



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

JET
Docket No. NR1068-14
14 Jul 14

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 July 2014. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by HQMC Memo 7220 MPO of 29 May 14, copy of which is attached and was previously sent you, to which you failed to respond.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In making this determination, the Board concurred with the comments contained in the advisory opinion. The Post-9/11 Veterans Education Assistance Act (Post-9/11 GI Bill, Public Law 110-252) was signed into law on 30 June 2008 and became effective on 1 August 2009. General descriptions of the essential components of the new law were widely available beginning in summer 2008 and specific implementing guidance was published in the summer of 2009.

Under the governing regulations, to be eligible to transfer benefits, a member must be on active duty or in the selective reserve at the time of the election to transfer. This is an important feature of the law because the transferability

provisions are intended as an incentive vice a benefit. Members who are retired are not eligible to transfer.

Evidence shows that you failed to take the steps necessary to transfer benefits. Your application claims, essentially, that "the Transition of Education Benefits (TEB) election form offered on the Post 9/11 GI Bill website was (is) misleading and unclear which resulted in the loss of transferability of earned education benefits to my dependents". You also allege that the DoD 1341.13 did not state that a Marine's dependent would "automatically become ineligible to receive Post-9/11 GI Bill benefits upon retirement unless the member provides a minimum of one month of benefit on the TEB website at the time of enrollment". However, the DoD 1341.13 specifically states that "an individual may not add family members after retirement or separation from Military Services, USCG, NOAA Corps, or PHS, but may modify the number of months of transferred entitlement or revoke transfer of entitlement after retirement or separation..." You transferred all 36 months to your son [REDACTED] and did not transfer anything to your other three dependents, leaving you the option to later modify the transfer of benefits.

To modify your application to change the number of designated months for your other three dependents would have required you to make the modification while you were still on active duty. However, you failed to take the necessary steps to modify your application prior to retiring. You have provided no evidence that you attempted to assert your rights by modifying your application prior to retiring, and you have also not provided evidence of any extraordinary circumstances that prevented you from asserting your rights.

Under these circumstances, the Board found that no relief is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

The Board members also considered your request for a personal appearance; however, they found that the issues in the case were adequately documented and that a personal appearance would not materially add to the Board's understanding of the issues involved. Thus, your request for a personal appearance has been denied.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and

material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,



ROBERT D. ZSALMAN
Acting Executive Director

Enclosure: HQMC Memo 7220 MPO of 29 May 14