

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2023-035**

  
OSCS/E-8 (Retired)

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**FINAL DECISION**

This proceeding was conducted according to 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 May 9, 2023, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 1, 2024, 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, who retired on August 31, 2009, as a Senior Chief Operations Specialist (OSCS, E-8) after serving more than twenty-one years on active duty in the Coast Guard, asked the Board to correct his record to show that he transferred his unused education benefits under the Post-9/11 Veterans Education Act of 2008 (Post-9/11 GI Bill)<sup>1</sup> to his dependents prior to his retirement. He alleged that he submitted his request to transfer the benefits prior to his retirement in August 2009.

The applicant stated that he always intended to transfer his Post-9/11 GI Bill benefits to his daughter prior to his retirement and that he remained on active duty long enough to be eligible. He also noted that when it came time to make the transfer request, he found the benefit transfer website very confusing and it took him at least two weeks to complete the transfer request due to the website crashing and not performing correctly. The applicant noted that after two weeks of trying to make the transfer, he finally received a letter saying that the transfer was successful.

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<sup>1</sup> 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](http://Gibill.va.gov/benefits/post_911_GIbill/index.html) (last visited on January 22, 2024).

The applicant stated that after he received the successful reply from the Veterans Administration (VA), he assumed the transfer request was complete and that his daughter was eligible for his education benefits. He alleged that at the time, there was little to no instruction from the Coast Guard or the VA on how to transfer his unused education benefits and that although he asked a lot of people at his duty station about the program, no one was familiar with the process at the time. He stated that the program was brand new at the time and he thought that he had done everything correctly.

In support of his request, the applicant submitted a copy of a letter from the VA dated July 2, 2009, which states his application had been sent successfully to the VA. The letter from the VA benefits office does not reference his request to transfer his education benefits, nor does it state which application had been received by the VA.

The applicant retired from the Coast Guard in 2009 but did not submit his application to the Board until 2023. He stated that he discovered the alleged error when his daughter tried to use his education benefits when she started college in the Fall of 2023.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on July 18, 1988, and served more than twenty-one years on active duty before retiring on August 31, 2009. There is nothing in his official military record to show that he was counseled about the Post-9/11 GI Bill program before his retirement.

### **VIEWS OF THE COAST GUARD**

On September 18, 2023, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC stated that the application is timely and recommended that the Board grant relief because the applicant was not correctly counseled on the process of transferring his education benefits to his dependents. The JAG stated that the program to transfer a member's unused education benefits became active on August 1, 2009, and the applicant was among the first members who enrolled for this benefit. Finally, the JAG noted that at the time of the applicant's retirement, the Coast Guard had not yet established the counseling processes it has in place now, and members were left to navigate the entitlement program without guidance.

In support of the JAG's recommendation, he submitted a copy of an email from the Coast Guard's GI Bill Management and Program Specialist, who stated that his office believes that the applicant intended to transfer his Post-9/11 GI Bill benefits to his dependents but was not properly briefed on the process for doing so by the Coast Guard. The Program Specialist stated that if the applicant had been properly counseled, then he would have successfully transferred the benefits because he met all of the eligibility requirements to do so.

## APPLICABLE LAW AND REGULATIONS

### Directive Type Memorandum (DTM) 09-003, June 22, 2009

On June 22, 2009, the Department of Defense (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 (Responsibilities) to the DTM states that it is the responsibility of the Secretary to “[p]rovide active-duty participants and members of the 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 of Attachment 2 (Procedures) to the DTM states the following about transferring educational benefits to dependents:

TRANSFERABILITY OF UNUSED EDUCATION BENEFITS TO FAMILY MEMBERS. Subject to the provisions of this attachment, the Secretary of the Military Department concerned, to promote recruitment and retention of members of the Armed Forces, may permit an individual described in paragraph 3.a. of this attachment, who is entitled to educational assistance under the Post-9/11 GI Bill, to elect to transfer to one or more of the family members specified, all or a portion of such individual's entitlement to such assistance.

Paragraph 3.a.(3) of Attachment 2 (Procedures) states that members eligible to transfer education benefits include those members 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 individuals eligible for retirement on August 1, 2009, no additional service is required. A Service member is considered to be retirement eligible if he or she has completed 20 years of active Federal service.

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.

Instead of individually counseling members about the transfer program, the Coast Guard issued a series of ALCOASTs about it:

- ALCOAST 447/08 (September 18, 2008), para. G (“Transferability: A member may have the opportunity to transfer benefits to their spouse or dependent child. Members must be on active duty at the time of this election, must have served six years since 9/11, and must agree to serve an additional four years of active service. Detailed guidance is being developed in conjunction with DOD and will be released ahead of the August 2009 implementation date.”)

- ALCOAST 044/09 (January 16, 2009), para. 4 (“Transferability: The basic requirements to be eligible to transfer this entitlement to a dependent (spouse or child) are that a member must be on active duty on 1 August 2009; must have a minimum of six years active service since 11 September 2001 and must agree to serve an additional four years of active service effective on the date they elect to transfer.”)
- ALCOAST 250/09 (April 28, 2009), para. 3 (“Eligibility: The Post-9/11 GI Bill ... is an automatic entitlement generally available to service members with at least 90 days of active-duty service following 11 September 2001. No action is required by members until they either 1) apply to receive benefits, 2) seek to transfer benefit eligibility to dependents, or 3) are currently eligible for another education benefit ... and who seek eligibility under the Post-9/11 GI Bill.”); para. 5.b. (“The Office of the Secretary of Defense has not yet released the final policy on transferability.”)
- ALCOAST 377/09 (June 26, 2009) (acknowledging DTM 09-003 as Coast Guard policy and stating in paragraph 6 that “[g]enerally, 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 [DTM 09-003]”)
- ALCOAST 443/09 (July 31, 2009) (encouraging members to review DTM 09-003 and to seek guidance).

#### APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 28, 2023, the BCMR sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. The Board did not receive a 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.<sup>2</sup> The applicant was retired from active duty in the Coast Guard on August 31, 2009, and submitted his application to the Board on January 30, 2023. He alleged that he discovered the error in his record in 2023, but to determine whether his application is timely, the Board must decide what the preponderance of the evidence shows about his discovery of the alleged error.<sup>3</sup>

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

<sup>3</sup> *Wielkoszewski v. Harvey*, 398 F.Supp.2d 102, 109 (D.D.C. 2005) (“The Court recognizes that *McFarlane* counsels that the date of discovery should be the actual date, and not the date at which a hypothetical “reasonable person” would have discovered the error or injustice. *McFarlane v. Sec’y of the Air Force*, 867 F.Supp. 405, 412 (E.D.Va.1994). Nevertheless, this does not mean that the actual date of discovery is whenever a plaintiff says it is.

3. The record indicates that the applicant applied to transfer his education benefits in July of 2009 but his transfer request was not processed. He stated that he discovered the error in the Fall of 2023 when his daughter tried to use the education benefits that he thought he had transferred to her. Accordingly, the Board finds that the preponderance of the evidence shows that the applicant discovered the alleged error in 2023 when his daughter's request for education benefits was rejected, and so his application is timely.

4. The applicant alleged that he was not properly counseled about the Post-9/11 GI Bill transfer program and that he did everything he could to apply for the benefit transfer before he retired on August 31, 2009. 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.<sup>4</sup> 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."<sup>5</sup>

5. Paragraph 3.g. of Attachment 1 (Responsibilities) to DTM 09-003, which applied to the Coast Guard, states that it is the responsibility of the Secretary to "[p]rovide active-duty participants and members of the 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." Therefore, if he was properly counseled, the applicant's record should contain documentation of individual pre-separation counseling about how to transfer his education benefits under the Post-9/11 GI benefit bill. However, there is nothing in the applicant's record to show that he received counseling about how to transfer his education benefits to the Post-9/11 GI Bill program or how to transfer his Post-9/11 GI benefits to his dependents, as required by DTM 09-003. The Coast Guard has recommended granting relief given the lack of any documented counseling. Moreover, the Coast Guard's GI Bill Program Manager acknowledged that the applicant was not properly counseled about the program and stated that his benefit transfer request would have been approved because he met all of the requirements to transfer the benefits to his dependents.

6. The Board agrees with the JAG's recommendation and finds that the applicant has proven by a preponderance of the evidence that he was not properly counseled about the Post-9/11 GI Bill benefit transfer program before he retired. The record shows that he was one of first members to submit a transfer request of their unused education benefits when the program went into effect on August 1, 2009. Moreover, pursuant to Paragraph 3.a.(3)(b) of Attachment 2 to DTM 09-003, the applicant was authorized to transfer his benefits to his dependents without obligating any additional military service because he had more than twenty years of active service on that date and was eligible to retire. Paragraph 3.a.(3)(a) of the DTM states that for individuals eligible for retirement on August 1, 2009, no additional service is required and that a member is considered to be retirement eligible if, like the applicant, he has completed at least 20 years of active service.

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<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

7. The Board finds that the applicant is entitled to relief because he has proven by a preponderance of the evidence that he was not properly counseled about his ability to transfer his education benefits to his dependents in 2009 before he retired from active duty. Accordingly, his record should be corrected to show that he transferred his education benefits to his dependents under the Post-9/11 GI Bill prior to his retirement from the Coast Guard. The Coast Guard should assist him with the paperwork necessary to accomplish this transfer of benefits.

**(ORDER AND SIGNATURES ON NEXT PAGE)**

**ORDER**

The application of OSCS [REDACTED] [REDACTED] USCG (Retired), for correction of his military record is granted. The Coast Guard shall correct his record to show that he successfully transferred his education benefits to his dependents pursuant to the Post-9/11 GI Bill prior to his retirement from the Coast Guard on August 31, 2009. 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.)

February 1, 2024

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