

ADDENDUM TO RECORD OF PROCEEDINGS

IN THE MATTER OF:

XXXXXXXXXX

DOCKET NUMBER: BC-2014-04171-2

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

The Board reconsider his request that he be allowed to transfer his post-9/11 GI Bill Transfer of Educational Benefits (TEB) to his dependents and change his Active- D u t y Service Commitment (ADSC) Obligation End Date (OED) to 30 April 2016.

RESUME OF THE CASE

The applicant is a retired Air Force major (O-4).

The applicant was approved for TEB on 2 May 2012.

On 4 May 12, the applicant signed Post 9/11 GI Bill Transfer of Educational Benefits Statement of Understanding and committed to a four-year service obligation with an obligation end date of 1 May 2016.

On 17 July 2013, according to Defense Intelligence Agency letter, the applicant was advised that he was not selected for promotion by the Lieutenant Colonel (LAF) Central Selection Board.

On 14 July 2015, the Board considered and denied the applicant's request that his ADSC obligation end date be adjusted to 30 April 2016 for the purpose of TEB; finding the applicant had provided insufficient evidence of an error or injustice to justify relief.

On 30 April 2016, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was relieved from active duty and retired on 1 May 2016. The applicant served 20 years and 28 days of active service for retirement. According to the Narrative Reason for Separation, the applicant had reached the "Maximum Service or Time in Grade."

For an accounting of the applicant's original request and the rationale of the earlier decision, see the AFBCMR Letter and Record of Proceedings at Exhibit E.

On 14 October 2020, the applicant requested again that he be allowed to transfer his post-9/11 GI Bill TEB to his dependents and change his ADSC OED to 30 April 2016. He contends new DoD policy allows officers involuntarily separated as a result of being twice passed over for promotion to retain their eligibility to transfer education benefits.

In support of his reconsideration request, the applicant submitted the following new evidence: (1) Congressional Inquiry dated 29 October 2021; (2) News Articles – Changes to Post-9/11 GI Bill, dated 12 July 2018; (3) Applicant's personal statement; (4) Title 10, section 632; and (5) Letter from the Manpower Data Center, dated 27 February 2016.

The applicant's complete submission is at Exhibit F.

APPLICABLE AUTHORITY

According to the regulation at the time of the applicant's discharge, DODI 1341.13, Post-9/11 GI Bill, Enclosure 3, Paragraph 3, dated 31 May 13 states: Any service member on or after 1 August 2009, who is entitled to the Post-9/11 GI Bill at the time of the approval of his or her request to transfer that entitlement under this section, may transfer that entitlement provided he or she has at least 10 years of service in the Military Services (active duty or Selected Reserve) on the date of approval, is precluded by either standard policy (Service or DOD) statute from committing to four additional years, and agrees to serve for the maximum amount of time allowed by such policy or statute. (Note that this provision uses the same language as AFI 36-2649, Voluntary Education Program, paragraph A13.18.1.1.2 paragraph 3.a.(2)). The effect of this paragraph is the elimination of the retainability requirement for members who have at least 10 years of service, who are subject to early separation due to policy or statute, and who agree (or would have agreed) to serve the maximum time allowed.

The most recent version of DoDI 1341.13, Post-9/11 GI Bill, Incorporating Change 1, dated 12 July 2018, clarifies the reasons that a member may retain their benefits even though they failed to complete their service obligation, provided they had an approved transfer and/or were not precluded from agreeing to a four-year service obligation at the time of their approval. According to Enclosure 3, Paragraph 3, sub-paragraph 2g one of those reasons includes member who are "discharge[d] or release[d] from active duty or the Selected Reserve, with an honorable discharge, due to twice failing to be selected for promotion as a commissioned officer on active duty or Selected Reserve."

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board finds a preponderance of the evidence substantiates the applicant's contentions. In this respect, the Board notes DODI 1341.13 and AFI 36-2649, which states that members who have at least 10 years of service on the date of application, are precluded by either policy or statute from completing the additional years of service and agree to serve the maximum amount of time allowed by such policy or statute are eligible for TEB. In this case, the applicant retired on 1 May 2016, and was precluded by policy from completing his four-year service obligation. Therefore, we recommend the applicant's records be corrected as indicated below.
4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that on 2 May 2012, he elected to transfer his Post 9/11 GI Bill Educational Benefits to his eligible dependents and on 30 April 2016, he completed the required Active-Duty Service Commitment (ADSC) for TEB as required by DODI 1341.13, Post-9/11 GI Bill.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2014-04171-2 in Executive Session on 12 July 2022:

, Panel Chair
, Panel Member
, Panel Member

All members voted to correct the record. The panel considered the following:

Exhibit E: Record of Proceedings, w/Exhibits A-D, dated 29 October 2015.
Exhibit F: Application, DD Form 149, w/atchs, dated 21 November 2021.
Exhibit G: Documentary evidence, including relevant excerpts from official records.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

Board Operations Manager, AFBCMR