

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 May 2024

DOCKET NUMBER: AR20230010467

APPLICANT REQUESTS: Transfer Education Benefits (TEB) under the Post 9/11 G.I. Bill to his dependent children. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Officer Record Brief (ORB), 20 June 2023
- Memorandum for Record (MFR), Subject: Request for Exception to Post 9-11 GI Bill Transfer Policy, 12 June 2023
- Memorandum, Subject: Request for Exception to Policy Post 9-11 GI Bill, 26 June 2023

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 pertinent part, he applied for the Post 9/11 GI Bill benefits over a decade ago. He was a Major at the time with 18 months of eligibility. He gave 12 months to his daughter J-, and the remaining six months to his son Z-. He did not keep a record as he thought it would be maintained in the system. He has since checked his record and cannot find any evidence of his application. His dependents should not be penalized due to him not having four more years of eligibility to retain this benefit. After 31 years of service, he has met the Army's recruit and retention incentive. He requests clemency from the Board and requests reinstatement of his post 9/11 GI Bill benefits.

3. A review of the applicant's available service record reflects the following:

a. On 7 June 1995, he was appointed as a Reserve commissioned officer and executed an oath of office.

b. National Guard Bureau (NGB) Form 337 (Oaths of Office), dated

15 September 1995 shows he was appointed as a Reserve commissioned officer in the Alabama Army National Guard (ALARNG) and executed an oath of office.

c. NGB Form 22 (Report of Separation and Record of Service), dated 22 September 1997 reflects an honorable release from the ALARNG and transfer to the U.S. Army Reserve (USAR) Control Group Individual Ready Reserve (IRR)) with service from 15 September 1995 to 22 September 1997 for a net service this period of 2 years and 8 days.

d. On 6 October 1997, the Alabama State Military Department, Office of the Adjutant General, issued Orders Number 279-002 honorably separating him from the ALARNG and reassigning him to the USAR Control Group (IRR), with a retroactive effective date of 22 September 1997.

e. On 19 February 1998:

(1) He was appointed as a Reserve commissioned officer and executed an oath of office.

(2) NGB Form 337 shows he was appointed as a Reserve commission officer with the ALARNG and executed an oath of office.

f. NGB Form 22, dated 1 October 1999 reflects an honorable release from the ALARNG and transfer to the USAR Control Group (IRR) with service from 19 February 1998 to 1 October 1999 for a net service this period of 1 year, 7 months, and 10 days.

g. On 3 November 1999, the Alabama State Military Department, Office of the Adjutant General, issued Orders Number 307-219 honorably discharging him from the ALARNG and reassigning him to the USAR Control Group (IRR), with a retroactive effective date of 1 October 1999.

h. On 3 January 2010, he entered active duty in support of Operation Enduring Freedom.

i. On 1 July 2010, he was honorably released from active duty and returned to his USAR unit. He completed 5 months and 29 days of net active service.

j. On 19 February 2015, the U.S. Army Human Resources Command issued a Memorandum, Subject: Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter).

k. He continues service with the USAR.

4. The applicant provides the following:

a. ORB dated 20 June 2023 showing his basic date of appointment as 7 June 1995 and actively serving in the USAR.

b. MFR, Subject: Request for Exception to Post 9-11 GI Bill Transfer Policy, dated 12 June 2023, wherein he asks for reinstatement of his benefits so that he can transfer the benefits to his dependents due to him not being able to meet the four-year service requirement. He also reiterates his opening statement to the Board.

c. Memorandum, Subject: Request for Exception to Policy Post 9-11 GI Bill, dated 26 June 2023, wherein the Headquarters, U.S. Army Materiel Command, Chief of Staff, Major General W- D- endorsed the applicant's request supporting his request to transfer his education benefits to his dependent children.

5. On 14 February 2024, the U.S. Army Human Resources Command (HRC), Chief, Education Incentives Branch, provided an advisory opinion recommending disapproval of the applicant's request stating, in effect:

a. Recommend disapproval of the applicant's request to waive the Post 9/11 GI Bill Transfer of Education Benefits service obligation. Service Members (SM) earn the Post 9/11 GI Bill because of their qualifying active duty service. However, the ability to use TEB for eligible dependents is neither a reward for service nor a transition benefit, but a retention incentive (much like a specialty skills bonus) requiring the fulfillment of a by-law mandatory four-year Additional Service Obligation (ASO). Eligibility to participate in the TEB retention incentive is based on service in active duty or Selected Reserve, on or after 1 August 2009; having at least 90 days of qualifying active duty service; attaining a minimum of 6 years of qualifying service; having no current negative action flags; and being able to commit to the four-year ASO. The only way to request Post 9/11 GI Bill TEB is via the Defense Manpower Data Center (DMDC) maintained milConnect website at <https://milconnect.dmdc.osd.mil>. If approved to participate in the retention incentive, the milConnect system will assign the SM an Obligation End Date (OED), which is automatically calculated from the initial request and signifies the four-year ASO end date. Additionally, SMs must allocate a minimum of one month benefits to each eligible dependent before leaving the service, otherwise they will lose eligibility to do so after transitioning. Finally, SMs must honorably complete the ASO, or they will lose TEB eligibility. The Post 9/11 GI Bill TEB retention incentive is an integral part of the Army's talent management initiative, so is used for the express purpose of recruitment and retention. Consequently, Public Law 110-252 makes no provisions for waiving these requirements.

b. They do not recommend administrative relief based on the following:

(1) A Soldier 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. The Department of Defense (DoD), Department of the Army, and Department of Veterans Affairs initiated a comprehensive publicity campaign plan that generated major communications through military, public, and social medial venues on the Post 9/11 GI Bill and associated transfer of education benefits program. This information has been available to the applicant since the program's inception.

(2) He was 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 required minimum of six years of service. However, their records indicate that he never submitted a TEB request until 15 May 2023 which was rejected by their office on 17 May 2023 due to insufficient retainability to commit to the by-law required four-year ASO. Upon rejecting his TEB request, their office sent him an email to inform him of the TEB rejection, which included the reason for rejection and information on how to possibly become eligible for TEB. See Enclosure One for the TEB rejection email to the applicant. At the time of his TEB request, he had a mandatory retirement date (MRD) of 1 July 2025, which was less than four years from the date of his TEB request and prevented him from meeting the program's by-law required four-year ASO. As of the date of this letter, his MRD remains 1 July 2025.

(3) Soldiers receive counseling on all GI Bills, including the Post 9/11 GI Bill benefit and its TEB incentive, at various venues throughout the Soldier's career (in/out processing at Education Centers, upon demobilization or release from active duty, and during the last year before separation or retirement (Soldier for Life (SFL)-Transition Assistance Program (TAP)). Soldiers have had access to and received counseling on GI Bill benefit through SFL-TAP since 2002 on-line and in-person.

(4) Since the applicant has been in service, numerous Post 9/11 GI Bill TEB information sources have been available to him after the TEB incentive became available in 2009. He could have obtained the TEB eligibility criteria through the previously mentioned counseling opportunities and by consulting the DoD Type Directive Memorandum 09-003: Post 9/11 GI Bill, Attachment 2, paragraph 3a(3), dated 22 June 2009; paragraph 17a(4) of the U.S. Army Post 9/11 GI Bill Policy Memorandum dated 10 July 2009; DoD, Department of the Army, and the U.S. Army Human Resources Command websites. In addition, information provided before and after the program's implementation was highly publicized. Finally, the Department of Veterans Affairs website, Military Personnel messages and many news articles were released regarding eligibility for the Post 9/11 GI Bill TEB. In short, he could have used the DoD, Army, and Department of Veterans Affairs resources available to him to ensure his

compliance with all program participation requirements, to include committing to and fulfilling the by-law mandatory four-year ASO.

(5) Since the implementation of the Post 9/11 GI Bill TEB program in 2009, milConnect has been the sole system of record for all TEB related transactions, to include requests and allocation of months to dependents. On 6 February 2024, this office contacted DMDC to validate his statement in his correspondence to your office that "over a decade ago...[he] gave 12 months to [his] daughter J-, and the remaining six months to [his] son Z-." The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed. DMDC's review of the applicant's milConnect access record did not support the submission of a TEB request prior to his 15 May 2023 request. According to the access record, he never logged on to the milConnect website prior to 15 May 2023, which is the date of his only TEB request. Enclosure Two contains the email traffic with DMDC. Has the applicant submitted a TEB request "over a decade ago", as he claims, he had the responsibility of checking the milConnect website for the status of his TEB request and any applicable OED, which is and has always been viewable in the upper left-hand corner of the TEB website. He could have logged into the milConnect website at any point after his alleged TEB request was submitted and, while he was still able to commit to the four-year ASO, and could have noticed that he never actually submitted a TEB request. Again, please note that a Soldier earns the Post 9/11 GI Bill because of their active duty service; however, its accompanying TEB program is a retention incentive requiring the fulfillment of the by-law four-year ASO. The TEB retention incentive is not a Soldier's entitled benefit.

c. The applicant's military service may make his dependents eligible for other types of assistance. Enclosure Three contains numerous agencies that may assist. Additionally, his Post 9/11 GI Bill benefits are available for his use. The records indicate he has been on orders for qualifying active-duty service for more than 90 days, and upon his discharge date from his current assignment, this period of service will fall under the "Forever GI Bill" authorized by Public Law 115-48, Section 112. In short, if he is honorably discharged from his current assignment, his Post 9/11 GI Bill benefits will not expire.

6. On 29 February 2024, the applicant was provided a copy of the advisory opinion and given an opportunity to respond.

7. On 29 March 2024, he provided a rebuttal stating, in effect:

a. References (a) Request for Exception to Policy, dated 10 July 2023; (b) DA Form 4836 (Developmental Counseling Form), dated March 2023.

b. Request Army Review Boards Agency to approve his exception to policy to

HRC's denial of his request to transfer his Post 9/11 GI Bill Benefits to his two children. He had previously requested an exception, which was endorsed by the Army Material Command Chief of Staff in July 2023. Request was denied to not meeting the four-year obligation as his MRD is July 2025, Reference (a) pertains.

c. In the rationale provided in the initial denial, there are multiple statements that are inaccurate. First, he does not concur with this seen as an attempt to obtain an additional benefit he did not earn. As of 17 January 2024, he has 32 years of service. He believes his 32 years of service more than meets the "recruit and retain" purpose of this program. Further, the Post 9/11 GI Bill program is not widely publicized in the USAR as claimed in the denial letter. As a USAR Soldier, he has spoken to multiple USAR Soldiers who thought the Post 9//11 GI Bill was the same program as the Montgomery GI Bill. Additionally, he has spoken to several USAR Recruiters, who advised they not only were unaware of the four-year obligation with the Post 9//GI Bill, but advised the program is a Veterans Affairs program and they do not brief this program to incoming or outgoing Soldiers in the USAR. He commanded from the Platoon to Brigade level and the Post 9//GI Bill has never been mentioned as a benefit. Multiple examples of the different counseling's are attached, none of them mention the Post 9/11 GI Bill, Reference (b) pertains.

d. Considering the recruiting and retention issues the Army is currently facing and has been facing for several years, the lack of communicating this program is not taking care of Soldiers. The USAR does not have the education centers the denial letters stipulates as a part of the available resources he would have had at his disposal. Instead of costly bonuses offered to assist not only recruiting but also retaining Soldiers, the removal of the four-year obligation to an already existing Army program is a viable, easy solution. He requests consideration and approval of his exception to policy request.

e. In support of his response, he provided the following additional documents:

- Memorandum for Request for Exception to Post 9-11 GI Bill Transfer Policy, dated 12 June 2023, previously address in the above paragraphs.
- Memorandum for Request for Exception to Post 9-11 GI Bill Transfer Policy, dated 26 June 2023, previously addressed in the above paragraphs.
- ORB, dated 20 June 2023, previously addressed in the above paragraphs.
- DA Forms 4856, covering general benefit topics for the USAR as stated in the above paragraph.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and U.S. Human Resources Command – Education Incentives Branch advisory opinion, the Board concurred with the advising official recommendation for disapproval finding the applicant was eligible to transfer his Post 9/11 GI Bill education benefits to his eligible dependents since he already attained the required minimum of six (6) years of service. The opine noted the applicant as indicated by HRC database, never submitted a TEB request until 15 May 2023, and was rejected due to insufficient retainability to commit to the by-law required four-year ADO.

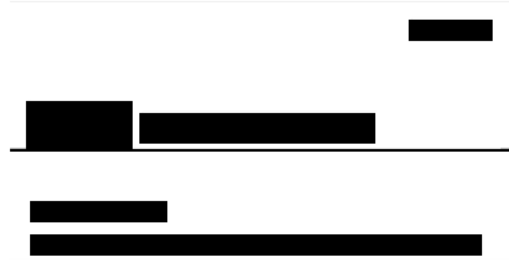
2. The Board agreed there is insufficient evidence to support the applicant's contentions for an exception to Transfer Education Benefits (TEB) under the Post 9/11 G.I. Bill to his dependent children. The Board found the applicant had ample time to obtain the TEB eligibility criteria through various counseling opportunities and by consulting Department of Defense Type Directive Memorandum 09-003: Post 9/11 GI Bill. The Board determined based on the preponderance of evidence and HRC advisory the applicant's request is without merit. Therefore, the Board denied relief.

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.



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, United States Code (USC), section 3319 (Authority to Transfer Unused Education Benefits to Family Members) states that an individual transferring an entitlement to educational assistance under this section shall designate the dependent or dependents to whom such entitlement is being transferred, designate the number of months of such entitlement to be transferred to each such dependent and specify the period for which the transfer shall be effective for each dependent. 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. On 10 July 2009, the Army released the Post-9/11 GI Bill Implementation Policy that identified and established responsibilities, eligibility criteria, benefits, and detailed guidance on the administration of the program.
  - a. Transferability of Unused Benefits to Dependents. For the purposes of transferability, Armed Forces include all active duty service and all Selected Reserve service regardless of branch of service or component. Soldiers whose request to



transfer benefits is approved will incur an additional service obligation in accordance with the below policy. Soldiers are expected to serve the additional service obligation.

b. Eligibility.

(1) Any Soldier of the Armed Forces who fulfills Post 9/11 GI Bill eligibility requirements and who, at the time of the approval of the Soldier's request to transfer entitlement to educational assistance does not have an adverse action flag, is eligible for the Post 9/11 GI Bill, and

(2) Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years from the date of request, regardless of the number of months transferred, or

(3) Has at least 10 years of service in the Armed Forces on the date of election and if cannot commit to 4 additional years due to a Retention Control Point (RCP) or Mandatory Retirement Date (MRD), must commit to serve for the maximum amount of time allowed by either RCP or MRD as of the date of request, regardless of the number of months transferred.

(4) Is or will become retirement eligible during the period from 1 August 2009, through 1 August 2013 and agrees to serve the additional period, if any, specified below. For the purposes of this paragraph, a Soldier is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under Title 10 USC, section 12732.

- Soldiers eligible for retirement on or before 1 August 2009, no additional service is required
- Soldiers with an approved retirement date on or after 1 September 2009, but on or before 1 June 2010, no additional service requirement
- Soldiers who attain 20 years of service on or after 2 August 2009 and before 2 August 2010, one year of additional service from the date of request is required
- Soldiers who attain 20 years of service on or after 2 August 2010 and before 2 August 2011, two years of additional service from the date of request are required
- Soldiers who attain 20 years of service on or after 2 August 2011, and before 2 August 2012, three years of additional service from the date of request are required

(5) If a Soldier transferring entitlement fails to complete the service agreed to by the Soldier in accordance with the terms of the agreement of the Soldier, the amount of any transferred entitlement that is used by a dependent of the Soldier as of the date of

such failure shall be treated as an overpayment of educational assistance and will be subject to collection by Department of Veterans Affairs. Future entitlements will be terminated.

4. Army Regulation (AR) 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 Selected Reserve.

5. AR 15-185 (Army Board for Correction of Military Records (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 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.

//NOTHING FOLLOWS//