

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 May 2024

DOCKET NUMBER: AR20230012065

APPLICANT REQUESTS: transfer of education benefits (TEB) of his post 9/11 GI Bill to his spouse

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states he is requesting TEB of his post 9/11 GI Bill benefits to his spouse. He was placed on extended medical leave due to being diagnosed with a terminal illness in January 2020, in order to undergo extensive treatment procedures. Over the course of the following two years, the applicant underwent multiple craniotomy surgeries resulting in a medical grade traumatic brain injury (TBI). Given the nature of the TBI, terminal prognosis, and the applicant is still undergoing continuous treatment for said terminal illness, the applicant was not made aware of the law stating his TEB must be transferred to his spouse, while still on active duty.
2. On 3 October 2023, the Army Review Boards Agency (ARBA) sent a letter to the applicant requesting a copy of the documentation he submitted via a combat disc. ARBA was unable to open the combat disc. The applicant did not reply.
3. The applicant's service record contains the following documents:
 - a. DA Form 71 (Oath of Office - Military Personnel), dated 31 March 2016 shows the applicant took the oath of office as a Regular Army Officer in the Military Police Corps in the rank of second lieutenant.
 - b. Relief from Active Duty (REFRAD) for officers with remaining military service obligation or those desiring a reserve appointment from U.S. Army Human Resources Command (AHRC), dated 14 March 2019 states the separation pertaining to the applicant effective 31 August 2019 was approved. The REFRAD notice shall constitute acceptance of a reserve appointment. If the applicant did not want to accept the appointment, he must submit a request to withdrawal his resignation before the approved date of REFRAD and remain on active duty.

c. Self-Authored memorandum subject withdrawal of previously approved/pending separation request, dated 29 April 2019 states the applicant requested to voluntarily withdraw his previously submitted/approved separation for 31 August 2019 to enable more time to reevaluate/reconsider his previous intent to separate from Active-Duty Service.

d. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), dated 18 April 2022 shows the board found the applicant physically unfit for duty and recommended a rating of 100 percent and that he be permanently retired for disability. The applicant concurred with the recommendation of the board and waived a formal hearing of his case. He did not request reconsideration of his Department of Veterans Affairs ratings.

e. DA Form 5016 (Chronological Statement of Retirement Points), dated 4 April 2024 shows the last entry for service was 18 July 2022. He had 21 years qualifying for retired pay.

f. The applicant's service record was void of a DD Form 214 (Certificate of Release or Discharge from Active Duty), and information regarding his TEB prior to his discharge.

4. On 22 November 2023, the Chief, Education Incentives Branch, AHRC, provided an advisory opinion for the Board's consideration, which states:

a. AHRC recommended disapproval of the applicant's request for TEB, with a caveat for possible approval.

b. 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. 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; and have no current negative action flag; commit to the ASO; and transfer benefits to the dependents through the TEB website. All benefits must be transferred before the servicemember separates or retires. Public Law (PL) 110-252 makes no provisions for waiving this requirement.

c. AHRC did not recommend administrative relief based on the following:

(1) Soldiers earn the Post 9/11 GI Bill for their use because of 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 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.

(2) The applicant enlisted in the Regular Army on 27 April 2015 and served honorably until his medical disability retirement on 19 July 2022 for a total of seven years, two months, and 22 days of honorable service in the Regular Army. AHRC records indicate the applicant also has prior service in the Air Force for a total of four months and 20 days. However, AHRC was unable to verify this information with the documents in his records. AHRC reached out to the Air Force to confirm his service dates. Unfortunately, the U.S. Air Force was unable to confirm his service dates due to conflicting information in their systems. Regardless, the applicant had sufficient honorable service in the U.S. Army and is therefore eligible for the Post 9/11 GI Bill at 100 percent payable rate for his personal use, with no delimiting date per PL 115-48, section 112 (also known as the "Forever GI Bill").

(3) On 10 August 2021, the applicant was enrolled in the medical disability process through the Integrated Disability Evaluation System (IDES). On 18 April 2022, the PEB convened and found the applicant unfit for duty and formally counseled him on being found unfit for duty. The TEB website shows the applicant requested TEB on 30 June 2022; however, AHRC rejected his request due to IDES finding him unfit for duty on 18 April 2022. Again, Soldiers earn the Post 9/11 GI Bill for their use because of their Active-Duty service; however, the ability to transfer it to eligible dependents is a retention incentive.

(4) Based on the available records, the applicant was eligible to transfer his Post 9/11 GI Bill four months prior to entering IDES because he had attained the minimum required six years of service in the armed forces. Please know that it is possible for the applicant to have had more time to submit a TEB request based on his prior service in the Air Force; AHRC was unable to verify his Air Force service dates in their systems or through the Air Force systems. AHRC records indicate the applicant did not submit a TEB request during the four months he was eligible for the program, starting when he reached six years of service in April 2021 and ending when he entered IDES in August 2021.

d. One possible reason exists for the ABCMR to provide relief to the applicant. DA Form 199, Section III, Disability 1 block, line 1 states the applicant was found unfit for duty due to glioblastoma status post resection, which could have negatively impacted his cognitive abilities. Therefore, it is reasonable to presume the applicant did not fully and properly understand the program participation requirements and policy.

e. The applicant remains eligible to use his Post 9/11 GI Bill education benefits and while the transfer program is no longer available for him, his military service may make his dependents eligible for other types of assistance. Additionally, based on the applicant's medical disability rating, his dependents may be eligible for the Dependents' Educational Assistance program.

5. On 25 November 2023, the advisory opinion was provided to the applicant to allow him the opportunity to respond. The applicant responded by submitting a letter from a Nurse Case Manager from Carl R. Darnall Army Medical Center, dated 13 December 2022 [sic], which includes a medical timeline of the applicant's illness of DX-Grade 4 Glioblastoma expected outcome - terminal. The letter states:

a. The timeline is to show the Board the extent of the applicant's illness.

b. The applicant was indeed counseled of his "initial" unfit status on 18 April 2022, however he filed a rebuttal and ultimately requested a formal review. That formal review was not completed until approximately 65 days before the applicant entered the system. Therefore, it stands to reason the applicant entered his TEB request as part of his out-processing and preparation for retirement.

c. The applicant was eligible to transfer his Post 9/11 GI Bill four months prior to entering the IDES process; however consider the applicant's life within that timeframe as documented in the timeline. The applicant was told his tumor was progressing, scheduled, and rescheduled a needed jaw surgery. He truly recognized the mental and physical effects these brain surgeries took on his body as is evident by having his leave cut short.

d. It is very reasonable to say that a diagnosis of Grade 4 Glioblastoma requiring two craniotomies with resection of brain tissue and a total of three related surgeries to repair or revise the structure of the skull and surrounding soft tissue would certainly negatively impact the applicant's cognitive abilities.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and U.S. Army Human Resources Command – Education Incentives Branch advisory opinion, the Board noted the advising official recommendation for disapproval with a caveat for potential approval. The Board agreed there is sufficient evidence to support the

applicant's contention for transfer of his education benefits (TEB) of his post 9/11 GI Bill to his spouse.

2. The Board determined there were extenuating circumstances that impacted the applicant's ability to remember and properly transfer his benefits to his spouse. The Board notwithstanding the advising official opine, found there was sufficient evidence to grant relief.

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 his application to transfer his educational benefits to his spouse April 2021 during the four (4) months of his eligibility, and that the application was approved by the Army, and that his active duty service obligation changed since he was approved for a medical disability retirement. .

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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 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.

2. 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.

3. 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.

4. 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//