

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230004068

APPLICANT REQUESTS: correction of his record to show an amended date of his Post 9/11 GI Bill Transfer of Education Benefits (TEB) to fulfill his service requirement. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Support letter number 1
- Support letter number 2
- Congressional Representative letter

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. The request for transfer of his unused Post 9/11 GI Bill benefits was conducted from Afghanistan during a period of high operational tempo, combat activity, and extremely limited Internet access. Around 14 May 2013, he attempted to conduct the transfer of benefits and thought the request was submitted successfully but poor access to internet connectivity required a resubmission on 29 July 2013. He served honorably in the Army and U.S. Army Reserve (USAR) for over 20 years. Granting this correction request would fulfill his service obligation and allow his children to utilize his unused Post 9/11 GI Bill benefits.

b. He requests the transfer date of his unused Post 9/11 GI Bill benefits be changed from 29 July 2013 to 14 May 2013. Without the updated request date, he is approximately 2 months short of completing his service obligation. After 24 years of

honorable service in the Army, USAR, and the Alabama Army National Guard, it is important to him that his service obligation is properly fulfilled.

c. From August 2012 to August 2013, he was deployed to Afghanistan in support of Operation Enduring Freedom. In May 2013, his detachment began their 90-day redeployment preparations. As part of those preparations, around 14 May 2013, he attempted to transfer his education benefits to his three daughters. The attempt had to be resubmitted on 29 July 2013.

d. His 2012-2013 deployment to Afghanistan was part of an involuntary mobilization and unit transfer. Upon his return, he found himself somewhat "unitless" because his unit was on the other side of the country and none of the Soldiers deployed with him were core members of the unit. There was no policy for releasing cross-leveled Soldiers and it was a frustrating process getting back to his previous unit as his position was no longer available. During his contemplation about retirement, there was no counseling available to him during the process. If he had been made aware of the outstanding service obligation, he would have gladly postponed his retirement by two months.

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

a. On 14 May 1994, the applicant was appointed as a Reserve commissioned officer and executed an oath of office.

b. On 15 December 2011, Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter) was issued by the U.S. Army Human Resources Command (HRC), which notified the applicant he completed the required service to be eligible for retired pay.

c. On 13 August 2012, Orders Number BN-226-0027 issued by Headquarters, U.S. Army Maneuver Center of Excellence, deployed the applicant in a temporary change of station status in support of Operation Enduring Freedom for a period of 394 days with a proceed date of on or about 17 August 2012.

d. On 12 September 2013, the applicant was honorably released from active duty and transferred to his USAR unit. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 1 month, and 3 days of net active service in support of Operation Enduring Freedom.

e. On 22 May 2014, Orders Number 14-142-00078 issued by Headquarters, 81st Regional Support Command, reassigned the applicant from his USAR unit and transferred him to the Retired Reserve, effective 29 May 2014, by reason of completion of 20 or more years of qualifying service for retired pay at age 60.

4. The applicant provides:

a. Support letter number 1 authored by Lieutenant Colonel (Retired) T- L- which states in pertinent part, On or about 1 May 2013, he distinctly recalls having conversations with the applicant about transferring his unused Post 9/11 GI Bill benefits to his daughters. The author had previously transferred his benefits to his own children, and he shared his guidance as well as his experience with him. This conversation stands out for it was "in person" and was spawned by the preparations for their "90-day out" redeployment preparations. The operational tempo for the 401st Army Field Support Brigade's redistribution property assistance teams was significant during their rotation. This only increased through the Spring and Summer of 2013. This left little opportunity to perform non-mission essential or personal tasks. Further, access to stable internet and outside theater communications were constrained and frustratingly sporadic.

b. Support letter number 2 authored by Captain (Retired) D- G- which states in pertinent part, the applicant served with the author for 12 months in Afghanistan in support of Operation Enduring Freedom. During the deployment, the author served as the Headquarters and Headquarters Company commander for the 401st Army Field Support Brigade and frequently interacted with the applicant. It was the authors observation that the applicant served honorably and with the highest levels of integrity during their time in Afghanistan. In May 2013, their detachment was approximately 90 days from returning to the States and they began conducting end-of-tour activities such as submitting awards, inventorying equipment, and updating records. During these redeployment activities, around 14 May 2013, the author can confirm that the applicant did attempt to transfer his Post 9/11 GI Bill benefits to his daughters.

c. Congressional Representative Letter to HRC which states in pertinent part, this letter is regarding the concerns of the applicant, U.S. Army Reserves Retired (Ret), about his Post 9/11 GI Bill TEB to his daughter, who is currently being denied. The author would appreciate the Army's timely response to the initial inquiry, which mentions the opportunity for the applicant to appeal this decision. While we understand the U.S. Army's process regarding the correction of military records and appreciate the Army's detailed response regarding this case, we anticipate the applicant's appeal and urge you to give full consideration of the merits of his request.

5. On 14 August 2023, in the processing of this case, HRC, Chief, Education Incentive Branch, provided an advisory opinion which recommended disapproval and states in pertinent part:

a. HRC records confirm the applicant did submit a TEB request on 29 July 2013, which was approved by their office on 5 August 2013. After HRC approval, the milConnect system automatically assigned him a TEB service obligation end date of 28 July 2014 (viewable in the upper left hand corner of the TEB website for the applicant to see) based on the date of his application. Unfortunately, he did not fulfill this obligation because he transferred to the Retired Reserve approximately two months (effective 29 May 2014) before reaching his agreed upon obligation end date (28 July 2014). Therefore, because he did not complete the terms of the Post 9/11 GI Bill retention incentive, he is no longer eligible for TEB. Consequently, on 1 March 2023, HRC had to change his previously approved TEB to "rejected" in milConnect.

b. Since the inception of the Post 9/11 GI Bill TEB program in 2009, milConnect has been the sole system of record for all TEB related transactions, to include requests and allocation of months to dependents. On 12 July 2023, HRC contacted the Defense Manpower Data Center (DMDC) to validate the applicant's statement in his correspondence to the Board, which reads "vicinity of 14 May 2013, he attempted to conduct a transfer of benefits and thought the request was submitted successfully but poor access to internet connectivity required a resubmission on 29 July 2013." The DMDC system of records a date/time stamp every time a Soldier's TEB milConnect website account is accessed. DMDC's review of the applicant's access record did not support his assertion that he submitted a TEB request prior to his 29 July 2013 request. Furthermore, DMDC's review could not find any evidence that the applicant ever attempted to access the milConnect website prior to his 29 July 2013 TEB request. Enclosure one contains the email traffic with DMDC. Again, please note that a Soldier earns the Post 9/11 GI Bill because of their active duty service; however, TEB is a retention incentive, not a Soldier's entitled benefit.

c. On 1 March 2023, HRC received an inquiry from the Department of Veterans Affairs (DVA) Regional Processing Office (RPO) in Muskogee, OK, regarding the applicant's TEB. After researching the case, HRC determined he did not fulfill his TEB additional service obligation. Consequently, in accordance with Public Law 110-252 and the associated Department of Defense and Army Policies, HRC rejected his request on 1 March 2023 and notified the DVA RPO Muskogee of the TEB rejection. The applicant was also notified via email, however, the email was returned as "undeliverable." The DVA, as the administrator and sole paying agent for Post 9/11 GI Bill Programs, is authorized to initiate collection proceedings against the applicant for transferred benefits used by dependents.

6. On 25 August 2023, the applicant was provided with a copy of the advisory opinion to provide a comment.

7. On 1 September 2023, the applicant responded to the advisory opinion and stated, he would like the Board to reject the advisory opinion for the reasons provided in his opening statements to the Board pertaining to a lack of counseling and his 24 years of honorable service.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.
2. 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 submitted a TEB request on 29 July 2013, which was approved on 5 August 2013, with a TEB service obligation end date of 28 July 2014. The applicant did not fulfill this obligation because he transferred to the Retired Reserve on 29 May 2014, before reaching his agreed upon obligation end date of 28 July 2014. Therefore, because he did not complete the terms of the Post 9/11 GI Bill retention incentive, he is no longer eligible for TEB. The Board reviewed and agreed with the HRC advisory official's finding that the DMDC's review of the applicant's access record did not support his assertion that he submitted a TEB request prior to his 29 July 2013 request. Furthermore, DMDC's review could not find any evidence he ever attempted to access the milConnect website prior to his 29 July 2013 TEB request.

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 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 active duty service obligation based on the time in service the Soldier had on 1 August 2009.

d. A Soldier must have initially requested to transfer benefits on the Department of Defense TEB online database. The TEB online database was operational 29 June 2009. Once approved in the TEB online database by the Soldier's service, the approval information is automatically relayed electronically to the VA for their access.

e. Is or will become retirement eligible during the period from 1 August 2009, through 1 August 2013 and agrees to serve the additional period, if any, specified below. For the purposes of this paragraph, a Soldier is considered to be retirement eligible if he or she has completed 20 years of active Federal service, or 20 qualifying years as computed under title 10 USC, Section 12732. Use which ever computation establishes 20 years regardless of which component the Soldier is in at the time of electing to transfer benefits.

- 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

3. On 22 June 2009, the Department of Defense 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.

4. Army Regulation (AR) 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 milConnect portal at <https://www.dmdc.osd.mil/mil-connect> or <http://milconnect.dmdc.mil>. 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 SELRES.

5. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//