

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 December 2024

DOCKET NUMBER: AR20240005619

APPLICANT REQUESTS: exception to policy to reinstate his terminated approval of transfer of Post 9/11 Education Benefits to his daughter under the Transfer of Education Benefit (TEB).

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

- DD Form 149 (Application for Correction of Military Record)
- May 2021 Discharge Orders
- April 2013 Line of Duty Determination
- Medical Evaluation Board and Addendum
- Department of Veterans Affairs medical documents
- September 2020 VA Rating Decision

FACTS:

1. The applicant states:

a. On 4 February 2024, he received notification that his daughter's GI Bill benefits were terminated because he failed to complete his military service obligations. He would like to explain the circumstances. He believes he qualifies for reinstatement of his TEB benefits. He suffered a stroke while returning from Afghanistan in April 2013. He then developed significant depression and post-traumatic stress disorder along with significant fatigue. He was referred to the Integrated Disability Evaluation System (IDES) in 2015 and actually went through the process in 2018. He also suffered a second stroke and went through IDS In 2021.

b. Given that he is a medical officer, he was retained both times despite his commander's and treating medical provider's determination that he be medically retired. After he was retained a second time, he wrote a letter to his commander asking to resign his commission because he did not believe he could be a productive or health Reserve officer. His request was granted, and he was honorably discharged. Given that there were medical contributing factors, he believes he qualifies for an exception and reinstatement of his terminated TEB benefits under the following condition noted on his 14 February 2024 termination of benefits letter: (1) honorably discharge or release from

active duty or the Selected Reserve for a physical or mental discharge, not a disability; and (2) that did not result from his own misconduct, but did interfere with the performance of his duty.

c. As a result of the strokes, he suffered loss of speech, blurred vision in his left eye, right sided weakness, and numbness, significant fatigue, depression, and PTDD. All these conditions negatively affected his ability to serve and contribute to the Army. He felt that he was a burden to his unit and was unable to present hopeful or interested, negatively impacting the morale of the unit and those he worked with and supervised. He believes his commander and general officer agreed granting his release from the service.

2. The applicant was appointed a Reserve commissioned officer and executed an oath of office on 3 August 2011.

a. He entered active duty on 1 January 2013 and served in Afghanistan from 13 January to 13 April 2013. He was honorably released from active duty on 29 April 2013, completing 3 months and 29 days (amended to 4 months) of active service.

b. He entered active duty on 20 June 2014 in support of Operation Enduring Freedom and he was honorably released from active duty on 15 October 2014, completing 3 months and 26 days of active service.

c. On 26 April 2018, an informal physical evaluation board (IPEB) convened and found the applicant fit for duty for major depressive disorder, post-traumatic stress disorder, and residuals of carotid dissection. He concurred and waived his right to formal PEB.

(1) The evidence supports that this condition does not prevent reasonable duty performance. This PEB recognizes that he cannot perform many functional activities and requires accommodations and workarounds. He further cannot be assigned to a deployable billet, and his Commander notes that Soldiers condition impacts his ability to perform in a garrison/deployed mission.

(2) However, a closer reading of the case file only indicates that Soldier's occupational efficiency is decreased (slight reduction in productivity) but that he still provides a much-needed service in the USAR in a garrison setting. Thus, continuing in the military (in terms of these conditions) does not pose a risk to the Soldier or to others. This condition does not impose unreasonable requirements on the military to maintain or protect the Soldier.

d. On 14 December 2020, an informal physical evaluation board (IPEB) convened and again found the applicant fit for duty. He was found fit for post-traumatic stress

disorder, chronic, major depressive disorder, recurrent, moderate; and left carotid dissection with stroke x2 and stent placement requiring lifelong anticoagulation. The evidence supports that this Medical Officer can reasonably perform duties of his are of concentration and rank without imposing unreasonable requirements on the military.

(1) The evidence supports that this Medical Officer can reasonably perform duties of his AOC and rank without imposing unreasonable requirements on the military. The onset of the PTSD, chronic and major depressive disorder, recurrent, moderate is while deployed to Afghanistan (January 2013-April 2013).

(2) His VA examination medical provider states the Officer "has continued to work as a psychiatrist since the last examination in 2018" and that "his work triggers constant reminders of his own trauma." The Commander's Statement dated 21 April 2020 indicates that the Officer is still performing with a modified duty schedule "to limited hours". There is no indication that his clinical privileges or credentials have been revoked. The Officer's performance evaluations submitted for PEB review indicate excellent performance within his subspecialty. The evidence supports that this Medical Officer can reasonably perform duties of his AOC and rank without imposing unreasonable requirements on the military and is qualified to perform the duties of a psychiatrist in CONUS. The provisions concerning the ability to deploy do not apply to Medical Corps Officers/

e. On 27 April 2021, following the applicant's request to be discharged, Headquarters, 9th Mission Support Command published Orders 21-117-00008 honorably discharging the applicant from the U.S. Army Reserve effective 7 May 2021, in accordance with Army Regulation 135-175 (Separation of Officers). The orders state "Your request for unqualified resignation is approved under the provision of AR 135-175, paragraph 6-10."

f. His DA Form 5016 (Chronological Statement of Retirement Points) show she completed 9 years, 9 months, and 4 days of qualifying service towards non-regular retirement.

3. On 14 February 2024, the VA informed the applicant that TEB benefits have been terminated effective May 7, 2021, for [Daughter's Name] because the Department of Defense (DoD) has determined he failed to complete your military service agreement.

4. The U.S. Army Human Resources Command (AHRC) provided an advisory opinion in the processing of this case on 29 November 2024 recommending disapproval for the applicant's request for the Post 9/11 GI Bill (PGIB) Transfer of Education Benefits (TEB).

a. Service Members (SM) earn the PGIB because of their qualifying Active Duty (AD) service. However, the ability to transfer education benefits to eligible dependents through the TEB program is neither a reward for service nor a transition benefit but a retention incentive (much like a specialty skills bonus) requiring the commitment to and then fulfillment of a by-law mandatory four-year Additional Service Obligation (ASO). Eligibility to participate in the TEB retention incentive is based on service in an AD or Selected Reserve Duty Status, on or after August 1, 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 initial request and signifies the four-year ASO end date. Additionally, SMs must allocate a minimum of one month of benefits to each eligible dependent before leaving the Service, otherwise they will lose the ability to do so after transitioning. Finally, SMs must complete the ASO, or their dependents will lose the ability to use the transferred education benefits. If transferred benefits have been used, the VA will consider this an overpayment and could initiate debt collection. The PGIB TEB retention incentive is an integral part of the Army's talent management initiative and is used for the express purpose of recruitment and retention. Consequently, Public Law (PL) 110-252 (as codified by 38 USC Chapter 33) makes no provisions for waiving these requirements.

b. HRC officials do not recommend administrative relief based on the following:

(1) Soldiers receive counseling on all GI Bills, including the PGIB benefit and its TEB incentive at various venues throughout their career (in/out-processing at Education Centers), upon demobilization or release from Active Duty (REFRAD), and during the last year before separation or retirement (Soldier for Life (SFL) -Transition Assistance Program (TAP)). Soldiers have had access to and received counseling on GI Bill benefits through SFL-TAP (i.e., ACAP XXI or TAP XXI) since 2002 on-line and in-person. Eligibility criteria could have also been obtained by consulting Department of Defense Instruction (DoDI) 1341.13, change 1, dated 12 July 2018, Army Regulation 621-202, Army Educational Incentives and Entitlements, effective 26 October 2017, Department of Defense (DoD), Department of the Army (DA), and Army Human Resources Command (HRC) websites; Social Media posts across multiple platforms, and at their own request. Finally, the Department of Veteran's Affairs (OVA) website, numerous Military Personnel (MILPER) messages and many news articles were released regarding eligibility for the Post 9/11 GI Bill TEB.

(2) A Soldier should not be granted relief based on unawareness of the law, program rules, or procedures unless they left the service during the implementation phase (first 90 days) of the program. The above-mentioned information was available to

Mr. O'Brien prior to his retirement. In short, he could have used the Department of Defense and Department of the Army resources available to him at any point during his ten years of service to ensure he remained eligible for all program requirements.

(3) On the TEB website, the Soldier must acknowledge and click on ten statements in the TEB website before submitting a TEB request. Statements "d" and "e" specifically pertain to the Soldier agreeing to serve the TEB service obligation and a possible overpayment if the TEB service obligation is not fulfilled. Statement "d" reads: "I understand and agree to remain in the Armed Forces for the period required. I understand that failure to complete that service may lead to an overpayment by the Department of Veterans Affairs for any payments made. (Service documentation will remain on file with the Service)." Statement "e" reads: "I understand that I am responsible for any overpayments due to not completing my additional obligated term of service agreement. This service obligation end date will be determined by my approving official and be available to view once my request is approved. If I am not aware of my projected service obligation end date, I will contact my approving official before making this request for verification."

(4) The applicant submitted a TEB request on 29 December 2017. His request was approved on 2 January 2018 and was automatically assigned the PL 110-252 mandated four-year Additional Service Obligation (ASO) of 28 December 2021 (viewable in the upper left-hand corner of the TEB website for the applicant to see). On 13 February 2024, the VA Regional Processing Office in [REDACTED] contacted HRC office regarding the applicant's TEB. A review of his record indicated that on 7 May 2021, the applicant was honorably discharged from the Army Reserve as his voluntary request for unqualified resignation was approved under the provision of Army Regulation 135-175, Separation of Officers, paragraph 6-10. This voluntary separation from the Armed Forces constituted a violation of the terms of the PGIB retention incentive, and therefore he was no longer eligible for TEB program. Consequently, HRC office was obligated to place his previously approved TEB in a "rejected" status in the milConnect system.

(5) In correspondence with the ABCMR, the applicant stated, "my daughter, [Name] GI Bill benefits were terminated because I failed to complete my military service agreement. I would like to appeal this and have this corrected." His reasoning to have his TEB reinstated is based on the VA letter notifying him of the termination of his daughter's transferred education benefits, dated 14 February 2024 which lists a "Discharge or release from active duty or the Selected Reserve, for a physical or mental condition with an honorable discharge, not a disability that did not result from your willful misconduct, but did interfere with the performance of duty" as one of the reasons for an adjustment of the OED. The applicant was enrolled in the Integrated Disability Evaluation System (IDES) process twice, the first time on 29 January 2018 (not 2015 as claimed in Block 14, DD Form 149) and 17 April 2020. On both occasions, he was

"found fit and returned to duty" and on both occasions the applicant concurred with the results of the Medical Evaluation Board. As stated above, the applicant was discharged due to him submitting for, and being approved for an Unqualified Resignation, and not due to a "physical or mental condition, not a disability that did not result from your willful misconduct but did interfere with the performance of duty". It should also be noted that the VA had no decision-making authority in the "fit and return to duty" determination for the applicant. It was and is within the purview of the Army to make this decision. Lastly, since the applicant was the one to initiate his separation, he could have selected a discharge date after his Obligation End Date thus fulfilling his TEB ASO.

c. The applicant's military service may make his dependents eligible for other types of assistance. There are numerous agencies that may assist. Additionally, the Post 9/11 GI Bill benefits are still available to him personally.

4. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal. As of 24 December 2024, no response was received.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Although the HRC advisory recommended denying relief, the Board found that based upon the applicant completing all but 7-8 months of the required ADSO, there is sufficient evidence to demonstrate the applicant was not properly trained on the TEB benefit and its requirements. Therefore, the Board concluded there was sufficient evidence of an injustice warranting a change to the applicant's record showing he submitted for TEB benefits on 29 December 2016; thus completing the required ADSO.

BOARD VOTE:


Mbr 1 Mbr 2 Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 Army records of the individual concerned be corrected by changing the applicant's record to show he submitted for TEB benefits on 29 December 2016.

3/31/2025


XCHAIRPERSON


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 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 in order to transfer educational benefits to a spouse and at least 10 years of eligible service to transfer to eligible children.

c. A Soldier may only transfer to eligible family members. To be considered an eligible family member the spouse or child must be enrolled in the Defense Enrollment Eligibility Reporting System.

d. A Soldier must also agree to serve the prescribed additional service obligation based on the time in service the Soldier had on 1 August 2009. The law mandated four-year Additional Service Obligation (ASO).

e. 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.

f. A Soldier must have initially requested to transfer benefits on the DOD TEB online database. The TEB online database was operational 29 June 2009. Once approved in the TEB online database by the Soldier's service, the approval information is automatically relayed electronically to the VA for their access.

2. Army Regulation (AR) 621-202 (Army Educational Incentives and Entitlements) paragraph 4-15 states Soldiers may elect to transfer their Post-9/11 G.I. 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 G.I. 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 G.I. 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.

3. Army Regulation 135-175 (Separation of Officers) governs the separation of officers in the US Army Reserve. It includes provisions for removal from active status: Members of the U.S. Army Reserve can be removed from active status for any of the reasons listed in paragraphs (1) through (18) of the regulation, with or without the officer's consent, including resignation.

//NOTHING FOLLOWS//