

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 May 2024

DOCKET NUMBER: AR20230010209

APPLICANT REQUESTS:

- a. in effect, correction of his record to show he completed a 4-year service obligation for the Transfer of Education Benefits (TEB), resulting in the remission of a service debt related to educational benefits paid under the Post 9/11 G.I. Bill TEB.
- b. a personal appearance (video/telephone).

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), 31 March 2016

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in summary, he should not be required to repay funds (\$31,000.00) previously disbursed under the Post 9/11 G.I. Bill TEB due to his failure to complete his remaining service obligation. He retired upon reaching his Retention Control Point (RCP) and after completing 20 years of service. He contends the administrative personnel should have noted he had not completed his required service obligation, provided a waiver, or extended him for an additional 6 months. He is currently unable to work due to his disabilities and his only source of income is his retirement pay/disability compensation. He was advised, since he was retired due to reaching his RCP this debt could be waived.
3. On 5 March 1996, the applicant enlisted in the Regular Army for 3 years.

4. On 15 June 1998, the applicant extended his current enlistment term by 3 years and 20 weeks.
5. On 30 November 2000, the applicant reenlisted for 3 years.
6. On 25 March 2003, Bravo Company, 82nd Soldier Support Battalion issued Orders Number 084-101 announcing the applicant's promotion to the rank/grade of staff sergeant (SSG)/E-6, effective 1 April 2003.
7. On 2 April 2003, the applicant reenlisted for 3 years.
8. On 4 January 2005, the applicant reenlisted for 3 years.
9. On 5 May 2006, the applicant reenlisted indefinitely.
11. On 7 April 2015, the U.S. Army Installation Management Command issued Orders Number 097-0002 reassigning the applicant to the transition center pending voluntary separation processing.
12. On or about 9 March 2016, the applicant was afforded counseling concerning post service entitlements to include educational benefits.
13. On 31 March 2016, the applicant was voluntarily retired from military service in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 12 (Retirement for Length of Service). DD Form 214, item 26 (Separation Code) reflects "RBD (Sufficient Service for Retirement)."
14. On 9 February 2024, the U.S. Army Human Resources Command (AHRC), Chief, Education Incentives Branch, provided an advisory opinion recommending disapproval of the applicant's request noting he failed to fulfill the mandatory 4-years Active-Duty Service Obligation (ADSO) because he voluntarily retired 5 months prior to reaching his Obligation End Date (OED). Service members should not be granted relief based on unawareness of the law, program rules, or procedures unless they left the service during the implementation phase (first 90 days) of the program.
  - a. The applicant was first eligible to transfer his Post 9/11 GI Bill education benefits to his eligible dependents when the program first became available on 1 August 2009 because he had already attained the minimum required 6-years of service. However, his records reflect that he submitted his TEB request on 7 August 2012, which was approved by his career counselor on 8 January 2013. After the TEB approval, the milConnect system automatically assigned him a TEB OED of 6 August 2016, based on the date of his application. This information, along with his system calculated OED, is displayed on his milConnect TEB webpage, in the upper left-hand corner.

b. On 5 May 2006, the applicant reenlisted indefinitely. At that time, as an "SSG" he had an RCP of 22 years which would have allowed him to serve until 31 March 2018. This was sufficient time to complete the TEB by-law mandatory 4-year ADSO. While he was serving, the RCP for his rank (SSG) was reduced to 20 years, adjusting the date from 31 March 2018 to 31 March 2016. On 24 January 2024, their office contacted AHRC Retention Office and confirmed that the applicant was "grandfathered" into the original 22-year RCP in effect at the time of his reenlistment; therefore, his RCP date remained unchanged on 31 March 2018.

c. In 2016, HRC's Retirements and Separations Branch informed their office that the applicant was selected for early separation during the Fiscal Year 2016 Qualitative Management Program (QMP) board. Instead of mandatory separation on 1 November 2016, the applicant opted to voluntarily leave the service in lieu of QMP as he had sufficient time to retire. Because QMP (to include retirement/separation in lieu of QMP) in accordance with Public Law 110-252 (TEB's governing law) and subsequent Army policy codified in AR 621-202 (Army Educational Incentives and Entitlements) is not a valid reason to adjust a retention incentive's OED, their office rejected the applicant's TEB request on 7 September 2016. The applicant was subsequently notified of this rejection.

d. On 29 July 2022, their office received an inquiry from the Department of Veterans Affairs (DVA) Regional Processing Office (RPO) in Muskogee, OK, regarding the applicant's TEB. Their office confirmed the TEB rejection in 2016 was warranted and notified the DVA RPO in Muskogee. The DVA, as the administrator and sole paying agent for all GI Bill Programs, is authorized to initiate collection proceedings against the applicant for any transferred benefits used by dependents. The applicant retains the Post 9/11 GI Bill for his use because of his AD service.

e. While the applicant was in service, numerous Post 9/11 GI Bill TEB information sources were available to him after the TEB incentive became available in 2009. The applicant could have obtained the TEB eligibility criteria through various counseling opportunities at the Installation Education Center, In-/Out-processing centers (located on each installation); Department of Defense (DoD) Type Directive Memorandum 09- 003, HRC websites and various briefings at the installation level. In addition, information provided before and after the program's implementation was highly publicized. Finally, the DVA website, Military Personnel messages and many news articles were released regarding eligibility for the Post 9/11 GI Bill TEB program. In short, the applicant could have used the DoD, Army and DVA resources available to him to ensure his compliance with all program participation requirements, to include his assigned service obligation.

f. On 23 January 2024, their office contacted the DVA regarding the applicant's debt. The DVA confirmed an incurred debt; however, they were unable to provide the

amount. The DVA in Muskogee stated "funds have been received six separate times" ranging from 31 July 2023 until 20 December 2023. Because payments were made after the applicant left the service, he may be eligible to have his debt waived as an administrative error; however, this is up to the DVA to decide. The applicant must contact the DVA Debt Management Center (DMC) to determine the debt amount and make any necessary payment arrangements.

15. On 15 February 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. The applicant responded via email noting that he does not understand why he should be required to repay the \$31,000.00 in tuition assistance received by his daughter. He again notes that the administrative staff took care of his retirement processing, and he was never made aware of this obligation during that time.

#### BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The evidence of record and independent evidence provided by the applicant was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

3. The applicant did not pursue all avenues of relief before applying to the ABCMR. The applicant may request remission of his debt through the Department of Veterans Affairs. Since the VA made the payments after he left the service, he may be eligible to have his debt waived as an administrative error. However, that is up to the Department of Veterans Affairs, not the Department of the Army.

4. The Board concurs with the advisory opinion.

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.

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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. Title 10, USC, 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 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.
3. Department of Defense policy further states the Secretaries of the Military Departments were instructed to provide active-duty participants individual pre-separation or release from active-duty counseling on the benefits under the Post 9/11 G.I. Bill, and to document accordingly and maintain records for individuals who received supplemental educational assistance under Public Law 110-252, section 3316.
4. Army Regulation 621-202 (Army Educational Incentives and Entitlements) Chapter 4 (Post 9/11 G.I. Bill) provides policy is to implement the Post 9/11 G.I. Bill to enhance the Army's recruiting and retention programs. 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://milconnect.dmdc.osd.mil/milconnect/>.

a. Soldiers who fail to fulfill the TEB service obligation will have the previously approved TEB rejected and the Soldier and dependent may incur an overpayment debt from the DVA.

b. If a Soldier fails to complete the service agreement for reasons other than those listed below, the amount of any transferred entitlement used by the dependent will be treated as an overpayment of educational assistance and will be subject to the recoupment by the DVA. Exceptions are as follows:

(1) Death of the Soldier;

(2) Discharge or release from the Army for a medical condition that pre-existed the service of the Soldier and was not service connected;

(3) Discharge or release from the Army for hardship;

(4) Discharge or release from the Army for a physical or a mental condition not characterized as a disability, and which did not result from the Soldier's own willful misconduct;

(5) Discharge or release from the Army for a disability; and

(6) Involuntary discharge or release through a Service force-shaping or RIF initiative when the TEB request resulting in an approved TEB request is before the convening date of the following boards:

(a) Service force-shaping or RIF initiatives include but are not limited to Soldiers involuntarily separated or retired from qualifying service under the provisions of the Qualitative Service Program, Qualitative Retention Board etc.

(b) Soldiers separated under the above programs may only retain the transferred benefits without completing the previously approved TEB service obligation if they requested the transfer prior to the convening of the board, on or after the effective date of this regulation, and were otherwise eligible to transfer benefits (all factors must be met).

(c) These exceptions do not apply to Soldiers who voluntarily retire or separate in lieu of consideration by any separation or retirement board and will result in TEB rejection if their established separation/retirement date is before the TEB obligation end date.

5. 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 may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//