

IN THE CASE OF: ██████████

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230007730

APPLICANT REQUESTS: an exception to policy (ETP) for transfer of education benefits (TEB) under the Post 9/11 G.I. Bill to dependents acquired after retiring from military service.

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

- DD Form 149 (Application for Correction of Military Record)
- TEB screenshot

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 that while serving in the military he elected TEB for his three dependent children. However, because none of them elected to exercise these benefits, he revoked their benefits returning the entitlement back to himself. He retired in 2016 and was subsequently married in 2017 resulting in a blended family. Now, his youngest child by marriage has graduated high school and is currently pursuing a degree at Louisiana State University. He would like to transfer his remaining education benefits to her. He notes that she is reflected in the Defense Enrollment Eligibility System (DEERS) as his dependent and has been since 2017, however she is not reflected as being eligible to receive his education benefits. He further provides that his concern is that the additional time spent in the military to ensure TEB eligibility his now family is unable to benefit from because they were not married while he was serving.

3. A review of the applicant's available service records reflects the following:

- a. On 2 July 1991, the applicant enlisted in the Regular Army.
- b. On 15 May 2009, after multiple reenlistments, the applicant elected to reenlist indefinitely.

c. On 31 July 2016, the applicant was honorably retired from military service.

4. The applicant provides a TEB screenshot reflective of his dependent eligibility status. Upon review you will note that all of the applicant's dependents are currently ineligible for TEB benefits. However, on or about 14 December 2010, the applicant initially elected to transfer benefits to his 3 dependents. He later revoked these benefits on or about 26 November 2013. His youngest child/stepdaughter and current spouse were never eligible for receive his education benefits.

5. On 4 January 2024, the Chief, Education Incentives Branch, HRC, provided an advisory opinion recommending disapproval of the applicant's request noting that on 14 December 2010, he requested TEB to 3 of his 4 dependent children reflected within DEERS. His TEB request was approved on 15 December 2010 by his career counselor with a TEB service obligation until 13 December 2012 (2-year TEB service obligation). On 16 January 2019, approximately two and half years after retiring, the applicant gained two additional dependents (spouse and stepdaughter). These two dependents are ineligible to participate in the TEB program because they were not his dependents while he was serving in accordance with Public Law 110-252 and Army Post 9/11 G.I. Bill Policy Memorandum.

6. On 9 January 2024, the applicant was provided a copy of the advisory opinion and afforded 15 days to provide comments. He has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board found no provisions of law or policy authorizing TEB to dependents gained after a Soldier has retired. The Board concurred with the recommendation of the advisory official that the applicant’s request should be disapproved.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	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.

8/18/2024

X [REDACTED]

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CHAIRPERSON  
[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, 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 Section 3319 (Authority to Transfer Education Benefits to Family Members) provides that an individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement as follows:

- the individual spouse
- on or more of the individual's children

a. An individual transferring an entitlement to educational assistance under this section shall:

- designate the dependent or dependents to whom such entitlement is being transferred
- designate the number of months of such entitlement to be transferred to each such dependent
- specify the period for which the transfer shall be effective for each dependent

b. (Time to Transfer) - subject to the time limitation for use of entitlement under section 3321 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.

c. (Modification or Revocation) - a member transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs. Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

3. Department of Defense Instruction 1341.13 (Post 9/11 G.I. Bill) provides that an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's family member only while serving in the Military Services. An individual may add new family members, modify the number of months of the transferred entitlement for existing family members, or revoke transfer of entitlement while serving in the Uniformed Services. An individual may not add family members after retirement or separation from the Military Services but may modify the number of months of the transferred entitlement or revoke transfer of entitlement after retirement or separation for those family members who have received transferred benefits prior to separation or retirement.

//NOTHING FOLLOWS//