

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 April 2025

DOCKET NUMBER: AR20240006426

APPLICANT REQUESTS: reconsideration through counsel to show he elected to Transfer Education Benefits (TEB) under the Post 9/11 GI Bill to his dependents.

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

- Counsel's brief on behalf of the applicant dated 14 June 2024, stated and outlined below
- U.S. Army Human Resources Command (HRC) advisory opinion dated 25 May 2023, which recommended disapproval for the applicant's request for Post 911 GI Bill TEB; an individual must be on Active Duty or in the Selected Reserve on or after 1 August 2009 to transfer the Post 9/11 GI Bill to dependents
 - According to the access record, the very first time the applicant logged on to the milConnect website was on 18 January 2018, which is 8 years after his retirement date and outside his program eligibility period
 - Please note that a Soldier earns the Post 9/11 GI Bill because of their Active-Duty service; however, TEB is a retention incentive, not a Soldier's entitled benefit
- HRC Memorandum for Record (MFR) - Selective Continuation (SELCON) [Applicant] dated 14 July 2009, which states, in part:
 - The applicant was advised of his non-selection for promotion to lieutenant colonel (LTC)/O-5; however, the board recommended that he be continued on active duty up to, but not to exceed 30 years of commissioned service
 - Should he decline this continuation, he would be separated from the Army no later than the 1st day of the 7th month after the approval of the respective promotion board report; approve June 2009 therefore his separation would be before 1 January 2010
- Applicant's SELCON acknowledgement and election, which shows he accepted the period of 30 years commissioned SELCON status

- Applicant's letter to the Chief of Staff of the Army dated 22 January 2018, wherein, he states, after being retired at 18 years and 7 months as a combat related Wounded Warrior based on injuries obtained in training, he found that those in his position had no way of passing down their earned Post 9-11 GI Bill TEB to their children; the entire letter can be reviewed in the supporting documents
- HRC letter to applicant dated 28 February 2018, states:
 - The Post 9/11 GI Bill is a Service Member's benefit; however, TEB is an incentive requiring additional service calculated from the TEB request date
 - To transfer the Post 9/11 GI Bill to dependents, an individual must be on Active Duty (AD) or in the Selected Reserve on or after 1 August 2009; have at least 90 days of qualifying Post 9/11 GI Bill service; six years in AD or Selected Reserve status and no current negative action flag
 - Commit to the service obligation; and transfer benefits to the dependents through the Department of Defense's TEB website at <http://milconnect.dmdc.mil>
 - All benefits must be transferred before the Service Member separates or retires; Public Law makes no provisions for waiving this requirement
 - The applicants' U.S. Army Military Human Resource Record reflects a U.S. Army retirement date of 20 December 2010 – his last day in AD status; he was added to the Permanent Disability Retirement List on 21 December 2010
 - Since the Post 9/11 GI Bill TEB became available on 1 August 2009, the applicant was eligible to transfer education benefits while on AD or Selected Reserve status on or after 1 August 2009
 - A review of the TEB website reflects the applicant did not submit a request to transfer education benefits to his dependents prior to his last day on AD status
- HRC email dated 9 May 2023, which shows, the applicant logged into the milConnect TEB website three (3) times on 18 January 2018, and did not submit TEB requests for his dependent(s)
- Scholarship and Grant Opportunities for Veterans, and Military Children and Spouses dated July 2017, showing a list of websites

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230002663 on 16 August 2023.

2. Counsel states, in part:

- The applicant requests a clarification of the status of his application and submits comments on the Board's draft advisory opinion issued on 25 May 2023
- The letter informed the applicant that he could provide comments on the draft advisory opinion within 15 days of receipt
- Even though counsel filed the application on behalf of the applicant and his application clearly states that he is cognitively impaired, counsel did not receive notice of the advisory opinion until nearly 8 months after it was issued
- Unfortunately, the applicant appears not to have understood or appreciated the contents of the message when he received it, and my office [counsel] did not receive the May 2023 email from the ABCMR to the applicant
- We ask that the Board provide a response to our request to toll any transferred benefit resulting from the Board's decision
- As discussed in detail below, the Board should approve the applicant's application on multiple grounds:
 - First, the advisory opinion fails to show that the Army counseled the applicant on his eligibility and opportunity to elect TEB prior to out-processing
 - Second, the advisory opinion disregards the applicant's significant cognitive impairment during the limited time he could have elected TEB; and
 - Third, even if the Army could prove that the applicant was properly counseled and provided the opportunity to elect TEB prior to separation, the Board retains the discretion to correct the applicant's record given his unique circumstances
- Based on counsel's review of the record, the applicant received neither "SFL-TAP" [Soldier for Life – Transition Assistance Program] counseling nor any other out-processing or counseling during the fall of 2009, nor does the Army confirm that such counseling took place
- Indeed, proof of counseling was a deciding factor in two federal district court cases that were appealed following negative decisions from the ABCMR, both of which courts rendered decisions in favor of the service-member
- The applicant's circumstances weigh in favor of relief

3. Counsel's entire statement/brief with attachments can be reviewed within the supporting documents.

4. A review of the applicant's service records show:

- On 30 May 1992, the applicant was appointed a Regular Army commission in the

Corps of Engineers

- On 17 March 2003, Orders Number 076-031 promoted the applicant to the rank/grade of major (MAJ)/O-4, effective 1 April 2003
 - On 14 July 2009, HRC MFR – Subject: SELCON [Applicant], states in part:
 - The applicant was advised of his non-selection for promotion to lieutenant colonel (LTC)/O-5; however, the board recommended that he be continued on active duty up to but not to exceed 30 years of commissioned service
 - Should he decline this continuation, he would be separated from the Army no later than the 1st day of the 7th month after the approval of the respective promotion board report; approve June 2009 therefore his separation would be before 1 January 2010
 - The applicant's SELCON acknowledgement and election shows he accepted the period of 30 years commissioned SELCON status
 - On 27 July 2009, a Physical Evaluation Board (PEB) convened and found the applicant physically unfit for continued military service and that his disposition be permanent disability retirement with a combined rating of 60 percent; the applicant concurred with the PEB's findings and waived his rights to a formal hearing
 - On 20 September 2010, a PEB convened revising the previous PEB's disability rating of 60 percent, increasing it to 80 percent
 - On 21 September 2010, the U.S. Army Physical Disability Agency notified the applicant that his disability rating increased to 80 percent, and he was also informed that his request for Continuation on Active Duty was disapproved and finalized, and therefore he should resume transition processing with a projected retirement date no later than 20 December 2010
 - On 20 December 2010, the applicant was retired by reason of "Disability, Permanent"; his DD Form 214 shows he completed 18 years, 6 months, and 21 days of net active service.
5. On 25 May 2023 (as part of Docket Number AR20230002663), the HRC, Chief, Education Incentives Branch, provided an advisory opinion recommending denial of the applicant's request citing that he was eligible to transfer his educational benefits when it first became available on 1 August 2009 because he had already completed 6 years of service. The HRC advisory official stated:
- a. Recommend disapproval for the applicant's request for Post 9/11 GI Bill TEB. The Post 9/11 GI Bill is a Service Member's benefit; however, TEB is a retention incentive requiring an Additional Service Obligation calculated from their TEB request date.

b. Effective 21 December 2010, the applicant was placed on the retired list and did not submit a request to transfer education benefits during the 2 years that he was eligible for the program. Further, numerous resources were made available to the applicant since the program's inception wherein he could have obtained transferability criteria through various counseling opportunities at the Education Center in/out processing center, policies, and directives. In short, the applicant could have used the resources available to him during any point of his eligibility period.

c. The applicant entered the PEB process on 5 March 2009. On 27 July 2009, the board found him unfit for continued military service. On 3 March 2010, the applicant requested enrollment in the Continuation on Active Duty program. On 24 August 2010, his request was denied. In addition, on 21 September 2010, the board counselor advised the applicant of his request disapproval and therefore his transition processing would be resumed with a projected retirement date of 20 December 2010.

d. The applicant had more than 10 years of service and was undergoing the physical evaluation board process, he could have requested to transfer his education benefits from the date that the separation orders was published to the effective date of his medical retirement. However, there is no record that he visited the milConnect website to submit a request after 12 November 2010, therefore no transfer of education benefits was ever approved.

e. The ability to request transfer of education benefits during the Physical Disability Evaluation process was rescinded by Army Regulation 621-202 (Army Educational Incentives and Entitlements) effective 26 October 2017.

f. On 14 July 2009, the applicant was notified of his non-selection for promotion and was offered the choice between continuing to serve on Active-Duty or to be separated no later than 1 January 2010. On 28 August 2009, he made his election to continue on active duty for 30 years of commissioned service. Had he requested TEB during this time, his request would have been approved with a three-year additional service obligation in accordance with the Post 9/11 GI Bill policy memorandum.

g. In the applicant's correspondence with the ABCMR, he mentions his eligibility for an adjustment to his service obligation under Directive Type Memorandum (DTM) 09-033 paragraph 3(h)(5)(b)(4), "for a physical or mental condition, not a disability, that did not result from the individual's own willful misconduct but did interfere with the performance of duty." This exception in DTM 09-033 does not apply to him because he did not have an approved TEB prior to his retirement. He also states, "he meets every requirement for eligibility and transfer of his Post 9/11 GI Bill benefits, with one exception: he failed to submit a single form requesting transfer of the benefit to his children while on active duty." Since the implementation of the program, the milConnect website has been the only authorized method to request TEB. MilConnect is a self-

service website that is the system of record for all TEB-related transactions. A TEB requests via any other means other the milConnect has never been authorized.

h. On 9 May 2023, HRC contacted the Defense Manpower Data Center (DMDC) to determine if the applicant ever submitted a TEB request. The DMDC system records a date/time stamp every time a Soldier's TEB milConnect website account is accessed. DMDC confirmed that the applicant's milConnect access record did not support a submission and/or approval of a TEB request in 2009 or at any other time while he was eligible to participate in the program. According to the access record, the very first time the applicant logged on to the milConnect website was on 18 January 2018, which is 8 years after his retirement date and outside his program eligibility period.

6. The entire HRC advisory opinion continued to be reviewed in the supporting documents.

7. On 30 May 2023, the applicant, through legal counsel, was provided with a copy of the advisory opinion and afforded 15 days to provide comments. By 8 August 2023, the applicant had not responded.

8. On 16 August 2023, ABCMR Docket Number AR20230002663 shows the Board members voted unanimously to deny the applicant's request for retroactive election to Transfer Education Benefits under the Post 9/11 GI Bill to his dependents. The Board stated:

a. 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, available military records, and HRC, Chief, Education Incentives Branch advisory, the Board concurred with the advising official finding the applicant was eligible to transfer his educational benefits when it first became available on 1 August 2009 because he had already completed 6 years of service.

b. Evidence shows on 21 December 2010, the applicant was placed on the retired list and did not submit a request to transfer education benefits during the 2 years that he was eligible for the program. Furthermore, numerous resources were made available to the applicant since the program's inception wherein he could have obtained transferability criteria through various counseling opportunities at the Education Center in/out processing center, policies, and directives.

c. The Board determined based on the HRC opine, the applicant could have used the resources available to him during any point of his eligibility period. The applicant

entered the PEB process on 5 March 2009. On 27 July 2009, the board found him unfit for continued military service.

d. Evidence in the record shows the applicant had 10 years of service and was undergoing the physical evaluation board process, he could have requested to transfer his education benefits from the date that the separation orders was published to the effective date of his medical retirement. However, there is no record that he visited the milConnect website to submit a request after 12 November 2010, based on that no transfer of education benefits would have ever been approved.

e. It was noted by the Board, based on regulatory guidance the ability to request transfer of education benefits during the Physical Disability Evaluation process was rescinded by Army Regulation 621-202 (Army Educational Incentives and Entitlements) effective 26 October 2017. Additionally, the Board found evidence that the applicant logged on to the milConnect website on 18 January 2018, which is 8 years after his retirement date and outside his program eligibility period. Based on this, the Board found no error or injustice and denied relief.

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 Board carefully considered the applicant's request for reconsideration, submitted through counsel, and reviewed all supporting documentation, including the advisory opinion from U.S. Army Human Resources Command (HRC), the applicant's service records, and counsel's arguments regarding cognitive impairment and lack of transition counseling. The Board acknowledges the applicant's honorable service and the challenges he faced during his transition from active duty, including his combat-related injuries and subsequent placement on the Permanent Disability Retirement List.

However, the Board unanimously agreed that the regulatory requirements governing Transfer of Education Benefits (TEB) under the Post-9/11 GI Bill are clear and binding. The Board concurred with the HRC Advisory Opinion finding that TEB is not an automatic entitlement, but a retention incentive with specific requirements that must be met to include a four-year additional service obligation. To be eligible for TEB, a service member must have at least six years of qualifying service, be on active duty or in the Selected Reserve on or after 1 August 2009, submit a transfer request prior to separation, and commit to the additional service obligation. As the Advisory Opinion stated, the applicant retired on 20 December 2010 and did not submit a TEB request during his qualifying period. His first login to the milConnect website occurred in January 2018—over seven years after retirement—and no transfer request was made.

As the Advisory Opinion states, the applicant had various opportunities to receive counseling on the Post 9/11 GI Bill benefits and its TEB incentives at various stages. Counseling would have been available during in/out processing at education centers, upon demobilization or release from Active Duty, and during the last year before separation or retirement through the Soldier for Life Transition Assistance Program. Applicant cites to cognitive impairment during the separation process during the time he could have selected TEB. Although the Board is sympathetic to applicant's struggles, the PEB at the time of separation, focused on applicant's physical ailments. Applicant had numerous resources made available to him during the separation process to learn about the TEB requirements and process. The question here comes down to whether applicant met the requirements of TEB and the Board believes that applicant did not meet the requirements and is therefore is not eligible to receive the incentive.

While the Board is sympathetic to the applicant's circumstances and the arguments presented by counsel, the Board does not believe there is an error of law or regulation that warrants correction of the record. Therefore, it is not within the interests of equity to grant applicants request because he did not meet the requirements under TEB to use the benefit and his record should not be corrected.

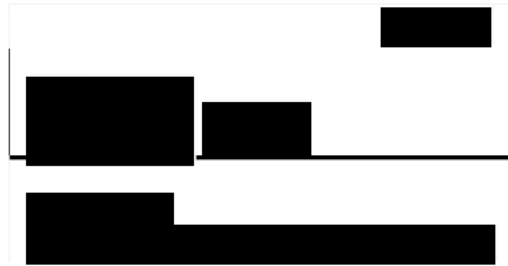
The Board found no evidence of error or injustice in the applicant's military records that would warrant correction. Therefore, relief is denied.

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 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.



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 (DEERS).

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.

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 Department of Defense (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 Department of Veterans Affairs (VA) for their access.

2. DOD policy further states the Secretaries of the Military Departments will provide active-duty participants individual pre-separation or release from active-duty counseling on the benefits under the Post-9/11 GI Bill, and document accordingly and maintain records for individuals who receive supplemental educational assistance under Public Law 110-252, section 3316.

3. Department of Defense Instruction (DODI) 1341.13 (Post 9-11 G.I. Bill) states that an individual transferring entitlement may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred. An individual may add new family members, modify the number of months of the transferred entitlement for existing family members, or revoke transfer of entitlement while serving in the Uniformed Services, however they may not add family members after retirement or separation from the Military Services, but may modify the number of months of the transferred entitlement or revoke transfer of entitlement after retirement or separation for those family members who have received transferred benefits prior to separation or retirement.

4. Army Regulation 621-202 (Army Educational Incentives and Entitlements) effective 26 October 2017. Paragraph 4-15 (Transferability of Unused Benefits to Dependents) 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 TEB website. 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. Soldiers must have at least 6 years of eligible service (qualifying active duty or SELRES) in the Armed Forces on the date of election and agree to serve 4 additional years from the date of request, regardless of the number of months transferred. Soldiers who are not eligible to commit to 4 additional years of service from the TEB request date are not eligible to transfer benefits. Paragraph 4-15a(2)(b), provides that Soldiers with at least 6 years of eligible service who have not yet transferred benefits and are enrolled in the Integrated Disability Evaluation System (IDES), which includes Medical Evaluation Board (MEB) and Physical Evaluation Board (PEB), must be found "fit for duty" and commit to four years from the TEB request date in order to be approved for TEB.

5. On 25 August 2017 the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; traumatic brain injury (TBI); sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for

relief is based in whole or in part on those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

//NOTHING FOLLOWS//