



**CUI//SP-MIL/SP-PRVCY**

**UNITED STATES AIR FORCE  
BOARD FOR CORRECTION OF MILITARY RECORDS**

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**RECORD OF PROCEEDINGS**

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2023-00783

*Work-Product*

**COUNSEL:** *Work-Product*

**HEARING REQUESTED:** NO

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**APPLICANT'S REQUEST**

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

**APPLICANT'S CONTENTIONS**

In 2011, the applicant transferred education benefits to his dependent children and accepted the Active Duty Service Commitment (ADSC) assessed with TEB. In mid-2011, the applicant was notified that he was non-selected for promotion to colonel (O-6), and requested to retire. The applicant was conscious of the ADSC associated with the approved TEB and submitted a waiver to retire before the end of the service commitment. Recently, the applicant's son was accepted to college, and he requested a Certificate of Eligibility from The Department of Veteran's Affairs (VA). The VA rejected the applicant's request and cited an unfulfilled ADSC as the reason for the rejection. The applicant contacted the Air Force and was informed the ADSC waiver from 2011 was in the "Best Interest of the Air Force." Furthermore, his education benefits would have been honored if the 2011 waiver was approved for "Hardship." The applicant does not recall stipulations surrounding the approval of his ADSC waiver under "Best Interest of the Air Force" and is requesting the Air Force honor the approved waiver and transfer education benefits to his dependent children.

The applicant's complete submission is at Exhibit A.

**STATEMENT OF FACTS**

The applicant is a retired Air Force lieutenant colonel (O-5).

On 16 Nov 11, according to according to *Post 9/11 G.I. Bill Transfer of Education Benefits Statement of Understanding*, the applicant completed the transfer of education benefits to his dependents and acknowledged the requirement to complete 3 years of additional service.

On 22 Mar 12, according to the Secretary of The Air Force, the ADSC waiver submitted by the applicant was approved for retirement effective 1 Sep 12.

On 31 Aug 12, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, the applicant retired with twenty years, six months, and twelve days of active service.

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

**AFBCMR Docket Number BC-2023-00783  
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Controlled by: SAF/MRB  
CUI Categories: SP-MIL/SP-PRVCY  
Limited Dissemination Control: N/A  
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## **AIR FORCE EVALUATION**

AFPC/DP3SA recommends denying the applicants request to transfer education benefits to his dependents. The applicant contends that he was approved to TEB to his dependents and his ADSC waiver was approved by SAF/MRBP; however, his dependents are being denied education benefits. On 14 Nov 11, the Defense Manpower Data Center (DMDC) shows the applicant applied for TEB and was approved with a service commitment to 13 Nov 14. On 24 Jan 12, the applicant submitted a voluntary request for retirement effective 1 Jan 13. On 27 Jan 12, he was informed that a waiver was required due to the ADSC assessed with his TEB approval. On 2 Feb 12, the applicant changed his requested retirement date under the 7-Day Option exception to policy and, on 3 Feb 12, was again informed of the required waiver. On 4 Feb 12, the applicant submitted a Best Interest of the Air Force waiver. On 22 Mar 12, SAF/MRBP approved the Best Interest of the Air Force waiver, and the effective date of his retirement was changed to reflect 1 Sep 12. In accordance with Air Force Instruction 36-2306, Incorporating Change 1, Voluntary Education Program (A9.18.8.5.3) and Directive-Type Memorandum (DTM) 09-003: Post 9/11 GI Bill, Attachment 2, (3.h.(5)(b)3), only a Hardship as determined by the Secretary of the Air Force allows retention of transferred benefits. Based on documentation provided by the applicant and analysis of the facts, there is no evidence of error or injustice.

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 3 May 23 for comment (Exhibit D), and the applicant replied on 31 May 23. In his response, the applicant through counsel contended that he remained eligible to transfer education benefits to his dependents because his retirement eligibility status and the nature of his approved ADSC waiver. Additionally, there was an error or injustice because the applicant was not provided the option to apply under "reduction in force" when he submitted the ADSC waiver. The evolving nature of regulations and the inclusion of a reduction in force exception, which would have protected the applications TEB eligibility further support that the applicant was penalized for being an early adopter of the TEB program. In addition, counsel argues that the applicant was retirement eligible in 2009 based on the applicant's four years of service in the Reserve Officer Training Corps (ROTC) prior to his entrance to active duty on 18 May 1992, and as such should have required no service commitment with the transfer of benefits.

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 on 22 Mar 12, SAF/MRBP approved an ADSC waiver that allowed the applicant to voluntarily retire prior to the completion of his ADSC; however, it did not waive the requirement to fulfill the service obligation in order to successfully transfer his educational benefits to his dependents. Furthermore, counsel's argument that the applicant had 20 years of qualifying service prior to 2009 is incorrect, as ROTC is a training program, and the service does not qualify for

active service that would have made the applicant eligible for retirement in 2009. 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 Department of the 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.

**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 Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2023-00783 in Executive Session on 3 Oct 23:

<b>Work-Product</b>	Panel Chair
<b>Work-Product</b>	Panel Member
<b>Work-Product</b>	Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 2 Mar 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atchs, dated 10 Apr 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 3 May 23.
- Exhibit E: Applicant's Response, w/atchs, dated 31 May 23.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

2/12/2024

**Work-Product**