

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02058

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

She be allowed to transfer her Post-9/11 GI Bill Transfer of Education Benefits (TEB) to her dependents.

APPLICANT'S CONTENTIONS

She was unaware her TEB application was rejected in 2011. She states the error was discovered in April 2021 when the Department of Veterans Affairs denied a request for use of benefits.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 30 June 2011, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was relieved from active duty and retired on 1 July 2011. The applicant served 20 years and 16 days of active service for retirement.

Defense Manpower Data Center (DMDC) records show the applicant applied for TEB on 24 June 2011 and her application was rejected on 13 July 2011.

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

APPLICABLE AUTHORITY/GUIDANCE

Directive-type Memorandum (DTM) 09-003, *Post-9/11 GI Bill*, dated 22 June 2009, Attachment 2.

Paragraph 3.a.(3) Is or becomes retirement eligible during the period from 1 August 2009 through 1 August 2013, and agrees to serve the additional period, if any, specified in paragraphs 3.a.(3)(a) through 3.a.(3)(e).

3.a.(3)(d) For those individuals eligible for retirement on or after 1 August 2010 and before 1 August 2011, 2 years of additional service is required.

3.g. Time for Transfer, Revocation, and Modification.

3.g.(1) Time for Transfer. An individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's family member only while serving as a member of the Armed Forces.

3.i. Procedures. All requests and transactions for individuals who remain in the Armed Forces will be completed through the Transferability of Educational Benefits Web application at <https://www.dmdc.osd.mil/TEB/>. The TEB Users Manual will provide instruction for enrollment; verification; and additions, changes, and revocations. Modifications or revocations after separation from the Armed Forces will be accomplished with the Department of Veterans Affairs.

AFI 36-2306, *Voluntary Education Program*, dated 13 August 2010, Attachment 9.

A9.18. Transferability of unused benefits to dependents.

A9.18.1.4.4. For those members eligible for retirement after 1 August 2010, and on or before 1 August 2011, two years of additional service from the date of request is required.

A9.18.7.1. Time for Transfer. A member approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed.

A9.18.9. Transfer of Benefits Procedures. All requests and transactions will be completed through the TEB Web application at <https://www.dmdc.osd.mil/TEB/>. Airmen are responsible for correcting inaccurate information. Airmen may request certification of Post-9/11 GI Bill eligibility from the DVA's website prior to requesting to transfer of benefits.

AIR FORCE EVALUATION

AFPC/DP3SA recommends denying the application. The applicant was approved for retirement effective 1 July 2011 and could not meet the required two-year service obligation. In accordance with Directive-Type Memorandum (DTM) 09-003: Post 9/11 GI Bill, Incorporating Change 1, Attachment 2 [3.a.(3)(d)] and AFI 36-2306, Voluntary Education Program (A9.18.1.4.4.), to gain TEB approval, members eligible for retirement after 1 August 2010 and on or before 1 August 2011 required two-years of additional service from the date of application.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice on the part of the Air Force. The applicant did not have the required retainability due to an approved retirement. She required retainability to 23 June 2013.

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 7 January 2022 for comment (Exhibit D), but has received no response.

FINDINGS AND CONCLUSION

1. The application was not 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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP3SA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board also notes the applicant did not file the application within three years of discovering the alleged error or injustice, as required by Section 1552 of Title 10, United States Code, and Air Force Instruction 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*. While the applicant asserts a date of discovery within the three-year limit, the Board does not find the assertion supported by a preponderance of the evidence. The Board does not find it in the interest of justice to waive the three-year filing requirement. Therefore, the Board finds the application untimely and recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the application was not timely filed; it would not be in the interest of justice to excuse the delay; and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

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-2021-02058 in Executive Session on 15 March 2022:

, Panel Chair
, Panel Member
, Panel Member

All members voted against correcting the record. The panel considered the following:

Exhibit A: Application, DD Form 149, w/atchs, dated 21 April 2021.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 5 January 2022.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 7 January 2022.

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