

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20230011434

APPLICANT REQUESTS:

- Transfer Education Benefits (TEB) to the former servicemember's (SM) dependents
- Personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Marriage License
- Certificate of Death
- Letter from U.S. Army Human Resources Command (AHRC)

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 the SM was denied TEB. The rejection was in error based on an updated interpretation of Public Law (PL) 110-252 from the Office of the Under Secretary of Defense (Personnel and Readiness/Military Personnel Policy). Spouse and dependents are considered eligible for TEB.
3. The applicant provides a letter from AHRC, 11 July 2018, which states, in effect, previously the SM requested TEB and the request was rejected. However, the rejection was in error based on an updated interpretation of PL 110-252. The SM is now considered to have qualifying service and the applicant, as his spouse, may be eligible for TEB. The SM's children are also considered eligible for TEB since they are still under the age of 26. The letter explains the applicant's options regarding requesting TEB.
4. The SM's service record contains the following documents:

a. The SM enlisted in the U.S. Army Reserve (USAR) on 28 December 2001. A DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows on 6 November 2002, he extended his enlistment in the USAR for a period of 1 year and 3 months. A DD Form 4 (Enlistment/Reenlistment Documents Armed Forces of the United States) shows he completed an immediate reenlistment in the USAR for an indefinite period of time on 29 August 2004.

b. DA Form 5016 (Chronological Statement of Retirement Points), 13 January 2025, shows the SM enlisted in the USAR from 16 December 2011 through 15 December 2013. He had 11 years qualifying for retirement.

5. On 15 July 2019, AHRC sent two memoranda to the Army Review Boards Agency (ARBA).

a. The first memorandum states, in pertinent part, AHRC was directed to correct the records of the 12301(d) TEB group applicants as per the ABCMR. AHRC processed 23 records, 12 were corrected and 11 were still open. The Post 9/11 GI Bill TEB website reflects those 12 veterans' records as transferring their Post 9/11 GI Bill TEB benefits to eligible dependents. The entire memorandum is available for the Board's review.

b. The second memorandum states, in pertinent part, AHRC processed 93 records, 37 were corrected, 15 were administratively close, and 41 are still open. Six individuals were deceased before the Bulk Review. In three cases, the Post 9/11 GI Bill TEB was approved prior to the Group Bulk review. The entire memorandum is available for the Board's review.

c. With the memoranda, a document titled ARBA 12301(d) Bulk Review was attached. The SM's name appears on the document and it shows the SM was deceased on 13 December 2013. The recommended action was to approve his TEB request as of 3 January 2013 with an obligation end date of 9 September 2013. In the notes section it states "SM deceased, January 2014, TEB request approved 25 June 2019."

6. On 31 January 2024, the Chief, Education Incentives Branch, AHRC, provided an advisory opinion, which states in pertinent part:

- a. AHRC recommended disapproval of the applicant's request.
- b. On 3 January 2013, the SM submitted a TEB request, which was rejected on 4 January 2013. Prior to 1 October 2016 and due to a government error in interpreting PL 110-252, the eligibility of approximately 116 USAR servicemembers' for the Post 9/11 GI Bill TEB program was erroneously denied. In 2017, AHRC began working to address the issue in guidance.

c. On 11 July 2018, the applicant was notified of the process to correct the SM's record and was asked to contact AHRC as to her wishes. This time, they notified her that her children were considered eligible for TEB as they were under the age of 26, at the time. A review of AHRC's records indicates they did not receive any return correspondence from the applicant. On 25 June 2019, the SM's record was corrected to reflect that his TEB request of 3 January 2013 was approved. At the time of his initial TEB request, he transferred 35 months of benefits to the applicant but not transfer benefits to his other dependents, thus only the applicant was eligible to use his transferred benefits.

d. The SM's dependent children are no longer eligible for Post 9/11 GI Bill benefits because they have reached the age of 26, and so have aged out of the TEB program. Additionally, the SM's son is no longer eligible for the Post 9/11 GI Bill benefits as he was never made an eligible dependent by receiving the TEB prior to his 21st birthday. The applicant remains eligible to use the Post 9/11 GI Bill benefits.

e. However, PL 115-48, commonly known as the "Colmery Act of 2017" allows for redistribution of transferred benefits from one dependent to another if the Soldier passes before the transferred benefits were used. Section 110(l) states, "in the case of an individual who transfers entitlements to education assistance under this section who dies before the dependent to whom entitlement to education assistance is so transferred has used all of such entitlement, such dependent may transfer such entitlement to another eligible dependent in accordance with the provisions of this section." The applicant will need to contact the Department of Veterans Affairs (VA) to determine the eligibility of [REDACTED] under the Colmery Act. The VA is the ultimate authority, administrator and paying agent for all GI Bill programs. AHRC has no authority to direct the VA on matters pertaining to this program.

7. On 21 May 2024, the advisory opinion was provided to the applicant to allow her the opportunity to respond. She did not respond.

8. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

BOARD DISCUSSION:

1. 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 U.S. Army Human Resource Command's advising official, the Board concluded relief was appropriate. The Board acknowledged the dependent

children have since aged out, however, noted future determinations may allow for use of the benefit in the future. Therefore, the Board granted relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

 GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

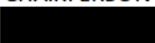
: : : GRANT FORMAL HEARING

: : : 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 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.

X 

CHAIRPERSON


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.
2. 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 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.
3. 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.
4. 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.

5. 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.
6. Army Regulation (AR) 621-202 (Army Educational Incentives and Entitlements) establishes policy for educational incentives and entitlements authorized by PL. 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.
 - a. 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.

b. Soldiers not eligible to transfer of unused benefits include Soldiers released from the Armed Forces prior to completion of an agreed upon ADO agreement for performance, conduct, and/or potential for advancement reasons including, but not limited to separation of the QMP.

7. PL 115-48, ("Colmery Act of 2017") states in Section 110(l) in the case of an individual who transfers entitlements to education assistance under this section who dies before the dependent to whom entitlement to education assistance is so transferred has used all of such entitlement, such dependent may transfer such entitlement to another eligible dependent in accordance with the provisions of this section.

//NOTHING FOLLOWS//