

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 July 2024

DOCKET NUMBER: AR20230012754

APPLICANT REQUESTS: Correction of his record to show Post 9/11 GI Bill Transfer of Educational Benefits (TEB) to his dependent.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 31 August 2016
- Court Order

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, prior to retirement he transferred all his GI Bill benefits to his son. He does not know if there was a glitch in the system, but all his benefits were transferred to his ex-wife. He was divorced on 29 September 2010 and removed her from his Defense Enrollment Eligibility Reporting System (DEERS) and everything else. He transferred all the benefits to his son on eBenefits and his name was the only name on there at the time. He recently applied for the GI Bill benefit and was denied. He looked into it and found out it was all under his ex-wife's name. The Department of Veterans Affairs was able to retract it and put it under his name. He is retired now and cannot transfer it to his son on eBenefits.
3. A review of the applicant's official record shows the following:
 - a. On 22 August 1996, the applicant enlisted in the Regular Army and served continuously until his length of service retirement.

b. On 21 December 2015, Orders Number 355-0162 issued by Headquarters, U.S. Army Garrison Command, Fort Knox, reassigned the applicant to the transition center for separation processing.

c. On 31 August 2016, the applicant was honorably released from active duty by reason of sufficient service for retirement and transferred to the U.S. Army Reserve Control Group (Retired Reserve). He completed 20 years and 9 days.

4. The applicant provides a Court Order showing he and his spouse were divorced on 29 September 2010.

5. On 1 May 2024, in the processing of this case, the U.S. Army Human Resources Command, Chief, Education Incentives Branch, provided an advisory opinion recommending disapproval and stating in pertinent part:

a. On 19 August 2009, the applicant requested the transfer of 34 months to [REDACTED] (Spouse), but not to his other dependent, [REDACTED] (Child; Date of Birth: [REDACTED]). His TEB request was approved on 19 August 2009 by his career counselor with a TEB service obligation until 18 August 2013 (4-year TEB service obligation). He did not transfer to any other dependent before his retirement from the U.S. Army on 31 August 2016.

b. When Soldiers, Veterans, and Retirees divorce a spouse, that spouse still stays on the Soldier's/Veteran's/Retiree's DEERS account; only the association with the sponsor in regard to benefits is terminated. Our office contacted the Defense Manpower Data Center (DMDC) to determine if months were ever transferred to his dependent [REDACTED]. The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed as well as the amount of months transferred to each dependent. DMDC confirmed that his milConnect access record did not support a transfer of benefits to [REDACTED] in 2009 or at any other time. DMDC verified his submission in 2009 reflected that he only transferred months to [REDACTED]. Enclosure One contains the full email traffic from DMDC. Furthermore, transfer requests and modifications must be made via the milConnect TEB website, not the eBenefits site as the applicant mentioned. Additionally, according to the milConnect website, he did not revoke the benefits transferred to his spouse until 14 March 2023, which refutes his statement that he transferred the benefits from his spouse to his son after his divorce in 2010.

6. On 10 June 2024, the applicant was provided with a copy of the advisory opinion to provide a comment or rebuttal. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is not warranted.
2. A majority of the Board concurred with the conclusion of the advisory official that there is no evidence in the system of record indicating the applicant attempted to transfer his Post-9/11 GI Bill education benefits to his son after his divorce in 2010 or prior to his retirement in 2016, after which he was no longer authorized to add dependents. Based on a preponderance of the evidence, the majority determined there is no error or injustice related to the transfer of education benefits in this case.
3. The member in the minority found that, given the life challenges that go along with a divorce, it is likely the applicant did not attend to the desired change in dependent for transfer of education benefits because he was distracted by more immediate needs. The member in the minority determined the applicant's record should be corrected to show he removed his ex-spouse as a dependent eligible for transfer of education benefits and then transferred one month of his education benefits to his son prior to his retirement.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	■	:	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.

12/26/2024

X

CHAIRPERSON

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, USC, 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. 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 must also agree to serve the prescribed active duty service obligation based on the time in service the Soldier had on 1 August 2009.
3. On 22 June 2009, the Department of Defense established the criteria for eligibility and transfer of unused education benefits to eligible family members. The policy states an eligible individual is any member of the Armed Forces who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, and on or after 1 August 2009, is eligible for the Post-9/11 GI Bill

and, in pertinent part, is or becomes retirement eligible during the period 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) 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.

//NOTHING FOLLOWS//