

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02346

XXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be allowed to transfer his Post-9/11 GI Bill education benefits (TEB) to his eligible dependents.

APPLICANT'S CONTENTIONS

On 8 Aug 12, the applicant was granted an Active-Duty Service Commitment (ADSC) waiver for TEB and approved for voluntary retirement in the Best Interest of the Air Force on 31 Dec 12. As such, he believed that he retained the education benefits when his ADSC waiver was approved. After his retirement, the applicant's dependents used the education benefits; however, in 2022, one of his dependents was denied access to education benefits by the Veterans Affairs office. Furthermore, the VA is requiring he pay back the benefits used by his dependents because he did not fulfill the service obligation. The applicant inquired with AFPC and was counseled that education benefits could only be retained in cases of hardship. He is requesting his record be corrected to show his service obligation was waived in 2012 through no fault or misconduct of his own.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force senior master sergeant (E-8).

On 3 Sep 10, according to *Post 9/11 G.I. Bill Transfer of Educational Benefits Statement of Understanding*, the applicant acknowledged to transfer education benefits to his dependents and incurred a four-year ADSC.

On 30 Jul 12, according to myPers, the applicant requested a waiver for the ADSC associated with his TEB. He was advised to either submit a hardship waiver request or submit a best interest of the Air Force as a basis for waiver of his ADSC. He was further advised to include a statement that he contacted the Veterans Affairs and fully understood the effect a waiver of his ADSC has on his Post-9/11 GI Bill Transferability Option.

On 7 Aug 12, the applicant submitted a retirement application along with a waiver request in the *Best Interest of the Air Force*. The applicant's commander concurred with his requested retirement date, his waiver, and recommended he be allowed to retire as requested.

On 31 Dec 12, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant retired from active service after twenty (20) years and fourteen (14) days of active service. Block 28, *Narrative Reason for Separation*, states "Vol Retirement: Sufficient 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

AFPC/DP3SA recommends denying the application. On 30 Aug 10, the applicant applied for TEB and was approved with a service obligation to 29 Aug 14. In accordance with Directive-Type Memorandum (DTM) 09-003: *Post 9/11 GI Bill*, Attachment 2, [3.h.(5)(b)3.] and Air Force Instruction 36-2306 IC1, *Voluntary Education Program* (A9.18.8.5.3.), only an approved Hardship waiver, as determined by the Secretary of the Air Force, allows retention of transferred benefits. The applicant's myPers records shows he submitted a Best Interest of the Air Force waiver request in conjunction with his voluntary retirement application. 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 submitted the waiver request and acknowledged the effect the waiver would have on his 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 13 Oct 22 for comment (Exhibit D) but has received no response.

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 board found the applicant was granted a waiver for the service commitment associated with TEB and permitted to voluntarily retire. However, because his retirement was not based on hardship, he was ineligible to retain his TEB benefits in accordance with Air Force policy. Therefore, the Board recommends against correcting the applicant's records.

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-2022-02346 in Executive Session on 6 Dec 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 31 Aug 22.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 22 Sep 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 13 Oct 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