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UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01483

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

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

His dependents were all enrolled in DEERS on the date the request to transfer was submitted. On 12 May 2022, he spoke with the Educational Services Superintendent, at the Total Force Service Center regarding his TEB. He learned that his TEB was rejected in 2010 because he did not sign and submit the Statement of Understanding (SOU) and his failure to meet a three-year transferability requirement. He never received an email notification regarding TEB. Presuming this email was sent to him, it may have been sent to his *Work-Product* deployment email address (which he would not have access to). Had he been aware that his signature was not recorded, he would have corrected the error while still on active duty. Further, he cites a rule published in a Department of the Army pamphlet as justification for his request and states, "The purpose of the Rule 7 was to reduce the additional service obligation from four years to three years for those with 17 to 18 years of service."

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 27 May 1992, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant entered the Regular Air Force.

On 5 March 2008, the applicant signed a Statement of Acceptance/Declination for Initial Selective Continuation of Majors with Less than 18 Years Active Federal Military Service Form, P0507B. He accepted continuation on active duty until qualified for retirement as an officer (20 years active military service and 10 years active commissioned service).

On 9 January 2010, the applicant applied for TEB and on 11 February 2010, the application was rejected because he did not have the required retainability.

On 31 May 2012, according to Special Orders No. *Work-Product*, the applicant was relieved from active duty and effective 1 June 2012 retired in the grade of major (O-4) and credited with 20 years and 4 days of active service for retirement.

AFBCMR Docket Number BC-2022-01483
CUI//SP-MIL/SP-PRVCY

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POC: SAF.MRBC.Workflow@us.af.mil

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

APPLICABLE GUIDANCE:

According to the regulation at the time of the applicant's discharge, DODI 1341.13, Post-9/11 GI Bill, Enclosure 3, Paragraph 3, dated 31 May 13 states: 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.

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. 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 denying the application. The Defense Manpower Data Center (DMDC) records show the applicant applied for TEB on 9 January 2010. The application was rejected on 11 February 2010 because the applicant did not have the required retainability. In accordance with (IAW) Directive-Type Memorandum (DTM) 09-003: Post-9/11 GI Bill, Attachment 2 [3.a.(3)(e)] and AFI 36-2306_AFGM1, The Education Services Program [18.a.(4)(e)], members eligible for retirement after 1 August 2011 and on or before 1 August 2012 incurred a three-year commitment from the date of application. Initial research reflects the TEB application was rejected due to no TEB SOU; however, after further review, the applicant's record reflects he was twice passed over for promotion and could not meet the service obligation.

At the time of the applicant's application, there was no provision in TEB guidance granting fulfillment of obligation in the event a member is passed over twice for promotion and subsequently separated from service. Effective 12 July 2018, DoDI 1341.13, Post-9/11 GI Bill, Change 1, 3.g.(2)(g), expanded the scope of Force Shaping to include members twice passed over for promotion allowing retention of transferred benefits. However, the policy only applies to members with an approved transfer prior to notification of non-selection for promotion and who are subsequently unable to complete the service agreement. IAW DoDI 1341.13, Change 1, 3.g.(2) and 3.g.(2)(g), "The Service member will be considered to have completed his or her previously approved TEB-related service agreement upon:"... "Discharge or release from active duty... with an honorable discharge, due to twice failing to be selected for promotion as a commissioned officer on active duty or Selected Reserve." The applicant acknowledged and accepted continuation on active duty until 31 May 2012, when he first qualified for retirement as an officer (20 years of active service), on 8 March 2008...over 2 years prior to his TEB application.

CUI//SP-MIL/SP-PRVCY

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 applicant's record shows he did not have the required retainability for TEB. The applicant applied and was disapproved for TEB after notification of non-selection for promotion as he was required to separate prior to meeting the required service obligation. Retention of the transfer is only allowed if the transfer was approved prior to notification of promotion non-selection.

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 30 August 2022 for comment (Exhibit D), and the applicant replied on 27 September 2022. In his response, the applicant contended the AE Misc Pub 621-202B, "Post-9/11 GI Bill Transferability Quick Reference," dated 28 July 2009, was valid for the time of his application and as an Army publication for the DoD should be used as definitive requirements for TEB. AFPC has not proven what the policy was at the time of his denial. He could not sign the TEB prior to non-selection notification because the program did not exist at that time. When he electronically signed his TEB application the digital signature was not recorded. AFPC did not inform him of the rejected application in a timely manner and this mistake created a financial loss.

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 applicant did not have the required retainability for TEB. He applied and was disapproved for TEB after notification of non-selection for promotion as he was required to separate prior to meeting the required service obligation. Retention of the transfer is only allowed if the transfer was approved prior to notification of promotion non-selection. Therefore, the Board recommends against correcting the applicant's records. 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.

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-2022-01483 in Executive Session on 6 December 2022:

- Work-Product, Panel Chair
- Work-Product, Panel Member
- Work-Product, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 26 May 2022.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 8 July 2022.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 August 2022.
- Exhibit E: Applicant’s Response, w/atch, dated 27 September 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.

9/5/2024

X Work-Product

Board Operations Manager, AFBCMR
Signed by: Work-Product