

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 April 2024

DOCKET NUMBER: AR20230010715

APPLICANT REQUESTS: transfer of education benefits (TEB) under the Post 9/11 GI Bill Transfer of Education Benefits to his dependents.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Enlisted Record Brief (ERB)
- Memorandum Pre-Chapter Separation Education Counseling, 5 February 2014
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending 10 February 2015

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 in his application and self-authored letter:

a. He requests to transfer his Post 9/11 GI Bill benefits to his daughter. In 2008, when he reenlisted in Afghanistan, he was told he could transfer his GI Bill to his daughter at any time. He did this, while he was on active duty. Now that his daughter is entering college, he was told there was miscommunication and he would need to appeal.

c. He was medically retired in 2015. Through the out-processing center, he was told that the Transfer of Educational Benefits (TEB) to his daughter had occurred. He was able to look on the Defense Enrollment Eligibility Reporting System (DEERS) and chose the number of months he could transfer to her and he elected 36 months. During college registration in May, when the applicant's daughter was selecting her classes, he was told to call the Retired Army component at U.S. Army Human Resources Command

(AHRC). They told him, at that point, that he would have to appeal as they did not have a record of his TEB.

3. The applicant provides the following documents:

a. His ERB, dated 15 January 2014, which shows in Section I Assignment Information he had deployments to:

- Afghanistan 15 November 2012 through 12 February 2013, 3 months
- Iraq 5 September 2009 through 29 August 2010, 12 months
- Afghanistan 21 December 2007 through 22 December 2008, 12 months
- Iraq 15 November 2003 through 15 December 2004, 12 months

b. Memorandum for Record: Subject Pre-Chapter Separation Education Counseling, dated 5 February 2014, which shows the applicant was eligible for total Montgomery GI Bill as he received an honorable discharge. Paragraph 3 states, "all Soldiers who have served on active duty since 11 September 2001, may be eligible for the Post 9/11 GI Bill Chapter 33...If you transferred benefits to family member(s), separation prior to completion of your service obligation may effect the family member's eligibility."

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

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 8 February 2001 and completed reenlistments to remain in the Regular Army.

b. DD Form 2648 (Pre-separation Counseling Checklist), dated 21 November 2013 shows in item 14 (Education/Training) the applicant marked "yes" on education benefits (Post 9-11 GI Bill Chapter 33).

c. DD Form 214 shows the applicant was honorably retired on 10 February 2015 and he was placed on the temporary disability retired list. He completed over 14 years of active service.

5. On 31 October 2023, the Chief, Education Incentives Branch, AHRC provided an advisory opinion, which states:

a. AHRC recommended disapproval for the applicant's request for Post 9/11 GI Bill TEB. The Post 9/11 GI Bill is a servicemember's benefit; however, TEB is a retention incentive requiring an additional service obligation (ASO) calculated from their TEB request date. It is always the servicemember's responsibility to know their TEB ASO and the date they will complete their requirement, called the Obligation End Date. To

transfer the Post 9/11 GI Bill to dependents, an individual must be on Active Duty or in the Selected Reserve on or after 1 August 2009; have at least six years in Active Duty or Selected Reserve status; have no current negative action; commit to the ASO; and transfer benefits to the dependents through the TEB website on milConnect. All benefits must be transferred before the servicemember separates or retires. Public Law (PL) 110-252 makes no provisions for waiving this requirement.

b. Soldiers earn the Post 9/11 GI Bill for their use because of their active duty service; however, the ability to transfer it to their eligible dependent(s) is neither a reward for service or a transition benefit, but a retention incentive (much like a reenlistment bonus) requiring the commitment to and then fulfillment of the mandatory by-law four-year ASO. Furthermore, the Post 9/11 GI Bill TEB program is an integral part of the Army's talent management initiative. Consequently, the Post 9/11 GI Bill transfer incentive was included in the statute for the express purpose of recruitment and retention.

c. Soldiers receive counseling on all GI Bills, including the Post 9/11 GI Bill benefit and its TEB incentive at various venues through the Soldiers career, upon demobilization or release from Active Duty, and during the last year before separation or retirement. Soldiers have had access to and received counseling on GI Bill benefits through Soldier for Life-Transition Assistance Program since 2002 online and in person.

d. 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 Army, Department of Defense, and Department of Veterans Affairs initiated a comprehensive public campaign plan that generated major communications through military, public, and social media venues on Post 9/11 GI Bill and subsequent TEB. This information was available to the applicant prior to his retirement.

e. The applicant was eligible to transfer his Post 9/11 GI Bill when the program first became available on 1 August 2009 because he had already attained the minimum required six years of service and the required qualifying Active Duty service time. Effective 10 February 2015, the applicant was placed on the United States Army Retired list. AHRC records indicated he did not submit a TEB request during the six years he was eligible for the program, starting with the program's implementation date in 2009 and ending with his retirement in 2015.

f. Numerous Post 9/11 GI Bill TEB information sources were available for the applicant, during his time in an Active Duty status, after the TEB incentive became available in 2009. He could have obtained TEB eligibility criteria through various counseling opportunities. Information provided before and after the program implementation was highly publicized. 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 Department of Defense and Department of the Army resources available to him, at any point during his four-year eligibility period.

g. All TEB information available included the requirement to transfer, while either in Active Duty or Selected Reserve status, and the possible requirement to serve an ASO. Specifically, the Department of the Army Post 9/11 GI Bill Policy Memorandum, paragraph 17 stated, "For the purposes of transferability, Armed Forces includes all Active-Duty service and all Selected Reserve service regardless of branch of service or component." Also, paragraph 17g(1) stated, "Time for Transfer. A Soldier 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."

h. The applicant stated he "reenlisted in 2008 in Afghanistan specifically for the opportunity to transfer my Post 9/11 GI Bill to my daughter C- D-." At the time of his reenlistment on 1 August 2008, the Post 9/11 GI Bill and the associated TEB program had not yet been implemented. In fact, the program was not implemented until 1 August 2009; therefore, neither the Post 9/11 GI Bill nor the TEB program would have been available to the applicant, at the time of his reenlistment on 1 August 2008 in Afghanistan.

i. Additionally, the applicant stated he checked with, "DEERS and choose the amount of months I could transfer to her and I elected to transfer 36 months" during his out-processing for his medical retirement in 2015. On 27 October 2023, AHRC contacted the Defense Manpower Data Center (DMDC) to determine if the applicant ever submitted a TEB request. The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed. DMDC confirmed the applicant's milConnect access record did not support a submission and/or approval of a TEB request at any time, while he was eligible to participate in the program. According to his access record, prior to his retirement on 10 February 2015, the applicant logged onto the milConnect website on 21 November 2011 for the first time but did not submit a request. Had the applicant requested TEB, at that time, his request would have been approved with a four-year ASO. He also assessed milConnect on 5 September 2015 but again, did not submit a TEB request. Had he requested a TEB then, it would have been disapproved and placed in a rejected status because he had a negative action flag in his record, at that time. The applicant accessed the milConnect website multiple times in 2022 and 2023, however, these periods were after his retirement date and outside his program eligibility period.

j. Finally, the applicant also stated he contacted AHRC "Retired Army component" and was told "he would have to appeal as they did not have a record of [TEB request]".

A review of AHRC records did not produce any indications of previous correspondence or contact with the applicant. He also states he "went through the out-processing center and was told the transfer had occurred for his daughter". It is not within AHRC's purview to comment on the actions of other agencies, however since the applicant did not have an approved TEB they would not have been able to assist him in allocating benefits to his dependents.

k. The applicant's military service may make his dependents eligible for other types of assistance. AHRC included a list of numerous agencies that may assist. The Post 9/11 GI Bill benefits are still available to the applicant.

l. AHRC included the email exchange with DMDC for the Board's consideration.

6. On 9 November 2023, the advisory opinion and attachments were provided to the applicant to allow him the opportunity to respond. The applicant did not respond.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant served on active duty from 8 February 2001 to 10 February 2015 and retired due to temporary disability after completing over 14 years of active service.

a. The Post 9/11 GI Bill is a servicemember's benefit; however, TEB is a retention incentive requiring an additional service obligation (ASO) calculated from their TEB request date. It is always the servicemember's responsibility to know their TEB ASO and the date they will complete their requirement, called the Obligation End Date. To transfer the Post 9/11 GI Bill to dependents, an individual must be on Active Duty or in the Selected Reserve on or after 1 August 2009; have at least six years in Active Duty or Selected Reserve status; have no current negative action; commit to the ASO; and transfer benefits to the dependents through the TEB website on milConnect. All benefits must be transferred before the servicemember separates or retires. Public Law 110-252 makes no provisions for waiving this requirement.

b. The Board reviewed and agreed with the HRC advisory official's finding that the applicant was eligible to transfer his Post 9/11 GI Bill when the program first became available on 1 August 2009 because he had already attained the minimum required six years of service and the required qualifying active duty service time. The applicant was placed on the retired list effective 10 February 2015. HRC records indicated he did not submit a TEB request during the six years he was eligible for the program, starting with program's implementation date in 2009 and ending with his retirement in 2015.

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, 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.

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. 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//