

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-01564

XXXXXXXXXX

COUNSEL: XXX

HEARING REQUESTED: YES

APPLICANT'S REQUEST

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

APPLICANT'S CONTENTIONS

In 2009, while still on active duty (AD), his base's education center incorrectly informed him that he would incur a three-year consecutive AD commitment to convert his Montgomery GI Bill to the Post-9/11 GI Bill. Again in 2012, while assigned to another base, he was given the same information by that base's education center so when he retired in 2013, he retired with the Montgomery GI Bill. In Sep 20, while investigating alternate skills training due to COVID-19 job impact, he spoke to a Department of Veterans Affairs (VA) education representative who inquired as to why he had not converted to the Post-9/11 GI Bill. The VA representative apologized for the misinformation and remarked that he was not the first veteran who received the wrong information on the conversion process. The VA representative then immediately converted him from the Montgomery GI Bill to the Post-9/11 GI Bill and assured him that he could transfer it to his children. In Apr 22, while reviewing his VA Education Benefits, he noticed that he could not list his children. He was then informed by the VA that since he converted his Post-9/11GI Bill after he separated he could not transfer his benefits to his children. He requests that he be allowed to transfer his benefit to his children based on the resulting severe financial impact due to erroneous information he had received.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

According to his DD Form 214, *Certificate of Release or Discharge from Active Duty*, dated XX XXX 13, the applicant was credited with a total of 23 years, 3 months, and 3 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/GUIDANCE

Department of Defense Instruction (DoDI) 1341.13, *Post-9/11 GI Bill*, Enclosure 3.

3. Transferability of Unused Education Benefits to Family Members. Subject to the provisions of this enclosure, the Secretary concerned, to promote recruitment and retention in the Uniformed Services, may permit an individual eligible for Post-9/11 GI Bill educational assistance to elect

to transfer to one or more of his or her family members all or a portion of his or her entitlement to such assistance.

AFI 36-2306, *Voluntary Education Program*, dated 13 Aug 10. Attachment 9, Chapter 33, Post-9/11 GI Bill Department of Veterans Affairs (DVA):

A9.2. Program Description and Purpose. The Air Force Post-9/11 GI Bill Program carries out DoD policy that implements the Department of Veterans Affairs (DVA) Post-9/11 GI Bill Program (also known as Chapter 33 benefits). The Program offers increased educational benefits to veterans who served on or after 11 September 2001 and a transfer program that supports Air Force recruiting and retention. The DVA offers information at <http://www.gibill.va.gov/>.

A9.3. Applicability. Applies to military personnel of the following components: Air Force active duty, the Air Force Reserve and Air National Guard (Active, Reserve and Guard). The Post-9/11 GI Bill is effective 1 August 2009.

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 Post-9/11 GI Bill if the Airman, as of 1 Aug 09: Is entitled to basic educational assistance under MGIB, and has used, but retains unused, entitlement under that Chapter; Is entitled to basic educational assistance under MGIB, but has not used any entitlement under that Chapter.

A9.10.2. The method and process of making the election to use Post-9/11 GI Bill benefits will be determined by the DVA.

A9.10.3. An election to convert from MGIB (Chapter 30) to the Post-9/11 GI Bill (Chapter33) is irrevocable and will be governed by the DVA. This includes Airmen who converted from VEAP to MGIB, as their decision to convert to MGIB is irrevocable.

A9.18. Transferability of unused benefits to dependents.

A9.18.1.1. Any member of the Armed Forces (active duty and/or Selected Reserve) who meets Post-9/11 GI Bill eligibility requirements and at the time of the approval of the member's request to transfer entitlement to educational assistance:

A9.18.1.2. Has at least 6 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election and agrees to serve 4 additional years in the Air Force from the date of request, regardless of the number of months transferred, or

A9.18.1.4.4. For those members eligible for retirement after 1 Aug 10 and on or before 1 Aug 11, two years of additional service from the date of request is required.

A9.18.1.4.5. For those members eligible for retirement after 1 Aug 11, and on or before 1 Aug 12, three years of additional service from the date of request is required.

A9.18.7.1. Time for Transfer. A member approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed.

A9.18.9. Transfer of Benefits Procedures. All requests and transactions will be completed through the TEB Web application at <https://www.dmdc.osd.mil/TEB/>. Airmen are responsible for correcting inaccurate information. Airmen may request certification of Post-9/11 GI Bill eligibility from the DVA's website prior to requesting to transfer of benefits.

AIR FORCE EVALUATION

AFPC/DP3SA recommends denying the request to transfer his Post-9/11 GI Bill TEB to his dependent children. The Defense Manpower Data Center (DMDC) shows no record the member applied for TEB. In accordance with AFI 36-2306 AFGM1, *The Education Services Program*, members must submit a request to transfer Post-9/11 GI Bill benefits via the Defense Manpower Data Center (DMDC) TEB website while on active duty. Without a request, eligibility for the program could not be established as DTM 09-003, Attachment 2 (3.a.), cites the date of election as the date on which the appropriate service obligation would be applied.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice and to grant relief would be contrary to the criteria established by law and/or Department of Defense guidance.

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 Aug 22 for comment (Exhibit D), and the applicant replied on 28 Sep 22. In his response, the applicant contended the advisory was a cut and dry decision which lacked reasoning. It does not consider all the circumstances nor the massive financial impact to him in funding his children's future education. He states that when he enlisted in the Army and prior to attending Warrant Officer Candidate School, he signed up for the Montgomery GI Bill. After eight years on active duty, he transferred from the Army to the Air Force, attended Officers Training School and was commissioned as a second lieutenant. He then served an additional 13 years on active duty, to include three combat tours in Afghanistan, before retiring on 31 Dec 13.

He reiterates that in 2009 he was incorrectly told that he would incur a three year active duty service commitment (ADSC) if he converted his Montgomery GI Bill to the Post-9/11 GI Bill which would require him to remain on active duty until 2016, for a total of 24 years, before he was eligible to retire. And in 2012, while assigned to another base, he was again misinformed that if he converted from the Montgomery GI Bill to the Post-9/11 GI Bill he would incur a three-year consecutive or concurrent ADSC beginning on the date of his GI Bill conversion. However, with only one year until retirement, neither option would allow him to retire as planned, and as he considered the information came from a trusted source, he did not pursue the issue.

In summary, he considers the entire GI Bill process to be a failure. Misinformation and poor customer service were indicative of his experience. His Post-9/11 GI Bill benefits were hard earned during his two decades of active duty service, which included four combat deployments, and he respectfully requests a correction to allow him to transfer his Post-9/11 GI Bill Benefits to his two children.

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. Specifically, he provides no evidence that supports his contentions, and the Defense Manpower Data Center shows no record that the applicant applied for TEB. Furthermore, the Board recognizes that the applicant may have not incurred an ADSC with the conversion of his Montgomery GI Bill to the Post 9/11 GI Bill; however, it does not change the fact that he would have incurred an ADSC with the transfer of benefits to his dependents. As such, without a date of transfer, the Board cannot confirm whether he would have fulfilled his military service obligation, which would have been required prior to his retirement to retain TEB benefits. 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.

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 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-2022-01564 in Executive Session on 11 Oct 22 and 8 Nov 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 17 Apr 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 8 Jul 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 30 Aug 22.
- Exhibit E: Applicant's Response, w/atch, dated 28 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

Board Operations Manager, AFBCMR