

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-201

████████████████████
██████████ MEC/E-7 (Retired)

FINAL DECISION

This is a proceeding under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on August 14, 2018, 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 November 22, 2019, 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 enlisted on active duty on October 6, 1992, and served several continuous periods of enlistment before he reenlisted indefinitely in 2006. He advanced to the rank of chief maritime enforcement specialist (MEC) before he voluntarily retired on October 31, 2012. The applicant 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 before he retired from the Coast Guard on November 1, 2012.

The applicant alleged that he had originally been enrolled in the regular Montgomery GI Bill (MGIB) upon his enlistment but converted those benefits to the Post-9/11 GI Bill before he retired. He stated that he thought that converting his benefits would automatically transfer his unused benefits to his daughter. He stated that he did not receive any formal counseling or training about transferring his Post-9/11 GI Bill benefits to dependents.

The applicant did not state when he converted his benefits, when he discovered the alleged error in his record, or why he waited nearly six years after his retirement to submit an

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).

application to the Board.

VIEWS OF THE COAST GUARD

On January 28, 2019, a 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 the application is untimely and should be denied because the applicant never converted his MGIB to the Post-9/11 GI Bill. In support of that argument, PSC submitted the following documents:

- In an email that the applicant sent to the Coast Guard's GI Bill Management and Program Specialist on July 29, 2018, he requested a waiver so that he could transfer his education benefits to his daughter. In that email he stated that it was his understanding that his unused education benefits had transferred to his daughter when he converted from the Montgomery GI Bill to the Post-9/11 GI Bill. The applicant also stated in the email that he did not receive formal training on the benefits transfer program prior to his retirement.
- In an email dated October 15, 2018, the Coast Guard's GI Bill Program Manager advised PSC that the applicant had never switched from the MGIB to the Post-9/11 GI Bill and never requested to transfer his GI Bill education benefits before he retired. The Program Manager added that the applicant voluntarily elected to retire from the Coast Guard in 2012 without transferring his education benefits, which was more than three years after the start date of the DVA's Post-9/11 Veterans Assistance Act of 2008.
- A print-out from the Coast Guard's Benefits for Education Administrative Services Tool (BEAST) shows that the applicant was enrolled in the MGIB program from October 6, 1992, to November 1, 2012, and did not submit any requests to transfer Post-9/11 benefits before his retirement.

Moreover, PSC stated, there were five ALCOASTs released leading up to the implementation of the Post-9/11 GI Bill instructing all members on the process of converting the MGIB to the Post-9/11 GI Bill and on the separate process for transferring one's Post-9/11 GI Bill benefits to eligible dependents. In particular, PSC noted that ALCOAST 337/09 stated that a member had to be a member of the Armed Forces on or after August 1, 2009, to be eligible to transfer benefits and that the Transfer of Education Benefits (TEB) website would be available for eligible members to transfer their benefits to their dependents on June 29, 2009.

PSC agreed with the applicant that the Coast Guard did not provide the applicant with formal training for the Post-9/11 GI Bill program and transfer of benefits program but stated that there were five ALCOASTs released with specific guidance on whom to contact and what references to review for the information prior to making a decision.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 4, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND REGULATIONS

The Coast Guard has released numerous ALCOASTs about the Post-9/11 GI Bill administered by the VA and the transferability of those education benefits through a DoD website. ALCOAST 377/09, released on June 26, 2009, announced the Department of Defense and Coast Guard policy concerning Post-9/11 GI Bill benefits and the transferability of unused benefits to family members as follows (capitalization adjusted):

1. This ALCOAST supersedes [prior ALCOASTs] and announces DoD/Coast Guard policy concerning Post-9/11-G.I. Bill education benefits as outlined in [Directive-Type Memorandum (DTM) 09-003 and 38 U.S.C. Chap. 33]. Particularly, [DTM-09-003] provides detailed policy on transferability of unused education benefits to family members. Servicemembers are encouraged to review [DTM 09-003] and consult with their unit Education Services Officer (ESO) for guidance on the Post-9/11 G.I. Bill. [DTM 09-003] is currently available on the Coast Guard Personnel Service Center (PSC) website: <http://www.uscg.mil/psc/>.

2. The Post-9/11 G.I. Bill, authorized under [38 U.S.C. Chap. 33] is an automatic entitlement generally available to servicemembers with at least 90 days of active duty service on or after 11 SEP 2001. No action is required by members until they either apply to receive benefits, 2) seek to transfer benefit eligibility to dependents, or 3) are currently eligible for another education benefit (MGIB, MGIB-SR, REAP) and who seek eligibility under the Post-9/11 G.I. Bill.

3. The Department of Veterans Affairs (DVA) is now accepting applications for the Post-9/11 G.I. Bill for members who wish to receive benefits. VA form 22-1990, Application for VA Education Benefits, is available online at: <http://www.gibill.va.gov>. Once DVA processes an application for Post-9/11 G.I. Bill benefits, the member will receive a letter explaining the DVA decision regarding eligibility. Payouts for the Post- 9/11 G.I. Bill are not anticipated prior to 15 AUG 2009.

4. Individuals eligible under another education benefit (MGIB, MGIB-SR, REAP), seeking eligibility under the Post-9/11 G.I. Bill are directed to the DVA website. The application form requires that individuals make an irrevocable election to convert from their existing program to the Post-9/11 G.I. Bill. Members should review [DTM 09-003] and consult with their ESO prior to making an election.

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6. Transferability eligibility: Generally, to be eligible to transfer unused education benefits, an individual must be a member of the armed forces (active duty or SELRES) on or after 1 AUG 2009 and obligate required service as outlined in paragraph 3.a. of [DTM 09-003]. Family members eligible to receive transferred benefits are outlined in paragraph 3.b. of [the DTM].

7. Transferability of Education Benefits (TEB) web application:

a. The TEB web application provides an eligible servicemember the ability to elect to transfer educational benefits to an eligible dependent. Via the TEB web application, all CG applications will be reviewed by the Coast Guard Personnel Service Center (PSC). Accepted applications are automatically sent to the VA for processing once the transfer is approved by PSC. Once approved, the dependent must apply to the DVA for a certificate of eligibility by submitting VA form 22-1990, Application for VA Education Benefits as indicated in paragraph 3. Servicemembers do not need to apply for education benefits through the VA prior to applying for transferability via the TEB web application.

b. The TEB web application is scheduled to open on 29 JUN 2009. The link is: <https://www.dmdc.osd mil/teb/>. This link will not be operational until 29 JUN 2009. Service members are directed to apply to their appropriate service component, active or reserve.

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10. Members with questions regarding VA education benefits are encouraged to contact their Education Services Officer (ESO) for clarification and guidance. ESOs are encouraged to familiarize themselves with general DVA guidelines concerning Post-9/11 G.I. Bill and direct members to the DVA website for detailed clarification. The DVA is the authority for the Post-9/11 G.I. Bill. Transferability policy, however, is directed by the Office of the Secretary of Defense (OSD) and detailed in [DTM-09-003]. ESO questions regarding transferability policy only may be directed to [name redacted], COMDT (CG-1221), at [phone number redacted].

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 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.g. of Attachment 1 states that the Secretaries of the Military Departments shall “provide active duty participants . . . 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.” (This requirement for *individual*, pre-separation counseling was amended to just pre-separation counseling on May 31, 2013, pursuant to DoDI 1341.13.)

Paragraph 1.a. of Attachment 2 to DTM 09-003 states that the “DVA is responsible for determining eligibility for education benefits under the Post-9/11 GI Bill. Generally, to be eligible for the Post-9/11 GI Bill, individuals must serve on active duty on or after September 11, 2001,” for a specified period of time.

Paragraph 1.b.(8) of Attachment 2 states that members who are eligible for educational benefits under the MGIB or another program could elect to receive benefits under the Post-9/11 GI Bill instead and receive refunds of their contributions.

Paragraph 1.e.(1)(f) of Attachment 2 provides that even members who are not entitled to educational assistance under the MGIB, by reason of an election to disenroll, also “may elect to receive education assistance under [38 U.S.C. Chap. 33]” if, as of the date of the election, they meet the requirements for entitlement to educational assistance with [38 U.S.C. Chap. 33].”

Paragraph 1.e.(2) of Attachment 2 states that the method and process of making an election to receive educational assistance under the Post-9/11 GI Bill will be determined by DVA. Paragraph 1.e.(3) states that such an election is irrevocable.

Paragraph 3 of Attachment 2 governs the transferability of unused education benefits to family members. Paragraph 3.a. states the following about eligibility:

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 Post-9/11 GI Bill, and

(1) 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, or

(2) 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, or

(3) Is or becomes retirement eligible during the period from August 1, 2009, through August 1, 2013, and agrees to serve the additional period, if any, specified in paragraphs 3.a.(3)(a) through 3.a.(3)(e) of this attachment. A Service Member is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under section 12732 of Reference (b).

(a) For those individuals eligible for retirement on August 1, 2009, no additional service is required.

(b) For those individuals who have an approved retirement date after August 1, 2009, and before July 1, 2010, no additional service is required.

(c) For those individuals eligible for retirement after August 1, 2009, and before August 1, 2010, 1 year of additional service is required.

(d) For those individuals eligible for retirement on or after August 1, 2010, and before August 1, 2011, 2 years of additional service is required.

(e) For those individuals eligible for retirement on or after August 1, 2011, and before August 1, 2012, 3 years of additional service is required.

Paragraph 3.g.(1) states that the transfer must be made while the member is still serving on active duty or in the Selected Reserve.

Paragraph 3.i. of Attachment 2 states that “[a]ll requests and transactions for individuals who remain in the Armed Forces will be completed through the Transferability of Educational Benefits (TEB) Web application at <https://www.dmdc.osd.mil/TEB/>. The TEB Users’ Manual will provide instruction for enrollment; verification; and additions, changes, and revocations.” Paragraph 3.g.(2) states that a member on active duty or in the Selected Reserve may also modify or revoke a transfer at any time through the TEB website.

PREVIOUS BCMR DECISIONS

In BCMR Docket No. 2012-054, the applicant was a chief warrant officer who had retired on October 31, 2009—three months after the Post-9/11 GI Bill went into effect. He alleged that he was never counseled about his eligibility to transfer his education benefits to his dependents before he retired. The Coast Guard admitted that the applicant had not been individually counseled about the Post-9/11 GI Bill before he retired but recommended denying relief and stated that he had been counseled through the numerous ALCOASTs issued in 2008 and 2009. But the Board found that, under paragraph 3.a.(3) of Attachment 2 to DTM 09-003, the applicant had not been required to obligate additional service to be eligible to transfer his benefits and that, under paragraph 3.g. of Attachment 1, he had been entitled to individual, pre-

separation counseling about the benefits under the Post-9/11 GI Bill—not just published ALCOASTs. Therefore, the Board directed the Coast Guard to correct the applicant's record to show that he had transferred his education benefits to his dependents before he retired. The delegate of the Secretary approved the Board's decision.

Thereafter, the Board granted relief in numerous cases wherein members who had retired between August 1, 2009, and May 31, 2013, did so without receiving individual, pre-separation counseling: 2012-121, 2012-145, 2012-149, 2012-177, 2012-215, 2012-222, 2012-223, 2013-074, 2013-088, 2013-101, 2013-111, 2013-141, 2013-148, 2014-010, 2014-095, 2014-111, 2014-202, and 2014-230.

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. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice.² The applicant did not state when he discovered the alleged error in his record—only that he thought at the time that he had transferred his education benefits to his dependents just by converting his MGIB benefits to Post-9/11 GI Bill benefits. Although the timeliness of the applicant's claim is unclear, the Board finds that even if it is untimely, it is in the interest of justice to excuse the untimeliness of the applicant's request and conduct a full review of the merits because the Board has granted relief in many similar cases.

2. The applicant was entitled to individual, pre-separation counseling about his eligibility to transfer his benefits to his dependents before he retired on October 31, 2012.³ He alleged that he was not properly counseled and in recommending denying relief, the Coast Guard relied on its issuance of ALCOASTs and admitted that the applicant did not receive individual counseling. Therefore, the preponderance of the evidence shows that the applicant did not receive the individual, pre-separation counseling he was legally entitled to under paragraph 3.g. of Attachment 1 to DTM 09-003.

3. The applicant would have had to obligate four additional years of service to be eligible to transfer his Post 9/11 GI Bill benefits in 2012,⁴ but he might have done so if he had received individual, pre-separation counseling about the transferability of his benefits under the Post-9/11 GI Bill. Therefore, as in numerous similar cases in which the Coast Guard recommended granting relief following the decision of the delegate of the Secretary in BCMR Docket No. 2012-054, the Board finds that the applicant is entitled to relief in this case.

4. The applicant claimed that he thought that he had transferred his benefits to his dependents when he converted his MGIB benefits to Post-9/11 GI Bill benefits, but his records

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

³ DTM 09-003, Attachment 1, para. 3.g.

⁴ DTM 09-003, Attachment 3, para. 3.a.

show that he never did convert his MGIB benefits to Post-9/11 GI Bill benefits. Although the preponderance of the evidence shows that the applicant was mistaken about whether he had converted his MGIB benefits to Post-9/11 GI Bill benefits, the Board finds that this mistake should not prevent him from receiving relief since he never received the individual, pre-separation counseling he was legally entitled to under paragraph 3.g. of Attachment 1 to DTM 09-003.

5. Accordingly, relief should be granted by directing the Coast Guard to correct his record to show that he successfully converted his MGIB benefits to Post-9/11 GI Bill benefits and then successfully completed the transfer of his Post-9/11 GI Bill benefits to his dependents before he retired without being required to obligate additional years of service. The Coast Guard should assist the applicant in completing any paperwork necessary to effect these corrections.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of MEC [REDACTED] USCG (Retired), for correction of his military record is granted as follows:

The Coast Guard shall correct his record to show that he successfully converted his MGIB benefits to Post-9/11 GI Bill benefits and then successfully completed the transfer of his Post-9/11 GI Bill benefits to his dependents before he retired, without being required to obligate additional years of service. The Coast Guard shall assist him in completing any paperwork necessary to effect these corrections.

November 22, 2019

