



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JLP: jlp
Docket No. 3927-02
5 September 2002

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: [REDACTED]
Review of naval record

Ref: (a) Title 10 U.S.C. 1552
(b) Veterans Improvement Act of 1996 (PL 104 275)
(c) Title 38, United States Code, Chapter 32

Encl: (1) DD Form 149 w/attachments
(2) VEAP Statement of Understanding
(3) Statement from Educational Service Officer
(4) BUPERS MEMO Pers-604 15 March 2001
(5) OPNAV INSTRUCTION 1780.1
(6) Copy of members service record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, the applicable naval record be corrected to show that he elected to participate in the Veterans Educational Assistance Program (VEAP) when eligible and further corrected to show that he elected to participate in the Montgomery GI Bill (MGIB) Program during the VEAP to MGIB conversion period.

2. The Board, consisting of Messrs. Suiter, McPartlin, and Ms. Nofsiger reviewed Petitioner's allegations of error and injustice on 23 April 2002 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Prior to filing enclosure (1) with this Board, Petitioner exhausted all administrative remedies afforded under existing law and regulations within the Department of the Navy.

b. Petitioner claims that he recently learned that he is not eligible for any educational benefits. He states that while at Aviation Officer Candidate School in 1983 he believed he was an eligible participant in VEAP. He is unable to locate a VEAP Statement of Understanding which would verify his election to participate in the VEAP. Enclosure (2) is a sanitized copy of the VEAP Statement of Understanding.

Enclosure (3) is a letter from his Educational Service Officer in 1985 which states that there was a strong possibility that this document could have been lost in conjunction with a six month deployment when all service records were loaded into large metal containers and sent to the deployment point and the process was reversed on return from deployment. The Educational Service Officer described the entire process as "complete chaos".

c. In correspondence attached as enclosure (4), the office having cognisance over the subject matter involved in Petitioner's application recommended denial, commenting that the VEAP was available to members who entered the military for the first time between 1 January 1977 and 30 June 1985. It was closed to new enrollments on 30 June 1985 and reopened for five months from October 1986 to 31 March 1987. Members who did not enroll before these deadlines lost their eligibility. On 9 October 1996 reference (b) allowed members with an active VEAP account to convert to the MGIB Program. Pers 604 further states that reference (c) did not require the Armed Forces to keep documentation of a member's VEAP election in their service record and that there was no requirement for individual counseling for VEAP enrollment upon entry or during the open enrollment period. Pers 604 states that it attempted to notify all eligible VEAP members prior to final closure. Pers 604 contends that since the program has been closed for over 14 years it is not expected that members would remember the specifics of the program or notification of its closure. They further contend that 40,000 Sailors are in this category.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (4), the Board finds the existence of an injustice warranting the requested relief. In this connection, the Board found that the the advisory opinion furnished by Pers 604 (Encl 4) is in conflict with OPNAV INSTRUCTION 1780.01 which was in effect during the period in question. Page 7 section (8) paragraph (a) of the instruction states that commanding officers or officers-in-charge will ensure that all eligible personnel in their commands are aware of the provisions of the VEAP instruction. Paragraph (b) states commanding officers or officers-in-charge of recruiting districts or other units processing entrants to active duty will ensure that the procedures in paragraph 5e are followed. The last sentence in paragraph 5e states " Whether a service member elects to enroll or not, the original signed VEAP Statement of Understanding (Parts I and II) will be retained in the member's service record. Page (4) paragraph (4) states although eligible servicemembers may enroll and change the amount of contributions at any time while on active duty, it is necessary that the right to participate and provisions of participation be reviewed with eligible servicemembers during regularly scheduled command career counseling interviews. Page I of the VEAP Statement of Understanding states that it will be completed prior to entry on active duty and Page II states that it will be completed during reception station processing or at first duty station. It was clear to the Board that Navy policy concerning the VEAP Program mandated that all Navy members should have a completed and signed contract and that the contract was to be maintained in their records. The part of the Pers 604 opinion which states that there are 40,000 members in the same position as the Petitioner is misleading. The vast majority of requests from VEAP members to convert to the MGIB Program are denied because their records contained a signed VEAP Statement of Understanding indicating that they elected not to participate in VEAP. Petitioner is contending that he believes his records did contain a VEAP Statement of Understanding but it has been lost. Accordingly, the Board strongly believes that in the absence of a completed signed VEAP Statement of Understanding the benefit of the doubt should go to the Petitioner.


Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

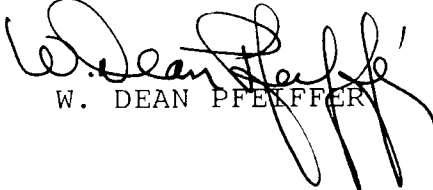
That Petitioner's naval record be corrected, where appropriate, to show that on 29 June 1985, one day prior to the termination of the VEAP he executed a VEAP Statement of Understanding (DD Form 2057) electing to participate in the VEAP with the minimum contribution of \$25.00 and further corrected to show that on 10 October 1996, during the VEAP to MGIB conversion period, he executed a MGIB Election Form (DD Form 2366) and that this election form reflects that he elected to participate in the VEAP.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Boards proceedings in the above-entitled matter.

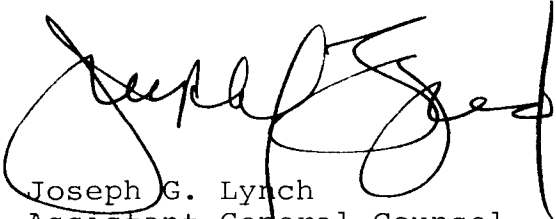
ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved: AUG 16 2002


Joseph G. Lynch
Assistant General Counsel
(Manpower and Reserve Affairs)