

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 19 August 2025

DOCKET NUMBER: AR20240007616

APPLICANT REQUESTS: an exception to policy (ETP) to transfer his remaining Post 9-11 GI Bill benefits to his daughter.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 072-175, Headquarters, Missouri National Guard, dated 12 March 2012
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 20 November 2012
- Adoption Records, dated 26 February 2016
- Certificate of Eligibility, Department of Veterans Affairs (VA), dated 12 February 2024
- copies, Social Security Cards (2)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 that at the time of his retirement in 2012, he and his wife were the legal guardians of two children. Due to a delay in the adoption process, through no fault of their own, the adoption was not final until 2016. This prevented him from being able to transfer his benefit prior to retirement.
3. A review of his service record shows:
  - a. Following periods of service in the U.S. Navy and U.S. Navy Reserve, he enlisted in the Army National Guard of the United States on 27 May 1992.
  - b. He was ordered to Full-time National Guard Duty in an Active Guard/Reserve status, effective 1 September 2004.

c. He was honorably discharged and transferred to the Retired Reserve on 30 November 2012. He completed 26 years, 8 months, and 21 days of total service for retired pay.

4. The applicant provides:

a. Family Court documents which show that the applicant and his spouse became legal guardians of the minor children, R.D.R. and R.M.L.R., on 8 November 2012. The adoption of the children was finalized on 26 February 2016.

b. A Certificate of Eligibility from the VA, dated 12 February 2024, shows that he is eligible for Post 9/11 GI Bill benefits, with 17 months and 22 days of full-time benefits remaining.

c. Copies of two Social Security cards for R.D.W. and R.M.W..

5. In the processing of this case, two advisory opinions were received from the National Guard Bureau.

a. On 2 April 2025, the Chief, Education Services Branch, provides that at the time the applicant retired, the law only allowed for the transfer of benefits to natural, adopted, or stepchildren. However, in 2021, Public Law 116-315 allowed wards and foster children to be eligible to receive transferred benefits. The applicant was the legal guardian of his children while he was actively serving. They later became his adopted children. Because he would not have had a service obligation due to the Department of Defense provision in place at that time, the Education Services Branch recommends full relief.

b. On 28 May 2025, the Chief, Special Actions Branch, reiterated the facts as presented by the Chief, Education Services Branch and further recommended approval of the applicant's request.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board concurred with the advisory opinion provided by the Chief, Education Services Branch, National Guard Bureau who opined that after the applicant retired, the law only allowed for the transfer of benefits to natural, adopted, or stepchildren. However, in 2021, Public Law 116-315 allowed wards and foster children to be eligible to receive transferred benefits. The applicant was the legal guardian of his children while he was actively serving and later became his adopted children. Since he would not have any

further service obligation, they recommended granting relief. Therefore, the Board determined his request warranted relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XX	XX	XX	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 and Army National Guard records of the individual concerned be corrected by showing the applicant received an Exception to Policy authorizing the transfer of his remaining Post 9-11 GI Bill benefits to his daughter.

X  
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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, U.S. Code, 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 Army Board for Correction of Military Records (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. 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 § 12732. Use which ever computation establishes 20 years regardless of which component the Soldier is in at the time of electing to transfer benefits. (See Table 1)

- 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
- Paragraph 17a(4) does not apply to any Soldier who retired on or before 1 August 2009 unless recalled to active duty and serving on or after 1 August 2009 and before 2 August 2012. Those who retire on or before 1 August 2009 are, by law, not eligible to transfer unused Post 9/11 GI Bill benefits because their last day of duty will be 31 July 2009, and they will transfer to the retired list on 1 August 2009
- Paragraph 17a(4) expires on 2 August 2013

c. Procedures. All requests and transactions will be completed through the Transferability of Education Benefits Web application.

d. Failure to Complete Service Agreement. Except as provided below, if a Soldier transferring entitlement under this section fails to complete the service agreed to by the Soldier under paragraph 17a 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.

Exceptions:

- The death of the Soldier
- Discharge or release from active duty for a medical condition which pre-existed the service of the Soldier and was not service connected
- Discharge or release from active duty for hardship
- Discharge or release from active duty for a physical or mental condition not a disability and that did not result from the Soldier's own willful misconduct, but did interfere with the performance of duty
- The DVA has agreed to not recoup paid benefits or revoke transferred benefits for Soldiers who have agreed to an additional service commitment and who did not complete the agreed upon service due to separation for medical disability or through a service force shaping initiative

//NOTHING FOLLOWS//