

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240000784

APPLICANT REQUESTS: reconsideration of his previous request for an exception to policy to transfer education benefits to his family members under the Transfer of Education Benefits (TEB) provision of the Post-9/11 GI Bill.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20160001450 on 8 June 2017.
2. The applicant states he transferred his Post 9/11 GI Bill education benefits to his daughter while he was still on Active duty and he thought he had severed the time requirement for this action. He was never told at time of separation by the VA (Department of Veterans Affairs) representative about the time requirement. The only thing they said was to "make sure you transfer the GI Bill" and nothing about "you must serve a set amount of time to transfer the GI Bill." Because he thought he had served enough time to transfer the GI Bill and at separation briefings, the VA should inform service members about the time requirement not just to make sure that they transfer the GI Bill. He has a current disability rating of 100% which gives his daughter more education benefits that they cannot use because of this other issue.
3. The applicant enlisted in the Regular Army on 9 November 1993.
 - a. He served through multiple extensions or reenlistments, in a variety of stateside or overseas assignments, and he was advanced to staff sergeant (SSG)/E-6.
 - b. The applicant's last DD Form 93, Record of Emergency Data, shows him married to Mi__ and they have 2 dependent children: Br__, born in 1990 and Jo__ born in 1995.
 - c. The applicant retired on 30 June 2013, and he was placed on the retired list in his retired grade of SSG/E-6 on 1 July 2013 after serving over 20 years of active service.

4. On 8 June 2017, the Board considered the applicant's request and denied it.

a. Prior to adjudicating the applicant's previous case, the Board received an advisory opinion from the U.S. Army Human Resources Command (AHRC) that recommended disapproval of the applicant's request to waive the Post 9/11 GI Bill TEB service obligation. Public Law 110-252 establishes legal limitations on the transferability of unused Post 9/11 GI Bill benefits. Further, § 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, have at least six years in Active Duty or Selected Reserve status and no current negative action flag, commit to the service obligation, and transfer benefits to the dependents through the TEB website, <http://milconnect.dmdc.mil>. All benefits must be transferred before the servicemember separates or retires. AHRC does not recommend administrative relief:

(1) The Post 9/11 GI Bill is a benefit for the Soldier as a reward for service during a time of conflict. The option to transfer education benefits to a dependent is considered an incentive, not a benefit. 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.

(2) The Post 9/11 GI Bill benefit and the TEB incentive do not require a formal one-on-one counseling, group counseling, nor a reduction in pay to make oneself eligible. A Soldier acquires eligibility for the Post 9/11 GI Bill benefit through qualified service after 10 September 2001 and elects the benefit through the VA on VA Form 22-1990. A Soldier acquires TEB eligibility as stated in paragraph 1 and makes dependents eligible (awards at least one month to the dependent) by requesting TEB via the TEB website and fulfilling the TEB service obligation.

(3) On the TEB website, the Soldier must acknowledge and check on nine statements in the TEB website before submitting the TEB request. Statements "d" and "e" pertain to the Soldier agreeing to-serve the TEB service obligation and a possible overpayment- if the TEB service - obligation is not fulfilled.

(4) The applicant had almost four years prior to his retirement to research the eligibility criteria for the TEB incentive. He should have obtained the TEB eligibility criteria through the Department of Defense Directive-Type Memorandum 09-003 (dated 22 June 2009), Attachment 2, paragraph 3a(3)(c), the Department of the Army Post 911 GI Bill Policy Memorandum, paragraph 17a(4)(c), DoD, DA, and HRC websites, and various briefings at the installation level. He was not limited to information from his unit leadership as he stated. The applicant had sufficient time to submit a TEB request and research the TEB service obligation requirements before he voluntarily retired on 30 June 2013. He failed to research the TEB incentive requirements accordingly.

(5) The applicant submitted a TEB request on 23 July 2009. His servicing Career Counselor approved the TEB request on 23 July 2009 with a TEB service obligation of 22 July 2013 (viewable in the upper left-hand corner of the TEB website for applicant to see. The applicant submitted a voluntary request for retirement with a projected retirement effective date of 30 June 2013. On 5 February 2013, the applicant's voluntary retirement request was approved, retirement orders were published with a retirement effective date of 30 June 2013, and he was provided copies. At that time, he had an opportunity to recognize he would not have been able to fulfill the TEB service obligation because he would have retired before fulfilling the service obligation.

(6) Throughout the TEB process, the applicant had the responsibility to check the TEB website for the status of his TEB request and any TEB service obligation (viewable in the upper left-hand corner of the TEB website). The applicant made himself ineligible for TEB when he requested retirement with a retirement effective date of 30 June 2013, which was before the TEB obligation end date. On 15 January 2011, 19 November 2012, 20 November 2012, 18 December 2012, and 15 January 2013, the applicant accessed the TEB website and adjusted benefit allocations for his dependents. At that time, he again would have seen the TEB Obligation End Date of 22 July 2013 in the upper left-hand corner of the TEB website.

(7) On 31 August 2015, this office received an inquiry from the Department of Veterans Affairs Regional Processing Office (RPO) Muskogee, OK about the applicant not fulfilling the TEB obligation end date. This office rejected his TEB request 31 August 2015 because the applicant did not fulfill the entire TEB service obligation prior to his retirement. This office sympathizes with the applicant and his dependents; however, the time for him to make himself aware of TEB eligibility criteria was-before he submitted-the retirement request.

b. The Board denied his request and stated: Notwithstanding the applicant's contentions, TEB is a retention incentive, not a benefit. DOD, the VA, and DA conducted extensive public campaigns that generated communications through military, public, and social media venues. The information regarding TEB eligibility was published well in advance with an emphasis on the criteria. The applicant had almost 4 years prior to his voluntary retirement on 30 June 2013 to research the eligibility criteria for the TEB incentive. Regretfully, it appears he failed to research the TEB incentive requirements accordingly. The requirements for transferring Post 9/11 GI Bill benefits are set in law. A change to the law is not within the purview of this Board.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The

option to transfer education benefits to a dependent is considered an incentive, not a benefit. 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. The evidence shows the applicant submitted a TEB request on 23 July 2009 and received a 4-year TEB service obligation of 22 July 2013. The applicant submitted a request for voluntary retirement to for 30 June 2013, which was approved on 5 February 2013, and her therefore did not serve or fulfill his 4-year TEB service obligation. Since the applicant did not fulfill his service obligations, the Board determined relief is not warranted.

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 to amend the decision of the ABCMR set forth in Docket Number AR20160001450 on 8 June 2017.

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. Public Law 110-252, as amended by Public Law 111-377, identified the qualifications to receive the Post-9/11 GI Bill. Public Law 110-252 established legal requirements on the transferability of unused benefits to those members of the Armed Forces who were serving on active duty or as a member of the Selected Reserve on or after 1 August 2009.

2. On 22 June 2009, the DOD established the criteria for eligibility and transfer of unused education benefits to eligible family members. The policy limits the entitlement to transfer education benefits to any member of the Armed Forces on or after 1 August 2009, who, at the time of the approval of his or her request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill, and:

- 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
- 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
- Is already retirement eligible or becomes retirement eligible during the period from 1 August 2009 through 1 August 2013. A service member is considered retirement eligible if he or she has completed 20 years of active duty or 20 qualifying years of reserve service.

//NOTHING FOLLOWS//