

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230003482

APPLICANT REQUESTS: in effect, correct his military service records to show the Army approved him for the Transfer of Education Benefits (TEB) to his family member, under provisions of the Post-9/11 GI Bill.

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

Online 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 (Armed Forces), United States Code (USC), section 1552 (b) (Correction of Military Records: Claims Incident Thereto). 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 would like to transfer his education benefits to his family member, but, when he separated from the Oklahoma Army National Guard (OKARNG), they failed to tell him the transfer had to be completed prior to his expiration term of service (ETS); had they told him of this requirement, he would have taken action in time. He has limited income, and, because of this, he has been counting on his GI Bill education benefits to help pay for his family member's college.
3. A review of the applicant's service record reveals the following:
 - a. On 29 June 2001, the applicant enlisted into the OKARNG for 8 years; upon completion of initial entry training and the award of military occupational specialty 11B (Infantryman), the Army released the applicant from active duty (REFRAD) and returned him for duty to the OKARNG.
 - b. On 15 October 2002, the applicant entered active duty, per Title 10, USC, section 12302 (Ready Reserve) orders. On 17 January 2003, the applicant deployed to the

Sinai in support of Operation Enduring Freedom; on 27 July 2003, he redeployed and, effect 22 August 2003, the Army REFRAD him and returned him to the OKARNG.

c. On 28 June 2007, the OKARNG honorably discharged the applicant based on his reaching his ETS; the OKARNG then transferred him to the U.S. Army Reserve (USAR) to complete the remainder of his military service obligation.

d. On 28 August 2008, after obtaining a release from the USAR, the applicant reenlisted into the OKARNG for 6 years. On 29 March 2011, he entered active duty based on Title 10, USC, section 12302 orders; on 22 June 2011, he deployed to Afghanistan. On 12 February 2012, he redeployed, and, on 20 March 2012, the Army REFRAD the applicant and returned him to the OKARNG.

e. On 13 May 2015, the applicant requested a transfer to the Inactive National Guard (ING). On 27 August 2015, the applicant reached his ETS.

(1) On an OKARNG Form 17-1-e (Separation/Discharge/ING Request), initiated 1 September 2015, the applicant's higher headquarters wrote, "[applicant's] transfer request to the ING was disapproved at the June G-1 DRB (Discharge Review Board) with the recommendation that he ETS. [Applicant] is receiving 90 percent VA (Department of Veterans Affairs) disability and does not receive enough IDT (inactive duty for training) pay to offset the travel distance to drill or the time away from work and family. [Applicant] was counseled on the additional benefits that he would be losing by not extending and has still chosen not to reenlist."

(2) On 22 September 2015, the applicant's brigade headquarters recommended approval of the applicant's request to ETS. On 24 September 2015, the separation authority concurred with the applicant's chain of command and directed the applicant be allowed to ETS.

f. OKARNG Orders, dated 7 October 2015, honorably discharged the applicant, effective 27 August 2015 due to the applicant reaching his ETS.

4. On 19 September 2023, the National Guard Bureau (NGB) provided an advisory opinion and recommended approval of the applicant's request.

a. "Title 38 (Veterans Benefits), USC, Section 3319 (Authority to Transfer Unused Education Benefits to Family Members) requires service members to transfer their post-9/11 GI Bill benefits prior to separating from service. Though [applicant] was eligible to transfer his post-9/11 GI Bill benefits at the time the program was implemented on August 1, 2009, he did not submit a request to transfer while he was actively serving."

b. "Since it is likely that [applicant] did not receive adequate counseling to transfer his post-9/11 GI Bill benefits prior to separating from service, this office recommends the board grant relief."

c. "It is important to note that [applicant's] Post-9/11 GI Bill benefits will expire on March 19, 2027 (15 years from his last date of qualifying service). While benefits transferred to a child will continue until the child's 26th birthday, benefits transferred to a spouse will expire the same day as the Service Member's benefits."

5. On 21 September 2023, the Army Review Boards Agency (ARBA) provided the applicant a copy of the advisory opinion for review and the opportunity to submit a statement or additional evidence on his own behalf. On 4 October 2023, the applicant submitted the following response:

a. "I am very happy and thankful that the NGB recommends that I be granted to transfer my GI Bill benefits to my [family member]. I desperately hope that the Army Review Board will follow with the same decision."

b. "I would like to explain my situation and what has brought me to this time. When I ETS'd in 2015 from the OKARNG, I was not in a good mental state. I had returned from a tough combat deployment from Afghanistan in 2012 and was suffering greatly with PTSD and other physical issues. I struggled to stay in the military but wanted to do my best to stick it out. When I finally decided I needed to get out, transferring my GI Bill benefits to my [family member] was the last thing on my mind. On top of that, I received no exit counseling informing me of things I should do or consider. I regret not knowing this information about the GI Bill benefits, and the process of transferring it."

c. "Please keep in mind that when I ETS'd in 2015 my [family member] was only 10 years old. This information was just not something I was thinking about nor was told to do. There was no checklist to make sure I didn't miss anything. I thought that since I hadn't used all of my GI Bill that I could transfer it at any time. In these tough financial times, college is expensive, and I need all the help I can get to support my [family member] in college and help [my family member] accomplish [his/her] goals." The applicant then gave his family member's name and said his family member was his oldest child, would be graduating soon, and, once in college, planned on majoring in engineering.

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 contentions, the military record, regulatory guidance and applicable Public Law. The Board agreed that the applicant was eligible to transfer his

Post-9/11 GI Bill benefits but did not submit a request while actively serving. The Board further agreed through no fault of the applicant, it was more likely than not that prior to separating from service, he did not receive adequate counseling regarding the transfer of his Post-9/11 GI Bill benefits. The Board noted OKARNG Orders, dated 7 October 2015, honorably discharged the applicant, effective 27 August 2015 due to the applicant reaching his ETS. After due consideration of the case, the Board agreed the evidence presented sufficient to warrant a recommendation for 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 by showing the applicant filed in timely manner, his application to transfer his unused education benefits to his daughter on 7 June 2015 and provided all other program eligibility criteria were met, in accordance with the Transfer of Education Benefits provisions of the Post-9/11 GI Bill.





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, USC, 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 established the legal requirements for the transferability of unused Post 9/11 GI Bill benefits; however, the transfer is limited to those members who were 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. The policy states eligible individuals include any member of the Armed Forces that was serving on or after 1 August 2009, and who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, was eligible for the Post-9/11 GI Bill. Additionally, the individual had to:

a. Have completed at least 6 years of service in the Armed Forces on the date of election and agreed to serve an additional 4 years in the Armed Forces from the date of election; or

b. Had at least 10 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election, but was precluded by either standard policy (service or DOD) or statute from committing to the 4 additional years, and had agreed to serve for the maximum amount of time allowed by such policy or statute

4. From 1 August 2009 through 1 August 2013, temporary rules applied with regard to the additional service obligation (ADSO); based on years of service, on 1 August 2009, the Soldier incurred following ADSO:

- 20 or more years of service, on 1 August 2009 – no ADSO
- Approved retirement with a date from 1 September 2009 to 1 June 2010 – no ADSO
- Attained 20 years of service between 2 August 2009 and 1 August 2010 – 1 year ADSO, starting from the TEB request date
- Attained 20 years of service between 2 August 2010 and 1 August 2011 – 2 years ADSO, starting from the TEB request date
- Attained 20 years of service between 2 August 2011 and 1 August 2012 – 3 year ADSO, starting from the TEB request date

- Attained 20 years of service after 1 August 2012 – 4 year ADSO, starting from the TEB request date

//NOTHING FOLLOWS//