

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 February 2024

DOCKET NUMBER: AR20230005123

APPLICANT REQUESTS: in effect, approval to Transfer Education Benefits (TEB) her Post 9/11 GI Bill to her dependent. A personal appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record) (on-line)
- DD Form 149
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment)

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 in effect, she received an approved TEB based on her reenlistment; however, her unit would not recognize her reenlistment. She was then erroneously instructed to enter into another reenlistment which changed her Expiration Term of Service (ETS) to an earlier date. This disqualified her TEB eligibility after it was already approved. This error has caused her daughter to lose her TEB benefits and must repay a debt of \$65,000.00 or more due to an administrative error. This is unjust, not only because her reenlistment was not honored after her TEB was approved, but also because she served in Iraq and is a 100 percent total and permanent disabled veteran.

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

a. The applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) on 24 April 1993. She was discharged from the USAR DEP and enlisted in the Regular Army (RA) on 1 September 1993.

b. The applicant was honorably released from active duty on 17 August 2000 and assigned to the USAR Control Group (Reinforcement). DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 6-years, 11-months and 17-days of active service.

c. The applicant enlisted in the Army National Guard (ARNG) on 25 February 2009 for 6-years.

d. On 22 May 2009, Orders Number 142-034, issued by the State ██████████ (██████) Military Department, the applicant was ordered to active duty for training, effective 1 June 2009.

e. On 22 June 2010, Orders Number 173-006, issued by the State of ████████ Military Department, the applicant was ordered to active duty in support of Operation Iraqi Freedom, effective 8 July 2010.

f. The applicant was honorably released from active duty on 7 July 2010. DD Form 214 shows the applicant completed 1-year, 1-month, and 7-days of active service.

g. On 22 November 2010, Orders Number A-11-032399, issued by the U.S. Army Human Resources Command (HRC), the applicant was retained on active duty to participate in the Reserve component warriors in transition medical retention processing program for completion of medical evaluation, effective 22 November 2010.

h. On 22 December 2010, Orders Number A-12-035174, issued by HRC, the applicant was retained on active duty to participate in the Reserve component warriors in transition medical retention processing program for completion of medical care and treatment, effective 23 December 2010.

i. The applicant was honorably released from active duty on 12 February 2011. DD Form 214 shows the applicant completed 1-year, 8-months, and 12-days of active service.

j. On 7 June 2011, Orders Number A-06-112003, issued by HRC, the applicant was ordered to active duty for Contingency Operation for Active Duty Operational Support (CO-ADOS), effective 11 July 2011.

k. The applicant was honorably released from active duty on 9 July 2012. DD Form 214 shows the applicant completed 1-year of active service.

l. On 17 July 2012, Orders Number A-07-212384, issued by HRC, the applicant was ordered to active duty for CO-ADOS, effective 30 July 2012.

m. On 15 October 2012, Orders Number A-10-218804, issued by HRC, the applicant was ordered to active duty to participate in the Reserve component warriors in transition medical retention processing program for completion of medical care and treatment, effective 12 October 2012.

n. The applicant was honorably released from active duty on 21 May 2013. DD Form 214 shows the applicant completed 7-months and 10-days of active service.

o. On 7 December 2014, the applicant extended her enlistment for 1-year which changed her ETS from 24 February 2015 to 24 February 2016.

p. On 21 February 2016, the applicant was counseled regarding her eligibility window for extension of her enlistment contract with an ETS of 24 February 2016. The applicant did not have the intention to extend. The applicant concurred with the counseling.

q. On 24 February 2016, the applicant was honorably discharged from the ARNG. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant completed 7-years of service with 6 years, 11 months, and 17 days of prior active service.

4. The applicant provides DA Form 4836 dated 29 July 2013 which shows her current ETS date of 24 February 2015 and she reenlisted for 3-years which gave her a new ETS date of 24 February 2018.

5. On 19 September 2023, in the processing of this case, the NGB, Chief, Special Actions Branch, provided an advisory opinion regarding the correction of her record to reflect she completed the 4-year service obligation required for TEB prior to separating from the ARNG. The advisory official stated it was recommended her request be approved. The law requires service members to be able to complete a 4-year service obligation when requesting TEB. It was discovered the applicant was not able to commit to the 4-year service obligation when she requested TEB on 12 June 2013, but her TEB was approved in error. However, if the applicant would have requested TEB when she was first eligible on 6 February 2011, she would have been able to commit and complete the required service obligation.

6. On 24 August 2023, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. She 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's TEB request was approved in error but would have been valid had she submitted the request with 4 years of retainability. The Board determined her record should be corrected to show she requested TEB 4 years prior to her discharge on 24 February 2016.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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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 she requested TEB 4 years prior to her discharge on 24 February 2016.

6/3/2024

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 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 establishes legal limitations on the transferability of unused Post-9/11 GI Bill benefits. Further, section 3020 Public Law 110-252, limits eligibility to transfer unused benefits to those members of the armed forces who are 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. An eligible individual is any member of the armed forces on or after 1 August 2009 who, at the time of the approval of the individual's 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; or

b. Has at least 10 years of service in the armed forces (active duty and/or 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; or

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 duty or 20 qualifying years of reserve service.

4. The policy further states the Secretaries of the Military Departments will provide active duty participants and members of the reserve components with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly and maintain records for individuals who receive supplemental educational assistance under Public Law 110-252, section 3316.

5. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members), (f) (Time for Transfer; Revocation and Modification), (1) (Time for transfer), subject to the time limitation for use of entitlement under section 3321, and except as provided in subsection (k) or (l), 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. (h) (5) (Limitation on age of use by child transferees), (A) In general. A child to whom entitlement is transferred under this section may use the benefits transferred without regard to the 15-year delimiting date specified in section 3321, but may not, except as provided in subparagraph (B) or (C), use any benefits so transferred after attaining the age of 26 years.

6. Army Regulation 15-185 (Army Board for Correction of Military Records (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//