

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02771

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be allowed to transfer his Post-9/11 educational benefits (TEB) to his legal ward dependent.

APPLICANT'S CONTENTIONS

He transferred one month of TEB to each of his three dependents prior to retiring from active service on 31 Oct 09. The applicant has had permanent custody of his dependent since she was two, and though his legal ward in Oct 09 when he retired, she was listed as his dependent in the Defense Enrollment Eligibility Reporting System (DEERS). The system allowed him to transfer one month of credit to her in 2009, and the database at the Veterans Education Call Center still reflects her having the one month credit. He followed the guidance at the time, was never notified after the transfer that she became ineligible, and has been counting on utilizing TEB for her. He spoke with a representative in the Education Services policy office who informed him that a legal ward was not supposed to qualify for TEB in 2009. The representative also informed him that the law changed in 2021 to allow legal wards and foster children to qualify for TEB; however, the change was not retroactive.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force chief master sergeant (E-7).

On 31 Oct 09, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant retired from active service with twenty-five years and eleven months of service.

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

APPLICABLE AUTHORITY/GUIDANCE

Section 1011 of the "Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020," Public Law 116-315, revised section 3319(c) of title 38, United States Code, by changing the definition of an eligible dependent. An individual approved to transfer an entitlement to educational assistance under this section may transfer their Post-9/11 GI Bill education benefits to an eligible dependent or a combination of eligible dependents. The term "eligible dependent has the meaning given the term "dependent" under subparagraphs (A), (I), and (D) of section 1072(2) of title 10.

Pursuant to 38 U.S.C. 3319(f)(1), eligible individuals can only transfer entitlement to dependents "while serving as a member of the Armed Forces when the transfer is executed" except as provided under paragraphs 38 U.S.C. 3319(k) and (l).

AIR FORCE EVALUATION

AFPC/DP3SA recommends denying the application. Defense Manpower Data Center records show the applicant was approved for TEB effective 29 Oct 09, with no additional service obligation. On 9 Apr 21, the Department of Defense issued policy updating the definition of an “eligible dependent” to which individuals may transfer benefits as a result of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (Public Law 116-315). The change allows foster children and legal wards residing with a Service member for a least 12 consecutive months to receive transferred Post-9/11 GI Bill benefits; however, only individuals currently serving in the Armed Forces approved to transfer benefits on or after 5 Jan 21 may effect a transfer to foster children and legal wards. At the time of the members transfer (2009), a system anomaly allowed the allocation of months to his legal ward; however, the law did not permit the transfer. The applicant retired effective 1 Nov 09.

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 16 Sep 21 for comment (Exhibit D), but has received no response.

The applicant’s complete response is at Exhibit E.

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 the victim of an error or injustice. While the Board notes the recommendation of AFPC/DP3SA against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions. The Board notes that the legal ward was enrolled in DEERS as his dependent and the guidance at the time allowed him to transfer his educational benefits to his legal ward. Given the fact the applicant’s legal ward was approved for the TEB entitlement in 2009, the Board finds it would be an injustice to withdraw this entitlement since the applicant followed the guidance at the time and was not advised of his dependent’s ineligibility. Moreover, in light of the recent change to the law that now allows legal wards and foster children to qualify for TEB, the Board finds it proper and fitting to grant the applicant’s request. Therefore, the Board recommends correcting the applicant’s records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that:

a. In 2009 his legal ward, [REDACTED] *Work-Product* was considered a dependent in accordance with 10 U.S. Code § 1072(2).

b. On 23 October 2009, he was approved the transfer of one month of his Post-9/11 GI Bill Educational Benefits to all his eligible dependents with no service obligation required.

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-2021-02771 in Executive Session on 30 Nov 21:

, Panel Chair
, Panel Member
, Panel Member

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

Exhibit A: Application, DD Form 149, dated 9 Aug 21.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 14 Sep 21.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 Sep 21.

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.

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Board Operations Manager, AFBCMR