

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20230013846

APPLICANT REQUESTS:

- correction of his military records to show he transferred his Post 9/11 GI Bill (PGIB) education benefits to his dependent(s) under the Transfer of Education Benefits (TEB), prior to his 2011 retirement
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Dependent College Enrollment Certificate

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 requests any omissions or failures to complete information or documents to allow his GI Bill benefits to be transferred to his son [Son's Name] be corrected. He believed he completed all required documents and steps prior to retirement, but now, 13 years later, he is told he did not, and benefits won't transfer to his college-aged son. He took all steps he believed were required during my retirement process to transfer my GI Bill benefits to his son, J\_\_\_\_. He was not aware of any electronic transfer that was required. He attended all pre-retirement counseling and thought all transfer requirements were met. As a result, his family has planned for his son's college to be paid for by the transferred GI Bill benefits. Now, he is a freshman in college & has been denied use of the benefits.

a. He (the applicant) purposefully did not use the benefits since retirement so they would be available for him. If the benefits do not transfer to him, they will be wasted as he has no need for them at age 55. They relied on these benefits being available and his understanding that all conditions were met, and documents completed but now he is

not being able to use the GI Bill benefits he earned and believed he transferred. They don't want the benefits to be wasted and his son is enrolled at Mississippi State and ready to use them now.

b. The Veteran's Service liaison at his son's college told them that many veterans who retired when he did (when the ability to transfer GI Bill benefits was new) encounter this same issue with transfers being denied years later. Had he known there was an issue with the transfer, they could have planned differently for his son's college expenses but are left with no other recourse than this plea for correction now. He earned the benefits and does not want to have an administrative failure prevent him from transferring them to his son. He should not incur debt when the benefits exist to pay for his education, he specifically believed he transferred those benefits to him.

2. The applicant enlisted in the Regular Army on 7 September 1989 and held an infantry specialty.

a. He served through multiple reenlistments in a variety of stateside or overseas assignment, including Southwest Asia and Afghanistan, and he attained the rank of sergeant first class/E-7.

b. His DD Form 93 (Record of Emergency Data), dated 13 January 2009, shows he is married and has two dependent children born in 1992 and 2004 respectively.

c. He retired on 31 January 2011. His DD Form 214 (certificate of Release or Discharge from Active Duty) shows he completed more than 21 years of active service.

3. The U.S. Army Human Resources Command (ASHRC) provided an advisory opinion on 23 Augst 2024 in the processing of this case. An AHRC advisory official recommended disapproval of applicant's request for the Post 9/11 GI Bill (PGIB) Transfer of Education Benefits (TEB). Service Members (SM) earn the PGIB because of their qualifying Active Duty (AD) service. However, the ability to TEB to eligible dependents is neither a reward for service nor a transition benefit but a retention incentive (much like a 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 an AD or Selected Reserve Duty Status, on or after August 1, 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 PGIB 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. AHRC does not recommend administrative relief based on the following:

a. Soldiers receive counseling on all GI Bills, including the PGIB benefit and its TEB incentive at various venues throughout their career (in/out-processing at Education Centers), upon demobilization or release from Active Duty (REFRAD), and during the last year before separation or retirement (Soldier for Life (SFL) -Transition Assistance Program (TAP)). Soldiers have had access to and received counseling on GI Bill benefits through SFL-TAP (i.e., ACAP XXI or TAP XXI) since 2002 on-line and in-person. Eligibility criteria could have also been obtained by consulting Department of Defense Type Directive Memorandum 09-003: PGIB, Attachment 2, paragraph 3a(3), dated June 22, 2009; paragraph 17a(4) of the U.S. Army PGIB Policy Memorandum dated July 10, 2009; Department of Defense (DoD), Department of the Army (DA), and Army Human Resources Command (AHRC) websites; and Social Media posts across multiple platforms.

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 DoD, 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 since the implementation of the 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 submitting a valid TEB request via the milConnect website, the designated system of record for all TES-related transactions and the only DoD- wide authorized means to request TEB and upon approval of such a request modify the allocation of the transferred benefits.

c. The applicant was eligible to transfer his PGIB education benefits to his eligible dependents upon the implementation of the TEB program on 1 August 2009, because he had already attained the required minimum of six years of service. Had the applicant requested TEB at that time, he could have been approved with a zero- month additional service obligation since he was eligible for retirement. Since the implementation of the TEB program, the milConnect website has been the system of record for all TEB-related transactions and the ONLY DoD-wide approved means to request TEB, and upon approval of such a request, manage the allocation of the transferred benefits. Additionally, milConnect creates a date/time stamp every time a Soldier accesses the

website and when submitting a transaction. On 16 July 2024, AHRC requested the applicant's access history to the milConnect website. His access history reflects that he accessed milConnect website seven times in a span of 5 minutes on 15 September 2010 without submitting a TEB request. This appears to indicate that he must have been aware of the requirement that TEB must be submitted via the milConnect website, which appears to conflict with his statement on the DD Form 149, that he "wasn't aware of any electronic transfer that was required." Additionally, he accessed milConnect twice in 2016, once in 2020 and 2021, and four times in 2023. All these access attempts were however after his retirement, and he was therefore no longer eligible to request TEB.

d. The applicant also stated on his DD Form 149 that he "took all steps I believed were required during my retirement process to transfer my GI Bill benefits to my son" and that "all conditions were met & documents completed." As previously explained in paragraph c. milConnect has always been the only authorized method to request TEB. We contacted the DVA and requested the applicant's application history for his PGIB benefits. The VA Regional Processing Office reported that the applicant requested the use of his PGIB benefits on 10 November 2010 and his Certificate of Eligibility was issued on 21 December 2010. The required VA Form 22-1990 (Application for VA Education Benefits) clearly states that it is used for applying to use earned education benefits. It does not mention, nor does it have any blocks available to include dependents information. Additionally, the Certificate of Eligibility that was issued to the applicant was made out to him and would not have included any mention of a transfer of education benefits to his dependents. It is unclear how the applicant could have arrived at the conclusion that he had transferred his PGIB benefits to his son through this process.

e. In his packet to ABCMR the applicant further stated that he "purposefully didn't use the benefits since retirement so they would be available for him (son)." This is a misrepresentation of the facts. According to the DVA, the applicant used 11 months and 12 days of PGIB benefits between 1 October 2011 and 9 July 2012 to attend Gwinnett Fire Academy. This time period during which he attended the school, was after his retirement on 31 January 2011 and therefore, he must have been aware of the fact that he used PGIB benefits and that the above-referenced statement was incorrect.

f. It is unclear where the Veteran's Service Liaison, mentioned in Block 18 of the DD Form 149 obtained the information "that many veterans who retired when I did (when the ability to transfer GI Bill benefits was new) encounter this same issue with transfers being denied years later." Since the implementation of the TEB program on 1 August 2009, it has always been a requirement for Soldiers wanting to transfer their education benefits to request this transfer via the milConnect website. The applicant never submitted a TEB request through the only DoD-wide approved means to request TEB, nor did he provide any documentation that would support his contention that he submitted a TEB request during his retirement process.

g. The applicant's military service may make his dependent eligible for other types of assistance. There are numerous agencies that may assist. Additionally, the applicant's Post 9/11 GI Bill benefits are still available for his use until 31 January 2026 when his 15-year delimiting period ends.

4. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal and/or comments. As of 13 September 2024, applicant had not responded.

#### 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. Upon review of the applicant's petition, available military records and U.S. Army Human Resources Command – Education Incentives Branch advisory opinion, the Board concurred with the advising official recommendation for denial finding the applicant's access history reflects that he accessed milConnect website seven times in a span of 5 minutes on 15 September 2010 without submitting a TEB request. The opine noted, the applicant accessed milConnect twice in 2016, once in 2020 and 2021, and four times in 2023. All these access attempts were however after his retirement, and he was therefore no longer eligible to request TEB.

2. The Board determined there is insufficient evidence to support the applicant's request for correction of his military records to show he transferred his Post 9/11 GI Bill (PGIB) education benefits to his dependent(s) under the Transfer of Education Benefits (TEB), prior to his 2011 retirement. Evidence shows the applicant used 11 months and 12 days of PGIB benefits between 1 October 2011 and 9 July 2012 to attend Gwinnett Fire Academy. The Board noted, this time period during which he attended the school, was after his retirement on 31 January 2011. The Board agreed the records is absent sufficient evidence showing the applicant submitted a TEB request through the only DoD-wide approved means to request TEB, nor does he provide any documentation that would support his contention that he submitted a TEB request during his retirement process. Therefore, the Board denied relief.

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 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.

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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, U.S. Code, § 3319 Authority to transfer unused education benefits to family members.

a. In General—

(1) Subject to the provisions of this section, the Secretary concerned may permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).

(2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The Secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the national security interests of the United States.

b. Eligible Individuals.—An individual referred to in subsection (a) is any member of the uniformed services who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least—

(1) six years of service in the Armed Forces and enters into an agreement to serve at least four more years as a member of the uniformed services; or

(2) the years of service as determined in regulations pursuant to subsection (j).

c. Eligible Dependents.— (1) Transfer.— An individual approved to transfer an entitlement to educational assistance under this section may transfer the individual's entitlement to an eligible dependent or a combination of eligible dependents; and (2) Definition of eligible dependent.— For purposes of this subsection, the term "eligible dependent" has the meaning given the term "dependent" under subparagraphs (A), (I), and (D) of section 1072(2) of title 10.

d. Limitation on Months of Transfer.— The total number of months of entitlement transferred by an individual under this section may not exceed 36 months. The Secretary of Defense may prescribe regulations that would limit the months of entitlement that may be transferred under this section to no less than 18 months.

e. Designation of Transferee.—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.

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.

(2) Modification or revocation.— (A) In general.— An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. (B) Notice.— The modification or revocation of the transfer of entitlement under this paragraph shall be made by the submittal of written notice of the action to both the Secretary concerned and the Secretary of Veterans Affairs.

(3) Prohibition on treatment of transferred entitlement as marital property.— Entitlement transferred under this section may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

g. Commencement of Use.—A dependent to whom entitlement to educational assistance is transferred under this section may not commence the use of the transferred entitlement until certain time frames specified here.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. 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//