

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230012103

APPLICANT REQUESTS: in effect, approval to Transfer Education Benefits (TEB) of his Post 9/11 GI Bill to his dependent.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 2366 (Montgomery GI Bill Act of 1984)
- Enlisted Record Brief

FACTS:

1. The applicant states in effect, he submitted a request to transfer 30-months of his Post 9/11 GI Bill benefits in 2013 prior to his retirement from active duty. He had assumed his request was approved as he did not receive notification to the contrary. However, he was sent an e-mail from the U.S. Army Human Resources Command (HRC) rejecting his request while he was deployed and during the transition of the Army wide email enterprise system. The first time he was made aware of this email was on 14 September 2023 from HRC when he inquired about his inability to see that he transferred these benefits. The email in question was sent to his @us.army.mil address when he had already transitioned to his army.mail.mil address. He only recently discovered this error when he was attempting to confirm his daughter's ability to use his Post 9/11 GI Bill benefits.

2. A review of the applicant's service record shows:

a. The applicant's service record is void of his initial DD Form 4 (Enlistment/ Reenlistment Document – Armed Forces of the United States); however, his DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he enlisted in the Regular Army (RA) on 31 March 2002. The applicant had continuous service through extensions and reenlistments.

b. DD Form 2366 dated 4 April 2002 shows the applicant was eligible for the Montgomery GI Bill upon his entry on active duty.

c. On 8 October 2013, the applicant was honorably discharged from active duty to accept assessment in the Army as a warrant officer. DD Form 214 shows the applicant completed 11-years, 6-months, and 8-days of active service.

d. On 9 October 2013:

(1) The applicant executed his oath of office and was appointed a Reserve warrant officer in the rank of warrant officer one.

(2) Orders Number 282-346-A-3591, issued by Headquarters, U.S. Army Garrison, Fort Rucker, the applicant was ordered to active duty for a 6-year active duty commitment, effective 9 October 2013.

e. On 31 March 2022, the applicant was honorably retired from active duty and assigned to the U.S. Army Reserve Control Group (Retired Reserve). DD Form 214 shows the applicant completed 8-years, 5-months, and 22-days of active service with 11 years, 6 months, and 8 days of prior active service.

3. The applicant provides his Enlisted Record Brief dated 30 September 2013; the document does not reflect any information regarding the applicant's Montgomery GI Bill

4. On 23 February 2024, in the processing of this case, HRC, provided an advisory opinion regarding the applicant's request for approval of TEB to his dependent. The advisory official did not recommend administrative relief of his request. The applicant should not be granted relief on the basis of unawareness of the law, program rules or procedures unless he left the service during the implementation phase of the program which was 1 August 2009. The Department of Defense and the Department of Veterans Affairs initiated a comprehensive publicity campaign plan that generated major communications throughout the military, public and social media venues on the Post 9/11 GI Bill and the subsequent transfer of education benefits.

The applicant was eligible for TEB of his Post 9/11 GI Bill to his dependents on 1 August 2009 as he already attained the minimum required 6-years of service. He submitted a TEB request on 22 March 2013. On 19 April 2013 his application was placed in a pending status due to his insufficient retainability to commit to the 4-years additional service obligation. The applicant was sent an email to his military email address to inform him of the pending status along with guidance to become eligible. He needed 4-years of retainability to be able to meet the additional service obligation, his expiration of term of service was 30 September 2015, consequently his TEB was rejected. At which time, he was notified via email. The applicant's TEB request was and will always be displayed in the upper left-hand corner of the TEB milConnect webpage. A change in the Army's email system did not prevent the applicant from contacting the

installation education center to follow-up on the status of his TEB request. The advisory official also provided the notification emails sent to the applicant.

5. On 28 February 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

6. On 28 February 2024, the applicant responded via email stating the only thing he had to add was, "Why does the Army hate us so much?" He had already spoken the truth in the matter, he simply did not know there was an issue with his TEB request as he never received the email. During his transition from active duty, he was assured nothing else was required of him when he out-processed the education center. He simply asks the powers to be to click a few buttons on a computer to allow him to use the benefits he earned as he sees fit. Once again, the Army demonstrates what he had given to it simply will not be reciprocated.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. One potential outcome was to grant relief based on the applicant's statement, noting he did not receive an email regarding this transfer of benefits due to him preparing for retirement. However, upon review of the applicant's petition, available military records and U.S. Army Human Resources Command – Education Incentives Branch advisory opinion, the Board majority concurred with the advising official recommendation for disapproval finding there was a comprehensive publicity campaign plan that generated major communications through the military and social media venues, all of which was available to the applicant.

2. The Board determined there is insufficient evidence to support the applicant's contentions for approval to Transfer Education Benefits (TEB) of his Post 9/11 GI Bill to his dependent. The Board noted the applicant's alleged unawareness of the law, program rules or procedures is not a mitigating factor to authorize an exception. The Board agreed the TEB is a retention incentive based on service in active-duty or selected reserve. The Post 9/11 GI Bill TEB retention incentive is an integral part of the Army's talent management initiative for retention and recruitment. Based on public law 110-252, there are no provision for waiving these requirements. As such, the Board denied 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.



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. Public Law 110-252 establishes legal limitations on the transferability of unused Post-9/11 GI Bill benefits. Further, section 3020 Public Law 110-252, limits eligibility to transfer unused benefits to those members of the armed forces who are serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.
2. On 22 June 2009, DOD established the criteria for eligibility and transfer of unused educational benefits to eligible family members. An eligible individual is any member of the armed forces on or after 1 August 2009 who, at the time of the approval of the individual's 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; or

b. Has at least 10-years of service in the armed forces (active duty and/or 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; or

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 duty or 20 qualifying years of reserve service.

3. The policy further states the Secretaries of the Military Departments will provide active duty participants and members of the reserve components with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly and maintain records for individuals who receive supplemental educational assistance under Public Law 110-252, section 3316.

4. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members), (f) (Time for Transfer; Revocation and Modification), (1) (Time for transfer), subject to the time limitation for use of entitlement under section 3321, and except as provided in subsection (k) or (l), 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. (h) (5) (Limitation on age of use by child transferees), (A) In general. A child to whom entitlement is transferred under this section may use the benefits transferred without regard to the 15-year delimiting date specified in section 3321, but may not, except as provided in subparagraph (B) or (C), use any benefits so transferred after attaining the age of 26 years.

//NOTHING FOLLOWS//