



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

[REDACTED]
Docket No. 3128-16

JAN 13 2017

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USN, [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NAVADMIN 187/09 of 26 Jun 09
(3) NAVADMIN 203/09 of 11 Jul 09
(4) NPC memo 1780 PERS-314 dtd 5 Aug 16

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to establish eligibility to transfer Post 9/11 GI Bill benefits to his dependents.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 October 2016 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. 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. The bill provides financial support for education and housing for service members with at least 90 days of service on or after 11 September 2001. The act also includes a provision for qualifying service members to transfer educational benefits to dependents. General descriptions of the essential components of the new law were widely available beginning in summer 2008 but specific implementing guidance was not published until summer 2009.

Subj: REVIEW OF NAVAL RECORD ICO

USN, [REDACTED]

c. The Navy's guidance implementing the Post-9/11 GI Bill was published by NAVADMIN 187/09, released on 26 June 2009, and NAVADMIN 203/09, released 11 July 2009. Under the guidance, "active duty sailors that separate, retire, transfer to the Fleet Reserve or who are discharged prior to 1 August 2009 are not eligible to elect transferability." See enclosures (2) and (3).

d. Petitioner's application claims that he attempted to transfer his Post-9/11 GI Bill education benefits (TEB) to his dependents in MilConnect on 27 April 2012. However, the Petitioner did not have sufficient remaining time in his current enlistment. Petitioner claims that he was not counselled about requesting a short term extension to allow for his TEB request to be approved. Enlisted service members must sign a new enlistment contract covering the commitment period. MilConnect reflected TEB as "denied" but Petitioner did not check after transfer because he thought the Navy would notify him if his TEB was denied. Note: Petitioner has an approved retirement date of 30 November 2016. Petitioner is currently on active duty. See enclosures (1) and (4).

e. In correspondence attached as enclosure (4), Commander Navy Personnel Command (PERS-314) has recommended the request be denied. NAVADMIN 203/09 provided policies and procedures for Navy members to transfer their Post-9/11 GI Bill entitlement to eligible family members.¹ Petitioner was not in full compliance with NAVADMIN 203/09 because enlisted service members must document their additional service obligation in their Expiration of Active Obligated Service (EAOS). The Petitioner did not adjust his EAOS to reflect his additional service obligation. NAVADMIN 354/09 stated that "[a]fter 31 December 2009, short term extensions will no longer be authorized for the purpose of Post 9/11 transferability.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosure (4) regarding Petitioner's responsibility under the Post 9/11 GI Bill program. The Board found that had the Petitioner been given clear counselling from his command about his obligation to adjust his EAOS and document his additional service obligation, he would have followed the proper steps to successfully transfer his benefits. Additionally, the Board felt that the MilConnect system should provide a proactive notice to the service member in the event that their TEB is denied, vice putting the responsibility on the service member to log back into the system to check the status. Had the Navy provided the Petitioner with notice of the error, the Petitioner could have then taken the necessary steps to correct the problem. Although the proper administrative requirements were not completed by the Petitioner, which resulted in his TEB request being denied, the Petitioner served four years from the date of attempted TEB, and therefore the Board felt that under these circumstances a measure of relief is warranted.

¹ "(2) Ensure their additional service obligation (officer and enlisted) is properly documented in their Electronic Service Record (ESR) **before** submitting a request. Because officers' service is indefinite, and they do not have contracts, their four-year commitment is recorded on an Administrative Remarks, NAVPERS 1070/613 (Page 13) in the ESR. They are advised requests would be disapproved for members whose ESR does not reflect the required additional service."

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USN, [REDACTED]

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner elected to transfer unused educational benefits through the DMDC Transfer of Educational Benefits (TEB) web application on 20 July 2011.

b. Petitioner, in coordination with his command, completed the Statement of Understanding (SOU) and was submitted to Commander, Navy Personnel Command (NPC) for inclusion in the Petitioner's Official Military Personnel File (OMPF). Petitioner incurred three years additional service obligation.

c. NPC reviewed the Petitioner's TEB application, and it was approved on 20 July 2011.

d. Upon completion of the above changes, COMNAVPERSCOM (PERS 314) will execute an approved Transferability of Educational Benefits (TEB) application reflecting the transfer information.

e. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]
Recorder

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

[REDACTED]
Executive Director

Reviewed and approved/disapproved
[REDACTED]

2/7/17