



Work-Product

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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03363

Work-Product

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 applied for TEB in 2009 when the program opened. He was passed over for promotion to O-5 for the second time in 2007 and selectively continued to serve 20 years with a mandatory retirement date of 1 November 2011. His TEB application was approved, and he received a July 2012 obligation date, which he assumed did not apply to him due to his mandatory retirement date and or because he would have served over 10 years since 11 September 2001 at the time of his retirement. He was never informed his benefits were not transferred. He assumed the benefits would be available when he applied for them in the future. If his retirement date was in August 2011, he would have qualified by meeting the two-year service commitment. Since his mandatory retirement date was three months later, he received a three-year commitment which was outside of his ability to meet.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a retired Air Force major (O-4).

On 26 October 1991, according to the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, he entered active duty.

On 22 March 2007, the applicant signed a "Statement of Acceptance/Declination for Initial Selective Continuation of Majors With Less Than 18 Years Active Federal Military Service," indicating he accepted continuation on active duty until qualified for retirement as an officer (20 years active military service and 10 years active commissioned service).

On 24 July 2009, as noted on a letter from the Defense Manpower Data Center (DMDC), provided by AFPC Education Services (AFPC/DP3SA), the applicant submitted a request to transfer his education benefits, the application was approved with a three-year service obligation to 23 July 2012.

**AFBCMR Docket Number BC-2023-03363**

Work-Product

Controlled by: SAF/MRB

Work-Product

Limited Dissemination Control: N/A

POC: [SAF.MRBC.Workflow@us.af.mil](mailto:SAF.MRBC.Workflow@us.af.mil)

On 31 October 2011, according to DD Form 214, the applicant was relieved from active duty and received an honorable character of service under the provision of AFI 36-3203, *Service Retirements*. The type of separation reflects "Retirement." The narrative reason for separation reflects "Vol Retirement: Maximum Service or Time in Grade." He served 20 years and 5 months total active service and 4 years, 1 month and 24 days total prior inactive service.

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

#### **APPLICABLE AUTHORITY/GUIDANCE**

DoDI 1341.13, *Post-9/11 GI Bill*, Enclosure 3, Paragraph 3, dated 31 May 2013 states: Any service member on or after 1 August 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 July 2018, 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 denying the 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 retired prior to meeting the required service obligation.

DMDC records reflect the applicant applied for TEB on 24 July 2009 and his application was approved with a three-year service commitment to 23 July 2012. In accordance with AFI 36-2306\_AFGM1, *The Education Services Program* [18.a.(4)(e)] and Directive-Type Memorandum (DTM) 09-003: *Post 9/11 GI Bill*, Attachment 2, (3.a.(3)(e)), individuals eligible for retirement on or after 1 August 2011 and before 1 August 2012, must serve three years of additional service from the date of application. The applicant retired effective 1 November 2011. The applicant's DD Form 214, reflects a Narrative Reason for Separation as "Voluntary Retirement: Maximum Service or Time in Grade."

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 8 January 2024 for comment (Exhibit D), and the applicant replied on 3 February 2024. In his response, the applicant contended the advisory opinion is correct to note his DD Form 214 indicates "Voluntary Retirement;"

however, this does not mean his retirement date was “voluntary.” In 2007, after he was passed over for promotion to O-5 for the second time, he was selectively continued to serve until he reached 20 years of service, at which time he would be retired from active duty.

In 2009 when the Post-9/11 GI Bill TEB program was announced, he was advised by his unit leadership he would be allowed to transfer his benefits despite not meeting the retainability requirements. His transfer request was approved and his Active Duty Service Commitment (ADSC) date was updated to 31 July 2012. Therefore, he assumed he was “grandfathered” into the program due to his longevity and mandatory retirement date. He was later advised that was not the case. In 2018, there was a change to Department of Defense Instruction (DoDI) 1341.13, regarding this issue. Furthermore, he was never contacted or informed the benefit was no longer available after retirement. Financial planning for his children’s post-secondary education assumed the benefit would be available when needed.

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 the victim of an error or injustice. While the Board notes the recommendation of AFPC/DP3SA against correcting the record, the Board finds a preponderance of the evidence substantiates the applicant’s contentions. Specifically, the Board notes the application was approved with a service obligation to 23 July 2012; however, the applicant was forced to retire at 20 years of honorable service due to being twice passed over for promotion. At this time and prior to July 2018, there was no provision in the TEB policy allowing retention of transferred benefits for members twice passed over for promotion. Nevertheless, approval of the TEB application and in involuntary separation would lead a reasonable person to believe education benefits were vested with dependents and all requirements met. Additionally, DoDI 1341.13, Change 1, Enclosure 3, 3.g(2)(g), expanded the scope of Force Shaping to include members twice passed over for promotion to retain transferred benefits. Therefore, the Board believes the applicant met the intent of the program and finds sufficient evidence to recommend approving his request. 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 his request to transfer his Post-9/11 GI Bill benefits to his eligible dependents on 24 July 2009, was approved with a service obligation end date of 31 October 2011.

## **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-2023-03363 in Executive Session on 9 July 2024:

Work-Product

Work-Product, Panel Chair  
Work-Product, Panel Member  
Work-Product, Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atch, dated 11 October 2023.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP3SA, w/atch, dated 13 December 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 8 January 2024.
- Exhibit E: Applicant's Response, w/atchs, dated 3 February 2024.

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.

10/10/2024

X Work-Pr...

---

Work-Product  
Board Operations Manager, AFBCMR  
Signed by: Work-Product