

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-02997

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### APPLICANT'S REQUEST

He be allowed to transfer his Post-9/11 GI Bill education benefits (TEB) to his eligible dependents.

### APPLICANT'S CONTENTIONS

His Active Duty Service Commitment (ADSC) date was not changed when his ADSC waiver was approved by the Secretary of the Air Force (SecAF). On 31 Mar 10, the applicant successfully transferred one-month of education benefits to his dependents and accepted a service obligation of 29 Mar 13. While deployed on 20 Nov 11, he applied to waive the ADSC incurred by TEB based on the Best Interests of the Air Force. On 17 Jan 12, the ADSC was approved by SecAF with an effective retirement date of 1 Jun 12. The applicant believes he completed all the related coordination, and the approved waiver aligned his ADSC with his retirement effective date. The applicant was never informed that his 1 Jun 12 retirement date did not fulfill his ADSC, and his dependents would lose the education benefits. On 9 Jun 21, his son received a certificate of eligibility from the Department of Veteran Affairs (VA) confirming his eligibility for TEB. Shortly after his son began school, the VA reversed their approval and denied the claim for education benefits.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force lieutenant colonel (O-5).

On 31 Mar 10, according to *Post 9/11 G.I. Bill Transfer of Education Benefits Statement of Understanding*, the applicant completed the transfer of education benefits to his dependents and acknowledged the requirement to complete 3 years of additional service.

On 17 Jan 12, according to the Secretary of The Air Force, the Active Duty Service Commitment waiver submitted by the applicant was approved for retirement effective 1 Jun 12.

On 1 Jun 12, according to Special Order No. XX-XXXX, dated 20 Jan 12, the applicant was relieved from active duty and retired.

According to Special Order No. XX-XXXXX, dated 5 Mar 12, Special Order Work-Product, dated 20 Jan 12, was rescinded.

On 1 Sep 12, according to Special Order No., XX-XXXXX, dated 27 Mar 12, the applicant was relieved from active duty and retired.

On 31 Aug 12, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant retired with twenty years, three months, and four days of active service, effective 1 Sep 12.

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

### **AIR FORCE EVALUATION**

AFPC/DP3SA recommends denying the application. On 30 Mar 10, the applicant applied for TEB, and was approved on 1 Apr 10 with a service obligation to 29 Mar 13. On 4 Nov 11, the applicant submitted a voluntary request for retirement effective 1 Jun 12. On 8 Nov 11, the applicant was informed that he required an ADSC waiver due to the service obligation associated with his TEB approval. Furthermore, he was advised that the waiver could be submitted as a Hardship or Best Interest of the Air Force waiver. On 10 Nov 11, the applicant submitted a Best Interest of the Air Force waiver. On 17 Jan 12, SecAF approved the Best Interest of the Air Force waiver, and the effective date of his retirement was changed to reflect 1 Sep 12. In accordance with Air Force Instruction 36-2306, Incorporating Change 1, *Voluntary Education Program* (A9.18.8.5.3) and Directive-Type Memorandum (DTM) 09-003: *Post 9/11 GI Bill*, Attachment 2, (3.h.(5)(b)3), only a Hardship as determined by the Secretary of the Air Force allows retention of transferred benefits. 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 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 13 Apr 22 for comment (Exhibit D), and the applicant replied on 24 May 22. In his response, the applicant contended the ADSC associated with TEB should have been changed to match his retirement date of 1 Sep 12. He requested to retire while deployed to a US Navy base and was not briefed that he would lose TEB by applying for a Best Interest of the Air Force waiver. The Best Interest of the Air Force waiver was approved by the Secretary of the Air Force and his ADSC was changed to allow a retirement date of 1 Sep 12. The applicant believes it is wrong for the approval of a Best Interest of the Air Force waiver to penalize him where relief from personal circumstances would have allowed him to retain his benefits.

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 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 notes that the Secretary of the Air Force waiver is to relieve the applicant of his Active Duty Service Commitment for separation and does not constitute a waiver of the requirement to fulfill the service obligation for TEB approval. 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-2021-02997 in Executive Session on 9 Aug 22:

, 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 2 Sep 21 (sic).  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 1 Apr 22.  
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Apr 22.  
Exhibit E: Applicant's Response, w/atchs, dated 24 May 22.

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