

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 August 2024

DOCKET NUMBER: AR20230014039

APPLICANT REQUESTS: Correction of his record to show Post 9/11 GI Bill Transfer of Education Benefits (TEB) to his dependent and a personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) letter, 2 April 2013
- Post 9/11 GI Bill Statement of Benefits

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 he had no knowledge that an additional step was needed for TEB to a child. He believed that TEB was in order upon receiving a certificate of eligibility in 2013. He fulfilled 6 years of duty as required, plus an additional 10 plus years Additional Service Obligation (ASO).
3. A review of the applicant's official record shows the following:
  - a. On 18 March 1986, the applicant enlisted in the Regular Army.
  - b. On 29 June 1989, the applicant was honorably released from active duty and transferred to the USAR Control Group (Reinforcement). He completed 3 years, 3 months, and 12 days of net active service.

c. On 7 October 2010, the applicant enlisted in the USAR and had continued service through reenlistments with his final reenlistment on 4 December 2019 for an indefinite term.

d. On 22 March 2012, the applicant entered active duty in support of Operation Enduring Freedom.

e. On 15 January 2013, the applicant was honorably released from active duty and returned to his USAR unit. He completed 9 months and 24 days of net active service.

4. The applicant provides:

a. VA letter dated 2 April 2013 which shows the applicant had 11 months and 24 days of full-time benefits remaining and had until 16 January 2028 to use the benefits based on service from 22 March 2012 through 15 January 2013.

b. Post 9/11 GI Bill Statement of Benefits showing the applicant had 11 months and 24 days of education benefits.

5. On 17 July 2024, the Chief, Education Incentives Branch, U.S. Army Human Resources Command, provided an advisory opinion recommending disapproval and stating in pertinent part:

a. In September 2023, the applicant submitted two separate TEB requests, one on 7 September 2023 and another on 18 September 2023. Both requests were rejected due to him not being able to meet the by Public Law (PL) 110-252 required four-year ASO. This was due to a contract expiration date of 31 January 2024, on his latest DD Form 4/1, dated 4 December 2019. The 31 January 2024 date coincides with the month that he turned 60 years of age which constitutes the maximum age Reservists can serve to unless they are granted an extension. The applicant never submitted such documentation, nor is it available in his record. We notified him by email of the disapproval of his requests on 14 September 2023 and 21 September 2023, respectively (See Enclosures One and Two). After informing him of the disapprovals, he claimed that he was confident that he completed the enrollment process about 10 years ago and provided a screenshot of a DVA website. This was the same screenshot that he submitted to the ABCMR as proof that he previously submitted a TEB request. Please note that the submitted documentation is a combination of a screenshot of the DVA website and then the back page of a DVA letter sent to him. The screenshot is from 18 September 2023, which is the date that he accessed the DVA website.

b. However, during our email interactions with the applicant, he provided the complete original Certificate of Eligibility (COE) (Enclosure Three). This CoE, issued on 2 April 2013 by the DVA in response to him submitting a VA Form 22-1990 (Application

for VA Education Benefits) was addressed to him and showed the number of months of Post 9/11 GI Bill benefits available to him. The CoE does not mention his son. It is unclear how he could have arrived at the conclusion that this CoE constituted an approved TEB to his son. Furthermore, it must be noted that the DVA never was the approval authority for a TEB request. Title 38, USC, section 3319 (a) authorized the individual Service Secretaries to approve TEB requests. For the Department of the Army, the Education Incentives Branch has been designated as the Service Approval Authority and as indicated above, never received a TEB request from the applicant prior to September 2023.

c. Since the implementation of the TEB program, the milConnect website has been the system of record for all TEB-related transactions and the only Department of Defense 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 17 July 2024, we requested the applicant's access history to the milConnect website (Enclosure Four). His access history shows that prior to 21 April 2018, he never logged onto the milConnect website. The next time he logged onto milConnect was on 5 September 2023, two days prior to submitting the first TEB request. This confirms that the applicant, prior to 7 September 2023, never submitted a TEB request.

d. In his packet to the ABCMR, the applicant stated that he "had no knowledge that an additional step was needed to transfer education benefits to a child." As laid out in paragraph 2.a. of this advisory opinion, he had a myriad of resources available to him throughout his military career, which would have enabled him to educate himself on the TEB program participation requirements and assist him in verifying whether or not that he had an approved TEB request. His statement that he had "fulfilled 6 years of duty as required, plus an additional 10 plus years ASO" indicates that he was aware of the TEB retention incentive basic program requirements. However, apparently, he failed to follow the instructions for the application process. This failure on his part does not constitute sufficient reason to grant his request. Additionally, the total time he served in the armed forces is immaterial in this context, as long as he met the by-law required minimum of six years of service in the armed forces and had sufficient retainability on his then-current contract at the time of the TEB request to agree to, and serve the by-law required four-year ASO. In order for his service time to count towards fulfilling a TEB-related ASO, he would have had to have an approved TEB first, which he did not. Therefore, in accordance with Title 38, USC, section 3319 (b) since he never "entered into an agreement to serve at least four more years as a member of the uniformed services" his "additional 10 plus years" time in service cannot be applied towards fulfilling an ASO.

6. On 26 July 2024, the applicant was provided with a copy of the advisory opinion for comment or rebuttal. He did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendation in the HRC advisory opinion, and the lack of any rebuttal submitted by the applicant of those findings and recommendation, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's record.

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.

2/5/2025

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. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members) states 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). An individual referred to in subsection (a) is any member of the uniformed services who, at the time of approval of the individuals request to transfer entitlement to educational assistance under this section, has completed at least 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.
3. 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.
4. 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 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//