the post-Vietnam era Veterans' Education Assistance Program (VEAP) but that it should indicate that he did not contribute to VEAP. He also alleged that his three DD 214s are missing the following periods of enlistment:

- May 17, 1982, through October 15, 1991
- October 15, 1995, through July 8, 2000
- July 12, 2004, through July 13, 2008

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 17, 1982, and retired on May 31, 2012, after serving 30 years and 14 days on active duty. Upon enlisting, he enrolled in VEAP, but on May 9, 2002, he converted his education benefits from VEAP to the Montgomery GI Bill. There is nothing in his official military record to show that he attempted to transfer his Post-9/11 GI Bill educational benefits to his dependents before he retired.

There are three separate DD 214s in the applicant's record documenting his active Coast Guard service: The first covers his first enlistment, as extended, from May 17, 1982, through October 15, 1987; the second covers his second enlistment from October 16, 1987, through October 15, 1991; and the third covers all of his service from October 16, 1991, until his retirement on May 31, 2012. Remarks in block 18 of this third DD 214 state, "This DD-214 covers multiple enlistments/reenlistments as reflected in blocks 12a, 12b, and 12c. The following information applied regarding each enlistment/reenlistment." The table below shows that the applicant's third DD 214 covers four periods of enlistment: October 16, 1991, to October 15, 1996; October 16, 1996, to July 18, 2000; July 19, 2000, to July 11, 2004; and July 12, 2004, to May 31, 2012. The first DD 214 indicates that he contributed to VEAP, but the second and third DD 214 indicate that he did not contribute to the program.

On March 19, 2015, the applicant submitted an application to the Board asking it to correct the DD 214 for his service from October 16, 1991, to May 31, 2012, to show that he contributed to VEAP. Apparently, he believed that the lack of that notation on the DD 214 was the reason that his request to transfer his Post-9/11 GI Bill benefits to his dependents had been

unsuccessful. The Board denied relief in that case, noting that VEAP was available only to members who served between January 1, 1977, and June 30, 1985,³ and that the applicant had exchanged his VEAP benefits for MGIB benefits in 2002. Therefore, the Board found, his 2012 DD 214 should not show that he contributed to VEAP. The Board issued its Final Decision in that case on November 20, 2015, and the applicant submitted the current application to the Board on November 30, 2016.

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 include 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). Paragraph 3.a.(3)(a) states that for those members who were already eligible for retirement on August 1, 2009, no additional service is required.

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 and expressly excludes retired members.

DD 214 Manual, COMDTINST M1900.4D

Chapter 1 of the DD 214 Manual states that if a DD 214 documents more than one period of enlistment, block 18 shall list those periods of enlistment below this statement: "This DD-214 covers multiple enlistments/ reenlistments as reflected in blocks 12a, 12b, and 12c. The following information applied regarding each enlistment/reenlistment."

VIEWS OF THE COAST GUARD

On June 19, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis provided in a memorandum on the case submitted by the Commander, Personnel Service Center (PSC), who recommended that the Board deny relief.

³ Section E.3 of the Coast Guard Personnel and Pay Procedures Manual, PPCINST M1000.2B.

The PSC stated that the applicant was eligible to transfer his unused Post-9/11 GI Bill benefits prior to his retirement and was not required to obligate any additional service because in accordance with DTM 09-003, “for individuals eligible for retirement on or before August 1, 2009, no additional service is required.” PSC noted that the applicant became retirement eligible on May 16, 2002.

Although the applicant was eligible to transfer his Post-9/11 GI Bill benefits in 2011, the PSC argued that relief should be denied because there is no record that he attempted to do so before his retirement. PSC noted that although the applicant submitted screen shots of his submit transfer request forms from the DMDC Transfer of Education Benefits website, the requests were never processed in the DMDC or the PSC system because they contained errors. To support its recommended denial, the PSC submitted a copy of an email from Mr. S, the Coast Guard’s GI Bill Management and Program Specialist, who confirmed that the applicant’s multiple transfer requests had never been processed in the DMDC or the PSC system.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. He responded on August 8, 2017, and disagreed with the Coast Guard’s recommendation. The applicant reiterated that he converted his VEAP benefits to the GI Bill in 2002, received Post-9/11 GI Bill education benefits training on September 23, 2009, and made several attempts to transfer his Post-9/11 GI Bill education benefits to his dependents prior to his retirement. He admitted that he made some errors which caused the first two transfer requests to be rejected but that he corrected those errors, submitted the request a third time, and did not receive any error messages or any other indication that his third transfer request was unsuccessful.

SUBSEQUENT PROCEEDINGS

On September 13, 2017, the applicant contacted a member of the BCMR staff and explained that he had contacted Mr. S at the PSC regarding the case and had sent Mr. S. copies of the transfer request forms as proof that he had attempted to transfer his education benefits prior to his retirement. The applicant stated that Mr. S told him that he had never seen the two transfer request forms before and that if had seen them, he would have recommended to the JAG that relief be granted because the forms indicate that the applicant repeatedly attempted to transfer his benefits prior to his retirement.

On September 14, 2017, a member of the BCMR staff spoke with Mr. S at the PSC who confirmed that he had never seen the transfer request forms before the applicant sent them to him. Afterwards, Mr. S sent an email to the BCMR stating that he believes the transfer forms submitted by the applicant are genuine and were submitted via the DMDC system by the applicant before he retired. Mr. S asserted that the forms show that the applicant made every attempt to transfer his Post-9/11 GI Bill education benefits to his dependents before his retirement. Mr. S stated that as the Coast Guard’s Post-9/11 GI Bill Program Manager, he rescinds his initial determination that the applicant did not transfer or attempt to transfer his Post-9/11 GI Bill benefits and recommended that the Board grant relief.

On September 14, 2017, the Chair informed the JAG about Mr. S's revised recommendation. The JAG offered no objection in response.

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 retired from the Coast Guard on May 31, 2012, and submitted an application to the Board on March 19, 2015, trying to correct his record so he could transfer his education benefits but misunderstanding what correction was necessary to allow him to transfer the benefits. After receiving the Board's decision, he submitted the current application requesting the correction needed to effect the transfer on November 30, 2016. Therefore, the Board finds that the application is timely because he applied to the Board within three years of discovering the error that needs to be corrected to effect his benefits transfer, and he has been actively trying to correct his record and transfer his education benefits since March 19, 2015, less than three years after his separation from active duty.⁵
3. The applicant asked the Board to correct his record to show that he transferred his education benefits to his dependent children under the Post-9/11 GI Bill prior to his retirement in 2012. He stated that the lack of a successful transfer is erroneous and unjust because he repeatedly tried to transfer his benefits and was not informed that his third attempt was unsuccessful. 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 applicant provided copies of two benefits transfer requests that he submitted on the DMDC website, but both requests were apparently rejected because of miscellaneous errors made by him. Although the forms are undated, Mr. S, the Coast Guard's Post-9/11 GI Bill Program Manager, stated that the forms indicate that the transfer requests were made while the applicant was on active duty. The applicant alleged that he corrected the errors on the forms and submitted the request a third time, and received no notification that his third attempt had failed. The applicant did not submit anything to show, nor is there anything in the record to show, that his third request was submitted, accepted, processed, or rejected. After reviewing the two forms,

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

⁵ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

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).

however, Mr. S, the Coast Guard's Post-9/11 GI Bill Program Manager, stated that he firmly believes that the applicant attempted to transfer his education benefits before retirement. The Board finds that the two transfer request forms showing the reasons they were rejected are sufficient to prove that he persistently attempted to transfer his Post-9/11 GI Bill education benefits to his dependents prior to his retirement.

5. The JAG recommended denying relief, arguing that there are no valid transfer requests in the DMDC system or in the PSC records and that the applicant is no longer eligible to transfer his benefits because he was retired in 2012 and transfer requests must be submitted while the member is on active duty.⁸ However, the Board notes that the JAG's recommendation to the Board was written before PSC's GI Bill Management and Program Specialist had an opportunity to view the transfer request forms.

6. The Board disagrees with the JAG's recommendation and finds that the applicant has proven by a preponderance of the evidence that he made at least three attempts to transfer his Post-9/11 GI Bill benefits to his dependents prior to his retirement. He submitted documentary evidence showing that his first two transfer requests were rejected by the DMDC system because of errors, and the applicant alleged that he corrected the errors and submitted the request a third time. He stated that he did not receive another error message from the DMDC system and so presumed that the request had been successfully submitted. Therefore, the Board finds that the applicant submitted the form a third time after the two rejections and that it was reasonable for him to have thought that it had been processed. Although the applicant should have taken steps to ensure that his third transfer request was successfully processed before he retired from active duty, in light of the circumstances, the Board finds that his failure to follow-up on the processing of his third request should not prevent a 30-year veteran of the Coast Guard from receiving a valuable benefit. Therefore, his record should be corrected to show that he transferred his Post-9/11 GI Bill education benefits to his dependents before retiring from active duty.

7. The applicant also asked the Board to correct the DD 214 that he received for his service from May 17, 1982, through October 15, 1987, to show that he did not contribute to VEAP.⁹ The record shows that he received a DD 214 for his active service from May 17, 1982, through October 15, 1987, and block 15 indicates that he contributed to VEAP. Absent evidence to the contrary, the Board presumes that this information is correct, and the applicant did not submit anything to prove that he did not contribute to VEAP during this period of enlistment. Moreover, the record shows that on May 9, 2002, he converted his education benefits from VEAP to the Montgomery GI Bill. Therefore, the Board finds that the applicant has failed to prove by a preponderance of the evidence that this DD 214 is incorrect. This request should be denied.

8. The applicant also alleged that his DD 214s are missing several periods of enlistment and asked the Board to correct those errors. He stated that they are missing the following periods of service: May 17, 1982, through October 15, 1991; October 15, 1995, through July 8,

⁸ 38 U.S.C. § 3319 provides that "an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the armed forces when the transfer is executed."

⁹ The Board presumes that the applicant is making this request because he believes that it is impacting his ability to transfer his Post-9/11 GI Bill benefits.

2000; and July 12, 2004, through July 13, 2008. The applicant's record contains three separate DD 214s: The first covers his first enlistment as extended; the second covers his second enlistment; and the third covers his final four enlistments and, in accordance with the DD 214 Manual, correctly lists those separate enlistments in block 18. The Board finds that the applicant has not shown that these DD 214s fail to correctly document all of his periods of enlistment, pursuant to the instructions for completing DD 214s in the manual.

9. The Board finds that the applicant is entitled to partial relief because he has proven by a preponderance of the evidence that he repeatedly but unsuccessfully attempted to transfer his Post-9/11 GI Bill education benefits to his dependents prior to his retirement from active duty in 2012. Accordingly, his record should be corrected to show that he transferred his Post-9/11 GI Bill education benefits to his dependents effective March 11, 2011. All other requests for relief should be denied. The Coast Guard should assist the applicant with the paperwork necessary to accomplish this transfer of benefits. (There are no back pay and allowances due as a result of this correction.)

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED], USCG (Retired), for correction of his military record is granted in part. The Coast Guard shall correct his record to show that he transferred his Post-9/11 GI Bill education benefits to his eligible dependents effective March 11, 2011. The Coast Guard shall assist him with the paperwork necessary to accomplish this transfer of benefits. There are no back pay and allowances due as a result of this correction. All other requests for relief are denied.

September 22, 2017

