

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230002919

APPLICANT REQUESTS:

- in effect, revocation of Joint Force Headquarters [REDACTED] National Guard Orders 078-531, dated 19 March 2019
- due to the revocation, eligibility to Transfer Education Benefits (TEB)

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

- DD Form 149 (Application for Correction of Military Record)
- Officer Record Brief
- Joint Force Headquarters [REDACTED] National Guard Orders (ARNG) 078-531, 19 March 2019
- U.S. Army Human Resources Command (HRC) Memorandum, subject: Exception to Policy to Transfer from Retired Reserve to the Ready Reserve and Retention Beyond Mandatory Removal Date (MRD) for Applicant, 25 February 2021

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:

a. He was moved into the Retired Reserve by the [REDACTED] ARNG State Headquarters without his knowledge or consent on 28 February 2019 due to reaching his MRD. His intent had been to request an MRD extension. He had already extended his MRD twice before, with the assistance of the group S1. In 2019, he was unaware of the exact deadline and was given no warning or counseling that it was approaching. His family was on Tricare Reserve Select for healthcare coverage and they suddenly found themselves without coverage because he was unaware of the move to the Retired

Reserve. He found out when he received a call from his unit telling him not to come to the March drill, as he was no longer in the unit.

b. His exception to policy allowed him to come out of the Retired Reserve on 1 March 2021 and be placed in an Army Reserve troop program unit (TPU). However, while he was in the Retired Reserve for 2 years, he lost 2 years of retirement points. In addition, in December of 2018, he applied for TEB to his 16-year old son. This request was reviewed in April of 2019, at which time the reviewer noted that he was no longer active; therefore, denied the request for TEB. He is still trying to accomplish TEB but has been unsuccessful thus far. He no longer has enough time left to secure TEB as the requirement is to commit to 4 additional years of service. Furthermore, he has submitted a request to HRC for Exception to Policy to continue past the age of 68, as he is still in good health and deployable. If his request for an MRD extension is approved, he will request a deployment from his unit this year. He is still employed full time as a Trauma Surgeon and Surgical Critical Care Intensivist.

3. The applicant provides:

a. Officer Record Brief, dated 25 April 2017, reflects the following:

- Basic Date of Appointment – 21 December 1987
- Source of Original Appointment – Direct Appointment
- Date of Projected/Mandatory Retirement – 28 February 2018
- Current Duty Title – Flight Surgeon

b. JFHQ-ARNG orders 078-531, dated 19 March 2019, reflects the applicant was honorably separated from the ARNG, effective 28 February 2019, and transferred to The Retired Reserve.

c. HRC Memorandum, dated 25 February 2021, reflects the applicant's request for transfer to the Ready Reserve was approved as an exception to policy. His request to extend his MRD until 28 February 2023 was approved.

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

a. He took the Oath of Office on 21 December 1987 as a second lieutenant (2LT).

b. National Guard Bureau (NGB) Memorandum, dated 22 April 2016, Subject: Request for Retention beyond MRD, reflects the applicant's request to retain him beyond his MRD of 29 February 2016 until 28 February 2018 (age 67), on the reserve active-status list, under Title 10, U.S. code, Section 14703 and NGR 635-100 was approved.

c. NGB Memorandum, dated 20 February 2018, Subject: Request for Retention beyond MRD, reflects the National Guard Bureau Policy Division approved the applicant's request to retain him in an active status beyond his MRD of 28 February 2018 until 28 February 2019 (age 63) under Title 10, U.S. code, Section 14703 and NGR 635-100. The applicant was previously retained until 28 February 2018 and was further retained, on the reserve active status list, due to his critical skills as a physician and his appointment as an AMEDD officer.

d. NGB Special Orders Number 95, dated 4 April 2019, reflects the applicant was transferred to the U.S. Army Reserve/Retiree, with an effective date of 28 February 2019.

e. HRC Orders C-03-102782, dated 15 March 2021, reflects the applicant was voluntarily released from U.S. Army Reserve Control and assigned to 7457 Medical Operations Readiness, Richmond, Virginia, with an effective date of 13 October 2020.

f. Department of the Army Orders 0005037390.00, dated 14 June 2023, reflects the applicant was reassigned to [REDACTED] with an effective date of 31 May 2023 and an end date of 13 June 2023, where he will serve as a Public Health Officer.

g. Department of the Army Orders 0003093127.01, dated 2 February 2024, reflects the applicant's reassignment order 0003093127.00 was amended. The applicant was reassigned to [REDACTED] with an effective date of 11 August 2022 and an end date of 29 February 2024, where he will serve as a Public Health Officer.

h. Department of the Army Orders 0005013760.00, dated 12 June 2023, reflects a permanent change of assignment to the U.S. Army Reserve Retired Reserve, with an effective date of 15 July 2023, for the reason of retirement-mandatory.

i. Department of the Army Orders 0005013760.01, dated 12 June 2023, reflects Permanent Change of Station order 0005013760 was revoked.

5. In the processing of this case, a National Guard Bureau advisory opinion was received on 19 April 2024. The Chief, Special Actions Branch recommends disapproval of the applicant's request to have his records corrected to reflect that he completed the 4-year service requirement to transfer his Post-9/11 GI Bill education benefits. Further stating:

a. Title 38, United States Code, Section 3319, paragraph (b) requires service members to commit to a four-year service obligation from the date of their transfer request. Though the applicant was eligible to transfer his post-9/11 GI Bill benefits in 2009, he did not submit his transfer request until December 7, 2018. The applicant's

transfer request was denied because he was unable to meet the statutory required four-year service obligation due to his Mandatory Retirement Date (MRD) of February 28, 2019.

b. On February 25, 2021, while in the Retired Reserve, the applicant's MRD was extended to March 28, 2023, and on March 13, 2021, he joined the United States Army Reserve (USAR). While in the USAR, the applicant submitted a second transfer request, but it was also denied because he was still unable to meet the required four-year service obligation due to his MRD of February 28, 2023.

c. Because the applicant was unable to meet the statutory required four-year service obligation at the time of either transfer request, this office cannot recommend relief.

6. In response to the advisory opinion provided by the National Guard Bureau, the applicant states the following:

a. As he has noted in previous correspondence regarding his claim, he was transferred into the Retired Reserve by ■■■ ARNG without his knowledge, if he had been notified prior to, he would have requested MRD extension, and could have, in all probability, met the 4 year requirement, although it might have required him to request another extension, which it seems he most likely would have been granted since he was given one in March 2021. Also, the extension he received in March 2021 ran until 1 March 2024, at which time he was transferred back to the Retired Reserve, he thereby completed 3 years of additional service, it would have been 5 years were it not for the actions of ■■■ ARNG.

b. He should have been given notice by ■■■ ARNG that his MRD was approaching and appropriately counseled and questions answered. To his knowledge it is mandatory for Service Members (SM) to receive a Pre-Retirement Briefing. The below highlighted text is from an email that he received on 2/7/2024:

It is mandatory for Soldiers with 18-20 good years of service attend a Pre-Retirement Planning Seminar! The 99th RD Retirement Service Office (RSO) provides lots of great information that can assist Soldiers and their families, make timely and informed decisions regarding their retirement entitlements and benefits. Our events span over a two-day weekend face-to-face ONLY. On Saturdays, Soldiers and their spouses receive education from community partnered agencies such as Veterans Affairs (VA), My Army Benefits (MAB), TRICARE, Human Resources Command (HRC), P3 and DFAS. Gray Area Personnel also receive a "How-To" complete a retirement pay application and one-on-one assistance from a certified RSO professional. Sundays, Soldiers, and their spouses also receive information from the Retirement Service Office on the retirement timeline, both TPU

and AGR, how to calculate Early Age Drop, one-on-one questions and answer session, along with any additional assistance they may need from the RSO team.

c. In fact, his family is covered by Tricare and changes did have to be made, which caused his family problems at the doctor's office in 2019. Instead, he was informed by phone call on Friday, 1 March 2019, the day AFTER his MRD, that he was in the Retired Reserve and that he should not come to March Drill as he would not get drill pay (of note: he had already purchased his plane ticket). That was not proper on the part of ■■■ ARNG. Furthermore, the order transferring him to the Retired Reserve was generated 19 days after his 28 February 2019 MRD. He was not aware of this discrepancy until much later.

d. If ■■■ ARNG State HQ had wanted to retire him, they could have gone about it in a more professional manner, such as issuing his transfer order at least 30 days prior to his MRD, and informing him that MRD extension would not be approved. That approach would have given him the option to look for a slot in another state's Guard or in the USAR, as he subsequently ended up doing. They could also have given him a 90 day extension.

e. He spoke to other members of the ■■■ ARNG at the time of his transfer and was told that there was a feeling at State leadership level that ■■■ Guard had too many O-6's, particularly in the Health Care MOS's, and there was a desire to retire those eligible for retirement to allow for promotion of Junior Officers.

f. He fully understands that the ARNG Education Branch must adhere to the law, but he believes there are extenuating circumstances here. If there is need to meet the requirements of the law, then a solution would be to rescind the 19 March 2019 transfer order, this could and should have been done in March 2019 when he first contacted the S-1 HQ, 20th SFG(A), on 1 March 2019, to protest his transfer. The order should be rescinded and his DD Form 214 should reflect no break in service from 28 February 2019 to 28 February 2021.

g. One additional note, he was scheduled for deployment in 2025, he currently has a request in for another MRD extension, as he earnestly wants to be on the deployment. Although now that he has been transferred back to the Retired Reserve, it will be difficult to get it approved (even though he submitted it well before his MRD), but he does intend to try his utmost and he expects to be successful. He is a very experienced and fully deployable Trauma Surgeon/Flight Surgeon, and he wishes to continue to serve. These are benefits for his family, not for him, that he has earned for them. His wife and son endured his absence during three deployments, they have earned this benefit as well, as much as he have.

h. There is an unamended narrative that was in the DA 1559 that he sent to HQDA OTIG on 16 March 2024. He believes that this narrative adds further context to his complaint. His son is in 11th grade now and well into his college search; he needs to know if he should be looking at Yellow Ribbon Schools. This whole issue is causing his family significant stress.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the applicant's military records, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. The Board determined the applicant has not demonstrated by a preponderance of the evidence that relief is warranted. The applicant served as a member of the Army National Guard and was honorably transferred to the retired reserve on 28 February 2019 based on his mandatory retirement date. The Board found no error or injustice in his transfer to the retired reserve and therefore no basis to warrant relief.

2. Additionally, the Board reviewed and concurred with the National Guard Bureau's advising official finding the applicant was eligible to transfer his post-9/11 GI Bill benefits in 2009; however, he did not transfer his benefits until 2018. His transfer request was denied because he was unable to meet the statutory required 4-year service obligation due to his mandatory retirement date of 28 February 2019. After being transferred to the ready reserve, his mandatory retirement date was extended until 28 March 2023 and on 13 March 2021, he joined the U.S. Army Reserve. He again submitted a request to transfer his benefit; however, it was denied based on still not being eligible to complete the mandatory 4-year service obligation. The Board found no error or injustice.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

10/28/2024

X

CHAIRPERSON

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, section 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.

a. 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:

- has at least 6 years of service on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election; or,
- has at least 10 years of service (active duty and/or Selected Reserve), 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,
- is or becomes retirement eligible during the period from 1 August 2009 through 1 August 2013; a service member is considered retirement eligible if he or she has completed 20 years of active duty or 20 qualifying years of Reserve service

b. The policy further states the Secretaries of the Military Departments will provide active duty participants and members of the Reserve Components pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill; the counseling will be documented and maintained in records for individuals who receive supplemental educational assistance under Public Law 110-252, section 3316.

c. During the initial implementation of this program, many Soldiers in all grades were confused as to their eligibility and/or the application process. This confusion was exacerbated by the heavy use of the DOD website and the lack of proper log-in credentials for those who may have signed out on transition leave during the 60 to 90 days of the program implementation. In addition, officials at some education centers

may have also been confused with regard to the implementation instructions and may not have conducted proper counseling.

//NOTHING FOLLOWS//