

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230003288

APPLICANT REQUESTS: an exception to policy in order to transfer his Post 9/11 educational benefits to his son.)

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

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, he was not advised at the time of retirement that his Post 9/11 G.I. Bill would no longer be transferrable. He would like to transfer his remaining benefits to his son that will be graduating high school in June of 2023.
3. The applicant did not provide documentary evidence in support of his application.
4. A review of the applicant's service record shows:
  - a. On 23 January 2009, he enlisted in the Army Reserve.
  - b. DD Form 368 (Request for Conditional Release), dated 14 April 2013, reflects the applicant tendered his resignation from the Army Reserve further requested that it be accepted contingent upon actual appointment or enlistment in the Indiana Army National Guard.
  - c. On 11 June 2013, the applicant enlisted in the Indiana Army National Guard for a period of eight (8) years.
  - d. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 20 June 2019, reflects the Board found the applicant physically unfit and recommended

a rating of 70 percent and that his disposition be permanent disability retirement. The applicant concurred and waived a formal hearing of his case.

e. U.S. Army Physical Disability Agency order D 198-12, dated 17 July 2019, reflects the applicant was released from assignment and duty because of physical disability incurred and placed on the retired list on 21 August 2019, with a percentage of disability of 70 percent. Further stating, "Disability resulted from a combat related injury as defined in 26 USC 104: No"

4. National Guard Bureau advisory opinion, dated 7 November 2023, recommends approval and further states:

a. Title 38 USC, Section 3319 requires service members to be actively serving in the armed services to transfer (TEB) Post-9/11 GI Bill benefits to new dependents. In addition, Title 10 USC, Section 1072 requires children receiving transferred benefits be under the age of 23.

b. When the applicant separated from military service, he had only transferred benefits to two of his five eligible dependents (The applicant's eldest child was not eligible to receive benefits at the time of his separation from military service).

c. From August 1, 2009 through August 1 2013, the ARNG, Department of Defense, and Department of Veterans Affairs initiated a massive public awareness campaign plan on the post-9/11 GI Bill and the transfer of education benefits program through military, public, and social media venues. Although significant measures were taken during this period to disseminate information, many service members left the service without being fully aware of the requirement to transfer their benefits prior to leaving military service.

d. Though the applicant completed a TEB request on February 11, 2014, it is likely he was not informed of the requirement to transfer his benefits to each eligible dependent prior to separation due to the newness of the TEB program. Therefore, we recommend that the board grant relief and correct the applicant's record to show that he transferred one month of benefits to each of his eligible dependents.

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

5. The applicant was notified of the advisory opinion provided by the National Guard Bureau. He was afforded the opportunity to submit comments on the advisory opinion; however, as of the date of this writing, none have been received.

BOARD DISCUSSION:

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. Upon review of the applicant's petition, available military record and National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding the applicant completed a TEB request on February 11, 2014. The opine noted, it is likely he was not informed of the requirement to transfer his benefits to each eligible dependent prior to separation due to the newness of the TEB program. The Board determined, based on the advising opine, there is sufficient evidence to support correcting the applicant's record to show that he transferred one month of benefits to each of his eligible dependents. Therefore, 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 show that the applicant transferred one month of benefits to each of his eligible dependents.



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//