

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008706

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 7 August 2014

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 is writing to request a transfer of his GI Bill benefits to his daughter, Dan****, who will be commencing her studies at the University of Puerto Rico, in August 2023. He was improperly informed about the transfer process, particularly with regards to his English language proficiency. While he fully understands the importance of meeting his eligibility requirements and adhering to the guidelines for transferring his GI Bill benefits, probably his English language was not adequately to understand that process and requirements and may pose a barrier in accurately comprehending and fulfilling the necessary procedures for the transfer. Considering the circumstances, he requests the Board's understanding and assistance in this matter. He asks for guidance and support in navigating the transfer process, considering his limited English language skills. It is his earnest desire to ensure that his daughter receives the educational opportunities she deserves, as provided by the GI Bill benefits.
3. Review of the applicant's service records shows:
 - a. Having had prior service (3 January to 10 April 2000, 3 months and 8 days), he enlisted in the Army National Guard (ARNG) on 20 March 2009. His DD Form 93

(Record of Emergency Data) shows his marital status as married, with a dependent daughter (Dan***, born in November 2005).

b. He entered active duty for training from 23 September 2009 to 12 February 2010 and completed training for award of military occupational specialty 12R, Interior Electrician, after completing 4 months and 20 days of active service.

c. He again entered active duty on 19 May 2012 and was retained on active duty to participate in the Reserve Components Soldier in Transition medical care.

d. On 23 May 2014, an informal physical evaluation board (PEB) convened and found his medical conditions unfitting. The PEB recommended a combined disability rating of 60% and his disposition as permanent disability retirement.

e. He retired on 7 August 2014 due to permanent disability (enhanced). His DD Form 214 for this period shows he completed 2 years, 2 months, and 19 days of active service, with 11 months and 24 days of prior active service, and 2 years, 5 months, and 13 days of inactive service.

4. On 1 December 2023, the National Guard Bureau (NGB) provided an advisory opinion in the processing of this case. An NGB advisory official restated the applicant's request to have his records be corrected to reflect he applied to transfer his Post-9/11 GI Bill Benefits before he separated from the ARNG. The NGB indicated this opinion was coordinated with the ARNG Education Branch and recommended: Disapproval.

a. Title 38, U.S. Code, Section 3319 requires service members to complete 6 years of service to be eligible to transfer their Post-9/11 GI Bill Benefits to a dependent. On August 7, 2014, the applicant separated from the ARNG having completed 5 years, 7 months, and 26 days of service.

b. Because [Applicant] did not complete at least 6 years of service, he does not meet the eligibility requirements to transfer his Post-9/11 GI Bill benefits and we do not recommend the board grant relief. While he is not eligible to transfer his benefits, he does retain Post-9/11 GI Bill benefits for himself.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal. He did not respond.

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 of record shows the applicant served a period of 5 years, 7 months, and 26 days; however, he did not serve 6 total years as required for the transfer eligibility for this benefit. The Board reviewed and concurred with the National Guard Bureau's advisory opinion noting although he is not eligible to transfer the benefit, he is eligible to use the benefit for his personal use.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

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//