

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20230009954

APPLICANT REQUESTS:

- correction of his record to reflect that his Transfer of Education Benefits (TEB) request to transfer to his daughter was approved prior to his discharge
- appearance before the Board via video/telephone

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 would like to transfer his GI Bill benefits to his daughter. He was unaware and unable to complete this before his separation from the military. There is no error or injustice, just the request of a disabled veteran. This correction is a kind action that would benefit his daughter in attending a culinary school that would prevent her from going into an educational debt and even preventing her from going to the school at all. This is not a way for the applicant to undercut, abuse or take money from the military at all; rather the benefits that he has been awarded for his time in service.
3. A review of the applicant's service records show:
 - a. DD Form 4 (Enlistment/Reenlistment Document-Armed Forces of the United States) reflects he enlisted in the Army National Guard of the United States on 17 October 2006.
 - b. The applicant entered active duty for training on 7 November 2006. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty on 4 June 2007 and transferred to the ARNG. He completed 6 months and 4 days net active service.

c. The applicant entered active duty on 2 December 2008. His DD Form 214 shows he was honorably released from active duty on 12 December 2009 and transferred to the ARNG. He completed 1 year and 8 days net active service.

d. NGB Form 23B (ARNG Retirement Points History Statement), prepared 26 May 2010 shows the applicant had 3 years of creditable service for retired pay.

e. The applicant entered active duty on 20 August 2010. His DD Form 214 shows he was honorably released from active duty on 16 October 2011 and transferred to the ARNG. He completed 1 year, 1 month and 27 days net active service.

f. DA Form 4836 (Oath of Extension of enlistment or Reenlistment), 24 October 2011, shows the applicant voluntarily extended his current enlistment/reenlistment agreement for 6 years.

g. NGB Form 600-7-3-R-E (Annex to DD form 4 or DA Form 4836 Reenlistment/Extension Bonus (REB) Addendum, ARNG of the United States), 29 June 2012 shows in Section III (Bonus Amount and Payments number 1 Reenlistment/Extension Bonus the applicant reenlisted/extended for six years.

h. NGB Form 22 (National Guard Report of separation and Record of Service) shows the applicant was honorably separated from the ARNG on 16 December 2018 for expiration of service obligation.

- 10a (Net service this period) 12 years, and 2 months
- 10e (Total service for retired pay) 12 years

j. Orders 340-1070, 6 December 2018 show the applicant was honorably discharged from the ARNG and as a Reserve of the Army effective 16 December 2018.

4. On 3 April 2024, in the processing of this case the Chief, Education Services Branch, National Guard Bureau, provided an advisory opinion recommending approval. He states in pertinent part:

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 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 six years of service and agree to serve four additional years. Additionally, Soldiers must not be serving under a Suspension of Favorable Personnel Actions (SPFA).

b. On June 26, 2012, the applicant requested TEB and the request was rejected because he had not completed at least six years of service in the Uniformed Services and had not committed to the four-year service obligation. He signed a six-year extension on June 29, 2012, enabling him to meet the four-year service obligation requirement, but he was still short of completing the required six years of service.

c. The applicant made a second request for TEB on December 5, 2017. This request was rejected because he had an active SPFA and his remaining service obligation was less than four years. He separated from service on December 17, 2018.

d. Though the applicant did not meet the requirements for TEB at either time when he requested it, he did meet the requirements when he completed six years of service on October 16, 2012. Therefore, we recommend the board grant relief and correct the applicant's record to show that he requested TEB upon his earliest eligibility.

5. On 24 April 2024, the applicant was provided with the advisory opinion for comment. He did not respond.

6. By regulation (AR 15-185), the ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the advisory official that the applicant did complete sufficient service to be eligible to transfer his Post-9/11 GI Bill education benefits to his dependents, but he failed to submit a request for the transfer at the right time in his career. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected to show he submitted a request for transfer of his Post-9/11 GI Bill education benefits to his dependents the day after he completed his 6th year of service.

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 Army National Guard records of the individual concerned be corrected by showing he submitted a request for transfer of his Post-9/11 GI Bill education benefits to his dependents the day after he completed his 6th year of service.

12/16/2024

X

CHAIRPERSON

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. 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.

a. 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.

b. 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.

3. 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 in order to transfer educational benefits to a spouse and at least 10 years of eligible service to transfer to eligible children.

c. A Soldier may only transfer to eligible family members. To be considered an eligible family member the spouse or child must be enrolled in the Defense Enrollment Eligibility Reporting System (DEERS).

d. A Soldier must also agree to serve the prescribed additional service obligation based on the time in service the Soldier had on 1 August 2009.

e. A Soldier should not be granted relief based on unawareness of the law, program rules, or procedures unless he or she left the service during the implementation phase which is the first 90 days of the program.

f. A Soldier must have initially requested to transfer benefits on the DOD TEB online database. The TEB online database was operational 29 June 2009. Once approved in the TEB online database by the Soldier's service, the approval information is automatically relayed electronically to the VA for their access.

3. Army Regulation 621-202 (Army Educational Incentives and Entitlements) paragraph 4-15 states Soldiers may elect to transfer their Post-9/11 GI Bill education benefits to their spouse, one or more of their children, or a combination of spouse and children through the TEB website in the milConnect portal at <https://www.dmdc.osd.mil/mil-connect> or <http://milconnect.dmdc.mil>. Only dependents listed as eligible in the TEB

website may receive the Post-9/11 GI Bill education benefit. TEB is neither an entitlement nor a transition benefit, but was specifically identified by statute as a tool for recruitment and retention of the career force. The ability to transfer the Post-9/11 GI Bill education benefit was created as a recruitment and retention incentive for additional service within the Uniformed Services. Soldiers may increase, decrease, or revoke months to an eligible dependent at any time as long as at least one month is transferred to the dependent before the Soldier leaves the Armed Forces. Once a Soldier leaves service, the Soldier may not transfer benefits to dependents who had not received at least one month while the Soldier was on active duty or in the SELRES.

//NOTHING FOLLOWS//