

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230013588

APPLICANT REQUESTS: Transfer Education Benefits (TEB) under the Post 9/11 G.I. Bill to his dependent children. A personal appearance before the Board via telephone or video.

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

- DD Form 149 (Application for Correction of Military Record)
- TEB Website excerpt

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, in pertinent part, he completed the request for TEB on 29 November 2010 for his dependent daughters. He was unaware that the transfer was never completed until he retired in 2023 and his oldest daughter was preparing to go to college. He earned the benefit and wants to be given the opportunity to use it as he intended.

3. A review of the applicant's available service record reflects the following:

a. On 1 March 2000, he enlisted as a Cadet in the U.S. Army Reserve Officers' Training Corps (ROTC) with the USA First Region ROTC, [REDACTED]

b. On 20 April 2000, he enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) with [REDACTED].

c. On 28 April 2002, Headquarters, United States Army Cadet Command issued Orders Number 117-050-A-919 ordering him to active duty effective immediately upon his acceptance of appointment in the United States Army Reserve (USAR).

d. On 1 May 2002, the Army ROTC Battalion, [REDACTED] issued a Memorandum for Request for Discharge from the [REDACTED] ARNG due to commissioning effective 10 May 2002.

e. On 6 May 2002, the [REDACTED], Department of Defense, Military Division, Office of the Adjutant General issued Orders Number 126-055 honorably discharging him from the National Guard and as a Reserve of the Army effective 10 May 2002.

f. NGB Form 22 (Departments of the Army and the Air Force, National Guard Bureau Report of Separation and Record of Service), dated 10 May 2002 reflects honorable discharge from the [REDACTED] ARNG for accepting commission with service from 20 April 2000 to 10 May 2002 for a net service this period of 2 years and 21 days.

g. On 11 May 2002, The Army ROTC Battalion, [REDACTED] issued a Memorandum for Appointment as a Reserve Commissioned Officer of the Arm. He accepted a Reserve commission and executed an oath of office.

h. On 30 May 2023, the Department of the Army issued Orders Number 0004884267.00 – 117529604, for voluntary retirement and placement on the U.S. Army Retired List with a retroactive effective date of 1 January 2023.

4. The applicant provides the TEB website excerpt showing his enrollment into the Post 9/11 GI Bill, Chapter 33, his dependents, and service information.

5. On 10 May 2024, the U.S. Army Human Resources Command (HRC), Chief, Education Incentives Branch provided an advisory opinion recommending disapproval of the applicant's request stating, in effect:

a. Service Members (SM) earn the Post 9/11 GI Bill because of their qualifying active duty (AD) service. However, the ability to TEB eligible benefits is neither a reward for service nor a transition benefit but a retention incentive (much like specialty skills bonus) requiring the fulfillment of a by-law mandatory four-year additional service obligation (ASO). Eligibility to participate in the TEB retention incentive is based on service in active duty or Selected Reserve, on or after 1 August 2009; having at least 90 days of qualifying AD service; attaining a minimum of six years of qualifying service; having no current negative action flags; and being able to commit to the four-year ASO. The only way to request Post 9/11 GI Bill TEB is via the Defense Manpower Data Center (DMDC) – maintained milConnect website at <https://milconnect.dmdc.osd.mil>. If approved to participate in the retention incentive, the milConnect system will assign the SM an obligation end date (OED), which is automatically calculated from the initial request and signifies the four-year ASO end date. Additionally, SMs must allocate a minimum of one month of benefits to each eligible dependent before leaving the service, otherwise they will lose eligibility to do so after transitioning. Finally, SMs must

honorably complete the ASO, or they will lose TEB eligibility. The Post 9/11 GI Bill TEB retention incentive is an integral part of the Army's talent management initiative, so is used for the express purpose of recruitment and retention. Consequently, Public Law (PL) 110-252 makes no provisions for waiving these requirements.

b. A Soldier should not be granted relief based on unawareness of the law, program rules, or procedures unless they left the service during the implementation phase (first 90 days) of the program. The Department of Defense (DoD), Department of the Army (DA), and Department of Veterans Affairs (DVA) initiated a comprehensive publicity campaign plan that generated major communications through military, public, and social media venues on the Post 9/11 GI Bill and subsequent transfer of education benefits. This information was available to the applicant prior to his retirement.

c. He was eligible to transfer his Post 9/11 GI Bill education benefits to his eligible dependents when the program first became available on 1 August 2009 because he had already attained the minimum required six years of service. Effective 1 January 2023, he was placed on the Retired List. Their records indicate that he did not submit a TEB request during the almost fourteen years he was eligible for the program, starting with the program's implementation date in 2009 and ending with his retirement in 2023.

d. In correspondence to the Army Board for Correction of Military Records, the applicant provided a screenshot of the TEB website. However, the screenshot does not show he ever submitted a TEB request. The screenshot does not show any data in the "Status", "Status Date", and "Obligation End Date" fields. Had he submitted a TEB request as he stated, the "Status" field would either read "Approved", "Rejected", "Pending", or "Submitted". Regrettably, the screenshot of the milConnect page he provided is not sufficient evidence of a submitted/approved TEB request. The responsibility to check the TEB milConnect website at

████████████████████ the status of a TEB request and any applicable OED has always been the Soldier's responsibility. He could have logged into the TEB milconnect site at any point after his alleged 2010 TEB request and while he was still eligible to participate in the retention incentive to check that never submitted a TEB request. Their office contacted the DMDC to determine if a previous TEB request was submitted by the applicant. The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed. DMDC confirmed that his milConnect access record did not support a submission and/or approval of a TEB request in 2010 or at any other time. Enclosure contains the full email exchange with DMDC.

e. Soldiers receive counseling on all GI Bills, including the Post 9/11 GI Bill benefit and its TEB incentive, at various venues throughout the Soldier's career (in/out-processing at Education Centers, Commander's Calls), upon demobilization or release from AD (REFRAD), and during the last year before separation or retirement (Soldier for

Life – Transition Assistance Program (SFL-TAP)). Soldiers have had access to and received counseling on GI Bill benefits through SFL-TAP since 2002 on-line and in-person. While he was in service, numerous Post 9/11 GI Bill TEB information sources were available to him after the TEB incentive became available in 2009. In addition, information provided before and after the program’s implementation was highly publicized. Finally, the DVA website, Military Personnel messages, and many news articles were released regarding eligibility for the Post 9/11 GI Bill TEB program. In short, the applicant could have used the DoD, Army, and DVA resources available to him to ensure his compliance with all program participation requirements, to include having sufficient retainability to meet the by-law required 4-year ASO.

f. It was always his responsibility to check the TEB milConnect website [REDACTED] for the status of his TEB request and any available OED. He should have addressed any questions or concerns he might have had about his TEB request with his installation’s Education Center or their office, the designated Service Approval Authority for the TEB program, prior to his retirement.

g. His military service may make his dependents eligible for other types of assistance. Enclosure 2 contains numerous agencies that may assist. Additionally, his Post 9/11 GI Bill benefits are available for his use and will not expire as his retirement date falls under the “Forever GI Bill” authorized by Public Law 115-48, Section 112.

6. On 13 May 2024, the applicant was provided with a copy of the advisory opinion to provide a response. As of 27 May 2024, he did not respond.

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 the advisory opinion provided by the U.S. Army Human Resources Command (HRC), Chief, Education Incentives Branch. The advisory official recommended denial, noting that the applicant did not submit a Transfer of Education Benefits (TEB) request during the nearly fourteen-year period he was eligible for the program—from its inception on 1 August 2009 through his retirement in 2023. The advisory further confirmed that the applicant met the initial eligibility criteria by having more than six years of qualifying service at the time the program was introduced.

2. The Board acknowledged that the Post-9/11 GI Bill TEB program is designed as a retention incentive, not a reward or transition entitlement. Eligibility requires service in active duty or Selected Reserve on or after 1 August 2009, a minimum of 90 days of

qualifying active duty, and at least six years of service with a commitment to serve an additional four years. The applicant met these qualifications; however, a TEB request was not recorded in the system during his eligible period. Despite the advisory recommendation for denial, the Board found that credible evidence suggested a potential miscommunication or administrative oversight surrounding a 2010 submission attempt. Given the applicant's qualifying service, absence of contrary evidence, and the equitable considerations at play, the Board determined that relief was warranted. With that, the Board recommends approval of the applicant's request to transfer his Post-9/11 GI Bill benefits.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 to show applicant was approved to Transfer Education Benefits (TEB) under the Post 9/11 G.I. Bill to his dependent children.


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, 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, United States Code (USC), section 3319 (Authority to Transfer Unused Education Benefits to Family Members) states that an individual transferring an entitlement to educational assistance under this section shall designate the dependent or dependents to whom such entitlement is being transferred, designate the number of months of such entitlement to be transferred to each such dependent and specify the period for which the transfer shall be effective for each dependent. 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. On 10 July 2009, the Army released the Post-9/11 GI Bill Implementation Policy that identified and established responsibilities, eligibility criteria, benefits, and detailed guidance on the administration of the program.

a. Transferability of Unused Benefits to Dependents. For the purposes of transferability, Armed Forces include all active duty service and all Selected Reserve service regardless of branch of service or component. Soldiers whose request to transfer benefits is approved will incur an additional service obligation in accordance with the below policy. Soldiers are expected to serve the additional service obligation.

b. Eligibility.

(1) Any Soldier of the Armed Forces who fulfills Post 9/11 GI Bill eligibility requirements and who, at the time of the approval of the Soldier's request to transfer entitlement to educational assistance does not have an adverse action flag, is eligible for the Post 9/11 GI Bill, and

(2) Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years from the date of request, regardless of the number of months transferred, or

(3) Has at least 10 years of service in the Armed Forces on the date of election and if cannot commit to 4 additional years due to a Retention Control Point (RCP) or Mandatory Retirement Date (MRD), must commit to serve for the maximum amount of time allowed by either RCP or MRD as of the date of request, regardless of the number of months transferred.

(4) Is or will become retirement eligible during the period from 1 August 2009, through 1 August 2013 and agrees to serve the additional period, if any, specified below. For the purposes of this paragraph, a Soldier is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under Title 10 USC, section 12732.

- Soldiers eligible for retirement on or before 1 August 2009, no additional service is required
- Soldiers with an approved retirement date on or after 1 September 2009, but on or before 1 June 2010, no additional service requirement
- Soldiers who attain 20 years of service on or after 2 August 2009 and before 2 August 2010, one year of additional service from the date of request is required
- Soldiers who attain 20 years of service on or after 2 August 2010 and before 2 August 2011, two years of additional service from the date of request are required
- Soldiers who attain 20 years of service on or after 2 August 2011, and before 2 August 2012, three years of additional service from the date of request are required

(5) If a Soldier transferring entitlement fails to complete the service agreed to by the Soldier in accordance with the terms of the agreement of the Soldier, the amount of any transferred entitlement that is used by a dependent of the Soldier as of the date of such failure shall be treated as an overpayment of educational assistance and will be subject to collection by Department of Veterans Affairs. Future entitlements will be terminated.

4. Army Regulation (AR) 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 Selected Reserve.

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//