



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-01694

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

The applicant logged into MilConnect to transfer education benefits to his dependent and discovered they were ineligible because he did not complete the service obligation prior to his retirement. On 24 Aug 09, his transfer was approved, and he was required to do an additional four years of service. Three-years later, he was notified of his eligibility to retire and believed the notification letter signified everything was good and he could retire whenever he was ready. He applied for retirement and was approved with an effective date of 30 Mar 12. However, he was never briefed of the requirement to stay for five additional months past his approved retirement date to retain the benefit of transferring his education benefits to his dependents. He is adamant he would have never retired without fulfilling the service commitment if he was aware it would result in losing his approved transfer of education benefits.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is an Air Force Reserve senior master sergeant (E-8) awaiting retired pay at age 60.

According to an undated AF Form 4406, *Post-9/11 GI Bill Transfer of Education Benefits Statement of Understanding*, the applicant agreed to a service commitment of three additional years.

Effective on 24 Aug 09, according to the Department of Defense Manpower Data Center (DMDC) notification letter, dated 17 May 23, submitted by the applicant, his request for the TEB to his dependents was approved with an obligation end date of 24 Aug 12.

Effective on 30 Mar 12, according to Work-Product dated 18 Nov 11, the applicant was relieved from his current assignment and placed on the Air Force Reserve Retired List.

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

### APPLICABLE AUTHORITY/GUIDANCE

**AFBCMR Docket Number BC-2023-01694**

Work-Product

Work-Product

In accordance with Directive-Type Memorandum (DTM) 09-003, dated 22 Jun 09 DoD Instruction 1341.3, *Post-9/11 GI Bill Program*, dated 31 May 13, members are eligible to transfer benefits if their service to the Armed Forces was on or after 1 Aug 09. If that member became retirement eligible during the period from 1 August 2009, through 31 July 2012 and agreed to serve the additional period, if any, specified in the following subparagraphs before 1 August 2013 (the date that this subparagraph became no longer in effect), then that member was considered to have an approved transfer provided they fulfilled their service commitment:

- For individuals eligible for retirement on or after 1 August 2011, and before 1 August 2012, 3 years of additional service is required.

### **AIR FORCE EVALUATION**

ARPC/DPAT recommends denying the applicants request to waive the remaining days of his service commitment and allow him to transfer education benefits to his dependents. Based on the documentation provided by the applicant and analysis of the facts, there is no error or injustice on the part of the Air Force. The applicant contends he was unaware of the need to serve additional days to fulfill the service commitment and should have been informed prior to retiring. On 24 Aug 09, the applicant elected to transfer his education benefits to his dependents and incurred a service commitment to 24 Aug 12. However, he applied and was approved for retirement on 30 Mar 12. In accordance with DoDI 1341.13 (31 May 2013), Incorporating Change 1, July 12, 2018, the applicant is no longer eligible to transfer education benefits as he did not fulfill the required three-year service obligation.

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 24 Jul 23 for comment (Exhibit D), and the applicant replied on 4 Aug 23. He understands the simple answer is to just say no and he should have known better, but he had nothing to remind him of his military service obligation end date and when he received his 20-year letter, he thought it was acknowledging he fulfilled his service obligations. There was no one from his administrative office who sat down with him to go over the SOU and let him know he should wait five more months. In this regard, he should have been asked to sign a waiver acknowledging the outcome of his decision.

His entire career in the Air Force Reserve has always been positive and to progress from being a Dirt Boy to a First Sergeant to a Log Planner should mean something. He was in an environment where people would work together to help each other learn and solve problems. He knows other service members that tried to retire, but had someone who reviewed their records, counseled them on their required military service obligation and helped them remain in the service to fulfill their commitment. He just wishes he was given that benefit and requests the Board consider approving his request to allow his son and daughter to use the Post-9/11 GI Bill to further their education.

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 ARPC/DPAT and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board found the applicant did not fulfill the full three years of his military service obligation prior to his retirement and voluntary separation on 30 Mar 12. While the Board notes the applicant's contentions he should have been briefed on the loss of his transfer of education benefits with his elected retirement date, the Board finds the SOU signed by the applicant clearly outlined the three-year military service obligation required for completion of transfer. 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-2023-01694 in Executive Session on 13 Feb 24:

Work-Product

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 May 23.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, ARPC/DPAT, w/atchs, dated 11 Jul 23.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 24 Jul 23.
- Exhibit E: Applicant's Response, dated 4 Aug 23.

*Work-Product*

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.

3/11/2024

*Work-Product*

**AFBCMR Docket Number BC-2023-01694**

*Work-Product*