

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 June 2024

DOCKET NUMBER: AR20230012604

APPLICANT REQUESTS: transfer of Post 9/11 GI Bill education benefits (TEB) to his dependents under the Transfer of Education Benefits (TEB).

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

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 he was not advised he had to transfer his education benefits to his then nine year old daughter prior to retiring in 2015, otherwise he would not be able to transfer them when she was actually eligible to receive them. He waited to transfer his benefits until his daughter graduated high school.
3. The applicant's service record contains the following documents:
 - a. NGB Forms 22 (Report of Separation and Record of Service) show the applicant was a member of the Army National Guard (ARNG) from 16 November 1991 through 7 November 2002 and from 23 December 2002 through 10 September 2004.
 - b. NGB Form 337 (Oaths of Office) shows on 11 September 2004 the applicant took the oath of office in the ARNG.
 - c. Memorandum Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), 12 May 2009 informed the applicant he had completed the required years of service and was eligible for retired pay, upon application, at age 60.

d. DD Form 93 (Record of Emergency Data), dated 15 August 2012, shows the applicant is married, has four sons born on 12 December 1991, 23 June 1993, two born on 28 October 1998; and one daughter born on 13 July 2005.

e. NGB Form 22, shows the applicant was honorably transferred to the Retired Reserve on 30 April 2015. He had completed 25 years, 7 months, and 20 days of total service for pay and 26 years, 4 months, and 6 day total service for retired pay.

4. On 19 January 2024, the Chief, Education Services Branch, National Guard Bureau (NGB) provided an advisory opinion, which states:

a. The applicant requested his records be corrected to reflect that he requested TEB of his Post 9/11 GI Bill benefit before he separated from the ARNG. Title 38, United States Code, Section 3319 authorizes service components to allow eligible servicemembers to transfer their unused Post 9/11 GI Bill benefits as a retention incentive. To be eligible to transfer benefits, a servicemember must be currently serving in the Uniformed Services, be eligible for the Post 9/11 GI Bill, have completed at least six years of service, and agree to serve four additional years.

b. The applicant gained eligibility for the Post 9/11 GI Bill and was eligible for TEB from the beginning of the program on 1 August 2009. NGB found no evidence the applicant requested TEB prior to retiring on 30 April 2015. If the applicant had requested TEB, while in service, he would have incurred a service obligation due to a special provision in DTM 09-003, dated 22 June 2009. In his statement, the applicant indicated that he was not advised about TEB eligibility and requirements prior to his separation. Given that it is likely the applicant was not adequately counseled about his eligibility for TEB prior to his retirement, and he would not have incurred a service obligation if he had completed a TEB request, NGB recommended the Board grant relief.

5. On 30 January 2024, NGB provided a second advisory, which also recommended approval of the applicant's request.

6. On 1 February 2024, the advisory opinions were provided to the applicant to allow him the opportunity to respond. He did not respond.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant served in the ARNG and was honorably transferred to the Retired Reserve on 30 April 2015. He had completed 25 years, 7 months, and 20 days of total service for pay and 26 years, 4 months, and 6 days of total service for retired pay. To be eligible to transfer benefits, a servicemember must be currently serving in the Uniformed Services, be eligible for the Post 9/11 GI Bill, have completed at least six years of service, and agree to serve four additional years.

b. Soldiers earn the Post 9/11 GI Bill for their use because of their military active duty service. However, the ability to transfer the education benefit to their eligible dependent(s) (called TEB) is neither a reward for service nor a transition benefit. It is a retention incentive (much like a specialty skill bonus) requiring the commitment to and then fulfillment of the mandatory by-law additional service obligations to the Army. Soldiers receive counseling on all GI Bills, including the TEB incentive at various venues throughout their career (in/out-processing at Education Centers).

c. The applicant gained eligibility for the Post 9/11 GI Bill and was eligible for TEB from the beginning of the program on 1 August 2009. However, there is no evidence the applicant requested TEB prior to retiring on 30 April 2015. The Board rejected the NGB's justification that "it is likely the applicant was not adequately counseled about his eligibility for TEB prior to his retirement" because TEB does not require one on one counseling. However, given that the applicant was eligible for TEB when the program was implemented, and given that he would not have incurred a service obligation if he had timely completed a TEB request, the Board determined as a matter of justice, relief is warranted, provided all other criteria for this program is met.

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 and Army National Guard records of the individual concerned be corrected by showing he timely submitted a request to transfer his Post 9/11 GI Bill benefits to his eligible dependents, prior to his transfer to the Retired Reserve, provided all other criteria is met.

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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.

//NOTHING FOLLOWS//