



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

█
Docket No. 8749-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) Title 38 U.S.C. Chap 33
(c) MARADMIN 391/19
(d) MARADMIN 693/21
(e) MARADMIN 408/19

Encl: (1) DD Form 149 w/attachments
(2) MCTFS TBIR Screen
(3) Careerist Active Duty Reenlistment (2012)
(4) DD Form 4, 16 Jul 16
(5) BEAST Screens
(6) DD Form 4, 7 Mar 20

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 eligibility to transfer Post-9/11 GI Bill education benefits to eligible dependents.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 14 December 2022. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of enclosures (1) through (6), relevant portions of Petitioner's 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, 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. 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

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of service on or after 11 September 2001. The act also includes provision for qualifying service members to transfer education benefits 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.

- b. Petitioner's Armed Forces Active Duty Base date is 26 January 2004. Enclosure (2).
- c. Petitioner reenlisted on 22 August 2012 for a term of 4 years. Enclosure (3).
- d. Petitioner reenlisted on 16 July 2016 for a term of 4 years. Enclosure (4).
- e. Petitioner submitted transfer of education benefits (TEB) application on 1 August 2019. The Service rejected the application on 1 October 2019 indicating, Petitioner "has not committed to the required additional service time." Enclosure (5).
- f. Petitioner reenlisted on 7 March 2020 for a term of 3 years. Enclosure (6).
- g. Petitioner submitted second TEB application on 17 May 2022. The Service rejected the application on 28 July 2022 indicating, Petitioner "has not committed to the required additional service time." Enclosure (5).
- h. Petitioner approved to transfer to the Fleet Marine Corps Reserve (FMCR) effective 31 January 2024. Enclosure (2).
- i. Petitioner requests that his TEB be approved with the original date of submission, 1 August 2019, making his end of obligation date 31 July 2023. Petitioner contends that he was unable to reenlist during fiscal year 2019 due to medical issues and wasn't able to submit his reenlistment until March of 2020. As a result, he couldn't reenlist for an additional 48 months because it would have exceeded service limitations as an E-6 in the Marine Corps.¹ Thus, he could only reenlist for an additional 36 months. Further contending that upon entering his 14 month window, he submitted his appendix J which was subsequently approved with a retirement date of 31 January 2024. Petitioner believes that he fulfilled the intent of the transfer of education benefits by completing the continuous 48-month requirement without a break in service. Enclosure (1).

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Majority concluded the 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 administrative requirements outlined in references (c) and (d).² Although

¹ Reference (e), outlines the service limits and high year tenure for Staff Sergeant/E-6 is 20 years active duty service. Marines eligible for retirement who are approaching service limits must transfer to the Fleet Marine Corps Reserve (FMCR) per Marine Corps Order 1900.16.

² References (c) and (d), the option to transfer a Service member's unused education benefits to an eligible dependent required a 4 year additional service obligation at the time of election. Reference (c) specified that Enlisted Marines had 150 days from the

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Petitioner did not complete the appropriate administrative requirements, the Majority concluded that Petitioner made multiple attempts to submit his TEB application, and agreed with the Petitioner's arguments that he has fulfilled the intent of the transfer of education benefits by completing the continuous 48-month requirement without a break in service, thereby meeting the spirit and intent of reference (b). Therefore, the Majority agreed, under these circumstances, relief is warranted.

MAJORITY RECOMMENDATION

In view of the foregoing, the Board Majority recommends the following corrective action: Petitioner elected to transfer unused education benefits to [REDACTED], [REDACTED] and [REDACTED] through the MilConnect TEB portal on 22 August 2012.

Petitioner, in coordination with his command completed the required Statement of Understanding on 22 August 2012 and submitted to the Commandant of the Marine Corps (CMC) for inclusion in the Petitioner's Official Military Personnel File.

CMC reviewed Petitioner's TEB application and it was approved on 22 August 2012 with a 4 year service obligation.

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

MINORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Minority concluded Petitioner's request does not warrant favorable action. The Minority noted the Marine Corps Transferability of Post-9/11 GI Bill policies clearly outlined the requirements and procedures to transfer education benefits. Moreover, Petitioner submitted an additional TEB application, thereby appearing to be aware of the process. Therefore, under these circumstances, relief is not warranted.

MINORITY RECOMMENDATION

In view of the foregoing, the Board 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.

date of TEB web application to incur the required obligated service or the TEB request was rejected; reference (d) provided 180 days to incur the obligation. Furthermore, the policy directed Marines to periodically check the status of their application; a denied TEB application required Marines to take corrective action and reapply with a new service obligation end date.

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

12/22/2022

[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)

2/7/2023

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]