

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01314

XXXX X. XXXX

**COUNSEL:** XXXX XXXX

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

His service obligation for Post-9/11 GI Bill transfer of educational benefits (TEB) be removed.

### APPLICANT'S CONTENTIONS

He was not provided the requisite training on the TEB, which would have alerted him to the fact that service in the Participating Individual Ready Reserve (PIRR) does not satisfy the obligated service. The Air Force Reserve Command constructively waived his service obligation when it transferred him to the PIRR. He also continued to serve in the Air Force Reserve to the fullest extent possible, without pay, and his continued service should satisfy his required obligated service.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force Reserve lieutenant colonel (O-5) awaiting retired pay at age 60.

On 27 Sep 10, the applicant signed a *Reserve Service Commitment Contract*, acknowledging his required satisfactory service in the Selected Reserve and the fulfillment of his Reserve Service Commitment (RSC) in accordance with Title 38 U.S.C. Chapter 33 and AFRCI 36-2102, by incurring a service obligation of one year and his RSC becoming effective from the date of his application in the Defense Manpower Data Center (DMDC) Transfer of Education Benefits (TEB) website.

According to the applicant's signed *Post 9/11 G.I. Bill Transfer of Educational Benefits Statement of Understanding*, dated 27 Sep 10, he acknowledged that personnel eligible to retire after 1 Aug 09 and before 1 Aug 10, require one year of additional service. In addition, he indicated his understanding that the transfer of benefits is lost if he did not complete the entire commitment.

His RSC began on 27 Sep 10 and was scheduled to end on 26 Sep 11.

On 8 Feb 11, as noted in Reserve Order No. XXXX, the applicant volunteered to be relieved from assignment and reassigned to the Individual Ready Reserve (IRR).

On 24 Jun 13, as noted in Reserve Order No. XXXX, the applicant was relieved from the IRR and assigned to the Retired Reserve Section and placed on the USAF Reserve Retired List, effective 1 Sep 13.

According to the Point Credit Summary (PCARS) report, he was credited with the following Active Duty (AD), Inactive Duty for Training (IDT), membership (MBR), and retirement points from 2010 to 2013:

R/R Year	AD	IDT	ECI	MBR	Retirement	Satisfactory Service (Year)
29 May 10 – 28 May 11	26	58	0	15	99	010000
29 May 11 – 28 May 12	1	60	0	15	76	010000
29 May 12 – 28 May 13	1	119	0	15	131	010000

For more information, see the excerpt of the applicant’s record at Exhibit B and the advisory at Exhibit C.

**AIR FORCE EVALUATION**

ARPC/DPAT recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice, due to the fact that he did not meet his original one year TEB service obligation. The applicant was eligible for the Post-9/11 GI Bill, as well as, transferring these benefits to his dependents upon the programs release on 1 Aug 09. The applicant elected to transfer his benefits to his dependents on 27 Sep 10. At the time of the applicant’s TEB approval, he incurred a one year service obligation date of 27 Sep 11. The applicant signed his Statement of Understanding (SOU) agreeing to the obligation end date. On 8 Feb 11, he elected to transfer to the Individual Ready Reserve (IRR), nullifying his TEB request, due to not fulfilling his service obligation ending date.

The complete advisory opinion is at Exhibit C.

**APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 9 Jul 21 and again on 5 Dec 22 for comment (Exhibit D), and the applicant replied on 24 Feb 23. In his response, the applicant contended the Board should disregard ARPC/DPAT’s recommendation because it does not address the three issues of error and injustice raised in the applicants petition: (1) he was not provided the requisite training on the TEB, which would have alerted him to the fact that service in the PIRR does not satisfy the obligated service; (2) Air Force Reserve Command constructively waived his service obligation when it transferred him to the PIRR; and (3) in the interest of equity, the applicant continued to serve the Air Force Reserve to the fullest extent possible-without pay-and this continued service should satisfy the required obligated service.

In addition to the arguments in the applicant’s petition, the Board should also consider previous decisions as persuasive in this case. For example, in an attached decision, the Board granted the petitioner’s request to amend a TEB service obligation after they retired from the Air Force one

month shy of completing the obligated service. The Board amended this obligation end date after finding it “reasonable to conclude the applicant would have fulfilled his obligation end date for TEB had it not been for his retirement for maximum years of service for his grade of major.” The applicant, likewise, would have remained in the Active and Selected Reserve serving as the Assistant Flight Commander, had he known that moving to the PIRR to serve as an Admissions Liaison Officer would preclude him from fulfilling the one-year service obligation.

The injustice with the Air Force not considering the two years the applicant served as an Admissions Liaison Officer is that the Air Force benefitted from his service in the position, in which he worked with recruits, helping shape and prepare future Air Force Officers. There was no change in his requirements the entire 2.5 years he served in this billet; he was still required to remain within height and weight requirements, remain physically fit, complete all required professional military education, and complete 50 drill points to maintain a satisfactory year for retirement purposes. The only difference is that because he was in the PIRR, he was not paid for his time spent fulfilling his billet’s responsibilities; he only received points that went toward satisfactory time for retirement.

Because the applicant would have remained in his billet that he was in at the time he requested the transfer of his benefits-had he known that transfer to the PIRR would have precluded him from fulfilling his one-year service obligation-and because the Air Force benefitted from his continued 2.5 years of service prior to him retiring, the Board should grant his petition. For these reasons, and those raised in the initial petition, the applicant respectfully requests this Board grant his application and provide the correction suggested in the Advisory Opinion.

The applicant’s complete response is at Exhibit E.

## **FINDINGS AND CONCLUSION**

1. The application was not timely filed, but it is in the interest of justice to excuse the delay.
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. While the Board notes the recommendation of AFPC/DPAT against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions in part. In this regard, the Board finds that at the time the applicant applied for TEB, the program was still being introduced and find it reasonable that the applicant was not properly informed that service in the PIRR would nullify his TEB request. Furthermore, the applicant’s status as a member of the PIRR required that he continue to participate in points gaining activities similar to a member in the Selected Reserve. As such, the Board finds that the applicant’s situation is unique and given that he continued to serve in the PIRR for 2.5 years earning points and satisfactory years of service, the Board believes that he met the intent of fulfilling the military service obligation for TEB. However, the Board further notes, that service in the IRR does not satisfy the required military service obligation for TEB and therefore finds no basis to recommend waiving the required service obligation. Instead, the Board finds it more appropriate to correct the record by changing his TEB election date to 8 Feb 10, thus allowing

him to complete his one-year military service obligation prior to his transfer from the Selected Reserve to the PIRR. Therefore, the Board recommends correcting the applicant's records 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 on 8 February 2010 he elected and was approved the transfer of his Post-9/11 GI Bill Education Benefits to his eligible dependents with a subsequent Obligation End Date (OED) of 7 February 2011.

However, regarding the remainder of the applicant's request, the Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the application will only be reconsidered upon receipt of relevant evidence not already considered by the Board.

### **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-2021-01314 in Executive Session on 12 Oct 21 and 7 Mar 23:

, Panel Chair  
, Panel Member  
, Panel Member

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

Exhibit A: Application, DD Form 149, w/atchs, dated 22 Dec 20.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, ARPC/DPAT, w/atchs, dated 23 Jun 21.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 9 Jul 21.  
Exhibit E: Applicant's Response, w/atch, dated 24 Feb 23

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**

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Board Operations Manager, AFBCMR