

IN THE CASE OF: ██████████

BOARD DATE: 18 January 2024

DOCKET NUMBER: AR20230003656

APPLICANT REQUESTS: correction of his records to reflect retroactive election to Transfer Education Benefits (TEB) under the Post 9/11 G.I. Bill to his dependents.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 27 September 2022
- Orders Number D 293-08, 20 October 2022
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 19 October 2022
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement), 2 November 2022

FACTS:

1. The applicant states he reenlisted for 6 years in August 2021 for TEB to his children. However, within a year of reenlisting he was medically retired. He contests that TEB eligibility was the primary reason for his reenlistment, but due to the frequency of his medical appointments he was negligent in actually making his TEB election. He notes that prior to being medically retired, he attempted to make a TEB election but experienced some issues. Unbeknownst to him, his medical retirement was rapidly progressing, and he was negligent in following up on his TEB election.

2. A review of the applicant's available service records reflects the following:

- a. On 10 May 2011, the applicant enlisted in the ARNG for 8 years.
- b. On 27 April 2017, the applicant extended his enlistment by 2 years.
- c. On 23 February 2019, the applicant extended his enlistment by 2 years.

d. On 5 June 2019, Department of Military and Veterans Affairs issued Orders Number 156-105 announcing the applicant's promotion to the rank/grade of staff sergeant (SSG)/E-6, effective 4 May 2019.

e. On 12 August 2019, the applicant extended his enlistment by 3 months.

f. On 25 June 2021, the applicant extended his enlistment by 6 years.

g. On 27 September 2022, an informal PEB convened finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired.

h. On 20 October 2022, Headquarters, U.S. Army Physical Disability Agency, issued Orders Number D 293-08 releasing the applicant from assignment and duty because of a physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, effective 19 November 2022.

i. On 1 November 2022, the Michigan ARNG issued Orders Number 2121122 retroactively transferring the applicant to the U.S. Army Control Group (Retired Reserve), effective 19 October 2022.

3. The applicant provides:

a. NGB Form 22 dated 19 October 2022 reflective of the applicant's service in the ARNG from 10 May 2011 – 19 October 2022. Item 10a. (Net Service this Period) reflects 11 years, 5 months, and 9 days.

b. NGB Form 23A dated 2 November 2022, reflective of the applicant's qualifying service performed between 10 May 2011 -18 October 2022.

4. On 28 July 2023, the Chief, Special Actions Branch, NGB, provided an advisory opinion recommending approval of the applicant's request noting that he initially gained eligibility for the Post 9/11 G.I. Bill in 2020 and was eligible for TEB at the time of his extension in 2021. Though he was eligible for TEB at the time of his extension, there is no evidence he requested TEB prior to retiring in 2022. Though the applicant did not request TEB while he was actively serving, due to the issues surrounding his medical separation, their office still recommended approval of his requested relief.

5. On 4 August 2023, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board concurred with the conclusion of the advisory official that issues surrounding his processing through the Disability Evaluation System likely impacted his awareness of the need to apply for TEB while still in an active status. Based on a preponderance of the evidence, the Board determined his record should be corrected to show he applied for TEB when he extended his enlistment on 25 June 2021.

BOARD 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 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 and Army National Guard records of the individual concerned be corrected by showing he applied for transfer of his Post-9/11 GI Bill education benefits to his eligible dependents on 25 June 2021.

4/15/2024

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 38, United States Code, section 3319 (Authority to Transfer Unused Education Benefits to Family Members) states that an individual transferring an entitlement to educational assistance under this section shall designate the dependent or dependents to whom such entitlement is being transferred, designate the number of months of such entitlement to be transferred to each such dependent and specify the period for which the transfer shall be effective for each dependent. 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. On 10 July 2009, the Army released the Post-9/11 GI Bill Implementation Policy that identified and established responsibilities, eligibility criteria, benefits, and detailed guidance on the administration of the program.

a. Transferability of Unused Benefits to Dependents. For the purposes of transferability, Armed Forces include all active duty service and all Selected Reserve service regardless of branch of service or component. Soldiers whose request to transfer benefits is approved will incur an additional service obligation in accordance with the below policy. Soldiers are expected to serve the additional service obligation.

b. Eligibility.

(1) Any Soldier of the Armed Forces who fulfills Post 9/11 GI Bill eligibility requirements and who, at the time of the approval of the Soldier's request to transfer entitlement to educational assistance does not have an adverse action flag, is eligible for the Post 9/11 GI Bill, and

(2) Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years from the date of request, regardless of the number of months transferred, or

(3) Has at least 10 years of service in the Armed Forces on the date of election and if cannot commit to 4 additional years due to a Retention Control Point (RCP) or Mandatory Retirement Date (MRD), must commit to serve for the maximum amount of time allowed by either RCP or MRD as of the date of request, regardless of the number of months transferred.

- Soldiers eligible for retirement on or before 1 August 2009, no additional service is required
- Soldiers with an approved retirement date on or after 1 September 2009, but on or before 1 June 2010, no additional service requirement

- Soldiers who attain 20 years of service on or after 2 August 2009 and before 2 August 2010, one year of additional service from the date of request is required
- Soldiers who attain 20 years of service on or after 2 August 2010 and before 2 August 2011, two years of additional service from the date of request are required
- Soldiers who attain 20 years of service on or after 2 August 2011, and before 2 August 2012, three years of additional service from the date of request are required

c. Procedures. All requests and transactions will be completed through the Transferability of Education Benefits Web application.

3. Army Regulation (AR) 621–202 (Army Educational Incentives and Entitlements) paragraph 4-15 (Transferability of Unused Benefits to Dependents) provides –

Eligibility- Soldiers must meet the following eligibility criteria in order to TEB to their eligible dependents:

a. Paragraph 4-15a.(2)(a) provides that Soldiers that have at least 6 years of eligible service (qualifying active duty or SELRES) in the Armed Forces on the date of election and agree to serve four additional years from the date of request, regardless of the number of months transferred. Soldiers who are not eligible to commit to 4 additional years of service from the TEB request date are not eligible to transfer benefits.

b. Paragraph 4-15a.(2)(b) provides that Soldiers with at least 6 years of eligible service who have not yet transferred benefits and are enrolled in the Integrated Disability Evaluation System (IDES), which includes Medical Evaluation Board (MEB) and PEB, must be found "fit for duty" and commit to four years from the TEB request date in order to be approved for TEB.

4. AR 15-185 (ABCMR) paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//