

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008701

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

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment/Reenlistment Document)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 8 May 2015
- Spouse Military Identification Card
- Department of Veterans Affairs (VA) Certificate of Eligibility and Summary of Benefits

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 would like to transfer his unused Post-9/11 GI Bill education benefits to his wife who is currently registered as a dependent in DEERS. He does not intend to use his remaining educational benefit: He is rated 100% permanent and totally disabled by the VA and would like to put his earned benefits to the best use for his family. He is submitting this appeal to back-date a request to transfer his Post-9/11 GI Bill Chapter 33 benefits to his wife, Ka****, as he completed his active duty service prior to certain changes made in the Post-9/11 GI bill. Currently, when attempting to make this transfer in milConnect, he receives a message stating that he cannot make this request since he is not on active duty. Although he did not make this transfer request while he was on active duty, he has earned this benefit as he has fulfilled the necessary years of service to transfer his remaining Post-9/11 GI bill education benefits to his dependent spouse which is shown in the attached supporting enlistment documentation showing his years of service. He completed his active duty service prior to certain changes made in the Post-9/11 GI Bill.

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

a. He enlisted in the Regular Army for 3 years and 16 weeks on 17 January 2012. He served in Afghanistan from July 2012 to January 2013.

b. He was honorably released from active duty on 8 May 2015 by reason of having completed his required active duty service. His DD Form 214 shows he completed 3 years, 3 months, and 22 days of active service.

4. The applicant provides:

- Spouse DOD Identification Card, issued on 22 March 2023
- VA Certificate of Eligibility, dated 12 April 2023, certifying that he is entitled to benefits for an approved program of education or training under Post 9/11 GI Bill
- VA Summary of Benefits, dated 21 March 2023, indicating 100% service-connected disabilities, effective 1 March 2023

5. The U.S. Army Human Resources Command (HRC) provided an advisory opinion on 26 October 2023 in the processing of this case. An HRC official stated:

a. HRC recommends disapproval for the applicant's TEB. The Post 9/11 GI Bill is a servicemember's benefit; however, TEB is a retention incentive requiring an Additional Service Obligation calculated from their TEB request date. It is always the Service Member's responsibility to know their TEB ASO and the date they will complete their requirement, called the Obligation End Date. To transfer the Post 9/11 GI Bill to dependents, an individual must be on Active Duty or in the Selected Reserve on or after 1 August 2009; have at least six years in Active Duty or Selected Reserve status; and have no current negative action flag (i.e., height and weight flag, Army Combat Fitness Test/Army Physical Fitness Test failure flag), commit to the ASO, and transfer benefits to the dependents through the TEB website at <http://milconnect.dmdc.osd.mil>. All benefits must be transferred before the Service Member separates or retires. Public Law (PL) 110-252 makes no provisions for waiving this requirement.

b. HRC does not recommend administrative relief based on the following:

(1) Soldiers earn the Post 9/11 GI Bill for their use because of their Active-Duty service; however, the ability to transfer it to their eligible dependent(s) is neither a reward for service or a transition benefit, but a retention incentive (much like a reenlistment bonus) requiring the commitment to and then fulfillment of the mandatory by-law 4-year ASO. Furthermore, the Post 9/11 GI Bill TEB program is an integral part of the Army's talent management initiative. Consequently, the Post 9/11 GI Bill transfer incentive was included in the statute for the express purpose of recruitment and retention.

(2) The applicant enlisted in the Regular Army on 17 January 2012 and served honorably until his separation on 8 May 2015, for a total of 3 years, 3 months, and 22 days of honorable service in the Regular Army. Because of his honorable service, he is eligible for the Post 9/11 GI Bill at the 100 percent payable rate (since he enlisted after 10 September 2001) for his personal use, with no delimiting date per Public Law 115-48, section 112 (a.k.a. the "Forever GI Bill").

(3) The applicant is not eligible to transfer his education benefits to his dependent(s) because he was discharged before attaining eligibility for the Post 9/11 GI Bill's TEB program, which requires a minimum of 6 years of service in the Armed Forces. His Regular Army service only extended for a little more than 3 years. Furthermore, records indicate that he did not earn a Purple Heart while in service; therefore, he does not qualify for this exception to the TEB retention incentive's program requirements. Again, Soldiers earn the Post 9/11 GI Bill for their use because of their Active Duty service; however, the ability to transfer it to their eligible dependent(s) is a retention incentive.

(4) In correspondence to the ABCMR, the applicant stated, "I have fulfilled the necessary years of service to transfer my remaining post-9/11 GI bill education to my dependent spouse..." As stated above, he did serve long enough to earn the Post 9/11 GI Bill at the 100 percent payable rate for his personal use. However, he did not make himself eligible to transfer his education benefits to his dependent spouse because he did not serve the program's required minimum of 6 years of service to qualify for the transfer of his education benefits. Additionally, upon reaching 6 years of service, he would have been required to commit to and then serve the program's mandatory additional 4 years of service because the transfer program is a retention incentive (much like a reenlistment bonus).

(5) The applicant remains eligible to use his Post 9/11 GI Bill education benefits and, while the transfer program is unavailable, his military service may make his dependents eligible for other types of assistance. Additionally, based on the applicant's medical disability rating from the VA (100 percent disabled), his dependents may be eligible for the Dependents' Educational Assistance program; however, he must contact the VA at 1-888-4551 to discuss his eligibility for this program.

6. The advisory opinion was forwarded to the applicant to give him an opportunity to submit a rebuttal. He did not respond.

7. 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.

BOARD DISCUSSION:

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. The evidence of record shows the applicant served for a period of 3 years, 3 months, and 22 days and therefore earned the use of the Post-9/11 GI Bill benefit for his personal use. However, the Board reviewed and concurred with the U.S. Army Human Resource Command's advisory opinion noting the applicant did not service for over a period of 6 years, as required to earn the benefit of transferring the benefit.

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]

[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. 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. 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.

//NOTHING FOLLOWS//