

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230007916

APPLICANT REQUESTS: in effect, exception to policy to transfer his Post 9/11 Transfer of Education Benefits (TEB) to his wife.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3349 (Physical Profile Record), dated 31 March 2023
- TEB Request Disapproved, dated 1 June 2023
- Post-9/11 GI Bill Statement of Benefits, dated 13 June 2023
- Department of Veteran Affairs (VA) Summary of Benefits Letter, dated 13 June 2023

FACTS:

1. The applicant states he is requesting to transfer his education benefits to his wife. He submitted a request on 1 June 2023 for a transfer of GI Bill benefits but did not realize there was a requirement of at least 4 years remaining on his enlistment to transfer the benefits. The 4-year mark was 28 May 2023 and he is unable to reenlist or extend due to his permanent profile. It is unjust that he is unable to transfer benefit due to a lack of education for Soldiers in education benefits as a whole. Furthermore, it is unjust that he is unable to transfer benefits to his wife who was a key part in his rehabilitation efforts from his 8 years of service due to a retention tool that lacks exceptions towards those who would serve 20 full years if capable. He missed the deadline by 4 days due to a lack of knowledge and he believes there should be a more reasonable deadline for those unable to reenlist due to service-connected disabilities.

2. The applicant provides:

a. A DA Form 3349 (Physical Profile Record), dated 31 March 2023, which indicates the applicant was on profile for neck injury/pain and referred for a medical evaluation board.

b. A screenshot from milConnect, dated 13 June 2023, which shows on 1 June 2023, the applicant's request to transfer his education benefits was disapproved due to the additional time in service requirement.

c. A Post-9/11 GI Bill Statement of Benefits, dated 13 June 2023, which shows the applicant has 36 months of benefits left to use.

d. A VA Summary of Benefits letter, dated 13 June 2023, which shows the applicant received a 90% service connected disability rating effective 1 December 2022.

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

a. He enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) on 16 April 2015.

b. The applicant signed and completed DA Form 5435 (Statement of Understanding, The Selected Reserve Montgomery GI Bill) concurrent with his enlistment in the [REDACTED] ARNG, on 16 April 2015.

c. He entered active duty on 5 October 2015. He was honorably released from active duty training on 29 April 2016. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 6 months and 25 days of active service.

d. The applicant signed and completed DD Form 2384-1 (Notice of Basic Eligibility (NOBE)) on 22 November 2017. He acknowledged he met the eligibility criteria for the Selected Reserve Educational Assistance Program authorized in Chapter 1606 of title 10, U.S. Code, as follows:

(1) On or after October 1, 1990, he agreed to serve 6 years in the Selected Reserve.

(2) He must be in compliance with all basic eligibility requirements.

(3) He had completed Initial Active Duty for Training (IADT), if required.

(4) He was not receiving financial assistance under Section 2107 of Title 10 U.S.C. (ROTC Scholarship).

e. Two additional DD Forms 214 show he had active service periods:

- 1 April 2020 to 24 June 2020 (2 months and 24 days) – Support of Covid-19
- 4 August 2020 to 2 August 2021 (11 months and 29 days) – Support of Covid-19

f. On 10 September 2020, he extended his enlistment for 6 years, establishing a new expiration of term of service date of 15 April 2027.

g. His NGB Form 23A (ARNG Current Annual Statement), dated 15 April 2023 shows the applicant earned a total of 1109 retirement points with 7 years of creditable service for retirement pay.

4. On 28 December 2023, the Chief, Special Actions Branch, National Guard Bureau (NGB), rendered an advisory opinion in the processing of this case. He opined:

a. Title 38 USC, Section 3319 requires service members be eligible to complete 4 years of service at the time of their TEB request. Though he was eligible for TEB in August 2020, the applicant did not submit his request until 29 May 2023. At that time, his request was denied due to his ETS date of 15 April 2027, which is less than 4 years from his TEB request date.

b. In his petition, the applicant stated that he is unable to reenlist or extend to meet the 4-year service requirement due to his permanent profile and pending medical discharge. DoDI 1341.13, dated October 25, 2022, Para 3.3b(4)(a) states that Service members who have not applied for TEB, and who are either on limited duty, or processing through the Disability Evaluation System (DES) in accordance with DoDI 1332.18, or both, must wait until the process is complete before applying for TEB.

c. Because the applicant was eligible to request TEB in August 2020 and he was not properly counseled on the requirement to have 4 years of service remaining to qualify, this office recommends the Board grant relief.

d. The opinion was coordinated with the ARNG Education Branch.

5. The advisory opinion was forwarded to the applicant for acknowledgement and/or response. The applicant has not provided a response to date.

6. By law (Public Law 110-252), legal limitations were established on the transferability of unused Post 9/11 GI Bill benefits.

a. A Soldier may only transfer to eligible family members. To be considered an eligible family member the spouse or child must be enrolled in the Dependent Eligibility Enrollment Reporting System (DEERS). Children lose eligible family member status upon turning age 21 or at marriage. Eligible family member status can be extended from age 21 to age 23 only if the child is enrolled as a full-time student and unmarried (verified by DEERS). Wards of State are not eligible for the benefits. Once the benefits are transferred, children may use the benefits up to age 26.

b. A Soldier must also agree to serve the prescribed additional service obligation based on the time in service the Soldier had on 1 August 2009.

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 was not properly counseled on the requirements for TEB, which led him to submit a TEB request that could not be honored due to his lack of retainability. The Board determined it would be appropriate to correct the applicant's record to show he submitted a request for TEB in the first month he became eligible for this retention incentive.

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 and Army National Guard records of the individual concerned be corrected by showing he submitted a request for TEB in the first month he became eligible for this retention incentive.

8/18/2024

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. 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. While PL 110-252, Section 3319(c)(2) states that Service Members may be eligible to transfer education benefits "To one or more of the individual's children", Army Regulation 621-202, Chapter 4-15g further states, "Eligible dependent status can be extended from age 21 and expires upon reaching their 23rd birthday only if the child is enrolled as a full-time student and unmarried (verified by DEERS). A child may be eligible if attending a Department of Veterans Affairs (DVA) approved course less than full-time or in other programs (non-institute of higher learning, apprenticeship, correspondence, flight, or noncollege degree) and currently age 21 or 22; a request must be submitted in writing to the Soldier's TEB approving official in such cases. A Soldier must transfer at least one month to the eligible child before the child's 23rd birthday for the child to be eligible for TEB." Therefore, when a child reaches their 23rd birthday and if the transfer has not already occurred, the child is no longer eligible in DEERS for education benefits to be transferred. If the child reaches their 21st birthday and the TEB website reflects "ineligible", but the child is enrolled as a full-time IHL or DVA-approved less than full-time non-IHL student, the sponsor or dependent must provide documentation to the DEERS office before the child's 23rd birthday and while enrolled so the DEERS office could extend the child's eligibility status.

//NOTHING FOLLOWS//