

## **RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2022-01331

XXXXXXXXXX

**COUNSEL:** NONE

**HEARING REQUESTED:** NO

### **APPLICANT'S REQUEST**

1. Transfer twenty-five (25) days of education benefits from the Montgomery GI Selected Reserve (MGIB-SR) back to the Montgomery GI Bill (MGIB).
2. Transfer twelve (12) months of Montgomery GI Bill Selective Reserve (MGIB-SR) entitlements to Post-9/11 GI Bill.
3. He be allowed to transfer his Post-9/11 GI Bill education benefits (TEB) to his eligible dependents.

### **APPLICANT'S CONTENTIONS**

In Jul 00, he successfully enrolled in the MGIB Chapter 30 benefits and had twenty-five (25) days of education benefits remaining after using thirty-five (35) months and five days. After leaving active duty in 2011, he joined the Montana Air National Guard (MTANG) and after deploying to Afghanistan he was told that he had earned 12 months of educational benefits under the MGIB-SR, Chapter 1606. He was then informed that if he converted his remaining 25 days from his MGIB, Chapter 30 to Post 9/11 GI Bill, Chapter 33 benefits, he could then convert the additional 12 months from his MGIB-SR, Chapter 1606 benefits to his Post 9/11 GI-Bill, Chapter 33 benefits. In doing so, he would have 13 months (12 months from MGIB-SR and 25 days from his active duty MGIB) that he could allocate to his dependents. As such, he completed the transfer of his Post 9/11 GI Bill, Chapter 33 benefits to his dependents; however, his son recently applied to use the benefit and was advised that only 25 days of benefits were available. He contacted the Department of Veteran Affairs (VA), but was informed that since he is not currently in a Drill status he is no longer eligible for the 12 months of MGIB-SR, Chapter 1606 benefits; however, they advised him that he should have an additional 12 months of education benefits under the Post 9/11 GI Bill, Chapter 33 for his periods of active-duty service after 2011.

In support of his appeal, the applicant provides a memorandum, dated 19 Jul 22 from a representative at Joint Force Headquarters, Montana ANG. The memorandum indicates the applicant was miscounseled to exchange his MGIB benefits for MGIB-SR benefits prior to transferring the benefits to Post-9/11 GI Bill because the office was following limited vague guidance at the time.

The applicant's complete submission is at Exhibit A.

### **STATEMENT OF FACTS**

The applicant is an Air National Guard lieutenant colonel (O-5).

On 12 Jul 00, according to DD Form 2366, *Montgomery GI Bill Act of 1984*, the applicant enrolled in the Montgomery GI Bill.

On 1 Oct 11, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant separated with eleven (11) years, and three (3) days of active service.

On 2 Oct 11, according to NGB 337, *Oath of Office*, the applicant was sworn into the Montana Air National Guard.

On 16 Dec 12, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was released from active duty with seven (7) months, and twenty-seven (27) days of active service.

On 30 Sep 15, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant was released from active duty with one (1) year, and five (5) months of active service.

On 31 Mar 23, according to Special Order XX-XXXX, dated 13 Apr 22, the applicant will retire with twenty-two (22) years, eight (8) months, and twenty-four (24) days of active service.

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

## **APPLICABLE AUTHORITY**

AFI 36-2306, *Voluntary Education Program*:

A9.5. Post-9/11 GI Bill Eligibility. Generally, to be eligible for the Post-9/11 GI Bill, Airmen must serve on active duty on or after 11 September 2001, for at least 30 continuous days when there is a discharge due to a service-connected disability; or, an aggregate period ranging from 90 days to 36 months or more.

A9.10.1. An Airman who is eligible for both the Post-9/11 GI Bill and any other DVA educational assistance program may elect to receive educational assistance under the Post9/11 GI Bill if the Airman, as of 1 Aug 09:

A9.10.1.1. Is entitled to basic educational assistance under MGIB, and has used, but retains unused, entitlement under that Chapter

A9.10.4. An Airman entitled to educational assistance under the Post-9/11 GI Bill who is also eligible for educational assistance under the MGIB, Chapters 31, 32, or 35 of title 38, U.S.C., the EATP, MGIB-SR, REAP, or the provisions of the Hostage Relief Act of 1980 (5 U.S.C. Section 5561, note) may not receive assistance under two or more such programs concurrently, but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) under which chapter or provisions to receive educational assistance.

A9.14. MGIB Benefits Exhaustion. Airmen who have exhausted their MGIB benefits can qualify for an additional 12 months of benefits under the Post-9/11 GI Bill based on DVA policy.

A9.15. MGIB Conversion. For Airmen eligible for MGIB who make an election to convert to the Post-9/11 GI Bill, the number of months of entitlement of the Airman to educational assistance under the Post-9/11 GI Bill shall be the number of months equal to the number of months of unused entitlement of the Airman under MGIB as of the date of the election. Airmen are

encouraged to assess their educational goals to determine the time they select Post-9/11 GI Bill benefits.

## **AIR FORCE EVALUATION**

ARPC/DPAT, recommends denying the application. There is no evidence of error or injustice because the applicant was ineligible for MGIB-SR, and he did not exhaust all MGIB and Post-9/11 entitlement months. The applicant requests that the original request of the (MGIB-SR) under Chapter 1606 educational assistance be granted and allow the twelve (12) months benefit to transfer to his Post 9/11 GI Bill education benefits. He contends that he was misadvised by the Air National Guard (ANG) education office that the MGIB-SR education benefits had been earned, and he would need to transfer them to the Post 9/11 GI Bill in order to utilize the twelve (12) additional months. On 12 Jul 00, while on active duty, the applicant successfully enrolled in to the MGIB. On 2 Oct 11, the applicant transferred to the Air National Guard and his MGIB-SR was updated as ineligible in Benefits for Education Administrative Services Tool (BEAST) and in MilPDS with coded reason of applicant requires six (6) years obligation to be eligible for MGIB. In accordance with DODI 1322.17, *Montgomery GI Bill-Selected Reserve (MGIB-SR)*, dated 29 Nov 99, an officer must agree to a six (6) year service obligation in the Selected Reserve to be eligible for MGIB-SR, and there is no evidence the applicant accepted the additional service commitment. Additionally, the applicant was required to apply to the VA for payment of benefits by completing a Notice of Basic Eligibility (NOBE) form to acquire MGIB-SR, and there is no evidence this action was initiated. On 23 Jul 13, the applicant elected to transfer Post 9/11 education benefits to his dependents and acknowledged that he would incur a service commitment that expired on 23 Jul 17. In accordance with DODI 1355.17, *Montgomery GI Bill-Selected Reserve (MGIB-SR)*, dated 15 Jan 15, upon transfer of the applicant's entitlement to the Post-9/11 GI Bill will be equal to the number of months they have remaining under MGIB. However, if the applicant exhausts all of the MGIB entitlement, they may be entitled to a maximum of 12 additional months under the Post-9/11 GI Bill. BEAST indicates evidence of sixteen (16) used months out of the maximum thirty-six (36) months, therefore, the applicant was ineligible to receive added months and still have twenty months of transferrable benefits available. Upon review of the applicant's records, there is no evidence of advisement from the ANG regarding TEB or MGIB-SR. Furthermore, in accordance with DODI 1322.17, *Montgomery GI Bill-Selected Reserve (MGIB-SR)*, dated 15 Jan 15, the applicant is ineligible to receive MGIB-SR because he is pending retirement and unable to serve an additional four (4) year service commitment from the date of election. Finally, the applicant cannot simultaneously receive education benefits from MGIB-SR and Post 9/11 G.I. Bill.

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 6 Sep 22 for comment (Exhibit D), and the applicant replied on 1 Sep 22. In his response, the applicant contended the eligible months of education benefits in the advisory was contrary to the amount briefed by the VA. The applicant attached an MFR from the Air Guard Manager that states the applicant was incorrectly briefed and he should have only been advised to transfer twelve months of MGIB-SR benefits.

The applicant's complete response is at Exhibit E.

## **ADDITIONAL AIR FORCE EVALUATION**

ARPC/DPAT, recommends granting the application. The applicant's response included documentation that was not considered when the initial evaluation was submitted. On 19 July 2022, the Guard Advisor submitted a statement that the applicant was misinformed because they had vague guidance and did not have the correct information to advise him. The advisor noted the applicant was advised to first exchange the MGIB benefits for Post-9/11 GI Bill benefits in order to transfer MGIB-SR benefits. However, the applicant should have been advised to transfer twelve (12) months of MGIB-SR benefits only.

The complete advisory opinion is at Exhibit F.

## **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 12 Sep 22 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 ARPC/DPAT and notes the letter from the Guard Advisor which indicates the applicant was miscounseled regarding his benefits. As such, the Board 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 APPLICANT be corrected to show that:

a. On 23 July 2013, he received 12 months of benefits under the Montgomery GI Bill Selective Reserve (MGIB-SR), Chapter 1606 benefits and converted those months to the Post-9/11 G.I. Bill, Chapter 33 benefits.

b. On 23 July 2013, he transferred 12 months of Post 9/11 GI Bill benefits to his eligible dependents.

## **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-2022-01331 in Executive Session on 8 Nov 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, dated 12 May 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, ARPC/DPAT, w/atchs, dated 18 Aug 22.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 6 Sep 22.
- Exhibit E: Applicant's response to advisory, dated 1 Sep 22.
- Exhibit F: Advisory opinion, ARPC/DPAT, 8 Sep 22.
- Exhibit G: Notification of advisory, SAF/MRBC to applicant, dated 12 Sep 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

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Board Operations Manager, AFBCMR