

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2022-02843

XXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: YES

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

He was approved for the Post 911 GI Bill TEB on 9 May 2012. In the same year he was notified that he was passed over for promotion. He filed an appeal for a supplemental board, it was approved, and the initial decision was not overturned. Since he already had 20 years of active duty, he was not offered continuation and was notified of his retirement date of 31 December 2013. During his final out-processing in September 2013, he was advised by personnel at the MPF that he would still receive TEB because he was being forced to retire due to being passed over for promotion. He recently inquired about using the TEB for his daughter who is going to college in the fall of 2023 and noticed a warning stating that he did not incur the four-year service obligation end date of 8 May 2016 due to retiring before this date.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a retired Air Force captain (O-3).

On 1 December 1992, according to DD Form 4, *Enlistment/Reenlistment Document Armed Forces of the United States*, the applicant enlisted in the Regular Air Force in the pay grade of E-1.

The applicant was non-selected for promotion to major (O-4) by the Calendar Years 2011C (CY11C) and CY12C Major Central Selection Board but was within two years of qualifying for retirement and was retained on active duty until he became retirement eligible.

On 9 May 2012, the applicant applied for TEB, and the application was approved with a four-year service obligation to 8 May 2016.

On 4 June 2012, AF Form 4406, *Post 9/11 GI Bill Transfer of Educational Benefits Statement of Understanding (SOU)*, the applicant acknowledged that he would incur a service obligation of four years and an Active Duty Service Commitment (ADSC) would be updated in his records.

On 31 December 2013, according to Special Orders No. XXX, the applicant was relieved from active duty and effective 1 January 2014 retired in the grade of captain and credited with 21 years and 1 month 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.

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 granting the application. Defense Manpower Data Center (DMDC) records show the applicant applied for TEB on 9 May 2012. The application was approved with a four-year service obligation to 8 May 2016. Subsequently, the applicant was assessed a mandatory date of separation (31 December 2013) due to being twice passed over for promotion. Prior to July 2018, there was no provision in TEB policy allowing retention of transferred benefits for members twice passed over for promotion.

Based on a 2018 change to Department of Defense Instruction (DoDI) 1341.13, *Post-9/11 GI Bill*, there is evidence of an error or injustice on the part of the Air Force. DoDI 1341.13, Change 1, 3.g.(2)(g), expanded the scope of Force Shaping to include members twice passed over for promotion. Members separated due to Force Shaping retain transferred 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 December 2022 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 AFPC/DP3SA and finds a preponderance of the evidence substantiates the applicant's contentions. Therefore, the Board recommends correcting the applicant's records as indicated below.

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 pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that on 9 May 2012, he elected and was approved to transfer his Post-9/11 GI Bill Educational Benefits to his eligible dependents with an obligation end date of 31 December 2013.

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-2022-02843 in Executive Session on 10 January 2023:

, 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 31 October 2022.
Exhibit B: Documentary evidence, including relevant excerpts from official records.
Exhibit C: Advisory opinion, AFPC/DP3SP, w/atchs, dated 5 December 2022.
Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 13 December 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