

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230007770

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

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), for the period ending 28 April 2023

FACTS:

1. The applicant states he wishes to apply for a waiver to transfer his Post 9/11 GI Bill college benefits to his daughter, Ash\_\_\_ Dr\_\_\_, who is now 23. He was not informed that the transfer had to be completed prior to her turning 23, and after a search of the Mil Connect, there is nothing stated in any of the FAQ (Frequently Asked Questions) or Help section that notes that. The only reference to age that is mentioned is that the child must complete the use of the benefits prior to 26 years old. Please waiver this so that he may pass these benefits to his child. He was not advised at any time during his service or educational briefs, nor is it listed anywhere that he could find on the Mil Connect website that there was an age limit to complete the transfer of these benefits to his dependent.

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

a. He was born in A\_\_\_ 1973. He was married to Ki\_\_\_ (April 1993 to November 2002) and they had two adopted children (Col\_\_\_, born in 1994 and Tri\_\_\_, born in 1998).

b. Having had prior service in the Georgia Army National Guard (GAARNG) from 16 November 1995 to 5 July 2004 (8 years, 7 months, and 20 days), he enlisted in the Regular Army on 6 July 2004.

c. His active duty enlistment document shows he was married to Hea\_\_\_ from 1 June 2004 to 12 April 2018. No children are listed.

d. An informal physical evaluation board (PEB) convened on 9 November 2007 and found his medical conditions of cervical strain and thoracic strain unfitting. The informal PEB assigned a 20% combined disability rating and his disposition as separation with severance pay.

e. He was honorably discharged from active duty on 12 February 2008. His DD Form 214 shows he completed 3 years, 7 months, and 7 days of active service.

f. After a break in in service, on 9 February 2023, he received a medical accession waiver for enlistment in the ARNG.

g. On 15 February 2023, he enlisted in the VAARNG for 6 years. His service records for this enlistment show he is married to Sa\_\_ (April 2018). No children/dependents are listed.

h. He entered active duty for training (ADT) on 12 April 2023. However, he did not complete training and was released from ADT 17 days later, on 28 April 2023, to the control of his State ARNG

3. On 30 October 2023, the NGB provided an advisory opinion in the processing of this case. An NGB official restated the applicant's request that his records be corrected to reflect that he applied to transfer his post-9/11 GI Bill Benefits before he separated from the ARNG. The NGB recommended disapproval.

a. The applicant earned qualifying service for the Post-9/11 GI Bill and his last day of qualifying active duty was 12 February 2008. For Service Members whose last day of active duty was prior to 1 January 2013, entitlement for the post-9/11 GI Bill expires after 15 years. Since the applicant's last day of active duty was prior to 1 January 2013, his eligibility for the post-9/11 GI Bill expired on 11 February 2023, which is 15 years from his last day on active duty. Once entitlement expires, the Service Member is no longer able to transfer that benefit to their dependents.

b. To reestablish eligibility, the applicant would need to complete a qualifying period of service of 90 continuous days or longer. However, even if the applicant were to reestablish eligibility for the Post-9/11 GI Bill, his dependents would not be eligible to receive transferred benefits because they are over the age of 23 and are not considered qualified dependents per Title 10 USC, Section 1072(2). Because the applicant no longer has entitlement to the Post-9/11 GI Bill and his dependents are already over the age of 23, we do not recommend the board grant relief.

c. This opinion was coordinated with the ARNG Education Branch.

4. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal and/or provide additional documents. He did not respond.

5. Public Law 110-252 established legal limitations on the transferability of unused Post 9/11 GI Bill benefits. Further, section 3020 of 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, have at least 6 years in an active duty or Selected Reserve status and no current negative action flag, commit to the service obligation, and transfer benefits to their dependents through the TEB website. All benefits must be transferred before the service member separates or retires. The TEB incentive does not require a formal one-on-one counseling, group counseling, nor a reduction in pay to make oneself eligible. A Soldier acquires TEB eligibility and makes dependents eligible by awarding at least one month to the dependent via the TEB website and fulfilling the TEB service obligation.

#### 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 was entitled to use of the Post-9/11 GI Bill benefit and that entitlement expired on 11 February 2023, therefore the Board denied relief concurring with the National Guard Bureau's advisory opinion. The Board noted the applicant did not transfer benefits to an eligible dependent prior to his separation from the ARNG and prior to the dependent's 23rd birthday.

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.

[REDACTED]

[REDACTED] [REDACTED]

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[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. 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.

2. 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.

a. Soldiers receive counseling on all GI Bills, including the Post 9/11 GI Bill benefit and the TEB incentive at various venues throughout the Soldier's career (in/out-processing at Education Centers, Commander's Calls), upon demobilization or release from active duty, and during the last year before separation or retirement (Soldier for Life (SFL)-Transition Assistance Processing (TAP)). Soldiers have had access to and received counseling on GI Bill benefits through SFL-TAP (i.e., ACAP XXI or TAP XXI) since 2002 on-line and in-person.

b. The TEB incentive does not require a formal one-on-one counseling, group counseling, nor a reduction in pay to make oneself eligible. A Soldier acquires TEB eligibility and makes dependents eligible by awarding at least one month to the dependent via the TEB website and fulfilling the TEB service obligation.

//NOTHING FOLLOWS//