

IN THE CASE OF: ██████████

BOARD DATE: 25 January 2024

DOCKET NUMBER: AR20230003818

APPLICANT REQUESTS: Correction of his record to show Post 9/11 GI Bill Transfer of Education Benefits (TEB) to his dependents.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Form 23A (Army National Guard (ARNG) Current Annual Statement)
- Orders Number 0001391982.00
- NGB Form 22 (Report of Separation and Record of Service)

FACTS:

1. The applicant states his Chapter 33/GI Bill allocations are not correct. His allocations should be an even distribution of 12 months per dependent child. He transferred his benefits in 2015, prior to retirement, but he was incorrectly informed of his options to change allocations. He was incorrectly informed that he could move months of benefits to a child with zero months even after he left service. He and his wife do not need to use the benefit, but his three children dependents can, and he would like them to.

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

a. On 27 February 1995, Orders Number 58-24 issued by Headquarters, First Region Reserve Officers' Training Corps (ROTC) reassigned the applicant from the First Region Control Group (ROTC) and assigned him to the U.S. Army Reserve (USAR) Control Group (Officer Active Duty Obligor) by reason of education delay.

b. DA Form 71 (Oath of Office Military Personnel), dated 19 May 1995, shows the applicant was appointed as a Reserve commissioned officer and executed an oath of office.

c. On 21 December 1999, Orders Number C-12-941061 issued by the U.S. Army Reserve Personnel Command, reassigned the applicant from the USAR Control Group (Annual Training) by reason of appointment in the Virginia ARNG, effective 19 June 1999.

d. DA Form 71, dated 19 June 1999, shows the applicant was appointed as a Reserve commissioned officer and executed an oath of office.

e. On 4 January 2000, Special Orders Number 2 issued by the NGB, extended Federal Recognition (FEDREC) to the applicant in the ARNG for his transfer from the USAR.

f. NGB Form 337 (Oaths of Office), dated 29 January 2003, shows the applicant was extended temporary FEDREC in the District of Columbia ARNG.

g. On 6 June 2003, Special Orders Number 144 issued by the NGB, extended FEDREC to the applicant upon his transfer to the Inactive National Guard.

h. On 14 September 2021, Orders Number 0001391982.00 issued by the [REDACTED] ARNG, transferred the applicant to the USAR Control Group (Retired Reserve), effective 1 August 2021.

i. NGB Form 22, ending on 31 July 2021, shows the applicant entered the ARNG on 19 May 1995 and was honorably transferred to the USAR Control Group (Retired Reserve). He completed 9 years and 11 months with 12 years, 6 months, and 18 days of prior Reserve Component service and 3 years, 8 months, and 24 days of prior active federal service.

3. The applicant provides NGB Form 23A showing his service from 19 May 1995 through 31 July 2021, completing 23 years of creditable service for retired pay.

4. On 28 July 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion and stated:

a. Title 38 United States Code, Section 3319 requires service members to request TEB for all dependents prior to separating from service. The applicant initially gained eligibility for the post-9/11 GI Bill and met the requirements for TEB in 2010. He completed a TEB request in 2015, his TEB was approved, and he was assigned an Obligation End Date (OED) of 15 August 2019. He separated in 2021 after completing his OED, however he did not assign months of benefit to all his dependents. A dependent may not be added to the transfer request after the Service Member separates from service.

b. Because the applicant received erroneous counseling regarding the ability to modify the months of benefits he assigned to each dependent, we recommend the board grant relief.

c. This opinion was coordinated with the Army National Guard Education Services Branch.

5. On 31 July 2023, the applicant was provided with a copy of the advisory opinion to provide a commend or rebuttal. He did not respond.

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 the applicant relied on erroneous counseling when he elected transfer of education benefits but did not transfer at least one month of benefits to each of his children. The Board determined the record should be corrected to show he transferred at least one month of benefits to each of his children prior to his transfer to the Retired Reserve.

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 and Army National Guard records of the individual concerned be corrected by showing he transferred at least one month of his Post-9/11 GI Bill education benefits to each of his children prior to his transfer to the Retired Reserve.

4/24/2024

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. Public Law 110-252 limits the eligibility to transfer unused benefits to those members of the Armed Forces who are serving on active duty or a member of the Selected Reserve.

a. A Soldier must be on active duty or a member of the Selected Reserve at the time of transfer of educational benefits to his or her dependent on or after 1 August 2009.

b. A Soldier must have at least 6 years of eligible service in order to transfer educational benefits to a spouse and at least 10 years of eligible service to transfer to eligible children.

c. A Soldier must also agree to serve the prescribed additional service obligation based on the time in service the Soldier had on 1 August 2009.

d. A Soldier should not be granted relief based on unawareness of the law, program rules, or procedures unless he or she left the service during the implementation phase which is the first 90 days of the program.

e. A Soldier must have initially requested to transfer benefits on the Department of Defense (DOD) TEB online database. The TEB online database was operational on 29 June 2009.

2. On 22 June 2009, the DOD established the criteria for eligibility and transfer of unused education benefits to eligible family members. The policy states an eligible individual is any member of the Armed Forces who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, and on or after 1 August 2009, is eligible for the Post-9/11 GI Bill and, in pertinent part, is or becomes retirement eligible during the period 1 August 2009 through 1 August 2013. A service member is considered to be retirement-eligible if he or she has completed 20 years of active service or 20 qualifying years of Reserve service.

3. Army Regulation 621-202 (Army Educational Incentives and Entitlements) paragraph 4-15 states Soldiers may elect to transfer their Post-9/11 GI Bill education benefits to their spouse, one or more of their children, or a combination of spouse and children through the TEB website in the [REDACTED]

[REDACTED] Only dependents listed as eligible in the TEB website may receive the Post-9/11 GI Bill education benefit. TEB is neither an entitlement nor a transition benefit, but was specifically identified by statute as a tool for recruitment and retention of the career force. The ability to transfer the Post-9/11 GI Bill education benefit was created as a recruitment and retention incentive for additional service within the Uniformed Services. Soldiers may increase, decrease, or revoke months to an eligible dependent at any time as long as at least one month is transferred to the dependent before the Soldier leaves the Armed Forces. Once a Soldier leaves service, the Soldier may not transfer benefits to dependents who had not received at least one month while the Soldier was on active duty or in the Selected Reserve.

//NOTHING FOLLOWS//