



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

■
Docket No. 3572-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN RET,
XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) NAVADMIN 203/09
(c) BUPERSNOTE 1780
(d) Title 38 U.S.C. Chapter 33

Encl: (1) DD Form 149 w/attachments
(2) Statement of Service of 29 Nov 11
(3) DEERS Screens
(4) BEAST Screen
(5) DD Form 214 of 31 Oct 12

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to establish retroactive approval to transfer Post-9/11 GI Bill education benefits to eligible dependents.

2. The Board, reviewed Petitioner's allegations of error and injustice on 22 June 2022, 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 enclosures (1) through (5), relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies, to include references (b) through (d).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. Petitioner's Active Duty Base Date was 30 August 1991. See enclosure (2).

b. Petitioner married [REDACTED] on 22 June 2002 and acquired a step-child, [REDACTED], born on 4 January 1994. Thereafter, Petitioner had two additional children: [REDACTED], born on 27 August 2004 and [REDACTED], born on 6 January 2006. See enclosure (3).

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c. Petitioner submitted transfer education benefits (TEB) application on 11 November 2011. The Service approved the TEB application with an obligation end date of 10 November 2014. See enclosure (4).

d. Petitioner voluntarily transferred to the Retired List effective 1 November 2012. See enclosure (5).

e. Petitioner contends that he was told if his date of eligible 20 years of service was 1 August 2011 or before he would not have had an additional service obligation to be eligible for the TEB. His date for eligible 20 years of service is listed as 30 September 2011, thus he missed being eligible to receive this benefit without additional service obligation by two months. Further stating that he is deeply saddened regarding this situation and he regrets not having a better understanding of the details regarding the transferability of this benefit, and he is now asking the BCNR to change his TEB obligated service date so his dependents can receive this benefit.

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Majority concluded Petitioner's request warrants favorable corrective action. In this regard, the Majority determined Petitioner met the basic eligibility criteria to transfer Post-9/11 GI Bill education benefits but failed to complete the service obligation as outlined in references (b) and (c)¹. Although Petitioner did not complete the proper administrative requirements, the Majority found that he completed over 3-years of active duty service after the inception of the ability to TEB (1 August 2009), thereby meeting the spirit and intent of reference (d)². Therefore, the Majority felt under these circumstances, relief is warranted.

MAJORITY RECOMMENDATION

In view of the foregoing, the Majority recommends the following corrective action be taken:

Petitioner elected to transfer unused education benefits to [REDACTED]/1-month, [REDACTED]/1-months, [REDACTED]/17-months, and [REDACTED]/17-months through the MilConnect TEB portal on 1 August 2009.

Commander, Navy Personnel Command (PERS-314) reviewed Petitioner's TEB application and it was approved on 1 August 2009 with a 3-year service obligation.

That a copy of this record of proceedings be filed in Petitioner's naval record.

¹ References (b) and (c), the option to transfer a Service member's unused education benefits to an eligible dependent required a 3-year additional service obligation at the time of election for those eligible to retire on or after 1 August 2011 and before 1 August 2012. Additionally, the aforementioned policies indicate if the transferor fails to complete the additional service obligation; the right to TEB is forfeited.

² Reference (d), the Post-9/11 Veterans Educational 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 provision for qualifying service members to TEB to their eligible dependents. General descriptions of the essential components of the law were widely available beginning in summer 2008 but specific implementing guidance was not published until summer 2009.

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MINORITY BOARD CONCLUSION

Upon review and consideration of all the evidence of record, the Board Minority concluded Petitioner's request does not warrant favorable corrective action. In this regard, the Minority determined the Navy Transferability of Post-9/11 GI Bill policies clearly outlined the requirements and procedures to transfer education benefits. Additionally, to receive approval Petitioner acknowledged "I understand and agree to remain in the Armed Forces for the period required. I understand that failure to complete that service may lead to an overpayment by the Department of Veterans Affairs for any payments made (Service documentation will remain on file with the Service)." Moreover, upon receiving approval to TEB, Petitioner had to the ability to print his approval that outlined his obligation end date as 10 November 2014. Therefore, the Minority felt, under these circumstances, relief is not warranted.

MINORITY RECOMMENDATION

In view of the foregoing, the Minority recommends that no corrective action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

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 Board's proceedings in the above-entitled matter.

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

6/28/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Majority Recommendation (Grant Relief)

Reviewed and Approved Board Minority Recommendation (Deny Relief)

7/22/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

Signed by: [REDACTED]