

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 May 2024

DOCKET NUMBER: AR20230011179

APPLICANT REQUESTS: approval of his Transfer of Education Benefits (TEB) of the Post-9/11 GI Bill.

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 was not able to transfer his Post 9/11 GI Bill benefits to his children due to him not taking steps before he left the Army. He was told by workers at Defense Enrollment Eligibility Reporting System (DEERS) station, the education office, and the Department of Veterans Affairs (VA) office at his courthouse that it would be okay to convert his Post 9/11 GI Bill to his children without taking any steps before he departed the military. He was made to believe that since his children were in the system that he would have no problems with this. He had always planned on using this benefit for his children and would have used the correct steps if he had known.
3. The applicant's service record shows:
 - a. He enlisted in the Army National Guard (ARNG) on 23 February 2001. He extended his enlistment in the ARNG on 21 May 2006.
 - b. His record contains DD Forms 214 (Certificate of Release or Discharge from Active Duty) that show his periods of active duty service on
 - (1) 27 August 2001 for completion of active duty training. He was honorably released on 18 January 2002. He completed 4 months and 22 days of active duty service.

(2) 12 October 2003 and was honorably released on 2 April 2005. He served in Southwest Asia from 15 March 2004 to 9 March 2005. He completed 1 year, 5 months, and 21 days of active duty service.

(3) 1 October 2007 and was honorably released on 3 January 2008. He was ordered to active duty for pre-mobilization training. He completed 3 months and 3 days of active duty service.

(4) 4 January 2008 and was honorably released on 9 February 2009. He served in Iraq from 15 March 2008 to 7 December 2008. He completed 1 year, 1 month, and 6 days of active duty service.

c. A DD Form 93 (Record of Emergency Data), dated 3 August 2012 shows the applicant as married with two dependent daughters, born in 2004.

d. A NGB Form 22 (National Guard Report of Separation and Record of Service) shows the applicant was honorably transferred to the Retire Reserve on 5 February 2013. He completed 11 years, 11 months, and 13 days of net service this period.

e. The applicant's service record is void of documentation relating to TEB.

4. On 21 February 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion, which states:

a. The applicant requests his record be corrected to reflect that his Post 9/11 GI Bill benefits were transferred prior to his discharge. NGB recommends approval of the applicant's request.

b. Title 38 United States Code (USC) Section 3319 authorizes service components to allow eligible servicemembers to transfer their unused Post 9/11 GI Bill benefits as a retention incentive. To be eligible TEB, a servicemember must be currently serving in the Uniformed Services, be eligible for the Post 9/11 GI Bill, have completed at least 6 years of service, and agree to serve 4 additional years.

c. On 5 February 2013, the applicant received a medical discharge after nearly 12 years of service. The applicant served a period of qualifying service for the Post 9/11 GI Bill, during his tenure in the ARNG and was eligible to submit a transfer request from the beginning of the program on 1 August 2009. However, there is no record indicating that he transferred his education benefits to his dependents.

d. From 1 August 2009 through 1 August 2013, the ARNG, Department of Defense, and VA initiated a massive public awareness campaign plain on the Post 9/11 GI Bill

and the TEB program through military, public, and social media venues. Although significant measures were taken, during this period to disseminate information, many servicemembers left the service without being fully aware of the requirement to transfer their benefits prior to leaving military service.

e. Although there is no record the applicant submitted a request to transfer, it is likely he was not informed of the requirement to submit his request prior to separation due to the newness of TEB. Therefore, NGB recommended the Board grant relief.

f. The opinion was coordinated with the ARNG Education Branch.

5. On 22 February 2024, the advisory was provided to the applicant to allow him the opportunity to respond. He did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the National Guard Bureau Chief, Special Actions Branch advisory, the Board concurred with the advising official to grant approval, finding the applicant may not have been aware of the transfer of education benefits program and requirements prior to being medically discharged from the Army. The Board found the applicant served as a member of the Army National Guard from 23 February 2001 to 5 February 2013 and was placed on the Permanent Disability Retired List.

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 the applicant filed and the Army approved, in a timely manner, his application to transfer his unused education benefits to his eligible dependent(s), provided all other program eligibility criteria were met, in accordance with the Transfer of Education Benefits provisions of the Post-9/11 GI Bill.

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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, as amended by Public Law 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. Public Law 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. 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 Dependent Eligibility Enrollment Reporting 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). Wards of State are not eligible for the benefits. Once the benefits are transferred, children may use the benefits up to age 26.

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.

3. Public Law 110-252 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. All applications will be submitted through the Transferability of Educational Benefits (TEB) website. Post 9/11 G.I. Bill (Chapter 33) benefits can be paid for training pursued on or after August 1, 2009. No payments may be paid for training pursued before that date. And for those individuals eligible for retirement on or after August 1, 2011, and before August 1, 2012, three years of additional service after approval of transfer are required.

4. DODI 1341.13 (Post 9-11 G.I. Bill) states that an individual transferring entitlement may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. An individual may add new family members, modify the number of months of the transferred entitlement for existing family members, or revoke transfer of entitlement while serving in the Uniformed Services, however they may not add family members after retirement or separation from the Military Services, but may modify the number of months of the transferred entitlement or revoke transfer of entitlement after retirement or separation for those family members who have received transferred benefits prior to separation or retirement.

//NOTHING FOLLOWS//