

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02133

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

She be allowed to transfer her Post-9/11 GI Bill Transfer of Education Benefits (TEB) to her dependent.

APPLICANT'S CONTENTIONS

In 2012, she went to the education office to transfer benefits to her son and was told she did not have enough time left on her enlistment and could transfer benefits when she reenlisted. However, she never reenlisted due to being medically retired in 2019. During her out-processing at the Force Development Flight, she was told that her benefits would be transferred to her son and that they would handle the transfer. She was also told that because she was being medically retired, she did not need the four-year retainability because she had the ten years of service. Further, she did not discover the benefits were not transferred until May 2022 when she applied for the Certificate of Eligibility (COE) for chapter 33 benefits.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force Reserve technical sergeant.

According to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant entered active duty on 12 August 1998. On 13 August 2009, she was honorably discharged in the grade of technical sergeant. The narrative reason for Separation reflects "Completion of Required Active Service." The applicant served 11 years and 2 months of total active service.

On 14 August 2009, the applicant enlisted in the Air Force Reserve in the grade of technical sergeant.

According to AF Form 469, *Duty Limiting Condition Report*, dated 31 March 2015, the Health Care Provider's medical recommendation for the squadron commander reflects the applicant's duty and mobility restrictions. In addition, the applicant's medical defect/condition requires a Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB) processing IAW AFI 41-210. The applicant was undergoing an MEB to determine medical fitness for her continued worldwide duty and retention.

On 15 August 2019, according to AF IMT 618, *Medical Board Report*, a board convened, and the applicant's case was referred to an Informal Physical Evaluation Board (IPEB), in which she was determined to have the diagnosis of lumber disc disease with radiculopathy and cervical disc disease with radiculopathy.

On 19 August 2015, according to AFRC/SGP, the applicant was found medically disqualified for continued military duty in accordance with AFI 48-123, Chapter 5 and Medical Standards Directory L and K. The applicant was unable to perform duties of her office and grade by reason of chronic low back pain.

On 1 October 2019, according to AF Form 356, *Findings and Recommended Disposition of USAF Physical Evaluation Board*, an IPEB convened, and the applicant was diagnosed with the condition of lumbar disc disease with spondylosis, which was determined to be unfitting due to physical disability and found to be permanent/stable. The IPEB recommended the applicant's permanent retirement with a disability rating of 40 percent.

On 11 October 2019, officials within the office of the Secretary of the Air Force approved the applicant's retirement under the provisions of 10 United States Code 1201, in the Reserve grade of technical sergeant.

Effective 31 October 2019, according to Special Order No. [REDACTED] *Work-Product*, dated 15 October 2019, the applicant was relieved from active duty and on 1 November 2019, she was permanently disability retired in the grade of technical sergeant with compensable percentage for physical disability of 40 percent. She served 21 years, 2 months and 20 days of service for basic pay and 11 years, 3 months and 9 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.

AIR FORCE EVALUATION

ARPC/DPAT recommends denying the application. There is no evidence of a TEB request submission attempt, either in her Person Education Summary or Service Member TEB History. An ARMS review concluded no evidence of a signed Statement of Understanding (SOU), which is signed and agreed upon by the member to serve the additional incurred four-year service commitment when requesting TEB. There is no evidence in myPers of documentation of any TEB related tickets before 5 May 2022. On 5 May 2022, the applicant called to inquire about not having access to transfer benefits and was informed that there was no documentation in her records indicating a TEB was requested. An ARMS review verified first evidence of an IPEB was on 29 September 2015. Also, within her PEB package was an In Line of Duty Determination email stating she was unfit on 26 February 2022 and a Special Retirement Order effective 1 November 2019 of permanent retirement.

Additionally, if the applicant had submitted a TEB application any time before 2018, she would have been deemed eligible as she had at least 10 years of service with no breaks in service when she transitions into the Selected Reserve, in accordance with DODI 1341.13 (31 May 2013), Enclosure 3, prior to Incorporating Change 1, July 12, 2018. The applicant was ineligible to apply for TEB any time after 2018, as she was declared unfit to return to duty per DODI law.

Per DODI 1341.13, Post-9/11 GI Bill, Enclosure 3, Incorporating Change 1, July 12, 2018: (a) Members who have not applied for TEB, who are on limited duty or involved in a MEB, PEB, or Disability Evaluation System process must wait until the process is complete before applying. If found fit for duty, the service member will comply with the standard TEB application procedure.

Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice, as there was not a TEB request submitted prior to initiation of the MEB/PEB process. At the time of her pending PEB, the applicant was ineligible to apply for TEB per DODI law, and when deemed unfit for duty, she became ineligible to transfer benefits to dependent, as she was retired due to disability.

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 16 September 2022 for comment (Exhibit D), and the applicant replied indicating in 2012, she went to the education office to transfer benefits to her son and was told she did not have the four-year retainability and she could transfer benefits when she reenlisted. However, she never reenlisted because she was being medically boarded. When she was granted a medical retirement, during out-processing she was informed that her benefits would be transferred, and the process would be taken care of for her due to her being locked out of the system from being in MEB status for six years. Further, as for her medical condition, LODs were never done when they should have been along with the fact that her retirement was never taken care of properly.

The applicant's complete response is at Exhibit E.

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 not the victim of an error or injustice. The Board concurs with the rationale and recommendation of ARPC/DPAT and finds a preponderance of the evidence does not substantiate the applicant's contentions. We note that a TEB request was not submitted prior to initiation of the applicant's MEB/PEB process. At the time of the applicant's pending PEB, she was ineligible to apply for TEB, and when deemed unfit for duty, she became ineligible to transfer benefits to a dependent, as she was retired due to disability. Therefore, the Board 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 evidence did not demonstrate material error or injustice, 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-2022-02133 in Executive Session on 6 December 2022:

, 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 13 July 2022.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory Opinion, ARPC/DPAT, w/atchs, dated 12 September 2022.
Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 16 September 2022.
Exhibit E: Applicant's Response, dated 19 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.

X

Board Operations Manager, AFBCMR