

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 June 2025

DOCKET NUMBER: AR20240011350

APPLICANT REQUESTS: Transfer Education Benefits (TEB) from her Post 9/11 GI Bill to his dependents.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharged from Active Duty)
- National Guard Bureau (NGB) Form 22 (NGB Report of Separation and Record of Service)

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:

- He was found to be physically unfit for retention while he was in the Warrior Transition Battalion
- He was medically retired
- During the out-processing, he was told by the Education Center, he would be able to TEB to his dependents after separation
- He did not TEB prior to his separation in 2016, because his child was in grade school but now is in college and plans to attend medical school
- He requests retroactive TEB to his dependents

3. A review of the applicant's service record shows:

- On 30 September 1999, he enlisted in the Regular Army and had continuous service through reenlistments
- On 5 November 2012, he enlisted in the Army National Guard of the United States (ARNGUS)

- On 18 December 2012, he was honorably released from active duty and assigned to the ARNGUS
- He had continuous service through an extension
- On 26 October 2015, he was ordered to active duty for active-duty medical extension by Orders Number A-10-505267, 13 October 2015
- On 16 December 2015, he was ordered to active duty for active-duty medical extension by Orders Number A-12-505587, 7 December 2016
- On 2 October 2016, the informal Physical Evaluation Board found him physically unfit for retention and recommended he be placed on the Permanent Disability Retired List (PDRL) with 50 percent disability
- On 15 December 2016, he was placed on the PDRL by Orders Number 302-0004, 28 October 2016
- On 14 December 2016, he was honorably retired from active duty and assigned to the U. S. Army Reserve Control Group (Retired Reserve)

4. On 21 May 2025, in the processing of this case, the National Guard Bureau (NGB) provided an advisory opinion regarding the applicant's request to TEB to his dependents. The advisory official stated though the applicant was eligible to TEB from the beginning of the program on 1 August 2009, he received counseling during his medical separation process leading him to believe he could TEB at any time, even after leaving the service. Due to the erroneous counseling, the applicant received, it is recommended the Board grant him full relief.

5. On 28 May 2025, in the processing of this case, the NGB provide a second advisory opinion regarding the applicant's request to TEB to his dependents. The advisory official recommended approval of his request. Though the applicant was eligible to TEB from the beginning of the program on 1 August 2009, he received counseling during his medical separation process leading him to believe he could TEB at any time, even after leaving the service. Due to the erroneous counseling, the applicant received, it is recommended the Board grant him full relief.

6. On 4 June 2025, the Army Review Boards Agency Case Management Division provided the applicant the advisory opinion for review and comment.

7. On 4 June 2025, the applicant responded via e-mail stating he received the advisory opinion and hoped the Board could adopt the recommendation cited in the advisory.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available

military records, and the National Guard Bureau Chief, Special Actions Branch advisory, the Board concurred with the advising official to grant approval, finding the applicant may not have received counseling during his medical separation process leading him to believe he could TEB at any time, even after leaving the service. Due to the erroneous counseling, the Board found the applicant warrant relief.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

■	■	■	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 filed and the Army approved, in a timely manner, his application to transfer his unused education benefits to his eligible dependent(s), provided all other program eligibility criteria were met, in accordance with the Transfer of Education Benefits provisions of the Post-9/11 GI Bill.

[REDACTED]

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 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 establishes legal limitations on the transferability of unused Post-9/11 GI Bill benefits. Further, section 3020 Public Law 110-252, limits eligibility to transfer unused benefits to those members of the armed forces who are serving on active duty or as a member of the Selected Reserve on or after 1 August 2009. To transfer education benefits, a Service Member must be on active duty or a member of the Selected Reserves in order to transfer benefits, have completed at least six years of qualifying service with at least 90-days of a qualifying period of service, have no negative action flag, and agree to serve at least four more years as a member of the Armed Forces, or the years of service as determined by the Secretary.
3. On 22 June 2009, Department of Defense (DoD) established the criteria for eligibility and transfer of unused educational benefits to eligible family members. An eligible individual is any member of the armed forces on or after 1 August 2009 who, at the time

of the approval of the individual's request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill.

a. Has at least 6-years of service in the armed forces on the date of election and agrees to serve 4 additional years in the armed forces from the date of election; or

b. Has at least 10-years of service in the armed forces (active duty and/or Selected Reserve) on the date of election, is precluded by either standard policy (service or DoD) or statute from committing to 4 additional years, and agrees to serve for the maximum amount of time allowed by such policy or statute; or

c. Is or becomes retirement eligible during the period from 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 duty or 20 qualifying years of reserve service.

4. The policy further states the Secretaries of the Military Departments will provide active duty participants and members of the reserve components with qualifying active duty service 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.

5. Title 38, USC, section 3319 (Authority to transfer unused education benefits to family members), (f) (Time for Transfer; Revocation and Modification), (1) (Time for transfer), subject to the time limitation for use of entitlement under section 3321, and except as provided in subsection (k) or (l), 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. (h) (5) (Limitation on age of use by child transferees), (A) In general. A child to whom entitlement is transferred under this section may use the benefits transferred without regard to the 15-year delimiting date specified in section 3321, but may not, except as provided in subparagraph (B) or (C), use any benefits so transferred after attaining the age of 26-years.

//NOTHING FOLLOWS//