ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 21 August 2024

DOCKET NUMBER: AR20230014344

APPLICANT REQUESTS: in effect, approval of Post 9/11 GI Bill Transfer of Education Benefits (TEB) to her dependent. A personal appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Army Garrison, Fort Belvoir Orders Number 219-0002
- Department of Veterans Affairs (VA) Statement of Post 9/11 GI Bill Benefits
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- VA Rating Decision
- VA notification 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 in effect, her request to TEB to her dependent was denied because she was flagged for being overweight and for a suicide attempt which caused the loss of her security clearance and could not commit to the required 4-year additional service obligation. She suffered from Post-Traumatic Stress Disorder (PTSD) after she was sexually assaulted by an officer while she was deployed to Afghanistan. She was plagued with stress, anxiety, PTSD and depression since that traumatic event.

3. A review of the applicant's service record shows:

a. On 9 September 2005, the applicant enlisted in the Regular Army and had continuous service through reenlistments.

b. The applicant's enlisted record brief shows the applicant's expiration of term of service was 22 November 2019 and she was flagged for suspension of favorable action for Army Body Fat Composition Program effective 9 October 2018.

c. On 24 July 2019, the Informal Physical Evaluation Board (PEB) found the applicant physically unfit for retention and recommend she be placed on the Temporary Disability Retired List (TDRL) with 80 percent disability for PTSD with major depressive disorder and post-traumatic headaches and occipital neuralgia.

d. On 7 August 2019, Orders Number 219-0002, issued by the U.S. Army Garrison, Fort Belvoir, the applicant was released from active duty because of physical disability incurred while entitled to basic pay and placed on the TDRL with 80 percent disability.

e. On the applicant's DA Form 2166-9-2 (Noncommissioned Officer Evaluation Report) for the rating period of 1 June 2018 through 27 August 2019, the applicant's rater commented she failed to meet the Army Body Fat Composition standards and failed to make progress while on the program.

f. On 30 October 2019, the applicant was honorably retired and assigned to the U.S. Army Reserve Control Group (Retired Reserve). DD Form 214 shows the applicant completed 14-years, 1-month, and 22-days of active service. Item 18 (Remarks) shows she served in Iraq from 28 December 2007 through 25 December 2008 and Afghanistan from 2 June 2011 through 19 November 2011.

g. On 25 October 2021, the Informal PEB found the applicant physically unfit for retention and recommend she be placed on the Permanent Disability Retired List (PDRL) with 80 percent disability for PTSD with major depressive disorder, recurrent severe without psychotic features and migraine with aura, not intractable, without status migrainous.

h. On 16 November 2021, Orders Number D320-52, issued by the U.S. Army Physical Disability Agency, the applicant was placed on the PDRL with 80 percent disability.

4. The applicant provides:

a. VA Statement of Post 9/11 GI Bill Benefits shows as of 20 October 2023 the applicant has 100 percent of her 36-months of benefits.

b. VA Rating Decision dated 14 November 2019 shows the applicant has a service connected disability (that pertains to this case) for:

- PTSD with major depressive disorder and traumatic brain injury and benign paroxysmal positional vertigo

- Obstructive sleep apnea with asthma
- Temporomandibular joint disorder
- Urticaria
- Post-traumatic headaches and occipital neuralgia

c. VA decision of benefits shows the applicant was eligible for the basic eligibility to Dependent's Educational Assistance.

5. On 8 April 2024, in the processing of this case, the U.S. Army Human Resources Command provided an advisory opinion regarding the applicant's request for approval to transfer her educational benefits to her dependent. The advisory official recommended disapproval of her request. The TEB of the Post 9/11 GI Bill is a retention incentive which requires an additional service obligation that is calculated from the TEB request date. The service member must:

- be on active duty or in the Selected Reserve on or after 1 August 2009
- at least 6-years on active duty or in the Selected Reserve status
- no current negative action flag (example; height and weight flag, Army Combat Fitness Test failure flag)
- commit to the additional service obligation
- transfer benefits to dependents through TEB website

The applicant should not be granted relief based on her unawareness of the law, program rules or procedures unless she left the service during the implementation phase of the program. There was a comprehensive public campaign plan that generated major communications through military, public and social media venues on the Post 9/11 GI Bill and subsequent TEB. This information was available to the applicant prior to her medical disability retirement.

The applicant enlisted in the Regular Army on 9 September 2005 and served until her medical retirement on 30 October 2019. She was eligible to request TEB after she reached her 6-years of service on 9 September 2011, she did not submit a TEB request while she was eligible to participate in the program. The applicant was enrolled in Integrated Disability Evaluation System (IDES) on 3 October 2018, she submitted a TEB request on 9 July 2019 which was rejected because she was flagged. At the time of her TEB request, she had insufficient retainability to commit to the required 4-year additional service obligation as her expiration term of service was 22 November 2019.

One possible reason exists for ABCMR to provide relief to the applicant. Our records indicate she was evaluated for PTSD per her DA Form 199, Section Ill. Based on the information listed on her DA Form 199 and considering the medical findings, it is reasonable to presume she was unaware of the requirement to request TEB during the

required timeframe, as her experience and condition likely prevented her from properly understanding the policy.

6. On 18 April 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On or about 9 May 2024, the applicant responded requesting the Board to TEB to her dependent. When she submitted her request for TEB when she was still on active duty, she lacked the information and guidance which caused her to not complete the process properly. When she obtained her 6-years of service, she and her leadership were not fully informed on the TEB process. Though she was flagged for being overweight, she intended to extend her enlistment to meet the service obligation, however, her plans were disrupted by her health issues related to PTSD caused by a sexual assault and the trauma she experienced, she was forced to medically retire. She does understand the rules regarding TEB of her Post 9/11 GI Bill, but she requests and exception to policy give her unique circumstances which prevented her from meeting the requirements.

8. MEDICAL REVIEW:

1. The applicant is applying to the ABCMR requesting approval to transfer her education benefits to her dependent under the Post 9/11 GI Bill Transfer of Education Benefits (TEB) program. She contends that Military Sexual Assault (MST) and Posttraumatic Stress Disorder (PTSD) are related to her request. More specifically, the applicant asserted that due to being flagged for being overweight and losing her security clearance due to a suicide attempt, she could not commit to the required 4-year additional service obligation. She contends that she suffered from PTSD after being sexually assaulted in Afghanistan and since then has been plagued with stress, anxiety, PTSD and depression. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1)The applicant enlisted in the Regular Army (RA) on 09 September 2005, 2) the applicant served in Iraq from 28 December 2007 through 25 December 2008 and Afghanistan from 02 June 2011 through 19 November 2011, 3) her expiration of term of service was 22 November 2019 and she was flagged for suspension of favorable action for Army Body Fat Composition Program effective 09 October 2018, 4) on 30 October 2019 the applicant was honorably retired. She was placed on the permanent disability retired list on 16 November 2021 with 80 percent disability for PTSD with Major Depressive Disorder, recurrent severe without psychotic features and migraine with aura, not intractable, without status migrainous, 5) on 08 April 2024, in processing the case, the U.S. Army Human Resources Command (HRC) provided an advisory opinion regarding the applicant's TEB request and recommended disapproval. It was noted that the applicant was eligible to request to TEB on 09 September 2011 and she did not submit a TEB request while she was eligible to participate in the program. She was enrolled in the Integrated Disability Evaluation System (IDES) on 03 October 2018 and

submitted a TEB request on 09 July 2019 which was rejected because she was flagged. She also had insufficient retainability to commit to the required 4-year additional service obligation as she had an ETS date of 22 November 2019. Per HRC, one possible reason exists for ABCMR to provide relief to the applicant based on her assertion of PTSD, as it is reasonable to presume the applicant was unaware of the requirement to request TEB during the required timeframe as her experience and condition likely prevented her from properly understanding the policy.

2. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The applicant had numerous in-service behavioral health records and the relevant data will be summarized below. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

3. The applicant's in-service medical records were available for review in JLV from 16 October 2005 through 25 November 2019. Review of the applicant's medical records indicate she had infrequent contact with BH prior to 2013.

- The applicant was evaluated on 08 February 2007 for a chapter separation evaluation due to a positive urinalysis for cocaine, which the applicant reported was inadvertent use. While the full chapter evaluation and recommendation(s) were unavailable for review, all documented domains of the mental status examination (e.g., mood, affect, etc.) were documented to be within normal limits. She was evaluated for physical health reasons on 29 November 2007 and it was documented that she endorsed anxiety and depression since returning to Germany from the United States and that she was scheduled to deploy to Iraq soon. She endorsed difficulty falling asleep and middle-night awakening. The applicant was referred to a social worker/Chaplain. On 30 July 2010, the applicant presented to the primary care clinic for problems related to insomnia, primarily noted as with problems staying asleep. It was documented that she was recently divorced and working 20 hours part-time. The applicant was temporarily prescribed Ambien, which was documented to not be helpful at a follow-up appointment on 16 August 2010 and the prescription was changed to Lunesta. She was evaluated by her PCM on 14 October 2010 following a visit to the emergency room (ER) for chest pain. The provider noted that the applicant reported anxiety, anhedonia, and decreased functioning. She was diagnosed with Tietze's Syndrome (Tietze Syndrome: Inflammation around the joints of the ribs that connect to the breastbone) and Adjustment Disorder with Disturbance of Emotions. A flight physical on 11 November 2011 documented that the applicant denied any 'physical or behavioral concerns.' At the time of her post-deployment health reassessment on 25 April 2012, it was documented that the applicant

denied having any current mental health issues, no suicidal or homicidal ideation, and no problems with alcohol.

- The applicant presented as a walk-in to the behavioral health clinic on 21 June 2013 following attendance at a SHARP class. She stated she had been raped 9 months ago by her ex-fiancé. It was also documented that the applicant reported she attempted suicide in 2005 while in AIT via overdose after finding out that her husband had cheated on her. At the time of the visit, she was diagnosed with Depressive Disorder, Not Otherwise Specified (NOS) and Borderline Traits. She was seen for a follow-up appointment on 02 July 2013 and improvements in her mood and sleep were noted. She engaged in treatment for 4 sessions in total, with her last appointment on 21 August 2013. At the time of her last appointment with that provider, it was documented that she had frustrations with her ex due to custody disputes though noted overall improvements in her depressive symptoms. The applicant was scheduled for a follow-up appointment; however, did not have any additional follow-up visits with BH until 2014.
- The applicant's next BH encounter occurred on 30 September 2014 when she presented as a walk-in due to depression and increased stress, which was attributed to her mother's diagnosis of Bipolar Disorder and her frequent expressions of suicidal ideation. The applicant informed the provider that her sister was also diagnosed with Bipolar Disorder. The applicant endorsed problems with sleep, anhedonia, inappropriate guilt, decreased energy and concentration, binging and purging (sometimes), and consuming alcohol on a daily basis. She also endorsed suicidal ideation with plan and intent via overdose but 'talked herself out of it.' Furthermore, the applicant reported a history of suicide attempt the year prior when stationed in Korea via hanging. She was found by a friend and the incident was never reported. The provider diagnosed her with Depression, scheduled for a medication evaluation, and was put on the clinic high-risk tracker for 30 days. On 06 October 2014, a psychiatry note documented that she endorsed experiencing increasing dysphoria, anhedonia, low energy, poor sleep, decreased concentration, drinking 2-3 beers per night, poor appetite, and suicidal ideation without plan. In addition to her depressive symptoms, she endorsed discrete episodes lasting 3-4 days of expansive mood, impulsivity, decreased need for sleep, an increase in goal-directed activity, and racing thoughts though denied experiencing any psychotic symptoms. The applicant reported to the provider that she had a history of 5 suicide attempts over her lifetime. She reported she was doing well at work and was motivated for treatment. The provider diagnosed her with Major Depression and started her on Effexor and Trazodone, noting that the applicant would be carefully monitored for mania symptoms due to her familial history of Bipolar Disorder and her own symptom report. A BH profile was initiated and the provider documented that she did not meet retention standards IAW AR 40-501; however, she did not yet meet the medical retention decision point (MRDP) as she had just started treatment. She was re-evaluated by her psychiatrist on 21 October 2014 and it was

documented that her mood was improving and that she no longer experienced suicidal ideation though her Trazodone was increased due to continued sleep problems. The provider updated her diagnosis to Episodic Mood Disorders. The applicant continued to follow-up with BH for individual and group psychotherapy through 11 December 2014. As of 31 December 2014, the available documentation shows the applicant was still on profile and the clinic high risk list; however, she had reportedly discontinued her medications after losing them in the field and missed a recent therapy appointment due to her child being ill. The applicant attended one cognitive behavioral therapy group for insomnia on 11 February 2015 at a different BH clinic and did not re-engage in treatment with her established BH providers.

- The applicant completed neuropsychological testing on 08 January 2015 as part of her Traumatic Brain Injury (TBI) evaluation. The catalyst for the evaluation was ongoing migraines following a concussion she sustained during her deployment to Iraq in 2008 after being thrown into a T-wall. It was documented that her test results were within normal limits and there was no indication that she had acquired cognitive deficits secondary to concussion or other neurologic injury and instead the provider attributed her cognitive lapses to mood and anxiety difficulties. She was diagnosed with common migraine, history of concussion, insomnia, and hearing loss. The applicant's BH records were reviewed in January 2016 by the Brigade Behavioral Health Officer (BHO) for Soldier Readiness Processing (SRP) purposes and was psychiatrically cleared based off not having any BH encounters in the previous 6 months. The applicant cleared BH due to PCS on 22 December 2016.
- The applicant self-referred to BH on 01 November 2017 due to stress with her job, family, inability to sleep, and feeling disconnected from the world. At the time of her triage, it was documented that the applicant endorsed a history of three instances of sexual trauma (1998 (childhood), 2010 (by husband), and 2012 (ex-fiancé)). She denied experiencing any trauma-related symptoms at the time of the visit except for sometimes being triggered by a sound or smell that reminded her of one of the traumatic events. She reported the medication prescribed in 2014 was helpful but discontinued due to not feeling like herself. She reported a history of non-suicidal self-injurious behavior (e.g., cutting) between 2008-2012 when she discovered her husband was cheating. She endorsed experiencing depressive symptoms followed by mood states consistent with symptoms of mania (e.g., decreased need for sleep, euphoric mood, increased engagement in goal-directed activity, impulsive shopping or taking trips, and increased irritability). She reported problems with attention and focus that she attributed to stress as well as unintentional weight gain. She denied experiencing psychosis or a history of inpatient psychiatric hospitalization. The applicant was diagnosed with Unspecified Mood Disorder and was referred for follow-up treatment. On 06 November 2017, the applicant followed-up for an intake and was diagnosed with Major Depressive Disorder, Recurrent, Moderate and was prescribed Lexapro

and Trazodone. The applicant was also referred to an Empowerment Group. On 29 November 2017, the applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood. It was documented that the applicant did not feel she could continue to serve in the military due to her physical and mental health problems as well as her daughter's mental health issues (reported her daughter was diagnosed with Depression with Psychosis), which she blamed herself for. On 30 November 2017 she reported her mood was unchanged since starting Lexapro and that she planned to leave the military to be more available for her daughter. It was documented that her therapist planned to submit a referral to the WTU to facilitate her treatment and military separation. Her Lexapro was increased and she was started on Prazosin for nightmares. The provider diagnosed her with Major Depressive Disorder, Recurrent, Moderate.

- On 04 January 2018 she reported increased suicidal ideation and depressive symptoms. Due to her reported symptoms, Lexapro was discontinued and she was started on a mood stabilizer, Abilify. She was placed on a temporary BH profile, noted as concerning for 'mixed or bipolar II spectrum depression.' At the time of her follow-up for individual psychotherapy on 11 January 2018 she was diagnosed with PTSD, Chronic. On 26 January 2018, the applicant reported increased suicidal ideation following her daughter's psychiatric hospitalization though noted some improvement in her symptoms since starting Abilify (an antipsychotic medication) and Prazosin (medication used to treat insomnia and nightmares). She was placed on a 90-day temporary BH profile and was diagnosed with Bipolar II Disorder. On 01 February 2018, was feeling better though having difficulty because her daughter disclosed she was molested by a friend of her fathers at age 6 when the applicant was deployed to Afghanistan. She reported she was at peace with her own sexual assault at age 13 but continued to be 'deeply troubled' by later sexual assaults that were perpetrated by ex-husband and a warrant officer in Afghanistan. She was referred to the Adult Co-Occurring Partial Hospitalization program on 13 February 2018 and enrolled from 22 March 2018 through 29 May 2018. She returned to her individual psychotherapist and psychiatrist for outpatient treatment upon completion of the program. She was referred to an out-of-state inpatient treatment program on 07 June 2018 due to worsening depression and suicidal ideation. She attended the treatment program from 18 June to 19 July 2018. Medication adjustments reflected that Abilify was discontinued and she was prescribed Lamictal (mood stabilizer/antconvulsant), Zoloft (antidepressant), Clonidine (anti-anxiety agent) and BuSpar (anxiolytic medication). Her discharge diagnoses included PTSD and Bipolar Affective Disorder II (provisional).
- On 28 February 2019, she was psychiatrically admitted due to an attempted overdose on Ambien. It was reported that she attempted suicide due to feeling overwhelmed and like a failure. The applicant continued with individual therapy and a referral was placed on 14 March 2019 for psychiatry. She was put on the high-risk list on 26 February 2019 due to her inpatient hospitalization. The

applicant completed an intensive outpatient program from 11 April 2019 through 30 May 2019. Her last BH appointment in-service was dated 26 August 2019 and her diagnoses were noted as MDD Recurrent, moderate and PTSD.

- Review of JLV shows the applicant is 100% service-connected through the VA, 70% of which is for PTSD (of note the VA rating decision letter combines several BH conditions as part of this rating to include PTSD with MDD, TBI, and benign paroxysmal positional vertigo (BPPV) (claimed as insomnia, MST, concussion, Bipolar Disorder)). She completed a Compensation and Pension (C&P) examination on 30 October 2018. The applicant was diagnosed with PTSD and Major Depressive Disorder, Recurrent, Severe without psychotic features. The stressor(s) associated with her diagnosis of PTSD were documented as sexual assault when deployed to Afghanistan and due to rape by her ex-husband. She also endorsed using cocaine on a few occasions in 2006 and getting demoted for going AWOL in 2007, which she attributed to being in the hospital and missing her flight back to Germany. Review of VA records demonstrate the applicant has had infrequent contact with BH through the VA since her discharge (09 and 27 June 2023 and a referral placed on 25 June 2024). Her medication list shows she is currently prescribed Effexor.

4. The available records indicate the applicant was diagnosed with several BH conditions while in-service to include PTSD, Bipolar II Disorder, Episodic Mood Disorder, Major Depressive Disorder, Recurrent, and Adjustment Disorder with Disturbance of Emotions. Review of her medical records confirms that she reported she was sexually assaulted in-service. The dates of her assaults and the identified assailants do not align throughout the records, though it is unclear if this is due to clerical error or applicant report. However, it was consistently documented that the applicant reported a history of three sexual assaults, two of which occurred during her military service (2010 and 2011/2012). Records indicate the applicant was not diagnosed with a medically boardable or mitigating BH condition until 2013 and was not diagnosed with PTSD until 2018; however, there were indications prior to 2013 that she was experiencing BH concerns given her diagnosis of Adjustment Disorder with Disturbance of Emotions in 2010. Review of the records also indicate that the applicant likely had BH-related concerns prior to her reports of MST given her 2007 referral for chapter separation due to cocaine use, report of depression and anxiety during a physical health appointment in 2007, and her self-report that she attempted suicide in 2005 while in AIT (not available in the records). It is also clear in the records that the applicant's BH condition(s) continued to worsen over time, to include re-triggering her trauma and exacerbating her BH symptoms, ultimately resulting in a medical evaluation board due to unfitness for service.

5. The sequelae of trauma, to include MST, may include intrusive thoughts about the trauma and difficulty concentrating as well as symptoms of depression (e.g., anhedonia

and difficulty with motivation). The severity of the applicant's trauma-related or depressive symptomatology around the time she became eligible for TEB in 2011 is unclear based on the available documentation, though it is acknowledged that, given that her eligibility started on or around the time of her in-service sexual assault, it is plausible that problems with concentration, focus, and motivation may have inhibited her ability to understand and follow-through with program requirements. However, there are no indications in the record that the applicant's condition was of such severity that it fell below retention standards until 2013, as indicated by a reported suicide attempt (though went unreported until 2014) and more definitively in 2014 when a BH profile was initiated. Furthermore, there is no indication in the records that the applicant's job performance declined around the time of her initial eligibility in 2011. As such, while it is acknowledged by this Advisor that MST and trauma-related conditions may interfere with the ability to focus and concentrate, therefore impacting the ability to engage and understand available resources, particularly given the nexus between the timeframe of her assaults and when she became eligible for TEB, it is unclear based on the available documentation if the applicant's condition was of such severity that she would have been unable to understand the requirements of the TEB at the initial time of eligibility.

6. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? N/A, the applicant is requesting to transfer her educational benefits to her dependent under the Post 9/11 GI Bill TEB program.

(2) Did the condition exist or experience occur during military service? N/A, the applicant is requesting to transfer her educational benefits to her dependent under the Post 9/11 GI Bill TEB program.

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A, the applicant is requesting to transfer her educational benefits to her dependent under the Post 9/11 GI Bill TEB program.

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 disapproval

finding the applicant should not be granted relief based on her unawareness of the law, program rules or procedures unless she left the service during the implementation phase of the program.

2. The medical opine noted, that MST and trauma-related conditions may interfere with the ability to focus and concentrate, therefore impacting the ability to engage and understand available resources, particularly given the nexus between the timeframe of her assaults and when she became eligible for TEB, it is unclear based on the available documentation if the applicant's condition was of such severity that she would have been unable to understand the requirements of the TEB at the initial time of eligibility. However, the Board determined the applicant enlisted in the Regular Army on 9 September 2005 and served until her medical retirement on 30 October 2019. She was eligible to request TEB after she reached her 6-years of service on 9 September 2011, she did not submit a TEB request while she was eligible to participate in the program. The Board agreed there is insufficient evidence to support the applicant's contentions for approval of Post 9/11 GI Bill Transfer of Education Benefits (TEB) to her dependent. Based on the advising opinion and evidence in the record, 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
[redacted]	[redacted]	[redacted]	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.

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 establishes legal limitations on the transferability of unused Post-9/11 GI Bill benefits. Further, section 3020 Public Law 110-252, limits eligibility to transfer unused benefits to those members of the armed forces who are serving on active duty or as a member of the Selected Reserve on or after 1 August 2009. To transfer education benefits, a Service Member must be on active duty or a member of the Selected Reserves in order to transfer benefits, have completed at least six years of qualifying service with at least 90 days of a qualifying period of service, have no negative action flag, and agree to serve at least four more years as a member of the Armed Forces, or the years of service as determined by the Secretary.

3. On 22 June 2009, DOD established the criteria for eligibility and transfer of unused educational benefits to eligible family members. An eligible individual is any member of the armed forces on or after 1 August 2009 who, at the time of the approval of the individual's 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; or

b. Has at least 10-years of service in the armed forces (active duty and/or 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; or

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 duty or 20 qualifying years of reserve service.

4. The policy further states the Secretaries of the Military Departments will provide active duty participants and members of the reserve components with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly and maintain records for individuals who receive supplemental educational assistance under Public Law 110-252, section 3316.

5. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members), (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. (h) (5) (Limitation on age of use by child transferees), (A) In general. A child to whom entitlement is transferred under this section may use the benefits transferred without regard to the 15-year delimiting date specified in section 3321, but may not, except as provided in subparagraph (B) or (C), use any benefits so transferred after attaining the age of 26 years.

6. 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//