

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240007140

APPLICANT REQUESTS: correction of his record to reflect that his post-9/11 GI Bill benefits were transferred to each of his eligible dependents prior to his retirement.

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

- DD Form 149 (Application for Correction of Military Record)
- State of Texas Certificate of Birth
- Passport

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 he requests the ability to transfer education benefits to his son who was not originally named upon separation, and he was not informed at separation that he needed to name all children who could potentially use his GI Bill benefits. His two older children that were named did not use it and he would like to add his son as a benefactor now that he is of college age.
3. A review of the applicant's official record shows the following:
 - a. On 30 June 1986, the applicant enlisted in the Regular Army (RA).
 - b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows that the applicant was honorably released from active duty on 29 June 1990 for expiration term of service.
 - c. He enlisted in the RA on 2 December 1993.

d. DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) dated 17 June 1994, shows correction to DD Form 214 effective 29 June 1990, in item 12c (Net Active Service This Period) to reflect "04 00 00//NOTHING FOLLOWS."

e. DD Form 214 shows that the applicant was honorably released from active duty on 26 August 1999 for completion of required active service.

f. On 27 August 1999, the applicant enlisted in the U.S. Army Reserve (USAR).

g. DD Form 214 shows that the applicant a member of the USAR entered active duty this period on 1 June 2000 and was released from active duty on 5 October 2000 for completion of required active service.

h. On 3 December 2000, the applicant enlisted in the USAR for a period of three years.

i. On 3 May 2001, the applicant enlisted in the Army National Guard (ARNG). DA Form 5435-R (Statement of Understanding - The Selected Reserve Montgomery GI Bill) dated 3 May 2001, shows the applicant endorsed and understood the Selected Reserve Montgomery GI Bill eligibility requirements, benefits, entitlement procedures, and caution.

j. On 11 April 2002, the applicant endorsed DD Form 2366 (Montgomery GI Bill Act of 1984) as a prior service member showing he was not eligible for the MGIB based on this enlistment because this was not his initial entry on active duty.

k. Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter) dated 16 December 2008, shows he had completed the required years of service and was eligible for retired pay at age 60.

l. DD Form 214 shows that the applicant a member of the ARNG entered active duty this period on 15 April 2002 and was honorably released from active duty on 25 September 2010 for completion of required active service.

m. DD Form 214 shows that the applicant a member of the ARNG entered active duty on 26 September 2010 in support of Operation New Dawn and was honorably released from active duty on 17 October 2011 for completion of required active service.

n. DD Form 214 shows that the applicant a member of the ARNG entered active duty this period on 18 October 2011 and was honorably retired from active duty on 31 January 2014 for sufficient service for retirement.

4. The applicant provides a copy of a state of Texas certificate of birth and a US Passport of his dependent son.
5. On 23 December 2024, the National Guard Bureau, Chief, Special Actions Branch, provided an advisory opinion recommending approval and stating in pertinent part:
 - 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.
 - b. When the applicant submitted his transfer request in 2013, he only allocated months to two of his four eligible dependents. Unfortunately, since the applicant is no longer actively serving in the armed forces, he is no longer eligible to add benefit months to new dependents.
 - c. In 2009, the Department of Defense and the Department of Veterans Affairs initiated a massive public awareness campaign plan on the post-9/11 GI Bill and the transfer of education benefits program through military, public, and social media venues. Due to the newness of the program when the applicant submitted his transfer request, it is likely he was not aware of the requirement to transfer benefits to dependents prior to separating from service.
 - d. Due to the likelihood that the applicant was not aware of the requirement to transfer benefits to his dependents prior to separating from service, they recommend the Board grant relief and correct his records to show that he transferred one month of benefits to each of his eligible dependents prior to separating from the ARNG.
6. On 31 December 2024, the applicant was provided with a copy of the advisory opinion for comment or rebuttal, he did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendations outlined in the NGB advisory opinion and the lack of any rebuttal of those findings and recommendations submitted by the applicant, the Board concluded there was sufficient evidence to change the applicant's record to show he made a timely transfer of his post-9/11 GI Bill benefits to each of his eligible dependents prior to his retirement.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XXX	:XXX	:XXX	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 showing the applicant made a timely transfer of his post-9/11 GI Bill benefits to each of his eligible dependents prior to his retirement.

//SIGNED//

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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. 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 must also agree to serve the prescribed active duty service obligation based on the time in service the Soldier had on 1 August 2009.
3. 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.
4. Army Regulation 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.

//NOTHING FOLLOWS//