

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 January 2025

DOCKET NUMBER: AR20240004567

APPLICANT REQUESTS:

- correction of his record to reflect his eligibility for the Transfer of Education Benefits (TEB) to his family members under the Post-9/11 GI Bill
- a personal appearance before the Board

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:

a. He believes that an error in the implementation of the law has led to an oversight in his eligibility status, and he is seeking the Board's support in rectifying this matter. The pertinent details of his case are as follows: In 2008, he was on active duty and was scheduled to retire on 1 August 2009. Before his retirement, Public Law 110-252 was passed on 30 June 2008, allowing for the transfer of educational benefits to eligible family members. This provision was implemented on 1 August 2009, and it was stipulated that to request the transfer of benefits, a service member must be in an active duty or selected reserve duty status on or after 1 August 2009. To ensure his eligibility, his original retirement orders, dated 30 November 2008, were revoked on 10 April 2009 and new retirement orders were issued on the same day for a new retirement date of 30 November 2009, allowing him to meet the eligibility criteria for TEB without the requirement to serve an additional four years.

b. During the eligibility window, his son was considering joining the military after high school, and his daughter was three years old. In November 2009, he sought guidance from the Fort Lee Education Office on transferring education benefits. He was

advised that the transfer should occur while he was on active duty, but he was also informed that if he transferred benefits to his son, it would be permanent. To allow him time to decide on military service, he opted to defer transferring benefits at that time. Now, as his daughter is a senior in high school and set to graduate, he attempted to transfer benefits via MILCONNECT but was informed that the transfer should have occurred while he was on active duty.

c. He is now appealing to the ABCMR to review his case and update his records to reflect his eligibility for TEB during the specified period. While he may not have specific documentation of his conversation with the advisor from the Fort Lee Education Center, he believes a review of his retirement orders and service records will confirm his eligibility during the implementation period of the TEB provision. He understands the requirement to provide full justification and evidence of the error and injustice. He kindly requests the Board's consideration of his case, as he believes a simple review of his service records will demonstrate his eligibility for the requested benefits.

d. He has also been informed that his situation is not unique among Veterans who may have faced similar challenges due to changes in legislation and implementation guidance. He is willing to provide any additional information or documentation necessary to support his appeal. Your prompt attention to this matter is greatly appreciated, and he trust that your thorough review will lead to a fair and just resolution.

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

a. On 2 August 1989, the applicant enlisted in the Regular Army (RA) and continued service through extensions and reenlistments.

b. DA Form 2-1 (Personnel Qualification Record) dated 2 January 2003, shows in item 20 the applicant's basic enlisted service date as 2 August 1989.

c. Orders Number 100-0504 dated 10 April 2009, issued by the U.S. Army Combined Arms Support Command and the Sustainment Center of Excellence, released him from active duty and placed him on the retired list, effective 30 November 2009.

d. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows that the applicant a member of the RA entered active duty this period on 2 August 1989 and was honorably retired from active duty on 30 November 2009 for sufficient service for retirement. He completed 20 years, 3 months, and 29 days of active service.

4. On 10 January 2025, the U.S. Army Human Resources Command, Chief, Education Incentives Branch, provided an advisory opinion recommending approval and stating in pertinent part:

a. Recommend approval of the applicant's request to transfer Post 9/11 GI Bill education benefits. Public Law (PL) 110-252 establishes legal limitations on the transferability of unused Post 9/11 GI Bill benefits. Furthermore, section 3020 PL 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. Both, Department of Defense and Department of the Army Implementation Guidance for the implementation of the TEB Program provided limited exceptions to the stipulations of PL 110-252. Based on the details below, we recommend administrative relief for the applicant as he was on terminal leave for retirement within 90 days of program implementation and met all TEB program participation requirements. Although significant measures were taken to disseminate the information to all Soldiers within all Army components during the initial implementation phase of the program, many Soldiers who left service during the first 90-days after the implementation of the program, were not fully aware of the requirement to transfer prior to leaving military service.

b. We recommend administrative relief based on the following: the applicant had met all program participation requirements and did not have a negative action flag at the time of his retirement. Had he requested TEB after the implementation of the TEB program on 1 August 2009 and prior to his retirement on 30 November 2009, his TEB request would have been approved in accordance with the Department of Defense and Department of the Army TEB program implementation instructions with a zero year additional service obligation and his obligation end date set to his TEB request date.

5. On 13 January 2025, the applicant was provided with a copy of the advisory opinion for review and/or comment.

#### BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was 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. Upon review of the applicant's petition, available military records, and the U.S. Army Human Resources Command's advising official, the Board concurred with the advising official to grant approval, finding the applicant met all program participation requirements and did not have a negative action flag at the time of his retirement. Therefore, the Board found relief was appropriate.

2. 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
:	:	:	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 records of the individual concerned be corrected by showing the applicant filed and the Army approved, in a timely manner, his application to transfer his unused education benefits to his eligible dependent(s), provided all other program eligibility criteria were met, in accordance with the Transfer of Education Benefits provisions of the Post-9/11 GI Bill.

5/12/2025

X

CHAIRPERSON

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. Army Regulation (AR) 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct. 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.

3. 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 SELRES.

4. 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 should not be granted relief based on unawareness of the law, program rules, or procedures unless he or she left the service during the implementation phase which is the first 90 days of the program.

c. A Soldier must have at least 6 years of eligible service in order to transfer educational benefits to a spouse and at least 10 years of eligible service to transfer to eligible children.

5. On 22 June 2009, the Department of Defense established the criteria for eligibility and transfer of unused education benefits to eligible family members. The policy states an eligible individual is any member of the Armed Forces who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, and on or after 1 August 2009, is eligible for the Post-9/11 GI Bill and, in pertinent part, is or becomes retirement eligible during the period 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 service or 20 qualifying years of Reserve service.

//NOTHING FOLLOWS//