

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 May 2024

DOCKET NUMBER: AR20230002960

APPLICANT REQUESTS: transfer of his Post 9/11 GI Bill educational benefits to his son, S.R.R under the Transfer of Education Benefits (TEB).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states he is unable to transfer any of his educational benefits to his son, S.R.R., who was born after his retirement and is a lawful and eligible dependent under MilConnect, as well as enrolled in Defense Enrollment Eligibility Report System (DEERS). He completed his obligation to the Army that allowed him to transfer his educational benefits to his children. Obviously, he would like to be able to share/split those benefits with a child that was born after his service had been completed. He would hope that being he has completed his contractual obligation regarding the transfer of Educational Benefits, this would hold true to a child born after his retirement. The amount of dollars that the Government will spend on his children will not increase by the addition of this child, but rather split into one more piece. There should be no reason he should not be afforded the option to share the benefits that he earned with his son. Please consider this heavily and heartily.

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

a. The applicant enlisted in the Army National Guard (ARNG) on 27 February 2006.

b. He served through multiple extensions or reenlistments, in a variety of assignments, including active duty mobilization (Operation Iraqi Freedom), 25 November 2007 to 29 April 2009; Operation Enduring Freedom), 27 February 2011 to 11 September 2012, and (Operation Inherent Resolve), 21 May 2017 to 19 May 2020).

c. The applicant was discharged from the ARNG on 19 May 2020 and transferred to the Retired Reserve.

d. His NGB Form 22 (National Guard Report of Separation and Record of Service) reflects he was honorably discharged on 19 May 2020 under the provisions of NGR 600-200 (Enlisted Personnel Management), paragraph 6-35I(12) or 6-35I(11). He served 14 years, 2 months, and 23 days of ARNG service this period.

3. On 16 February 2024, the National Guard Bureau provided an advisory opinion and recommended disapproval of the applicant's request. The advisory states:

a. The applicant requested his records be corrected to reflect he transferred his Post-9/11 GI Bill benefits to a child that was born after his retirement. Title 38, United States Code, Section 3319 paragraph (f) does not allow service members to transfer Post-9/11 GI Bill benefits to a new dependent after retirement or separation from service. The applicant submitted his transfer of education benefit (TEB) request on December 3, 2018 and met his Obligation End Date early due to his medical retirement on May 19, 2020. Prior to his retirement, the applicant allocated all 36 months of his benefits to his eligible dependents.

b. The child the applicant has requested to transfer benefits to was born on March 12, 2021, nearly one year after he separated from service. Because the requirement to transfer benefits to a new dependent cannot be done after the service member has separated from service, we do not recommend the board grant relief.

4. In response to the National Guard Bureau advisory opinion, the applicant requests that his son be added based on the simple fact that his separation/retirement from the Army was not by choice and that he, the applicant, had recently extended his enlistment prior to his involuntary separation/retirement. Had he been afforded the opportunity to fulfill his enlistment, his son would have been born during his tenure in the Army. He implores you, please grant his request to have his son added to his GI Bill Benefit. It was no fault of his own that his son was not born during his service.

5. 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:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's

contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant served in the ARNG from 27 February 2006 to 19 May 2020, completing 14 years and 2 months of ARNG service. The applicant submitted his transfer of education benefit (TEB) request on 3 December 2018 and met his Obligation End Date early due to his medical retirement on 19 May 2020. Prior to his retirement, he allocated all 36 months of his benefits to his eligible dependents. He requests to transfer his Post-9/11 GI Bill benefits to a child that was born after his retirement. The statute (38 USC, section 3319(f)) does not allow service members to transfer Post-9/11 GI Bill benefits to a new dependent after retirement or separation from service. The Board reviewed and agreed with the NGB advisory official's finding that the requirement to transfer benefits to a new dependent cannot be done after the service member has separated from service. Thus, the Board determined relief is not warranted.

OARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. 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.

2. 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

3. Title 38, U.S. Code § 3319 - Authority to transfer unused education benefits to family members,

a. Sub-paragraph (c) Eligible Dependents.— (1) Transfer.— An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement to an eligible dependent or a combination of eligible dependents and (2) Definition of eligible dependent.— For purposes of this subsection, the term "eligible dependent" has the meaning given the term "dependent" under subparagraphs (A), (I), and (D) of section 1072(2) of title 10.

b. Sub-paragraph (f) Time for Transfer; Revocation and Modification.— (1) Time for transfer.— Subject to the time limitation for use of entitlement under section 3321, and except as provided in subsection (k) or (l), an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed. (2) Modification or revocation.—(A) In general.— An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred, and (B) Notice.— The modification or revocation of the

transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

//NOTHING FOLLOWS//