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

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2023-03933

Work-Product

COUNSEL: NONE

HEARING REQUESTED: NO

### 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

In 2008, he elected to accept four years of retainability in order for his children to receive his Post-9/11 GI Bill benefits. He was an officer twice passed over for promotion to major. Prior to his retirement in 2011, he contacted the Military Personnel Flight (MPF) at [Work-Product] and inquired about his benefits and the four-year commitment he made in 2008. He was informed that since he was an active duty officer, twice passed over for promotion, his dependents were still eligible for his benefits and his TEB obligation end date would be adjusted, per the DoDI to reflect the same date as his retirement date.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

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

On 11 October 1991, 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.

On 3 August 2009, as noted in the documents provided by AFPC/DP3SA, the applicant applied for TEB, and the application was approved with a three-year service obligation to 2 August 2012.

On 9 September 2009, AF Form 4406, *Post 9/11 GI Bill Transfer of Educational Benefits Statement of Understanding (SOU)*, reflects the applicant acknowledged he would incur a service obligation of four years and an Active Duty Service Commitment (ADSC) would be updated in his records.

On 4 February 2010, according to a Non-Selection for Promotion Memorandum, the applicant was advised he was not selected for promotion by the CY09 Major (LAF/CHAP/LAF-J) Central Selection Board.

On 31 October 2011, according to DD Form 214, *Certificate of Release or Discharge from Active Duty*, 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

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Controlled by: SAF/MRB

CUI Categories: [Work-Product]

Limited Dissemination Control: N/A

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“Retirement.” The narrative reason for separation reflects “Vol Retirement: Maximum Service or Time in Grade.”

On 31 October 2011, according to Special Order Number [Work-Product], dated 10 May 2011, the applicant was relieved from active duty and effective 1 November 2011 retired in the grade of captain and credited with 20 years and 20 days 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/AUTHORITY**

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 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 granting the application. The Defense Manpower Data Center (DMDC) records show the applicant applied for TEB on 3 August 2009. The application was approved with a three-year service obligation to 2 August 2012. Subsequently, the applicant was assessed a mandatory date of separation (31 October 2011) due to being twice passed over for promotion to major. 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 injustice. 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. 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 22 January 2024 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.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 3 August 2009, his application to transfer his Post-9/11 GI Bill Educational Benefits to his eligible dependents 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-2023-03933 in Executive Session on 9 July 2024:

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/atchs, dated 30 November 2023.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DP3SA, dated 17 January 2024.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 22 January 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.

9/26/2024

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Board Operations Manager, AFBCMR

Signed by: Work-Product

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