

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 October 2024

DOCKET NUMBER: AR20230015269

APPLICANT REQUESTS: in effect, an exception to allow him to transfer Post 9/11 GI Bill education benefits to his children under the Transfer of Education Benefits (TEB).

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

- DD Form 149 (Application for Correction of Military Record)
- Statement of Understanding – Selected Reserve Montgomery GI Bill
- DD Form 214, Certificate of Release or Discharge from Active Duty) for the period January 2003 to January 2007

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 when he initially joined the Army Reserve, he was afforded the MGIB and a monetary signing bonus and took this as a benefit that he would carry as long as he was in and served faithfully and beyond retirement. As he progressed throughout his career, he was confident that he could use the MGIB at his disposal and/or disperse the unused funds from MGIB to his dependents.

a. On January 27, 2003, he was ordered to active duty in support of Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom. He was released on Active Duty on January 25, 2007. When released from active duty, he had no interaction with an Education Officer to advise him of his education options nor was there mention of the MGIB or any educational benefits, so he assumed this benefit was still in place. His feeling is that he fell between the gap of his release from active duty in 2007, and the beginning of the post 9/11 GI Bill that was passed in 2008 and was potentially cheated out of a benefit that he rightfully earned. As it happens, he now has one of his children preparing to go to college fall of 2024, and another in fall of 2025, so he began looking into utilizing the MGIB benefit.

b. He reached out to the VA to discuss his options, and to his surprise, the VA told him that the DOD never transferred his MGIB benefit to the VA. He feels if he no longer has access to this benefit, after fulfilling his end of the obligation, is unfair and disappointing considering he faithfully served for over 20 years and does not think it's fair to his children or family as they had to make sacrifices during my career to include being mobilized for 3 years. This is why he is requesting his records to be updated to reflect his benefit he earned, so it can be communicated to the VA and be dispersed to his children. He really needs his benefit to reflect to ensure his children receive the college education that they deserve.

3. The applicant enlisted in the U.S. Army Reserve on 29 September 1986. He completed initial entry training from October 1986 to January 1987.

a. He served through multiple extensions or reenlistments, in a variety of U.S. Army Reserve assignments, and he attained the rank of sergeant first class/E-7.

b. He entered active duty from 27 January 2003 to 25 January 2007, completing nearly 4 years of active service.

c. On 2 November 2006, the U.S. Army Human Resources Command issued him a Notification of Eligibility for Retired Pay at Age 60 (20_Year Letter).

d. On 14 June 2007, Headquarters, 85th Division published orders transferring him to the Retired Reserve effective 13 July 2007.

4. On 9 May 2024, the U.S. Army Human Resources Command provided an advisory opinion in the processing of this case, recommending disapproval of the applicant's request for GI Bill eligibility and the Transfer of Education Benefits (TEB) due to the following Public Law and policy requirements:

a. The National Defense Authorization Act of 1985 (Public Law 98-525) amended Title 38, US Code to include the Montgomery GI Bill -Active Duty (MGIB-AD) to Service Members (SMs) who entered Active Duty (AD) 1 July 1985 or later. The MGIB- AD is a service member's (SM's) benefit, which required SMs who entered service prior to 5 January 2023 to enroll within 3 working days of AD by signing Department of Defense (DD) Form 2366 and agree to a reduction in pay of \$1200 (\$100 each month for the first 12 months). SMs must complete the initial term of service with a fully honorable characterization of service and may not enroll in MGIB-AD more than once. [Applicant] did not establish eligibility for the MGIB-AD, Chapter 30, Title 38, U.S. Code because he never transferred from the Reserve Component to the Active Component, did not complete a DD Form 2366, nor did he contribute \$100 a month for 12 months.

b. [Applicant] established eligibility for the Montgomery GI Bill-Selected Reserve (MGIB-SR), chapter 1606, Title 10 U.S. Code with the United States Army Reserve through entering an enlistment contract of at least six years on 29 September 1986 and remaining in Troop Program Unit (TPU) or Individual Mobilization Augmentee (IMA) status. [Applicant] also met the other program requirements such as completion of Initial Active Duty for Training and high school. A Soldier is eligible to use MGIB-SR while drilling satisfactorily in TPU or IMA status. [Applicant's] MGIB-SR benefits were terminated when he transferred to the Retired Reserve on 13 July 2007. Therefore, [Applicant] is no longer eligible for MGIB-SR.

c. A Soldier establishes eligibility for the Post 9/11 GI Bill (PGIB) after attaining an aggregate of at least 90 cumulative qualifying AD days in honorable periods of service on/after September 2001. Additionally, since the PGIB is a Title 38, Chapter 33 program, the Department of Veterans Affairs (DVA) ultimately determines the SM's entitlement because the agency is the overall program administrator. [Applicant] established eligibility for PGIB, Chapter 33, Title 38, U.S. Code, due to qualifying AD service on/after 11 September 2001; however, his PGIB benefits were subject to a 15-year delimiting period beginning with his last release from AD on 25 January 2007. He was eligible to use the Post 9/11 GI Bill for his personal use until 25 January 2022, which was 15 years after his last release from AD of 90 days or more of qualifying AD.

d. SMs earn the Post 9/11 GI Bill because of their qualifying AD service. However, the ability to transfer those education benefits 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 Transfer of Education Benefits (TEB) retention incentive is based on service in AD 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 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 date of the initial request and signifies the four-year ASO end date. The PGIB 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. [Applicant] was never eligible to participate in the TEB program because he never served on AD or in the Selected Reserve on or after 1 August 2009, the implementation date of the TEB program. [Applicant] transferred to the Retired Reserve on 13 July, which is almost 2 years prior to the program's implementation date.

e. In correspondence to this Board, [Applicant] stated, "the DOD never transferred my MGIB to the VA." Since the inception of the TEB program, it has always been the SM's responsibility to request TEB. It has never been the Army's responsibility to automatically transfer education benefits on behalf of the Soldier. Furthermore, as previously stated, [Applicant] was never eligible for the TEB retention incentive because he did not serve on AD or Selected Reserve status on or after 1 August 2009. Additionally, at no point during [Applicant's] long Army career were any of the GI Bill programs available for the transfer to dependents. In fact, the PGIB TEB program was not created until approximately 20 months after his transfer to the Retired Reserve.

f. This office sympathizes with [Applicant]; however, he is no longer eligible for the MGIB-SR, was never eligible for the MGIB-AD, exceeded the delimiting period for the PGIB and was never eligible for TEB. Even though he was never eligible to participate in the TEB program, his military service may make his dependents eligible for other types of assistance.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit additional comments and/or a rebuttal. The applicant did not respond.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. The Board reviewed and concurred with the Chief of Education Incentives Branch with the U.S. Army Human Resources Command advising official finding the applicant established eligibility for the Montgomery GI Bill – Selected Reserve on 29 September 1986 which terminated when he transferred to the Retired Reserve on 13 July 2007. The Board concluded the applicant was not eligible to participate in the transfer of education program based on never serving on active duty after 1 August 2009, the date of the program implementation. The Board denied relief.

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. 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 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. The Post 9/11 GI Bill is a benefit for the Soldier as a reward for service during a time of conflict; however, the option to transfer this education benefit to eligible dependents are a retention incentive. The transfer incentive was included in the statute for the express purpose of recruitment and retention. It is neither a reward for service nor a transition benefit. Therefore, the incentive requires the Soldier to commit and fulfill additional service, in most cases, from the TEB request date.

a. Soldiers receive counseling on all GI Bills, including the Post 9/11 GI Bill benefit and the TEB incentive at various venues throughout the Soldier's career (in/out-processing at Education Centers, Commander's Calls), upon demobilization or release from active duty, and during the last year before separation or retirement (Soldier for Life (SFL)-Transition Assistance Processing (TAP)). Soldiers have had access to and received counseling on GI Bill benefits through SFL-TAP since 2002..

b. The TEB incentive does not require a formal one-on-one counseling, group counseling, nor a reduction in pay to make oneself eligible. A Soldier acquires TEB eligibility and makes dependents eligible by awarding at least one month to the dependent via the TEB website and fulfilling the TEB service obligation.

//NOTHING FOLLOWS//