

IN THE CASE OF: ██████████

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230007619

APPLICANT REQUESTS: correction of his Army National Guard (ARNG) records to show he transferred at least one month of his post-9/11 GI Bill benefits to each of his dependents prior to separation from the ARNG.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 25 December 2005 and 8 November 2018
- NGB Form 22 (Report of Separation and Record of Service), 14 July 2020
- Retired Reserve Order, 15 July 2020
- Honorable Discharge Certificate
- Army National Guard Current Annual Statement
- Letter of Approval from the DoD Manpower Data Center (DMDC)

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 prior to his retirement, he was advised by the Education officer that he should transfer all of his Post 9/11 education benefits (36 months), to his daughter who was about to graduate from high school. He was assured that any remaining months could be transferred to his son at any time following his retirement. His son will be entering his junior year of high school, so he went on MilConnect to transfer all 36 months to his son, because his daughter opted not to use his GI Bill. On MilConnect it states that his son is now ineligible because he has 0 months transferred to him. He believes his son should be eligible due to the fact that he was misinformed by a Major, who at the time was the state's Education Officer. If he had known that he was required to give both children at least 1 month, he would have done so. His daughter is turning 25 this year and will most likely not use the benefits before she turns 26, therefore his benefits will no longer be accessible. He has scoured both MilConnect

and the VA website, and the 1 month requirement is not posted anywhere. He was misinformed by an Army Officer, whom he entrusted to assist him in transferring his Post 9/11 GI Bill. This person was supposed to be the subject matter expert, but it wasn't until he (the applicant) decided to use his benefits that he was informed he had misguided him. If he had been given accurate information, he would have given the benefits to both children. He cares for both of his children equally and wish for them both to be his beneficiaries.

3. Review of the applicant's service records shows:

a. He was born in 1978. His records show he had a daughter, [REDACTED] who was born in [REDACTED]. He was married to [REDACTED] on [REDACTED], and they had a son, [REDACTED] born in [REDACTED]. The applicant and [REDACTED] were divorced on [REDACTED].

b. The applicant served on active duty/Regular Army from August 1996 to July 1999. He then enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) on 1 August 1998.

c. He served through multiple extensions, in a variety of assignments, including active duty mobilization (October 2004 to December 2005 and October 2017 to November 2018).

d. On 20 October 2020, RIARNG published orders transferring him to the Retired Reserve effective 15 July 2020. His NGB Form 22 shows he was honorably discharged and transferred to the Retired Reserve with over 20 years and 11 months of ARNG service.

e. His NGB Form 23A, ARNG Current Annual Statement, shows he completed 24 years, 5 months, and 3 days of qualifying service toward non-regular retirement.

4. On 22 June 2023, DMDC sent him a letter congratulating him on the approval by his service to transfer his unused Post- 9/11 GI Bill benefits to member(s) of his immediate family. Th letter informed him family members cannot be added to his transfer request after he separates from the Service. However, separated members can still edit transfer months and revoke Transferred months on a transfer request that has already been submitted. It is imperative that he remains in the Armed Forces until his Obligation End Date.

- Transfer Request Date: 9 April 2015
- Transfer Status: Request Approved
- Transfer Status Date: 9 April 2015
- Obligation End Date: 8 April 2019

5. On 28 December 2023, the NGB provided an advisory opinion in the processing of this case. An NGB official restated the applicant's request to have his records corrected to reflect that he transferred at least one month of his post-9/11 GI Bill benefits to each of his dependents prior to separation from the ARNG. The NGB recommends approval:

a. Title 38 USC, Section 3319 requires service members to transfer their post-9/11 GI Bill benefits prior to separating from service. Though the applicant has two eligible dependents, he allocated all 36 months of his benefits to one dependent based on guidance he was given at the time.

b. Since it is likely that the applicant did not receive correct guidance to transfer at least one month of benefits to each eligible dependent prior to separating from service, this office recommends the board grant relief. This opinion was coordinated with the ARNG Education Branch.

6. The applicant responded to the advisory opinion and stated he agrees with the advisory letter that was sent to him. He would like to add he recently learned the officer who had given him incorrect information had not been trained in his position at the time he advised him and had also given incorrect information to at least one other person in the same time period as himself. He understands that mistakes happen, but this benefit was something both his son and he were depending on for his education and his future.

7. All Post 9/11 GI Bill benefits must be transferred before the Service Member separates or retires. Changes to the number of months allocated to dependents can be made at any time, to include once a service member leaves military service, provided the Soldier allocates at least one month of benefits to the respective dependent prior to separation or retirement. If the Soldier fails to transfer at least one month to a dependent, the Soldier may not transfer to that dependent after leaving military service.

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 advising official recommendation for approval finding the applicant was not provided the correct guidance on transfer of his benefits. The Board agreed based on the opine recommendation, relief is granted to show correction of the applicant's Army National Guard (ARNG) records that he transferred at least one month of his post-9/11 GI Bill benefits to each of his dependents prior to separation from the ARNG.

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 to reflect in the applicant's Army National Guard (ARNG) records that he transferred at least one month of his post-9/11 GI Bill benefits to each of his dependents prior to separation from the ARNG.

5/14/2024

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, 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. Army Regulation 621-202, Education, Army Educational Incentives and Entitlements, establishes a reference for educational incentives and entitlements authorized by public

law. It provides Regular Army, Army National Guard, and Army Reserve-unique policies, responsibilities, and procedures governing these educational benefits for Soldiers and former Soldiers of the Active and Reserve Components. Soldier henceforth, unless otherwise specified, refers to enlisted and officers. 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.

a. Eligibility. Soldiers must meet all the following criteria to transfer unused Post 9/11 GI Bill education benefits to their eligible dependents.

(1) Soldiers must be eligible for Post 9/11 GI Bill benefits and not be serving under a suspension of favorable personnel actions in accordance with AR 600–8–2, at the time of the Soldier’s request to transfer education benefits. A flag is an action that would prevent a Soldier from being promoted or retained in the Service, including failure to maintain height and weight standards, and passing the APFT.

(2) Soldiers must meet the following service eligibility and agreement.

(a) Have at least 6 years of eligible service (qualifying active duty or SELRES) in the Armed Forces on the date of election and agree to serve four additional years from the date of request, regardless of the number of months transferred. Soldiers who are not eligible to commit to 4 additional years of service from the TEB request date are not eligible to transfer benefits.

(b) Soldiers with at least 6 years of eligible service who have not yet transferred benefits and are enrolled in the Integrated Disability Evaluation System (IDES), which includes Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB), must be found “fit for duty” and commit to four years from the TEB request date to be approved for TEB.

(c) Soldiers who complete their TEB service obligation and subsequently receive a less-than-honorable discharge will retain TEB and will not be subject to recoupment by DVA. This paragraph does not apply to confined Soldiers or those who have lost time in nonpaid or non-leave accrual status which does not count toward fulfillment of the TEB service obligation.

(3) All benefits must be transferred before the Service Member separates or retires. Changes to the number of months allocated to dependents can be made at any time, to include once a service member leaves military service, provided the Soldier allocates at least one month of benefits to the respective dependent prior to separation or retirement. If the Soldier fails to transfer at least one month to a dependent, the Soldier may not transfer to that dependent after leaving military service.

//NOTHING FOLLOWS//