

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-00902

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

He applied for TEB on 8 September 2009 and his application was approved on 8 September 2009 with a service obligation end date to 7 September 2012. His date of separation was 31 October 2011. He was forced to retire at 20 years of service due to being twice passed over for promotion to lieutenant colonel. At the time of his application there was no provision in TEB guidance granting fulfillment of obligation in the event a member was twice passed over. Due to forced retirement, he could not complete one more year of active duty to secure TEB.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 10 September 2009, the applicant signed a *Post 9/11 G.I. Bill Transfer of Educational Benefits Statement of Understanding*.

Special Orders No. XXX, dated 26 October 2011, reflect the applicant was relieved from active duty effective 31 October 2011 and retired on 1 November 2011. The applicant served 20 years and 20 days of active service for retirement.

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

### APPLICABLE AUTHORITY/GUIDANCE

DoDI 1341.13, Post-9/11 GI Bill, Enclosure 3, Paragraph 3, dated 31 May 2013 states: Any service member on or after 1 August 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.

DoDI 1341.13, Post-9/11 GI Bill, Incorporating Change 1, dated 12 July 2018, 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 include members 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. Defense Manpower Data Center records show the applicant applied for TEB on 8 September 2009. The application was approved with a three-year service commitment to 7 September 2012. Subsequently, the applicant was assessed a mandatory date of separation (31 October 2011) due to being twice passed over for promotion. Prior to July 2018, there was no provision in TEB policy allowing retention of transferred benefits for members twice passed over for promotion.

Based on a 2018 change to Department of Defense Instruction (DoDI) 1341.13, Post-9/11 GI Bill, there is evidence of an error or injustice on the part of the Air Force. DoDI 1341.13, Change 1, Enclosure 3, 3.g.(2)(g), expanded the scope of Force Shaping to include members twice passed over for promotion. Members separated due to Force Shaping retain transferred benefits.

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 3 May 2022 for comment (Exhibit D), but has received no response.

### **FINDINGS AND CONCLUSION**

1. The application was 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. 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.

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 September 2009, he elected and was approved to transfer his Post 9/11 GI Bill Education Benefits to his dependents with a service obligation to 31 October 2011.

### **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-2022-00902 in Executive Session on 14 June 2022:

, 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 March 2022.  
Exhibit B: Documentary evidence, including relevant excerpts from official records.  
Exhibit C: Advisory opinion, AFPC/DP3SA, w/atch, dated 25 April 2022.  
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 3 May 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**

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Board Operations Manager, AFBCMR