

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008365

APPLICANT REQUESTS:

- reinstatement of his GI Bill education benefits to his dependent. In effect, correction of his records to show he completed the 4-year obligation he incurred by transferring his post-9/11 GI Bill benefits under the Transfer of Education Benefits (TEB) to his dependents before he separated from the Army National Guard (ARNG)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (Report of Separation and Record of Service), dated 13 December 2021
- Retired Reserve Order, dated 14 December 2021
- ARNG Current Annual Statement, dated 24 December 2021
- Retired List Order, dated 3 November 2022

FACTS:

1. The applicant states he would like the Board to consider and grant his dependent full education benefits to college. He served 35 years in the Regular Army and the Alabama Army National Guard (ALARNG), only retiring after turning the age of 59, one year less than the mandatory retirement age of 60. It would create a financial hardship for his family to pay the cost back to the university. He retired one year after the COVID epidemic and at the time the Department of Defense was mandating to get the vaccine or face getting out. He chose to retire. He is also 30% service-connected for his left shoulder, elbow, and wrist.

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

a. He was born in October 1962. He had prior active service from September 1981 to May 1989.

b. He enlisted in the ALARNG on 28 July 1994. His record contains a marriage certificate reflective of his marriage to his spouse, Ni\_\_\_ on 7 November 1998.

c. He served through multiple extensions, in a variety of assignments, including active duty mobilizations (June 2007 to July 2008, January 2009 to June 2012, and June 2012 to June 2013). He attained the rank of master sergeant/E-8.

d. On 1 August 2006, ALARNG issued the applicant a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

e. On 23 December 2021, ALARNG published orders transferring the applicant to Retired Reserve, effective 13 December 2021.

f. His NGB Form 22 shows he was discharged from the ARNG on 13 December 2021 and transferred to the Retired Reserve in accordance with paragraph 6-36 of National Guard Regulation 600-200 (Enlisted Personnel Management). He completed 35 years and 26 days of total service for retired pay.

g. On 14 June 2022, he requested retired pay benefits, with eligibility or reduced age retirement. His request was approved.

h. On 3 November 2022, the U.S. Army Human Resources Command published orders placing him on the retired list (non-regular retirement), effective 2 January 2022.

3. On 19 September 2023, the National Guard Bureau (NGB) provided an advisory opinion in the processing of this case. The advisory official restated the applicant's request for correction of his records to show he completed the four-year obligation he incurred by transferring his post-9/11 GI Bill benefits under TEB to his dependents before he separated from the ARNG. The NGB official recommended: approval and stated:

a. Title 38, U.S. Code, Section 3319 requires service members to commit to serve an additional 4 years from the date of their transfer request. Though the applicant was eligible to transfer his post-9/11 GI Bill Benefits from the beginning of the program on August 1, 2009, he didn't submit a request to transfer until August 3, 2018, and was assigned an Obligation End Date (OED) of 2 August 2022.

b. On 9 July 2021, the applicant's records were reviewed under a Qualitative Retention Board (ORB), and he was selected to be retained for one year. Instead of completing the year, the applicant retired on 13 December 2021, 7 months, and 20 days prior to his OED. Because he did not receive adequate counseling about the requirement to complete his remaining service obligation, this office recommends the

Board grant relief. This opinion was coordinated with the ARNG Education Services Branch.

4. The applicant was provided with a copy of this advisory opinion. In his response, the applicant stated:

a. Before he retired, he was transferred to ALARNG Headquarters (HQ) in Montgomery. He served for 35 years and was deployed twice. Before he was the first sergeant for D Company, 1/6th Infantry. After being in HQ for over a year, he decided to retire on 13 December 2021. He notified the full time staff of his intent to retire, and they sent him a letter requesting retirement. During their next drill, he went to the orderly room to see what he needed to do. He was told that everything was in order. He didn't need to do anything. He received no advice or counseling on his benefits; the ones that he could receive or ones that he would forfeit because he did not fulfill his obligation till July of 2022. If he had known of the consequences, he would have stayed until his enlistment was over.

b. He transferred his education benefits to his daughter, and she was attending The University of North Alabama. She had completed her junior year when her funding was rescinded. They knew nothing about it until after it was rescinded. He is now responsible for the \$28,000 stipend she received each month plus nearly \$37,000 tuition the stipend is being paid back by a \$505.00 dollar deduction from his VA disability check. He is trying his best to secure a loan for the tuition. He has talked to the VA and the VA representative at the school, and they are not helping at all. It just seems that the Army is more concerned about him retiring early than the 35 years and two deployments he did serve.

5. By law (38 USC, section 3319(i):

a. Failure to complete service agreement: Except as provided, if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(1) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance under paragraph (1).

b. In the event of an overpayment of educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board reviewed and concurred with the National Guard Bureau's advisory opinion noting the applicant did not receive adequate counseling prior to his separation, resulting in separation prior to the term of his obligation end date of 7 months and 20 days.
3. The applicant's request for a video/telephonic appearance was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a video/telephonic appearance is not necessary to serve the interest of equity and justice in this case.

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 National Guard records of the individual concerned be corrected by showing the applicant filed his application and the Army approved his request to transfer his Post-9/11 GI Bill benefit to his family member prior to his retirement, provided all other criteria is met.

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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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Title 38, U.S. Code § 3319 - Authority to transfer unused education benefits to family members

a. In General.— (1) Subject to the provisions of this section, the Secretary concerned may permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d); and (2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The Secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the national security interests of the United States.

b. Eligible Individuals.—An individual referred to in subsection (a) is any member of the uniformed services who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least— (1) six years of service in the Armed Forces and enters into an agreement to serve at least four more years as a member of the uniformed services; or (2) the years of service as determined in regulations pursuant to subsection (j).

c. Eligible Dependents.— (1) Transfer.— An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement to an eligible dependent or a combination of eligible dependents.

d. Limitation on Months of Transfer.— The total number of months of entitlement transferred by an individual under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

e. Sub-paragraph (i) Overpayment.—

(1) Joint and several liability.— In the event of an overpayment of educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for purposes of section 3685.

(2) Failure to complete service agreement.—

(A) In general.— Except as provided in subparagraph (B), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(1) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance under paragraph (1).

(B) Exception.—Subparagraph (A) shall not apply in the case of an individual who fails to complete service agreed to by the individual— (i)by reason of the death of the individual; or (ii)for a reason referred to in section 3311(c)(4).

//NOTHING FOLLOWS//