

IN THE CASE OF: ██████████

BOARD DATE: 31 January 2024

DOCKET NUMBER: AR20230004913

APPLICANT REQUESTS: in effect, to Transfer Education Benefits (TEB) under his Post 9/11 GI Bill from his spouse to his child.

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 (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 he was trying to give his child some of his education benefits but was not able to move them from his spouse to his child. He was informed that if he did not do this before he retired that he could not. Before he left service, he was improperly informed that he could allocate months to any dependent, even if they have zero months allocated, after he had left service. He is trying to give his child the months that he has left on his school benefit. He was never properly informed that he needed to add time to his children before he retired. He is just trying to get his child into college with the help of what he earned while he was in.
3. A review of the applicant's military record shows the following:
  - a. He enlisted in the Regular Army on 31 July 1997.
  - b. On 17 May 2000, DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) shows the applicant enlisted in the ██████████ Army National Guard (█████ ARNG).
  - c. On 30 July 2000, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was honorably released from active duty and transferred to his ██████ ARNG unit.

d. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows he extended his ARNG enlistment for a period of 6 years on 18 July 2006.

e. DD Form 214 shows he entered active duty on 19 September 2008 and was released from active duty and transferred to his ■■■ ARNG on 12 October 2009. Item 18 (Remarks) shows he was ordered to active duty in support of Operation Iraqi Freedom and served in Iraq from 17 January to 10 September 2009.

f. DA Form 4836 shows he extended his ARNG enlistment for a period of 6 years on 15 June 2012.

g. On 11 July 2017, the applicant received his Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years).

h. On 30 July 2018, he was released from the ■■■ ARNG and transferred to the U.S. Army Reserve Control Group (Retired Reserve). National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he completed 18 years net service this period with 3 years of prior active federal service, and he had 21 years, 1 month, and 1-day total service for retired pay. Item 23 (Authority and Reason) shows National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-36z, Reduced Retirement Age based on Qualifying Continuous Active Service.

i. NGB Form 23B (Army National Guard Retirement Points History Statement) prepared on 13 September 2018, shows the applicant's total creditable service for Retired pay as 21 years, 1 month, and 1 day.

4. On 17 August 2023, the NGB, Chief, Special Actions Branch, provided an advisory opinion and recommended approval. The advisory official stated:

a. Title 38, USC, section 3319 requires service members to transfer at least one month of benefits to their eligible dependents before separating from service. The applicant transferred benefits to his spouse before separating but he did not transfer any benefits to his other dependents.

b. Due to the fact that the applicant was not properly counseled on the requirement to transfer his benefits to all his eligible dependents before separating from service, this office recommends the Board grant relief. This opinion was coordinated with the Army National Guard Education Services Branch.

5. On 24 August 2023, the applicant was provided with a copy of the NGB advisory opinion to allow for his comments or rebuttal. He did not respond.

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 records and National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advisory opinion recommendation for approval, finding the applicant was not properly counseled on the requirement to transfer his benefits to all his eligible dependents before separating from service. Evidence shows the applicant transferred at least one month of benefits to his spouse but did not transfer any benefits to his other dependents. Based on the opine, 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 by showing the applicant filed his application to transfer his educational benefits to all his eligible dependents before separating from service.

2/6/2024

X [Redacted Signature]

CHAIRPERSON  
[Redacted Name]

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. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members) provides —

a. The Secretary concerned may permit an individual who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents a portion of such individual's entitlement to such assistance, subject to the limitation under subsection. The purpose of the authority is to promote recruitment and retention in the uniformed services.

b. An individual transferring an entitlement to educational assistance under this section shall —

(1) designate the dependent or dependents to whom such entitlement is being transferred; and

(2) designate the number of months of such entitlement to be transferred to each such dependent.

c. 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.

3. Public Law (PL) 110-252, as amended by PL 111-377, identified the qualifications to receive the Post 9/11 GI Bill, one of which was that the service member must have performed active service on or after 11 September 2001 in order to be eligible for the Post-9/11 GI Bill.

a. PL 110-252 established legal requirements on the transferability of unused benefits to those members of the Armed Forces who were serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.

b. A Soldier may only transfer to eligible family members. To be considered an eligible family member the spouse or child must be enrolled in the Defense Enrollment Eligibility Report System (DEERS). Children lose eligible family member status upon turning age 21 or at marriage. Eligible family member status can be extended from age 21 to age 23 only if the child is enrolled as a full-time student and unmarried (verified by DEERS). Once the benefits are transferred, children may use the benefits up to age 26.

4. On 22 June 2009, the Department of Defense (DOD) established the criteria for eligibility and transfer of unused education benefits to eligible family members. The policy limits the entitlement to transfer education benefits to any member of the Armed Forces on or after 1 August 2009, who, at the time of the approval of his or her request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill.

a. Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election.

b. Has at least 10 years of service in the Armed Forces (active duty and/or service in the Selected Reserve) on the date of election, 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.

c. Is or becomes retirement eligible during the period from 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.

5. Army Regulation 621-202 (Army Educational Incentives and Entitlements) establishes policy for educational incentives and entitlements authorized by Public Law. It provides Regular Army, Army National Guard, Army National Guard of the United States, and U.S. Army Reserve unique policies, procedures and responsibilities governing educational benefits for Soldiers of the Active and Reserve Components. Paragraph 4-15 (Transferability of unused benefits to dependents) states in pertinent part, 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 Transfer of Education Benefits (TEB) website in the milConnect portal at <https://www.dmdc.osd.mil/milconnect>. 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 (PL 110-252) 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 Armed Forces. 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. Dependents gained after a Soldier is no longer on active duty or in the SELRES may not receive TEB.

//NOTHING FOLLOWS//