

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 October 2024

DOCKET NUMBER: AR20240000862

APPLICANT REQUESTS: Transfer Education Benefits (TEB) under the Post 9/11 GI Bill to his dependent son.

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

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 pertinent part, he has been trying to give his dependent son his unused education benefits. However, he is only now being told of documents he should have submitted while still serving which he was never informed of. He submitted the request on 12 June 2010, when still in service, and was just recently informed that it was terminated on 25 July 2011 due to no action to complete the statement of understanding and failing to extend within 70 days. He served both on active duty and in the National Guard and selected the Montgomery GI Bill as well as was given the Post 9/11 GI Bill and did not leave service until 4 September 2014 which would have met the 4-year service obligation.
3. A review of the applicant's available service record reflects the following:
 - a. On 5 September 2002, he enlisted in the Regular Army for a period of 4 years.
 - b. On 11 September 2002, DD Form 2366 (Montgomery GI Bill Act of 1984) shows he elected to enroll in the Montgomery GI Bill.
 - c. On 12 June 2006, he enlisted in the Colorado Army National Guard COARNG for a period of 6 years. In conjunction with this enlistment, he signed DA Form 5435-R (Statement of Understanding - The Selected Reserve Montgomery GI Bill) entitling him

to education benefits with the requirement to serve at least 6 years in the Selected Reserve, National guard, or U.S. Army Reserve.

d. DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 4 September 2006 reflects an honorable release from active duty for completion of required active service. Item 12 (Record of Service) shows service from 5 September 2002 to 4 September 2006 for a net active service this period of 4 years.

e. On 9 June 2011, National Guard Bureau (NGB) Form 22-5 (Addendum to DD Form 4 Approval and Acceptance by Service Representative for Interstate Transfer in the Army National Guard) shows he was transferred to the Texas Army National Guard (TXARNG).

f. NGB Form 23B (ARNG Retirement points History Statement) shows from 5 September 2008 through 8 June 2011 he was coded as "B5" (Inactive National Guard).

g. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) dated 9 September 2011 shows he extended his enlistment with the ARNG for a period of 2 years.

h. On 21 August 2014, the Texas Military Forces, ARNG issued Orders Number 233-059 honorably discharging him from the ARNG, effective 4 September 2014 by reason of expiration term of service.

4. On 31 July 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending disapproval of the applicant's request stating:

a. Title 38, USC, Section 3319 authorizes service components to allow eligible Service Members to transfer their unused post-9/11 GI Bill benefits as a retention incentive. To transfer benefits, a service member must be actively serving in the Uniformed Services, be eligible for the post-9/11 GI Bill, have completed at least six years of service, and agree to serve four additional years.

b. On 12 June 2010, the applicant requested TEB. On 25 July 2010, his TEB request was terminated because he was serving in the Inactive National Guard (ING) which is not an active drilling status and does not qualify for TEB. Though he served a total of 9 years, 2 months, and 27 days in the Army National Guard, only 4 years, 9 months, and 9 days were in an active drilling status, the remaining 4 years, 5 months, and 18 days were spent in the ING. His total time served in an active/qualifying status for TEB was 8 years, 9 months, and 9 days.

c. While the applicant may not have been aware that his TEB request was rejected,

because he was not in an active drilling status when he submitted his TEB request and he did not complete at least 10 years of active/qualifying service, we cannot recommend relief.

d. This opinion was coordinated with the Army National Guard Education Services Branch.

5. On 1 August 2024, the applicant was provided with a copy of the advisory opinion and afforded an opportunity to respond.

6. On 2 August 2024, he provided a rebuttal to the advisory opinion further reiterating his initial statement by responding, in pertinent part, he was informed that he had both the Montgomery GI Bill, which he paid for this benefit, as well as the Post 9/11 (awarded while on active duty from 2002-2006). He should have been able to transfer these to his son who was born in 2006. He was never told or provided any guidance of how this was done while he was on active duty nor during his time in the National Guard. These are benefits he earned as well as paid into, and he should be allowed to use.

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 evidence of record shows on 12 June 2010, the applicant requested TEB. On 25 July 2010, his TEB request was terminated because he was serving in the Inactive National Guard (ING) which is not an active drilling status and does not qualify for TEB. Though he served a total of 9 years, 2 months, and 27 days in the Army National Guard, only 4 years, 9 months, and 9 days were in an active drilling status, the remaining 4 years, 5 months, and 18 days were spent in the ING. His total time served in an active/qualifying status for TEB was 8 years, 9 months, and 9 days. The applicant contends that he was never told or provided any guidance of how this was done while he was on active duty nor during his time in the National Guard. The Board did not find his argument persuasive. The Board reviewed and agreed with the advisory official's determination that although the applicant may not have been aware that his TEB request was rejected, because he was not in an active drilling status when he submitted his TEB request, the fact remains that he did not complete at least 10 years of active/qualifying service, 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 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, 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 that an individual transferring an entitlement to educational assistance under this section shall designate the dependent or dependents to whom such entitlement is being transferred, designate the number of months of such entitlement to be transferred to each such dependent and specify the period for which the transfer shall be effective for each dependent. 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.

3. On 10 July 2009, the Army released the Post-9/11 GI Bill Implementation Policy that identified and established responsibilities, eligibility criteria, benefits, and detailed guidance on the administration of the program.

a. Transferability of Unused Benefits to Dependents. For the purposes of transferability, Armed Forces include all active duty service and all Selected Reserve service regardless of branch of service or component. Soldiers whose request to transfer benefits is approved will incur an additional service obligation in accordance with the below policy. Soldiers are expected to serve the additional service obligation.

b. Eligibility.

(1) Any Soldier of the Armed Forces who fulfills Post 9/11 GI Bill eligibility requirements and who, at the time of the approval of the Soldier's request to transfer entitlement to educational assistance does not have an adverse action flag, is eligible for the Post 9/11 GI Bill, and

(2) Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years from the date of request, regardless of the number of months transferred, or

(3) Has at least 10 years of service in the Armed Forces on the date of election and if cannot commit to 4 additional years due to a Retention Control Point (RCP) or Mandatory Retirement Date (MRD), must commit to serve for the maximum amount of time allowed by either RCP or MRD as of the date of request, regardless of the number of months transferred.

4. Army Regulation (AR) 621-202 (Army Educational Incentives and Entitlements) paragraph 4-15 states Soldiers may elect to transfer their Post-9/11 GI Bill education benefits to their spouse, one or more of their children, or a combination of spouse and children through the TEB website in the milConnect portal at <https://www.dmdc.osd.mil/mil-connect> or <http://milconnect.dmdc.mil>. Only dependents listed as eligible in the TEB website may receive the Post-9/11 GI Bill education benefit. TEB is neither an entitlement nor a transition benefit, but was specifically identified by statute as a tool for recruitment and retention of the career force. The ability to transfer the Post-9/11 GI Bill education benefit was created as a recruitment and retention incentive for additional service within the Uniformed Services. Soldiers may increase, decrease, or revoke months to an eligible dependent at any time as long as at least one month is transferred to the dependent before the Soldier leaves the Armed Forces. Once a Soldier leaves service, the Soldier may not transfer benefits to dependents who had not received at least one month while the Soldier was on active duty or in the Selected Reserve.

//NOTHING FOLLOWS//