

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230008937

APPLICANT REQUESTS: correction of his Army National Guard (ARNG) records to reflect that his Obligation End Date (OED) for his Transfer of Education Benefits (TEB) be amended to the date of his retirement on 2 September 2021.

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

- DD Form 149 (Application for Correction of Military Record)
- Email to Applicant from ARNG Education Support Center, dated 11 May 2023
- Documentation Related to Applicant's Son's Individualized Education Program (IEP)
- Printout of TEB Rejection for Applicant from MilConnect

FACTS:

1. The applicant states during COVID-19, he was offered to voluntarily request a retirement discharge of 1 September 2021 since he had 2 months and one day left from his official expiration of term of service (ETS) date of 1 December 2021. Before considering such a request, he asked his current readiness noncommissioned officer if this will affect his GI Bill transfer, which is the reason he reenlisted another 4 years. He was advised that it will not affect his transfer status since it was already approved but did not mention that he will be at risk of losing his benefits if he voluntarily discharged himself 2 months in advance. His request to voluntarily discharge himself 2 months and one day in advance was not properly counseled or guided to him. He would not have requested an early retirement if he had known the risks. He did not get a retention counseling and there were other factors he was not advised prior to signing his early retirement and he had to learn the hard way. Overall, he is looking to retrieve his original ETS of 1 December 2021 to retrieve his GI Bill Transfer benefits that he had promised his daughter he would give her to help her with her dreams and goals for college.

2. A review of the applicant's service records show:

- a. He was born in 1980. His records show he is married to Pa__ (October 2008) and they have a daughter, Ale__, born in May 2007.

b. Having had prior active service (November 1999 to November 2003) and prior ARNG service, he enlisted in the TXARNG on 14 February 2009.

c. He served through multiple extensions in a variety of assignments, including active duty mobilization (1 October 2009 to 22 November 2010) and he attained the rank of staff sergeant/E-6.

d. On 25 March 2021, TXARNG issued the applicant a Notification of Eligibility for Retired Pay for Non-Regular Service (20-Year Letter).

e. On 27 October 2021, TXARNG published orders transferring the applicant to the Retired Reserve, effective 2 September 2021. His record does not contain an NGB Form 22 (Report of Separation and Record of Service); however, his NGB Form 23A (ARNG Current Annual Statement), dated 25 March 2021, shows he completed 20 years and 1 month of qualifying service toward non-regular retirement.

3. On 11 May 2023, the ARNG Education Support Center informed the applicant via email that there is no waiver for the required 4-year service obligation. The 4-year service obligation is required by law of all service members regardless of time in service. If he voluntarily discharged (such as retirement) prior to completing the required 4-year service obligation the TEB will be terminated/revoked in accordance with law, Army Regulation, DODI, policy, and NGB processing guidance. Since he discharged for retirement prior to completing the required 4-year service obligation the TEB is now terminated/revoked in accordance with law, DODI, Army Regulation, Policy, and NGB processing guidance.

4. On 14 December 2023, the National Guard Bureau (NGB) provided an advisory opinion in the processing of the applicant's case. An NGB official restated the applicant's request to have his records be corrected to reflect that his OED for his TEB be changed to the date of his retirement. The NGB official recommended approval and stated:

a. Title 38, United States Code (USC) Section 3319 authorizes service components to allow eligible Service Members to transfer their unused Post-9/11 GI Bill benefits as a retention incentive. To be eligible to transfer benefits, a service member must be currently serving in the Uniformed Services, be eligible for the Post-9/11 GI Bill, have completed at least 6 years of service, and agree to serve 4 additional years.

b. The applicant gained eligibility for the Post-9/11 GI Bill and was eligible for TEB from the beginning of the program on August 1, 2009. On December 2, 2017, the applicant requested TEB and his request was approved. After approval, he was notified both in writing and on the TEB website that he incurred a 4-year service obligation and was required to remain in service until December 1, 2021. On September 1, 2021,

3 months prior to completing his service obligation, he voluntarily retired from service and his TEB request was rejected.

c. In his statement, the applicant indicated that he was erroneously advised during his out-processing counseling that his separation would not affect his TEB eligibility. Because he was incorrectly counseled prior to separation, the NGB recommends the Board grant relief.

d. It should be noted that the applicant's Post 9/11 GI Bill benefits are subject to a 15-year delimiting period and will expire on November 21, 2025. Any benefits transferred to a spouse will also expire on that day, however, any benefits transferred to a child will be unaffected.

e. This opinion was coordinated with the ARNG Education Services Branch.

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

6. Public Law 110-252 established legal limitations on the transferability of unused Post 9/11 GI Bill benefits. Further, section 3020 of Public Law 110-252 limits eligibility to transfer unused benefits to those members of the Armed Forces who are serving on active duty or as a member of the Selected Reserve on or after 1 August 2009, have at least 6 years in an active duty or Selected Reserve status and no current negative action flag, commit to the service obligation, and transfer benefits to their dependents through the TEB website. All benefits must be transferred before the service member separates or retires. 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.

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 applicant did not receive adequate counseling prior to his separation, resulting in separation prior to the term of his obligation end date of 3 months.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 separation, 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. 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. Soldiers can/could obtain TEB eligibility criteria through the Department of Defense (DOD) DTM 09-003 (dated 22 June 2009), the Department of the Army (DA) Post 9/11 GI Bill Policy Memorandum (dated 10 July 2009), paragraph 17a(4), DOD, DA, and HRC websites, various briefings at the installation level, and briefings through SFL-TAP.

//NOTHING FOLLOWS//