

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230012150

APPLICANT REQUESTS: in effect, exception to policy to transfer his Post 9/11 GI Bill education benefit to a dependent.

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 to transfer his education benefits to a dependent. He would like to transfer his remaining 9 months of the Post 9/11 GI Bill and he did not need to transfer the benefits prior to his retirement in January 2023. He was directed by the "GI Bill Education Center" to take this route in hopes of being able to complete his request. His dependent is returning to school and will have limited income due to less hours being worked. Please allow him to transfer his remaining benefit to his dependent.

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

a. The available service record is void of the applicant's DD Form 4 (Enlistment/Reenlistment Document); however, his DA Form 5016 (Retirement Accounting Statement) shows he enlisted in the Army National Guard (ARNG) on 13 January 2000.

b. The service record is also void of a completed DA Form 5435 (Statement of Understanding, The Selected Reserve Montgomery GI Bill).

c. He entered active duty on 30 January 2003. He was honorably released from active duty on 28 January 2005. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 11 months, and 29 days of active service with 2 months and 19 days of prior active service.

d. The applicant did not sign the available DD Form 2384-1 (Notice of Basic Eligibility (NOBE)) which was signed and dated by the commanding officer or designee on 24 October 2005.

e. Two additional DD Forms 214 show he had honorable active service periods:

- 5 February 2007 to 27 June 2008 (1 year, 4 months, and 23 days)
- 4 June 2015 to 8 January 2016 (7 months and 5 days)

f. Orders 0004335961.00 dated 19 March 2023, assigned the applicant to The Retired Reserve, effective 13 January 2023.

g. His DA Form 5016 dated 28 February 2024, shows the applicant earned a total of 22 years of creditable service for retirement.

3. On 21 February 2024, the National Guard Bureau (NGB), Chief, Special Actions Branch, rendered an advisory opinion in the processing of this case. He opined:

a. Title 38, United States Code (USC), Section 3319 requires service members to transfer at least one month of their Post-9/11 GI Bill benefits to their eligible dependents prior to separating from service. In addition, Title 10, USC, Section 1072 requires children receiving transferred benefits be under the age of 23. The applicant had five eligible children listed in milConnect on the date of his original transfer request, however, he did not allocate any benefits to his children prior to his separation from the Alabama Army National Guard (ALARNG) on 12 January 2023.

b. Since it is likely that the applicant did not receive accurate guidance to transfer at least one month of benefits to each eligible dependent prior to separating from service, we recommend the board grant relief. Additionally, because the applicant's two oldest children have since turned 23 and are ineligible to have benefits transferred to them, we recommend the record correction be retroactive to the date of his original transfer request.

4. On 22 February 2024, the advisory opinion was forwarded to the applicant for acknowledgement and/or response. The applicant did not respond.

5. By law (Public Law 110-252), legal limitations were established on the transferability of unused Post 9/11 GI Bill benefits.

a. 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.

b. 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.

BOARD DISCUSSION:

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 record and National Guard Bureau -Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding the applicant did not receive accurate guidance to transfer at least one month of his benefits to each eligible dependent prior to separating from the service. The Board agreed based on the advising opine, there is sufficient evidence to support an exception to policy to transfer his Post 9/11 GI Bill education benefit to a dependent. Therefore, the Board granted 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 is authorized an exception to policy to transfer his Post 9/11 GI Bill education benefit to a dependent.

[REDACTED]

[REDACTED]

[REDACTED]

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 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.

e. A Soldier must have no adverse action flag and have an honorable discharge to transfer the benefits.

f. A Soldier should not be granted relief based on unawareness of the law, program rules, or procedures unless he or she left the service during the implementation phase, which is the first 90 days of the program. The Army, DOD, and the VA initiated a public campaign plan that generated communications through military, public, and social media venues on the Post-9/11 GI Bill and subsequent transfer of education benefits.

g. A Soldier must have initially requested to transfer benefits on the DOD TEB online database. The TEB online database was operational 29 June 2009. Once approved in the TEB online database by the Soldier's service, the approval information is automatically relayed electronically to the VA for their access. The respective dependent must then submit an application for VA educational benefits, VA Form 22-1990e, to request to use the benefits.

h. Changes to the amount of months allocated to family members can be made at any time, to include once a Soldier leaves military service, provided the Soldier allocates at least 1 month of benefits prior to his or her separation. If the Soldier allocates 0 months and subsequently leaves military service, he/she is not authorized to transfer unused benefits post service.

2. On 22 June 2009, the 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.

3. Army Regulation 621-202 (Army Educational Incentives and Entitlements) paragraph 4-15 states 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 TEB website in the milConnect portal at <https://www.dmdc.osd.mil/mil-connect> or <http://milconnect.dmdc.mil>. 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 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 Uniformed Services. 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.

4. On 4 January 2011, the Post 9/11 Veterans Educational Improvements Act of 2010 was signed into law. This law expands the definition of Active Duty to include Title 32 Service. Rules under this special provision are as follows:

a. Must have served 90 days or more of honorable service under Title 32 Full-Time National Guard Duty (AGR) "for the purpose of organizing, administering, recruiting, instructing, or training" on or after 11 September 2001; or,

b. Must have served 90 days or more of honorable service under Title 32 section 502(f) "for the purpose of responding to a national emergency", on or after 11 September 2001 (Operation Noble Eagle 11 Sept 2001- 31 May 2002 is currently the only qualifying orders in this category); and,

c. Must not have qualified due to mobilization or Active Duty service under Title 10 USC section 688, 12301(a), 12301(d), 12301(9), 123.02, or 12304 for 90 days or longer on or after 11 September 2001. These codes may be listed on the orders or DD 214.

//NOTHING FOLLOWS//