

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240002059

APPLICANT REQUESTS: correction of her service record to show conversion of the Montgomery GI Bill (MGIB) education benefit to the Post 9/11 GI Bill for Transfer of Education Benefits (TEB) to her dependent son.

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

- DD Form 149 (Application for Correction of Military Record)
- Enlistment Packet, 1996 with the following documents:
  - DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 31 May 1996
  - DD Form 1966/1 (Record of Military Processing - Armed Forces of the United States)
  - DA Form 3286-59 (Statement for Enlistment United States Army Enlistment Program U.S. Army Delayed Enlistment Program)
  - DA Form 3286-64 (Statement for Enlistment United States Army Station/Unit/Command/Area Enlistment Program)
  - DA Form 3286-67 (Statement of Understanding)
  - USAREC Form 1107 (Supplemental to DA Form 3286-67 Statement for Enlistment (or Appointment) Army Policy)
- DD Form 2366 (Montgomery GI Bill Act of 1984 (MGIB)), 27 August 1996
- DD Form 4, 28 August 1998
- DA Form 3340-R (Request for Reenlistment or Extension in the Regular Army), 7 March 2001
- DA Form 1695 (Oath of Extension of Enlistment), 7 March 2001
- DD Form 4, 15 August 2002
- Orders Number 035-0006, 4 February 2005

- Orders Number 138-0020, 18 May 2005
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 14 August 2005
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 30 December 2005
- DA Form 4836, 1 June 2007
- DA Form 4836, 18 April 2009
- DA Form 4836, 30 July 2009
- DA Form 4836, 18 October 2011
- DD Form 214, ending 29 February 2012
- Orders Number 202-052, 20 July 2012
- Orders Number 253-197, 10 September 2013
- DD Form 214, ending 2 October 2013
- Memorandum, Subject: Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years), 11 July 2016
- Orders Number 295-1034, 21 October 2016
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 1 November 2016

#### 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, when she enlisted in the Regular Army in August 1996, she also signed up for the MGIB. She served with the Regular Army for approximately nine years before enlisting in the Pennsylvania Army National Guard (PAARNG) from 2005 to 2016 and retired. She received briefings in 2013 during her redeployment from Afghanistan that were inaccurate. Therefore, at the time of retirement, she was under the understanding that when the Post 9/11 Education Assistance Act was passed, any service member that had MGIB was automatically converted to the Post 9/11 BI Bill benefit. With her son graduating from high school she would like to have the error corrected so that she can transfer the education benefits to him.
3. A review of the applicant's available service record reflects the following:
  - a. On 29 October 1996, she enlisted in the Regular Army and continued service through reenlistments. In conjunction with this enlistment, she signed DD Form 2366 entitling her to education benefits.

b. On 4 February 2005, Headquarters, I Corps and Fort Lewis Military Personnel Division issued Orders Number 035-0006 reassigning her to the U.S. Army transition point for transition and honorable release from active duty, effective 14 August 2005.

c. DD Form 214, ending 14 August 2005 reflects an honorable release from active duty for completion of required active service. Item 12 (Record of Service) shows service from 22 August 1996 to 14 August 2005 for a net active service this period of 8 years, 11 months, and 23 days. Item 9 (Command to which Transferred) shows Headquarters and Headquarters Company, 328th Support Battalion, Lancaster, PA.

d. Her record is void of the DD Form 4 showing her initial enlistment with the PAARNG.

e. She continued service with the PAARNG through extensions and or reenlistments.

f. On 10 October 2007, the Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, the Adjutant General, issued Orders Number 283-004 ordering her to Full-Time National Guard Duty in an Active Guard/Reserve (AGR) status for a period of 3 years from 16 October 2007 to 15 October 2010.

g. On 23 September 2010, the Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, the Adjutant General issued Orders Number 266-018 continuing her in an AGR status from 16 October 2010 to 14 November 2011.

h. DD Form 214, ending 29 February 2012 shows she served on active duty and was honorably released for involuntary separation from Title 32 Active Guard Reserve (AGR) due to non-selection by the AGR Tour Continuation Board. Item 12; shows service from 16 October 2007 to 29 February 2012 for a net active service this period of 4 years, 4 months, and 15 days with total prior active service of 8 years, 11 months, and 23 days.

i. On 20 July 2012, the Commonwealth of Pennsylvania issued Orders Number 202-052 ordering her to active duty in support of Operation Enduring Freedom, effective 21 August 2012 not to exceed 400 days.

j. On 10 September 2013, the Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, the Adjutant General, issued Orders Number 253-197 amending Orders Number 202-052 amending "not to exceed 400 days" to reflect "21 August 2012 to 2 October 2013."

k. DD Form 214, ending 2 October 2013 reflects an honorable release from active

duty for completion of required active service. Item 12; shows service from 21 August 2012 to 2 October 2013 for a net active service this period of 1 year, 1 months, and 12 days and total prior active service of 13 years, 4 months, and 8 days.

l. On 11 July 2016, the Department of Military and Veterans Affairs, Office of the Adjutant General, Commonwealth of Pennsylvania, issued a Memorandum for Notification of Eligibility for Retired Pay for Non-Regular Service (20 Years).

m. On 21 October 2016, the Commonwealth of Pennsylvania, Department of Military and Veterans Affairs, the Adjutant General, issued Orders Number 295-1034 for an honorable discharge and retirement from the Army National Guard with transfer to the Retired Reserve, effective 1 November 2016.

n. NGB Form 22, ending 1 November 2016 reflects an honorable retirement from the PAARNG with service from 15 August 2005 to 1 November 2016 for a net service this period of 11 years, 2 months, and 17 days, with prior active Federal service of 8 years, 11 months, and 23 days, for a total service for retired pay of 20 years, 5 months, and 1 day.

4. The applicant provides the service records showing her initial enlistment in the Regular Army and subsequent enlistment in the PAARNG. The documents are available in the supporting documents for the Board's review.

5. On 9 August 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request stating:

a. Title 38 USC, Section 3319 requires service members to be actively serving in the armed services to transfer their post-9/11 GI Bill benefits to their dependents. It also requires service members to have completed at least six years of service in the Armed Forces and to enter into an agreement to serve at least four more years as a member of the uniformed services.

b. The applicant was eligible to transfer her post-9/11 GI Bill benefits effective 1 August 2009, and though she did not submit a transfer request, she would have completed her four-year military service obligation prior to her discharge on 1 November 2016 had she submitted a request.

c. From 1 August 2009 through 1 August 2013, the Army National Guard, Department of Defense, and Department of Veterans Affairs initiated a massive public awareness campaign plan on the post-9/11 GI Bill and the TEB program through military, public, and social media venues. Although significant measures were taken during their period to disseminate information, many service members were not fully

aware of the requirement to submit a transfer request or to transfer at least one month of benefits to each eligible dependent.

d. Since it is likely the applicant was not aware of the requirement to submit a transfer request due to the newness of the transfer program, and because she served at least four years of service from the date she was initially eligible to transfer, we recommend the board grant relief.

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

6. On 9 August 2024, the applicant was provided a copy of the advisory opinion and afforded an opportunity to respond. As of 23 August 2024, she 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 warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Title 38 USC, Section 3319 requires service members to be actively serving in the armed services to transfer their post-9/11 GI Bill benefits to their dependents. It also requires service members to have completed a certain number of service and to enter into an agreement to serve at least four more years as a member of the uniformed services. The evidence of record shows the applicant served in the ARNG from 15 August 2005 to 1 November 2016, completing 11 years, 2 months, and 17 days, with prior active service of 8 years, 11 months, and 23 days, for a total service of over 20 years and 5 months.

a. A majority of the Board was persuaded by the applicant's argument that she was not aware of the requirements. Additionally, the majority of the Board reviewed and agreed with the NGB advisory official's determination that since it is likely the applicant was not aware of the requirement to submit a transfer request due to the newness of the transfer program, and because she served at least four years of service from the date she was initially eligible to transfer. Therefore, the majority determined that relief is warranted.

b. The member in the minority found no evidence the applicant submitted a transfer request before her retirement. She was eligible but she did not do so. It would not be equitable to ask other Soldiers to submit a request for the transfer and commit to the additional service while exempting the applicant from the same. Additionally, significant measures were in fact taken during the period of her service to disseminate information about the Post 9/11 GI Bill and Transfer of Education Benefits (TEB). The applicant

knew or should have known of the requirement to submit a transfer request or to transfer at least one month of benefits to each eligible dependent.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by showing the applicant transferred at least 1 month of her Post 9/11 education benefits to her eligible dependent(s) prior to her retirement on 1 November 2016, provided all other criteria is met.

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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//