

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03677

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

The applicant applied for TEB and was denied because he voluntarily retired and did not complete the additional service commitment. The applicant was unable to meet the additional service commitment because he was twice passed over for promotion and forced to retire at twenty years. The applicant inquired about his ability to TEB during the pre-retirement counseling, and was reassured the additional service commitment would be waived because he was forced to retire prior the completion the service commitment.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 31 Dec 12, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was discharged from active service after twenty years, and two days for maximum service or time in grade.

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

APPLICABLE AUTHORITY/GUIDANCE

According to the regulation at the time of the applicant's discharge, Directive-Type Memorandum (DTM) 09-003, dated 22 Jun 09: Any service member on or after 1 Aug 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 Jul 18, 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.”

AIR FORCE EVALUATION

AFPC/DP3SA, recommends granting the application. On 15 Sep 09, the applicant applied for TEB and was approved with a four (4) year service commitment to 14 Sep 13. The applicant was assessed a mandatory separation date of 13 Dec 12, due to being twice passed over for promotion to lieutenant colonel (O-5). Records indicate on 12 July 12, an Air Force Personnel Center technician informed the applicant that he would retain his TEB; however, there was no provision in TEB policy allowing retention of benefits for members twice passed over for promotion. On 12 Jul 18, DoDI 1341.13, Change 1, 3.g.(2)(g), *Post-9/11 GI Bill*, expanded the scope of eligibility for TEB to include members twice passed over for promotion.

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 Jan 22 for comment (Exhibit D), but has received no response.

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. The Board concurs with the rationale and recommendation of AFPC/DP3SA and finds a preponderance of the evidence substantiates the applicant’s contentions. 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 the APPLICANT be corrected to show that on 15 September 2009, he elected and was approved to transfer his Post-9/11 GI Bill Educational Benefits to his eligible dependents with a subsequent Obligation End Date (OED) of 31 December 2012.

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-2021-03677 in Executive Session on 15 Mar 22:

, 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, undated.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, AFPC/DP3SA, dated 28 Dec 21.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 Jan 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.

X

Board Operations Manager, AFBCMR