

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 March 2025

DOCKET NUMBER: AR20240006413

APPLICANT REQUESTS: exception to policy authorizing the retention of Post 9/11 G.I. Bill benefits.

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

- DD Form 149 (Application for Correction of Military Record)
- Email communication
- Headquarters, U.S. Army Reserve Command letter, ,17 May 2011
- Department of Veterans Affairs (DVA) letter, 12 April 2024

FACTS:

1. The applicant states in pertinent part that she previously reenlisted with entitlement to a \$10,000.00 PSEB. However, after completing her contractual obligation, she was advised that she did not qualify for the PSEB. The applicant notes that this was a breach of the contractual terms and therefore she was permitted to be discharged after completing only 2.5 years of the enlistment period. The applicant also notes that she elected to transfer her educational benefits under the Post 9/11 G.I. Bill to her daughter.

2. A review of the applicant's available service records reflects the following:

a. After serving in the Regular Army and the Army National Guard, on 21 December 2009, the applicant enlisted in the U.S. States Army Reserve for 6 years with entitlement to a \$10,000.00 NPSEB to be disbursed in 3 increments: 50 percent upon award of the contracted military occupational specialty (MOS) (88N – Traffic Management Coordinator), 25 percent at the 2nd and 4th year anniversary of satisfactory service in the USAR.

b. On 22 July 2010, the applicant completed the requirements to be awarded the 88N MOS.

c. On 8 January 2012, the applicant requested to be discharged from the USAR due to a breach of contract.

d. On 8 February 2012, the applicant's commander recommended that the applicant be administratively separated from the USAR due to an administrative error in her enlistment contract. The applicant did complete her initial reenlistment obligation but was unable to collect her PSEB. She previously received a "General Under Honorable Conditions" characterization of service from her previous enlistment ending on 20 June 1983. Her reenlistment contract, DA Form 5261-5 (Selected Reserve Incentive Program – USAR Prior Service Enlistment Bonus Addendum) Section III, provides acknowledgement by the applicant that she "is in receipt of an honorable discharge issued on separation from prior military service", in which she was not.

e. On or about 8 January 2011, the applicant did make an inquiry to her congressional representative. In response, (17 May 2011) the Department of the Army, Deputy Chief of Staff, G-1, provided the applicant's reenlistment contract and offered the applicant two options: remain in her unit as a drilling Reservist without receipt of a bonus or request discharge in accordance with Army Regulatory guidance. The applicant elected to be discharged.

f. On 14 February 2012, the applicant was counselled on her election to be voluntarily separated from military service. She was further advised that many of her benefits would stop upon her separation from the USAR. The applicant never received payment of her enlistment bonus as the error was discovered while she was deployed.

g. On 12 May 2012, the Commanding General reviewed the administrative action and recommendations of the members of the applicant's chain of command and concluded that the applicant fraudulently enlisted in the USAR. In accordance with Army Regulation 135-178 (Enlisted Administrative Separations), Chapter 7 the applicant was ordered to be separated with an honorable characterization of service.

h. On 25 May 2012, Headquarters, 63rd Regional Support Command issued Orders Number 12-146-00078 honorably discharging the applicant from the USAR effective 30 May 2012 in accordance with Army Regulation 135-178.

3. The applicant provides the following a:

a. Email communication reflective of the applicant being in receipt of the response provided to her congressional representative.

b. Headquarters, U.S. Army Reserve Command letter, ,17 May 2011, reflective of the response letter provided to the applicant's congressional representative noting the circumstances surrounding her denial of entitlement to the \$10,000.00 NPSEB. During the time of the applicant's enlistment in the USAR, Soldiers who did not have an honorable discharge at the conclusion of their previous periods of service were not

eligible for the NPSEB. Since the applicant was previously released from active duty on 20 June 1983, with an Under Honorable Conditions characterization of service, she was ineligible for the bonus. She was therefore afforded the option to continue as a drilling reservist, request to be discharged or apply to this board for relief.

c. Department of Veterans Affairs (DVA) letter, 12 April 2024, reflective of the applicant being advised that her daughter's benefits under the Post 9/11 G.I. Bill were being terminated effective 30 May 2012 because she (applicant) failed to complete the contractual terms of her military service agreement. In accordance with 38 U.S.C 3319(i)(2) all benefits paid on her behalf to her dependents must be paid back to the DVA. The applicant was advised that she could appeal to this board for relief.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board noted the applicant's contentions that she reenlisted with entitlement to a \$10,000 Prior Service Enlistment Bonus (PSEB) and completed her contractual obligation. However, due to a breach of contract stemming from an administrative error, she was advised she did not qualify for the bonus and was subsequently discharged after serving approximately 2.5 years of her six-year enlistment. Further asserting that this discharge should not disqualify her from retaining transferred education benefits.

2. The Board determined the applicant reenlisted in the U.S. Army Reserve on 21 December 2009 with a PSEB incentive. However, her reenlistment contract erroneously indicated she had received an honorable discharge from prior service, when in fact her discharge on 20 June 1983 was characterized as under honorable conditions. The Board noted, at the time, regulatory policy clearly stated that Soldiers without an honorable discharge from prior service were ineligible for the PSEB. Upon discovery of the error, the applicant was offered the option to continue service without the bonus or request discharge. She elected separation and was honorably discharged on 30 May 2012 under Army Regulation 135-178, Chapter 7, for fraudulent enlistment.

3. Evidence in the records shows the Department of Veterans Affairs (DVA) subsequently terminated the transferred Post-9/11 GI Bill benefits, citing failure to complete the full contractual service obligation required for transfer eligibility under 38 U.S.C. § 3319(i)(2). The Board acknowledged the applicant's good faith effort to fulfill her service and the hardship caused by the termination of benefits, the record does not

support an exception to policy. The applicant did not meet the statutory service requirement for benefit transfer, and her discharge though honorable was the result of an enlistment error that rendered her ineligible for the bonus and associated benefits. The Board determined that the applicant's separation and loss of transferred benefits were consistent with applicable law and policy. Therefore, an exception to retain Post-9/11 GI Bill benefits is denied.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

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. Public Law 110-252 Section 3319 (Authority to Transfer Unused Education Benefits to Family Members) provides 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. 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 an 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) Is or will become retirement eligible during the period from 1 August 2009, through 1 August 2013 and agrees to serve the additional period, if any, specified below. For the purposes of this paragraph, a Soldier is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed under title 10 U.S.C Section 12732. Use which ever computation establishes 20 years regardless of which component the Soldier is in at the time of electing to transfer benefits

- Soldiers eligible for retirement on or before 1 August 2009, no additional service is required
- Soldiers with an approved retirement date on or after 1 September 2009, but on or before 1 June 2010, no additional service requirement
- Soldiers who attain 20 years of service on or after 2 August 2009 and before 2 August 2010, one year of additional service from the date of request is required
- Soldiers who attain 20 years of service on or after 2 August 2010 and before 2 August 2011, two years of additional service from the date of request are required
- Soldiers who attain 20 years of service on or after 2 August 2011, and before 2 August 2012, three years of additional service from the date of request are required

c. Failure to Complete Service Agreement - if a Soldier transferring entitlement under this section fails to complete the service agreed to by the Soldier in accordance with the terms of the agreement of the Soldier under that paragraph, the amount of any transferred entitlement that is used by a dependent of the Soldier as of the date of such failure shall be treated as an overpayment of educational assistance and will be subject to collection by DVA.

2. Army Regulation 621–202 (Army Educational Incentives and Entitlements) Chapter 4 (Post 9/11 G.I. Bill) provides that 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 Transfer Education Benefits (TEB) website. Soldiers who fail to fulfill the TEB service obligation will have the previously approved TEB rejected and the Soldier and dependent may incur an overpayment debt from the DVA. In the event of an overpayment of educational assistance with respect to a dependent to which entitlement is transferred, the dependent and the Soldier making the transfer may be jointly liable for the amount of the overpayment. The DVA is responsible for recouping overpayment of benefits. If a Soldier fails to complete the service agreement for reasons other than those listed below, the amount of any transferred entitlement used by the dependent shall be treated as an overpayment of educational assistance and will be subject to the recoupment by the DVA.

(1) Death of the Soldier

(2) Discharge or release from the Army for a medical condition, which pre-existed the service of the Soldier and was not service connected.

(3) Discharge or release from the Army for hardship per AR 135–178.

(4) Discharge or release from the Army for a physical or a mental condition not characterized as a disability and which did not result from the Soldier's own willful misconduct but did interfere with the performance of duty.

(5) Discharge or release from the Army for a disability.

(6) Involuntary discharge or release through a service force-shaping or reduction in force initiative when the TEB request resulting in an approved TEB request is before the effective date of this regulation and before the convening date

(7) Soldiers with a previously approved TEB who are subsequently reclassified in the special reporting code 09U and involuntarily separated from the Army on the 09U adjusted Retention Control Point date prior to completing their 4-year service agreement.

3. Army National Guard (ARNG) Selected Reserve Incentive Program (SRIP) Guidance for Fiscal Year (FY) 2007, 2008, and 2009, Section 7 (Prior Service Enlistment Bonus) provides that to be eligible for the PSEB, service members must have received an honorable discharge upon completion of all prior periods of service. A general under honorable conditions or uncharacterized discharge does not qualify a Soldier to receive the PSEB.

//NOTHING FOLLOWS//