

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230002394

APPLICANT REQUESTS: in effect, transfer of his Post-9/11 GI Bill education benefits to his stepdaughter under the Transfer of Education Benefits (TEB) program.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Education of Benefits Allocation
- Retirement Order 0000167067.01 dated 12 February 2020

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, it was not understood at the time of his retirement that at least one month of benefits had to be transferred to each dependent. It was explained at a final formation that they only needed to be in Defense Enrollment Eligibility Reporting System (DEERS).

3. The applicant provides:

a. A screenshot of his Post-9/11 GI Bill (Chapter 33) allocation of his dependents which shows:

- his spouse Bxx Sxx Hxx as ineligible with 0 months allocated
- his stepdaughter Kxx Mxx Txx as ineligible with 0 months allocated
- his child Txx Wxx Hxx who is eligible with a beginning date of 17 June 2015, with 12 months allocated and 12 months used
- his child Axx Pxx Hxx who is eligible with a beginning date of 13 February 2016, with 12 months allocated and 0 months used
- his child Lxx Jxx Hxx who is eligible with a beginning date of 13 February 2016, with 12 months allocated and 0 months used

b. A copy of his retirement order dated 12 February 2020, that show his was honorably placed on the Retired Reserve list effective 1 January 2020, after serving 32 years, 3 months and 1 day.

4. A review of the applicant's service record shows:

a. The applicant was born on XX ____ 1970. He enlisted in the Army National Guard on 30 September 1987.

b. He served through multiple reenlistments or extension, in a variety of stateside or overseas assignments, including active-duty mobilization from 15 March 2003 to 22 August 2004, attaining the rank of Master Sergeant (MSG)/E-8.

c. On 7 April 2019, the applicant initialed and signed the Memorandum For Record regarding his Education and Incentives Statement of Understanding of Benefits (which is attached for the Board's review).

d. He was transferred to the Retired Reserve on 31 December 2019. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 32 years, 3 months, and 1 day of total service for retired pay.

5. An advisory opinion was received from the National Guard Bureau (NGB) on 1 December 2023, in the processing of this case. An advisory official restated the applicant's request to have his records corrected to reflect that he applied to transfer at least one month of his post-9/11 GI Bill benefits to his stepdaughter, before he separated from the ARNG. The advisory official recommends approval.

a. Title 38 U.S.C., Section 3319 requires service members to transfer at least one month of benefits to their dependents prior to separating from service. Prior to his retirement from the ARNG, the applicant allocated 36 months of benefits to three of his dependents, but he did not allocate any benefits to his stepdaughter.

b. Because the applicant was not properly counseled on the requirement to transfer at least one month of benefits to his dependents prior to separating from service, the NGB recommends the Board grants relief.

c. This opinion was coordinated with the ARNG Education Branch.

6. On 13 September 2019, a letter was sent to the applicant notifying him of the advisory opinion and for the applicant to respond to the opinion within 30 days of the letter. No response was received.

7. Public Law 110-252 establishes legal limitations on the transferability of unused Post 9/11 GI Bill benefits. Further, § 3020 Public Law 110-252, limits eligibility to transfer unused benefits to those members of the Armed Forces who are serving on active duty or as a member of the Selected Reserve on or after 1 August 2009, have at least six years in Active Duty or Selected Reserve status and no current negative action flag, commit to the service obligation, and transfer benefits to the dependents through the Transfer of Education Benefits (TEB) website, <http://milconnect.dmdc.mil>. All benefits must be transferred before the Service Member separates or retires.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to deny relief based on the applicant retired in 2020 well past all phase in and had previously given his two dependents 36 months. Finding it difficult that he didn't know he needed to give one month to anyone he wanted to be eligible. However, upon review of the applicant's petition, available military records, and National Guard Bureau- Special Actions Branch advisory opinion, the Board majority concurred with the advising official recommendation for approval finding the applicant was not properly counseled on the requirements to transfer at least one month of benefits to his dependents prior to separating from the service.

2. The Board determined based on the advising opine recommendation for approval, there is sufficient evidence to support transfer of his Post-9/11 GI Bill education benefits to his stepdaughter under the Transfer of Education Benefits (TEB) program. As such, the Board granted relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■		GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show the applicant is eligible to transfer his Post-9/11 GI Bill education benefits to his stepdaughter under the Transfer of Education Benefits (TEB) program.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Public Law 110-252 establishes legal limitations on the transferability of unused Post-9/11 GI Bill benefits. Further, § 3020 Public Law 110-252, limits eligibility to transfer unused benefits to those members of the armed forces who are serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.
3. On 22 June 2009, DOD established the criteria for eligibility and transfer of unused educational benefits to eligible family members. An eligible individual is any member of the armed forces on or after 1 August 2009 who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill:
 - a. Has at least 6 years of service in the armed forces on the date of election and agrees to serve 4 additional years in the armed forces from the date of election; or

b. Has at least 10 years of service in the armed forces (active duty and/or Selected Reserve) on the date of election, is precluded by either standard policy (service or DOD) or statute from committing to 4 additional years, and agrees to serve for the maximum amount of time allowed by such policy or statute; or

c. Is or becomes retirement eligible during the period from 1 August 2009 through 1 August 2013. A service member is considered to be retirement eligible if he or she has completed 20 years of active duty or 20 qualifying years of reserve service.

4. The policy further states the Secretaries of the Military Departments will provide active duty participants and members of the reserve components with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly and maintain records for individuals who receive supplemental educational assistance under Public Law 110-252, section 3316.

//NOTHING FOLLOWS//