

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008528

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

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

DD Form 149 (Application for Correction of Military Record)

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 he was told prior to submitting his retirement packet he had a deadline to transfer his Post 9/11. He was not told that after he got out, he could no longer transfer the benefit. In fact, he was told he could as long as he transferred them before the deadline. His daughter is in the Navy. So, he needs his Post 9/11 transferred back to his son Car___ Bla___.
3. Review of the applicant's service records shows:
 - a. He was born in N___ 1972. His records show he is married to Ka___ and they have two dependent children: Jor___ Bla___ (stepson, born in Sep 2000 and Oct___, born in July 2002).
 - b. He served in the Army National Guard (ARNG) from October 1998 to September 1999, September 2001 to September 2002, and June 2005 to June 2011, with active duty mobilization from September 2008 to October 2009.
 - c. After a break in service, he enlisted in the PAARNG on 15 March 2012. He served through multiple extensions and attained the rank of staff sergeant/E-6.

d. On 10 April 2021, PAARNG issued the applicant a Notification of Eligibility for Retired Pay at Age 60 (20-Year Letter).

e. On 12 October 2021, he requested voluntary retirement from the ARNG for what he stated as personal reasons. Part of the applicant's retirement packet included several counselings, verification, or acknowledgement forms, one of which was a verification by the State Education and Incentives Branch Chief who verified the applicant did not transfer his education benefits.

f. The applicant also signed a statement on 7 February 2022 indicating his acknowledgement that he is not receiving the MFEP (State Military Family Education Program) because he did not fulfil his obligation to the contract. He stated he is "Ok with not receiving this benefit."

g. On 2 March 2022, Joint Force Headquarters, PAARNG issued orders transferring the applicant to the Retired Reserve, effective 31 March 2022.

h. The applicant's NGB Form 22 (Report of Separation and Record of Service) shows he was separated from the ARNG and transferred to the Retired Reserve on 31 March 2022 with 20 years, 6 months, and 25 days of total service for retired pay.

4. On 3 November 2023, the NGB provided an advisory opinion in the processing of this case. An NGB official recommended approval and stated:

a. The applicant requests his records be corrected to reflect that he transferred TEB benefit months to an additional dependent.

b. On July 10, 2019, the applicant requested TEB. His request was approved, and he was notified both by email and on the TEB website that he incurred a 4-year service obligation which required him to remain in service until July 9, 2023. On March 30, 2022, the applicant voluntarily separated from service, approximately 1 year and 3 months prior to completing his service obligation. Because he failed to complete his required service obligation, the applicant's request was terminated on April 14, 2023.

c. Upon further review, we discovered that the state education office reported that the applicant had not transferred his Post 9/11 GI Bill. As a result of this error, he was not properly counseled about his remaining service obligation prior to his separation. Given this fact, the NGB recommends that the Board reinstate the applicant's TEB and that he be allowed to transfer months to his remaining dependents.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal/additional comments, but he did not respond.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. 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 1 year and 3 months.

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.

[Redacted Signature]

[Redacted Name]

[Redacted Title]

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. 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//