

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230010239

APPLICANT REQUESTS: correction of his records to transfer education benefits (TEB) to his dependents.

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), 2 July 2004
- DD Form 214, 8 December 2006
- DD Form 214, 5 May 2009
- DD Form 214, 22 November 2010
- NGB Form 22 (National Guard Report of Separation and Record of Service), 20 February 2015
- Marriage License, [REDACTED]
- Letter from the Department of Veterans Affairs (VA), 19 May 2022
- Letter from the VA, 14 October 2022

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 requesting TEB. He would like to allocate all months to eligible dependents. Before he left the service, he was improperly informed he could transfer benefits after he left the service. This was important to him because he was not sure whether he would be using them or if he would pass them on to his spouse or children.
3. The applicant provides the following documents:
  - a. NGB Form 22 for the period ending 20 February 2015 shows the applicant was honorably discharged from the ARNG due to expiration term of service. He had completed 12 years of service.

b. A marriage license, which shows he married his spouse on [REDACTED].

c. A letter from the VA, dated 19 May 2022, certifies the applicant is entitled to an approved program of education or training under the Post 9/11 GI Bill.

d. A letter from the VA, dated 14 October 2022, states the VA made a decision about the applicant's benefits. He was evaluated as 100 percent disabled as of 30 December 2021. The entire letter is available for the Board's consideration.

4. The applicant's service record contains the following documents:

a. The applicant's service record was void of his DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States). His records contain DD Forms 214, which show he entered active duty, as an enlisted Soldier in the Army National Guard (ARNG) on:

(1) 3 September 2003, to complete active duty training, and was honorably released to his ARNG unit on 2 July 2004. He had completed 10 months of active duty service.

(2) 5 August 2005, with service in Kuwait and Iraq, and was honorably released on 8 December 2006. He had completed 1 year, 4 months, and 4 days of active duty service.

(3) 8 April 2008, with service in Kosovo, and was honorably released on 5 May 2009. He had completed 1 year and 28 days of active duty service.

(4) 3 September 2009, with service in Afghanistan, and was honorably released on 22 November 2010. He had completed 1 year, 20 months, and 20 days of active duty service.

b. A DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 7 October 2008 shows he extended his enlistment of 21 February 2003 in the ARNG for a period of 6 years.

c. Enlisted Record Brief, dated 8 February 2014, shows he had service in Afghanistan from 10 October 2009 through 18 August 2010, a period of 10 months; in Kosovo from 18 June 2008 through 2 February 2009, a period of 9 months; and in Iraq from 19 November 2005 through 5 November 2006, a period of 12 months.

d. Personnel Enlisted Qualification Record - Enlisted, dated 2 March 2015 shows the applicant's initial procurement date was 21 February 2003.

- e. The applicant's service record is void of documentation showing TEB information.
5. On 30 January 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion, which states:
- a. The applicant requests his records be corrected to reflect that he requested TEB of his Post 9/11 GI Bill before he separated from the ARNG. NGB recommended disapproval of the applicant's request.
- b. Title 38 United States Code Section 3319 authorizes service components to allow eligible servicemembers to transfer their unused Post 9/11 GI Bill benefits to eligible dependents as a retention incentive. To be eligible to transfer benefits, a servicemember 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.
- c. The applicant gained eligibility for the Post 9/11 GI Bill after deploying in 2006 and was eligible for TEB from the beginning of the program on 1 August 2009. NGB found no evidence the applicant requested TEB prior to separating on 20 February 2015.
- d. Given the applicant did not request TEB while he was actively serving, NGB does not recommend the Board grant relief. The applicant may still use the Post 9/11 GI Bill for himself, his eligibility for the benefit will end on 21 November 2025.
- e. The advisory opinion was coordinated with the ARNG Education Branch.
6. On 1 February 2024, the applicant was provided the advisory opinion to allow him the opportunity to respond. 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 relief is not warranted.
2. The Board concurred with the conclusion of the advisory official that the applicant had several years to request TEB prior to his discharge in 2015, and his failure to do so does not constitute an error or injustice. Further, it is unclear whether he had any eligible dependents to whom he could have transferred education benefits prior to his discharge. The Board noted that his service records show he was divorced, and he provides a marriage license showing he remarried after he was discharged. There are no provisions for TEB for dependents acquired after discharge. Based on a

preponderance of the evidence, the Board determined there is no error or injustice related to TEB in this case.

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.

8/18/2024

X [REDACTED]

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CHAIRPERSON  
[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, 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. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members) provides —

a. The Secretary concerned may permit an individual who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents a portion of such individual's entitlement to such assistance, subject to the limitation under subsection. The purpose of the authority is to promote recruitment and retention in the uniformed services.

b. An individual transferring an entitlement to educational assistance under this section shall —

(1) designate the dependent or dependents to whom such entitlement is being transferred; and

(2) designate the number of months of such entitlement to be transferred to each such dependent.

c. An individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed.

3. Public Law (PL) 110-252, as amended by PL 111-377, identified the qualifications to receive the Post 9/11 GI Bill, one of which was that the service member must have performed active service on or after 11 September 2001 in order to be eligible for the Post-9/11 GI Bill.

a. PL 110-252 established legal requirements on the transferability of unused benefits to those members of the Armed Forces who were serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.

b. 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 Report System (DEERS). Children lose eligible family member status upon turning age 21 or at marriage. Eligible family member status can be extended from age 21 to age 23 only if the child is enrolled as a full-time student and unmarried (verified by DEERS). Once the benefits are transferred, children may use the benefits up to age 26.

4. On 22 June 2009, the Department of Defense (DOD) established the criteria for eligibility and transfer of unused education benefits to eligible family members. The policy limits the entitlement to transfer education benefits to any member of the Armed Forces on or after 1 August 2009, who, at the time of the approval of his or her request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill.

a. Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election.

b. Has at least 10 years of service in the Armed Forces (active duty and/or service in the Selected Reserve) on the date of election, is precluded by either standard policy (service or DOD) or statute from committing to 4 additional years and agrees to serve for the maximum amount of time allowed by such policy or statute.

c. Is or becomes retirement eligible during the period from 1 August 2009 through 1 August 2013. A service member is considered to be retirement eligible if he or she has completed 20 years of active service or 20 qualifying years of Reserve service.

5. On 4 January 2011, the Post 9/11 Veterans Educational Improvements Act of 2010 was signed into law. This law expands the definition of Active Duty to include Title 32 Service. Rules under this special provision are as follows:

a. Must have served 90 days or more of honorable service under Title 32 Full-Time National Guard Duty (AGR) "for the purpose of organizing, administering, recruiting, instructing, or training" on or after 11 September 2001; or,

b. Must have served 90 days or more of honorable service under Title 32 section 502(f) "for the purpose of responding to a national emergency", on or after 11 September, 2001 (Operation Noble Eagle 11 Sept 2001- 31 May 2002 is currently the only qualifying orders in this category); and,

c. Must not have qualified due to mobilization or Active Duty service under Title 10 USC section 688, 12301(a), 12301(d), 12301(9), 123.02, or 12304 for 90 days or longer on or after 11 September 2001. These codes may be listed on the orders or DD 214.

6. Army Regulation 621-202 (Army Educational Incentives and Entitlements) establishes policy for educational incentives and entitlements authorized by Public Law. It provides Regular Army, Army National Guard, Army National Guard of the United States, and U.S. Army Reserve unique policies, procedures and responsibilities governing educational benefits for Soldiers of the Active and Reserve Components. Paragraph 4-15 (Transferability of unused benefits to dependents) states in pertinent part, 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 Transfer of Education Benefits (TEB) website in the milConnect portal at <https://www.dmdc.osd.mil/milconnect>. 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 (PL 110-252) 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 Armed Forces. 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.

Dependents gained after a Soldier is no longer on active duty or in the SELRES may not receive TEB.

//NOTHING FOLLOWS//