

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 May 2024

DOCKET NUMBER: AR20230011982

APPLICANT REQUESTS:

- Correction of his records to show transfer of education benefits (TEB) to his dependents
- Personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Letter from Department of Veterans Affairs (VA), 12 April 2023
- Letter from VA, 31 May 2023
- Email from U.S. Army Human Resources Command (AHRC), 27 June 2023

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:

a. He requests a correction to his Post 9/11 GI Bill benefits to reflect an equal distribution of his education benefits to each of his four dependent children. He was made aware he could complete a TEB by a peer, while serving in Afghanistan in November 2012. That same month, he used milConnect to equally distribute his education benefits to his four dependent children. He and his wife were certain they would not have more children and he was unconcerned with the active duty service obligation because his eligible retirement date was several years off.

b. He erred in that he did not take a screen shot for his personal records and, as a later correspondence with the VA would make clear, the transaction did not go through. He is not passing blame it is his fault. He asks that his kids not be penalized for his mistake. He has no need for these education benefits. The Army provided him a

Reserve Officer Training Corps scholarship for an undergraduate degree, tuition assistance for one graduate degree, and the School for Advanced Military Studies for a second. The Post 9/11 GI Bill was a benefit always intended for his children.

3. The applicant provides the following documents:

a. A letter from the VA, dated 12 April 2023, which certifies the applicant was entitled to benefits for an approved program of education or training under the Post 9/11 GI Bill. He had 36 months of full-time benefits remaining.

b. A letter from the VA, dated 31 May 2023, states the VA carefully reviewed the applicant's claim for education benefits under the Post 9/11 GI Bill. The VA denied his claim for Post 9/11 GI Bill benefits because the Army had not indicated that his spouse or parent had been approved for the transferability program.

c. An email from AHRC, dated 27 June 2023, states: Upon review of the applicant's record, Defense Manpower Data Center (DMDC) confirmed that his milConnect access record did not support a submission and/or approval of a TEB request in 2012 or at any other time, however, if the applicant had a screen shot of a previous transfer submission, he could provide it to AHRC for review. A request for TEB to eligible dependents had to be submitted through the DMDC web application. The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed and has been the system of record since its implementation in 2009. If the applicant believed he was eligible, there was a formal process to request a correction to a perceived error or injustice to his military records. He could apply to the Board to request a correction.

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

a. DA Form 71 (Oath of Office - Military Personnel), dated 11 May 1996 shows the applicant took the oath of office in the Regular Army Military Police Corps in the rank of second lieutenant.

b. DD Form 93 (Record of Emergency Data), dated 8 March 2018 shows the applicant was married and had two daughters born on 4 February 2005 and 26 January 2007 and two sons born on 8 April 2010 and 12 January 2012.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was honorably discharged on 31 August 2018. He had completed 22 years, 3 months, and 20 days of net active duty service with 5 months and 21 days of prior active duty service and 3 years and 25 days of prior inactive duty service. He had service in Afghanistan from 23 May 2012 through 22 February 2013 and service in Iraq from 2 November 2007 to 1 November 2008 and 17 October 2014 to 16 March 2015.

d. The applicant's service record is void of a request for TEB to his dependents.

5. On 9 February 2024, the Chief, Education Incentives Branch (EIB), AHRC provided an advisory opinion, which states, in pertinent part:

a. AHRC recommended disapproval of the applicant's request for the Post 9/11 GI Bill TEB. Servicemembers earn the Post 9/11 GI Bill because of their qualifying Active Duty service. However, the ability to TEB to eligible dependents is neither a reward for service nor transition benefit but a retention incentive 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 six 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 DMDC maintained milConnect website. If approved to participate in the retention incentive, the milConnect system will assign the servicemember an obligation end date, which is automatically calculated from the initial request and signifies the four-year ASO end date. Additionally, servicemembers must allocate a minimum of one month of benefits to each eligible dependent before leaving the service, otherwise they will lose eligibility to do so after transitioning. Finally, servicemembers 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 (PL) 110-252 makes no provisions for waiving these requirements.

b. Soldiers receive counseling on all GI Bills, including the Post 9/11 GI Bill benefit and its TEB incentive at various venues throughout their 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 the Soldier for Life Transition Assistance Program since 2002 on line and in person. Eligibility criteria could have been obtained by consulting Department of Defense (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; Army Regulation (AR) 621-202, Army Education Incentives and Entitlements, dated 26 September 2017; DoD, Department of the Army, and AHRC websites; and social media posts across multiple platforms.

c. A Soldier should not be granted relief based on unawareness of law, program rules, or procedures unless they left the service during the implementation phase (first 90 days) of the program. The Army, DoD, and VA initiated a comprehensive public campaign plan that generated major communications through military, public, and social media venues on the Post 9/11 GI Bill and subsequent TEB. This information was available to the applicant prior to his retirement.

d. 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. Effective 1 September 2018, the applicant was placed on the U.S. Army Retired List. AHRC's records indicate that he never submitted a TEB request during the eight years he was eligible for the program, starting with the program's implementation date in 2009 and ending with his retirement in 2018.

e. While the applicant was in service, numerous Post 9/11 GI Bill TEB information sources were available to him after the TEB incentive became available in 2009. In addition, information provided before and after the program's implementation was highly publicized. Finally, the VA 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 VA resources available to him to ensure his compliance with all program participation requirements, to include his assigned service obligation.

f. All TEB information available included the requirement to transfer while either on Active Duty or Selected Reserve status, the request to transfer Post 9/11 GI Bill benefits to eligible dependents must be submitted through the DMDC web application and the requirement to serve an additional service obligation. Specifically, AR 621-202, Chapter 4-15e(2) stated, "Soldiers may only request to transfer Post 9/11 GI Bill education benefits while serving as a member of the Uniformed Services on Active Duty or Selected Reserve and otherwise eligible for TEB. Soldiers may not request transfer while assigned to the Individual Ready Reserve and not on Active Duty, in retired, separated, and/or discharged status or in Retiree Recall status."

g. On 26 June 2023, the applicant contacted AHRC regarding his TEB. After review of his record, AHRC informed him there as no indication he ever submitted a TEB request.

h. In correspondence with the Board, the applicant stated that on or about November 2012, while in Afghanistan, he submitted a TEB through milConnect. On 26 June 2023, AHRC contacted DMDC to determine if a TEB request was submitted by the applicant. The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is assessed. DMDC confirmed that the applicant's milConnect access record did not support a submission and/or approval of a TEB request in 2012 or any other time, during the period he was eligible to participate in the program. AHRC provided the email with DMDC for the Board's consideration.

i. According to the access record, prior to his retirement on 1 September 2018, the applicant logged on to the milConnect website on 29 April 2014, 7 May 2014, 11 September 2014, 1 October 2014, and 24 August 2015, but did not submit a TEB request. If the applicant had actually requested a TEB at that time, the request would

have likely been approved as he had the ability to serve the by-law required a 4 year ASO. The applicant accessed the milConnect website multiple times between 2020 and 2023, however, these periods were after his retirement date and outside the program eligibility period. Additionally, milConnect has been the system of record since implementation of the program and the only DoD-wide authorized way to request TEB. Finally, please note that a Soldier earns the Post 9/11 GI Bill because of their Active-Duty service, however, TEB is a retention incentive, not a Soldier's entitled benefit.

j. Even though the applicant is no longer eligible to participate in the TEB program, his military service may make his dependents eligible for other types of assistance. Enclosure two contains numerous agencies that may assist. Additionally, the Post 9/11 GI Bill benefits are still available to the applicant.

6. On 22 February 2024, the advisory opinion, with attachments, were provided to the applicant to allow him the opportunity to respond. On 6 February 2024 [sic] the applicant responded, stating:

a. He respectfully presented the letter in response to the advisory opinion completed by the Army EIB.

b. There are four statements in the EIB advisory opinion he wanted to address for the Board to consider in adjudicating his case. The first is regarding paragraph (h) where it states, "In correspondence with your office, [the applicant] stated that on or about November 2012, while in Afghanistan, he submitted a request for TEB through milconnect...DMDC confirmed that [the applicant's] milConnect access records did not support a submission and/or approval of a TEB request in 2012..."

c. This confirms the assertion he made on the DD Form 149 he submitted in that he is at fault and what he believes he did back in November of 2012 in milConnect clearly did not result in a TEB to his dependents. The EIB can query for data to show when he successfully logged into milConnect. Can the EIB do the same to show failed attempts due to latency, atmospheric or weather inferences, etc.? His living conditions in Afghanistan were austere and they were sparse of the comforting things others take for granted, like a reliable internet connection. The remote physical structures where he lived no longer exists, and the satellite communications systems he had to rely on do not exist either. He asks the Board to consider: Could the lack of any milConnect access, or any website for that matter, irrefutably be 100 percent accurate - especially under adverse conditions in a combat zone?

d. The second statement the applicant would like to address, also in paragraph (h) is, "According to the access record, prior to his retirement on 1 September 2018, [the applicant] logged on to the milConnect website on 29 April 2014, 11 September 2014, 1 October 2014, and 24 August 2015 but did not submit a TEB request."

e. The supposition here seems to be the applicant logged into milConnect solely for the TEB feature on these dates and purposely chose not transfer his education benefits to his dependents. The applicant wishes to remind the Board that milConnect, at one time and the applicant believes still does, serves as the system for servicemembers to update their Servicemembers Group Life Insurance and TRICARE coverage for dependents, to name just a few benefits. This timeframe of the access records that EIB provided corresponds with another deployment of his, this time back to Iraq. He asks the Board to consider when he logged onto milConnect on these dates it was with the purpose of updating other benefits for his family in preparation for deploying to a combat zone.

f. Thirdly, paragraph (h) states, "If [the applicant] had actually requested TEB at that time, the request would have likely been approved as he had the ability to serve the by-law required 4-year ASO."

g. The applicant fully agrees with this statement. It is a reasonable belief that his TEB would be approved because he had enough time remaining in service to complete the required 4-year ASO before reaching his mandatory retirement date (MRD). That is the point he communicated in the DD Form 149 he submitted to initiate this review. He had every reason to believe that what he did on milConnect back in November 2012 would be approved. At that point, he had roughly 14 years of commissioned service and had a reasonable expectation he would be promoted. He knew with a promotion his MRD would be well beyond the required ASO. It was a simple low-risk decision he could be unconcerned with, from the November 2012 timeframe forward, because he knew for certain he would serve beyond the ASO requirement.

h. The last statement the applicant wanted to address is in paragraph (e). Specifically, it states, "While [the applicant] was in Service, numerous Post 9/11 GI Bill TEB information sources were available to him after the TEB incentive became available in 2009...he could have used the DoD, Army, and VA resources available to him to ensure his compliance..."

i. The applicant takes issues with these comments. He will admit that there was likely information regarding the TEB program, but to suggest that just because information exists that it is then widely disbursed, presented, briefed, and has become common knowledge is a bad assumption. He submits as evidence the fact there is no documentation in his official personal file of the overabundance of TEB information the comments suggest. He would further add, anecdotally, that an installation education office was never part of his pre- or post-deployment briefings, ever. Furthermore, any time he in-processed or out-processed an installation's education office, it consisted of a check to make sure he had not reneged on a tuition assistance obligation. He remembers quite well the circumstances by which he learned about the TEB program. He learned about it from a peer during a casual conversation they had during a pause in

a classified mission related meeting. What is more, after his peer informed him of the program, he acted in good faith, believing what he did in November 2012 was correct.

j. The applicant closed the letter by saying that the response he received from the EIB was ripe with condescension, repeatedly informing him that the TEB was not a right, but a retention tool. He wished to make clear to the EIB that he did not need a reward, an accolade, nor an incentive to be a Soldier. It was his calling and he served selflessly. Even under the strain of war and multiple deployments, he stayed when others transitioned out for a less strenuous lifestyle. Again, he did not need an incentive. He would have stayed in the Army, regardless, because he genuinely believes in living a life dedicated to service. He is not demanding that he receive a benefit because he missed a timeline, was not aware of the timeline or requirements, or just did not do what he was supposed to do. He consistently thought it was done, appropriately, and in accordance with the program's requirements.

#### BOARD DISCUSSION:

1. The Board determined 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.

2. 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 11 May 1996 to 31 August 2018, completing over 22 years of active service. He 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. The Board reviewed and agreed with the HRC advisory official's finding no evidence he submitted a TEB request during the eight years he was eligible for the program, starting with the program's implementation date in 2009 and ending with his retirement in 2018. The Board acknowledges the applicant's honorable service and his sacrifices over the years; however, the Board did not find his argument that he missed a deadline and/or he was not aware of the timeline or requirements, convincing, and voted to deny relief.

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.

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.

6. 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.

//NOTHING FOLLOWS//