

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-215



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 July 11, 2017, 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 March 7, 2018, 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, a chief [REDACTED] asked the Board to correct her record to show that she transferred her benefits under the Post-9/11 Veterans Education Act of 2008 (Post-9/11 GI Bill)¹ to her dependent children in March 2013. She alleged that she attempted to transfer the benefits in 2013 but that the complicated enrollment system caused her and other members in her office to struggle with the online application process and to have difficulty determining whether the benefits had been properly transferred. The applicant also stated that she sent an email to the Coast Guard's GI Bill Management and Program Specialist in March 2013 with questions about the benefit transfer process but only received an automated reply which did not answer her questions.

In support of her application, the applicant submitted a copy of a March 18, 2013, email that she sent to the Coast Guard's GI Bill Management and Program Specialist in which she stated that she had "some questions about eligibility" and asked if she should call or email him for answers. She indicated in the email that she had "tried switching online, but was unsuccessful." She also submitted a copy of the out of office autoreply email from the Program Specialist

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).

that she received immediately after sending her email. The automatically generated email from the GI Bill specialist stated that there is “no change” to the Post-9/11 GI Bill transfer of education benefits program and provided web addresses for two DVA GI Bill program websites. It also stated that due to the hundreds of emails and phone calls concerning perceived cuts to the Post-9/11 GI Bill and sequestration, the Program Manager’s office had temporarily suspended responding to emails unless they were an actual GI Bill emergency.

The applicant also submitted a copy of her retirement request letter dated June 1, 2017, in which she asked the Coast Guard to allow her to retire on the first day of September 2018, or as soon thereafter as possible. She also submitted numerous emails from 2013 to and from various members of the Coast Guard about the Post-9/11 GI Bill program and many of the responsive emails direct members to places where they can get answers about the transfer program. The emails also stated that the Coast Guard encouraged members to transfer their benefits before anticipated changes to the obligated service requirements came along.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 3, 1996, served on active duty and in the Reserves, and became eligible for retirement in June 2017. There is nothing in her official military record to show that she attempted to transfer her Post-9/11 GI Bill educational benefits to her dependents in 2013.

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 of Attachment 2 (Procedures) provides the eligibility rules for transferring Post-9/11 GI Bill benefits to dependents. Paragraph 3.a.(1) states that a member may transfer her Post-9/11 GI Bill benefits to her dependents if she has “at least 6 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election.” Paragraph 3.a.(2) states that a member may transfer her benefits if she has “at least 10 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election, is precluded by either standard policy (Service or DoD) or statute from committing to 4 additional years, and agrees to serve for the maximum amount of time allowed by such policy or statute.”

ALCGPSC 072/13 was released on June 26, 2013, and states that the ability to transfer education benefits to eligible dependents requires an additional four years of obligated service for all members if the transfer election is made after August 1, 2013.

ALCGPSC 087/13, released on August 10, 2013, reminded members to transfer their unused education benefits to their eligible dependents. It references ALCGPSC 072/13 and provides reference material and instructions.

VIEWS OF THE COAST GUARD

On November 27, 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.

PSC argued that relief should be denied because the applicant has not shown that an error or injustice occurred. PSC stated that numerous messages and opportunities to complete the transfer of Post-9/11 GI Bill benefits were made available to all members prior to the deadline to obligate four years of service as well as the applicant's date of election. PSC also stated that according to an email from the GI Bill Program Manager to PSC in response to the applicant's submission to the BCMR, the applicant actually submitted a request to transfer her education benefits on September 26, 2016, which would have obligated her to another four years of service, but then she requested retirement. The Program Manager also noted that the online process for making the transfer request was the same in 2016 as it was in 2013.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 6, 2017, the BCMR sent the applicant a copy of the Coast Guard's views and invited her to respond within thirty days. She responded on January 2, 2018, and disagreed with the Coast Guard's recommendation. The applicant emphasized that the process of transferring benefits was very confusing in 2013 and that is why she submitted so many emails with her application to show that the program was being thoroughly discussed by her and other members of the Coast Guard. She also stated that she submitted the emails to prove that she was paying attention to the program and was highly interested in transferring her benefits before she retired. The applicant also stated that although she only supplied a copy of one email to the GI Bill Program Manager in 2013, she also made numerous calls to that Program Manager in 2013 and 2016 and left numerous voice messages, all of which were not returned.

The applicant also emphasized that the Coast Guard and the GI Bill Program Manager were clearly overwhelmed with questions about the transfer program in 2013. She stated that the auto reply from the Program Manager in 2013 is proof that he was overwhelmed, and she pointed out that the Program Manager is listed as the only person in the Coast Guard to handle questions about the program. Finally, she stated that she regrets not sending more emails to the Program Manager or making more phone calls to him, but at the time she was dealing with the Coast Guard's legal department regarding her divorce and its complicated custody issues.

In closing, the applicant stated that she honestly attempted to transfer her education benefits in March 2013 and that she is not trying to take advantage of something that she is not entitled to. She also noted that she was not lazy and she tried to do the right thing because she

knew that she would be retiring in 2018. Finally, she stated that not transferring her education benefits to her children would “be a huge disappointment and put a financial burden as I did not plan for it 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. The applicant is on active duty so her application is timely.

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 asked the Board to correct her record to show that she transferred her education benefits to her dependent children in March 2013. She alleged that her inability to transfer her benefits in March 2013 was not her fault and constitutes an error and injustice. 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.³ 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.”⁴

4. The applicant had at least 10 years of military service in March 2013 but she has not shown that she was precluded by policy or statute from committing to serve four more years at the time, and so paragraph 3.a.(1) of Enclosure (2) to DTM 09-003 applied to her, rather than paragraph 3.a.(2). Under paragraph 3.a.(1), she was eligible to transfer her Post-9/11 GI Bill benefits to her dependents in March 2013 if she agreed to serve at least four more years on active duty past the date of election.

5. The applicant has submitted a documentary evidence that proves by a preponderance of the evidence that she tried to transfer her Post-9/11 GI Bill benefits to her dependents on or about March 18, 2013, but was unsuccessful. Her email to the Program Manager states that she “tried switching online, but was unsuccessful.” The automatic response she received shows that the Program Manager was indeed overwhelmed at the time. Had she successfully transferred her benefits on March 18, 2013, her election would have been valid because she continued serving for four years after the election.

² *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

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).

6. The question is whether the applicant's request should be granted because she tried to transfer her benefits at least once in March 2013. In BCMR Docket No. 2017-054, the Board granted relief to an applicant who was eligible to transfer his benefits before he retired without obligating additional years of service. That applicant showed that he had unsuccessfully tried to transfer his benefits and had erroneously believed that he had succeeded:

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, 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. [Citation omitted.] 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 in this case has submitted documentary evidence showing that she tried to make her election to transfer her Post-9/11 GI Bill benefits to her children on or about March 18, 2013, but was unsuccessful and she knew it. She has also proven that the Program Manager was overwhelmed and essentially unavailable to answer questions, and she made calls to try to get her questions answered after her attempt to make the election was rejected, but her calls were not returned. If the applicant had been successful, the transfer would have been valid because she continued serving for more than four years after March 18, 2013. The applicant should have persisted entering the election until she succeeded in 2013, but she was undergoing a divorce with child custody issues and did not successfully make the election until 2016. Although she was not successfully persistent in 2013, her email to the Program Manager shows

that she did actually make the decision to transfer her benefits in March 2013 and tried to do so, albeit unsuccessfully. Therefore, as in BCMR Docket No. 2017-054, the Board finds that her lack of successful persistence in 2013 should not prevent a 20-year veteran of the Coast Guard from receiving a valuable benefit. In the interest of justice her record should be corrected to show that she successfully made the election to transfer her benefits in March 2013.

8. Accordingly, the applicant's request should be granted in the interest of justice.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of [REDACTED], USCG, for correction of her military record is granted. The Coast Guard shall correct her record to show that she made the election to transfer her Post-9/11 GI Bill education benefits to her eligible dependents effective March 18, 2013. The Coast Guard shall assist her with the paperwork necessary to accomplish this transfer of benefits.

March 7, 2018

