

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230006265

APPLICANT REQUESTS: in effect, exception to policy to transfer her Post 9/11 GI Bill education benefits under the Transfer of Education Benefits (TEB) to her daughter.

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs Benefit Summary: Post-9/11 GI Bill Statement of Benefits, dated 12 May 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 16 December 2020

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 she did not have any kids at the time of discharge. She and her husband were service members. No one explained to her that she could transfer the benefit to her husband at least before she was discharged. She has 20 months and 3 days of Post 9/11 GI Bill benefits that will go to waste if unused.
3. Review of the applicant's service records shows:
 - a. She enlisted in the Army National Guard (ARNG) on 22 May 2014. She entered active duty for training from 5 August 2014 to 21 February 2015 and completed training for award of military occupational specialty 42A, Human Resource Specialist.
 - b. She entered active duty on 17 July 2018. She and her spouse were married on 13 October 2019.

c. On 26 August 2020, an informal physical evaluation board (PEB) found her medical condition unfitting. The informal PEB recommended a 10% disability rating and her disposition as separation with severance pay.

d. She was honorably discharged from active duty on 16 February 2020. Her DD Form 214 shows she was discharged in accordance with Chapter 4 of Army Regulation 635-40, Disability Evaluation for Retention, Retirement, or Separation, with severance pay. She completed 2 years and 5 months of active service.

e. Her NGB Form 23C, ARNG Retirement Points History Statement, shows she completed 6 qualifying years of service towards non-regular retirement.

4. On 26 October 2023, the National Guard Bureau (NGB) provided an advisory opinion in the processing of the applicant's case. An NGB official restated the applicant's request to transfer her Post 9/11 GI Bill Benefits to her daughter before she separated from the ARNG.

a. Title 38 USC, Section 3319(f) requires service members to submit a request to transfer their Post 9/11 GI Bill benefits while serving as a member of the Armed Forces. Though the applicant gained eligibility for the Post 9/11 GI Bill in 2018, there is no evidence indicating that she submitted a request to transfer her benefits prior to her separation from the ARNG on 16 December 2020.

b. Additionally, in the applicant's petition, she requested to transfer benefits to her daughter. Unfortunately, the applicant's daughter was not yet born while she was serving, and per Title 38 USC, Section 3319, Service Members must transfer benefits to eligible dependents while they are serving. Had she submitted a request to transfer benefits and transferred benefits to her husband while she was serving, she would still not be eligible to transfer benefits to her daughter since her daughter was not an eligible dependent while she was serving.

c. Because the applicant did not submit a request to transfer benefits while she was serving and her daughter was not an eligible dependent while she was serving, the NGB does not recommend relief.

5. The applicant was provided with a copy of this advisory opinion to give her an opportunity to submit a rebuttal. The applicant did not respond.

BOARD DISCUSSION:

1. 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.

2. The evidence shows the applicant did not request TEB prior to her separation from the ARNG. Additionally, the dependent in contention was not yet born prior to the applicant's separation from the ARNG. The Board reviewed and concurred with the National Guard Bureau's advisory opinion that because she did not request transfer of TEB while she was serving and her daughter was not an eligible dependent, the Board determined there was no error or injustice.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

[REDACTED]

[REDACTED]

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, U.S. Code, 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 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.

3. The Post 9/11 GI Bill is a benefit for the Soldier as a reward for service during a time of conflict; however, the option to transfer this education benefit to eligible dependents are a retention incentive. The transfer incentive was included in the statute for the express purpose of recruitment and retention. It is neither a reward for service nor a transition benefit. Therefore, the incentive requires the Soldier to commit and fulfill additional service, in most cases, from the TEB request date.

//NOTHING FOLLOWS//