



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01564

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 eligible dependents.

APPLICANT'S CONTENTIONS

When he transferred his benefits, he incurred a service obligation end-date (OED) of 23 Aug 11; however, he was twice passed over for promotion to lieutenant colonel (O-5) and was involuntarily ordered to retire prior to fulfilling his TEB OED. In communication with the Veterans Administration (VA), he recently discovered his letter of certification to transfer his benefits cannot be approved unless his OED matches or is prior to his retirement date. He believes he earned the right to transfer his benefits to his daughter and it is not his fault the Air Force forced him to retire prior to fulfilling his service commitment. Furthermore, when he out-processed, the Air Force Education Office told him that his remaining active duty service commitment (ADSC) for his TEB would be waived due to his honorable, but involuntary retirement from the Air Force. As such, he is requesting his OED be changed from 23 Aug 11 to 31 May 11 to allow his daughter to use the benefits he earned.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

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

On 15 May 91, according to the applicant's DD Form 214, *Certificate of Release or Discharge from Active Duty*, he entered the Regular Air Force and continued to serve until his discharge on 31 May 11.

On 27 Jun 06, the applicant was issued a letter informing him that he was considered, but not selected for promotion by the CY06A Lieutenant Colonel Central Selection Board. However, he was selected for continuation by the Major Selective Continuation Board and would have the opportunity to remain on active duty until he reached 20 years of active military service.

On 29 Jun 06, the applicant signed a "Statement of Acceptance/Declination of Selective Continuation" and chose to accept continuation on active duty to 20 years of active federal military service.

On 24 Aug 09, as shown on a print-out from the Defense Manpower Data Center (DMDC) provided by AFPC Education Services (AFPC/DP3SA), the applicant submitted a request to transfer his education benefits.

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Limited Dissemination Control: N/A
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On 1 Sep 09, the applicant signed the “Post-9/11 GI Bill Transfer of Educational Benefits Statement of Understanding.” At that time, the applicant would have been retirement eligible before 1 Aug 11 and would have therefore required two years of additional service to complete the transfer. Based on his 24 Aug 09 TEB request, the applicant’s transfer was approved with an OED of 23 Aug 11.

On 31 May 11, according to Special Order Number [REDACTED] *Work-Product*, the applicant was relieved from active duty and retired in the grade of major (O-4) on 1 Jun 11. He was credited with 20 years, 00 months, and 16 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.

AIR FORCE EVALUATION

AFPC/DP3SA, recommends granting the application. Based on the documentation provided by the applicant, analysis of the facts and a 2018 change to Department of Defense Instruction (DoDI) 1341.13, *Post-9/11 GI Bill*, there is evidence of an error and injustice. According to the DMDC, the applicant applied for TEB on 24 Aug 09 and signed the TEB Statement of Understanding on 1 Sep 09 agreeing to complete the required two-year service obligation. The application was approved with a service obligation to 23 Aug 11; however, he retired on 1 Jun 11 with a mandatory date of separation of 31 May 11. At this time and prior to July of 2018, there was no provision in TEB policy allowing retention of transferred benefits for members twice passed over for promotion. Nevertheless, approval of the TEB application and an involuntary separation would lead a reasonable person to believe education benefits were vested with dependents and all requirements met. The TEB application was approved in error likely due to the fact, at the time of application approval, the members mandatory date of separation was not yet assessed to the personnel record; however, the approval was at no fault of the member. 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. Therefore, DP3SP recommends correcting the applicant’s record to show his TEB be adjusted to reflect an OED of 31 May 11.

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 7 May 24 for comment (Exhibit D), and the applicant replied on 8 May 24. In his response, the applicant concurred with the advisory as written and requested the Board proceed with the information provided. The applicant’s complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. Although the application was not timely filed within the three-year limitation period established by 10 U.S.C. § 1552 (b), the untimeliness is waived in the interest of justice.
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. The Board notes when the applicant’s TEB request was originally approved, he was two months shy of completing the required service obligation. However, he was forced to retire at 20 years of honorable service due

to being twice passed over for promotion. Given the applicant's mandatory date of separation was not yet assessed in his personnel record when he applied, his request was approved, and he continued to serve to the maximum amount of time allowed by policy. In addition, 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.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that his request to transfer his Post-9/11 GI Bill benefits to his eligible dependents on 24 August 2009 was approved with a service obligation end date of 31 May 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-2024-01564 in Executive Session on 14 May 24:

Work-Product [Redacted] Panel Chair
Work-Product [Redacted] Panel Member
Work-Product [Redacted] Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 2 May 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DP3SA, w/atch, dated 7 May 24.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 7 May 24.
- Exhibit E: Applicant's response, dated 8 May 24.

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.

5/14/2024

Work-Product [Redacted]
Board Operations Manager, AFBCMR
Work-Product [Redacted]