


Department OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2021-039


HS1 (retired)

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application and military records on August 20, 2021, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 5, 2021, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant served in the Coast Guard Reserve from May 19, 1992, until he retired on December 1, 2012. He asked the Board to correct his record to show that he transferred his Post-9/11 GI Bill¹ education benefits to his dependent son before he retired from the Reserves, and alleged that he was never counseled about his eligibility to transfer those benefits. In support of his request, the applicant submitted a copy of his son's driver's license and high school diploma, the latter of which shows that his son graduated from high school on June 4, 2020.

The applicant retired from the Coast Guard Reserve in December 2012 but stated that he discovered the alleged error in his record in October 2020. He submitted his application to the Board on February 24, 2021, but did not explain the delay in submitting his application nor did he argue why the Board should find it in the interest of justice to consider his application.

¹ Post-9/11 Veterans' Educational Assistance Act of 2008, Public Law 110-252, § 5001, 122 Stat. 2323 (June 30, 2008), codified at 38 U.S.C. § 3319 (authorizing the Secretary of Defense in coordination with the Secretary of Veterans' Affairs to prescribe regulations so that members serving in the Armed Forces can transfer a portion of their entitlement to educational assistance under the Montgomery GI Bill program to their eligible dependents as of August 1, 2009, if the members have at least six years of service and agree to serve four more years or the amount of time prescribed by the regulations).

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 19, 1992. On August 21, 2010, he signed a Page 7 titled “SELRES^[2] Obligated Service for the Post-9/11 GI Bill” documenting counseling regarding the amount of additional time he would need to obligate in order to transfer his unused Post-9/11 GI Bill benefits to his dependents. On the Page 7, the applicant indicated by his initials that he agreed to obligate an additional three years of service to meet the requirements of the Post-9/11 GI Bill allowing the transfer of his education benefits to his dependents. He also indicated that he agreed to remain in the Coast Guard for three years from the date of his Transfer of Education Benefits (TEB)³ web application to successfully transfer his education benefits to his dependents.

The Applicant completed his TEB application on July 6, 2010, which would have obligated him to remain in the Coast Guard until July 5, 2013, if he wanted to successfully transfer his unused education benefits before his retirement. On June 5, 2012, he was notified via memorandum that he had completed at least twenty years of satisfactory federal service in the Reserve and would be eligible to receive retired pay when he reached age 60 on April 11, 2030.

The applicant voluntarily retired from the Coast Guard on December 1, 2012, after serving only two years, three months, and nine days, of the three years of additional service obligation he had agreed to on August 21, 2010, to transfer his unused education benefits.

VIEWS OF THE COAST GUARD

On August 9, 2021, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in accordance with a memorandum submitted by the Commander, Personnel Service Center (PSC).

PSC argued that the applicant’s request should be denied because according to the August 21, 2010, Page 7 that he signed, he agreed to remain in the Armed Forces for three years from the date of the TEB web application. However, he went into Retired Status on December 1, 2012, meaning he served only two years, three months, nine days, and so did not meet the three-year service obligation minimum required to transfer education benefits.

² The Selected Reserve (SELRES) consists of members within the Ready Reserve designated as essential to contingency requirements and have priority over all other Reserve elements. A reservist is a member of the Coast Guard Reserve force; they are otherwise civilians and may have careers outside the military. The Reserve Component (RC) is comprised of newly accessed officers, enlisted, and prior active-duty members who have joined the RC voluntarily, or affiliate to complete their remaining military service obligation. Reserve Policy Manual, COMDTINST M1001.28B.

³ The TEB web application provides an eligible servicemember the ability to elect to transfer educational benefits to an eligible dependent. Via the TEB web application, all CG applications will be reviewed by the Coast Guard Personnel Service Center (PSC). Accepted applications are automatically sent to the VA for processing once the transfer is approved by PSC.

The JAG argued that relief should be denied because the application is untimely. In determining whether it is in the interest of justice to waive the time limitations on applications, the JAG argued that the Board has been directed to "consider the reasons for the delay and the plaintiff's potential for success on the merits, based on a cursory review " *Allen v. Card*, 799 F. Supp. 158, 166 (D.D.C. 1992). The JAG argued that here, the applicant was retired at the end of 2012 and was provided retirement orders noting the date that he would be placed in a retired status. These orders should have put the applicant on notice at that time that he had not completed the required three years of additional service for the transfer of benefits. Therefore, the date of his retirement would serve as the time he reasonably should have discovered the alleged error. The JAG argued that the applicant has provided no evidence to account for his nearly decade long wait to apply to the BCMR and, thus, has not provided good cause for his failure to timely file. Therefore, the JAG argued, it is not in the interest of justice to waive the statutory three-year filing deadline for this case.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 5, 2021, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The Board did not receive a response.

APPLICABLE LAW AND POLICY

Title 38 U.S.C. § 3319 states the following in pertinent part:

(a) In general – (1) Subject to the provisions of this section, the Secretary concerned may permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).

(2) The purpose of the authority in paragraph (1) is to promote recruitment and retention in the uniformed services. The secretary concerned may exercise the authority for that purpose when authorized by the Secretary of Defense in the National Security interests of the United States.

(b) Eligible individuals – An individual referred to in subsection (a) is any member of the uniformed services who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least—

(1) six years of service in the armed forces and enters into an agreement to serve at least four more years as a member of the uniformed services; or

(2) the years of service as determined in regulations pursuant to subsection (j).

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(f) Time for transfer

Time for transfer.—Subject to the time limitation for use of entitlement under section 3321, 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.

(1) Modification or revocation.—

(A) In general.—An individual transferring entitlement under this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred.

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(i) Overpayment.—

(1) Joint and several liability.—In the event of an overpayment of educational assistance with respect to a dependent to whom entitlement is transferred under this section, the dependent and the individual making the transfer shall be jointly and severally liable to the United States for the amount of the overpayment for the purposes of section 3685.

(2) Failure to complete service agreement.—

(A) In general.—Except as provided in subparagraph (B), if an individual transferring entitlement under this section fails to complete the service agreed to by the individual under subsection (b)(1) in accordance with the terms of the agreement of the individual under that subsection, the amount of any transferred entitlement under this section that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance under paragraph (1).

(B) Exception. [Death of individual or discharge due to disability or hardship]

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(j) Regulations.—(1) The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section.

(2) Such regulations shall specify—

(A) the manner of authorizing the transfer of entitlement under this section;

(B) the eligibility criteria in accordance with subsection (b); and

(C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).”

Coast Guard ALCOASTs

The Coast Guard has issued numerous ALCOAST bulletins about the Post-9/11 MGIB educational assistance program and about the transferability of benefits under that program:

- ALCOAST 447/08, released on September 18, 2008, provides a brief introduction of the Post-9/11 Veterans Education Act of 2008 (Post-9/11 GI Bill). Paragraph 3.g. states that a “member may have the opportunity to transfer benefits to their spouse or dependent children,” and that detailed guidance would be released ahead of the August 2009 implementation date.
- ALCOAST 044/09, released on January 16, 2009, provides details about the transferability of benefits to spouses and children under the Post-9/11 GI Bill and notes that the member will have to obligate an additional four years of active service to be able to transfer the benefits to dependents. It states that an application to transfer benefits would be submitted electronically through a DoD website, and those applications would be verified by the Coast Guard. Data in that website compiled from other sources, such as DEERS and Direct Access, would be used to determine eligibility.
- ALCOAST 116/09, released on February 24, 2009, stated that each support command would have a Career Development Advisor who would be subject matter experts on a variety of matters, including MGIB and the Post-9/11 GI Bill.

- ALCOAST 250/09, released on April 28, 2009, states that the VA would begin accepting applications for transfer of benefits on or about June 15, 2009. It also notes that the Secretary of Defense had not yet released the final policy on transferability, specifically as it relates to members who are retirement eligible between 2009 and 2012.
- ALCOAST 377/09, released on June 26, 2009, announced the Department of Defense and Coast Guard policy concerning Post-9/11 GI Bill benefits and the transferability of unused benefits to family members as follows (capitalization adjusted):

1. This ALCOAST supersedes [prior ALCOASTs] and announces DoD/Coast Guard policy concerning Post-9/11-G.I. Bill education benefits as outlined in [Directive-Type Memorandum (DTM) 09-003 and 38 U.S.C. Chap. 33]. Particularly, [DTM-09-003] provides detailed policy on transferability of unused education benefits to family members. Servicemembers are encouraged to review [DTM 09-003] and consult with their unit Education Services Officer (ESO) for guidance on the Post-9/11 G.I. Bill. [DTM 09-003] is currently available on the Coast Guard Personnel Service Center (PSC) website: <http://www.uscg.mil/psc/>.

2. The Post-9/11 G.I. Bill, authorized under [38 U.S.C. Chap. 33] is an automatic entitlement generally available to servicemembers with at least 90 days of active duty service on or after 11 SEP 2001. No action is required by members until they either apply to receive benefits, 2) seek to transfer benefit eligibility to dependents, or 3) are currently eligible for another education benefit (MGIB, MGIB-SR, REAP) and who seek eligibility under the Post-9/11 G.I. Bill.

3. The Department of Veterans Affairs (DVA) is now accepting applications for the Post-9/11 G.I. Bill for members who wish to receive benefits. VA form 22-1990, Application for VA Education Benefits, is available online at: <http://www.gibill.va.gov>. Once DVA processes an application for Post-9/11 G.I. Bill benefits, the member will receive a letter explaining the DVA decision regarding eligibility. Payouts for the Post- 9/11 G.I. Bill are not anticipated prior to 15 AUG 2009.

4. Individuals eligible under another education benefit (MGIB, MGIB-SR, REAP), seeking eligibility under the Post-9/11 G.I. Bill are directed to the DVA website. The application form requires that individuals make an irrevocable election to convert from their existing program to the Post-9/11 G.I. Bill. Members should review [DTM 09-003] and consult with their ESO prior to making an election.

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6. Transferability eligibility: Generally, to be eligible to transfer unused education benefits, an individual must be a member of the armed forces (active duty or SELRES) on or after 1 AUG 2009 and obligate required service as outlined in paragraph 3.a. of [DTM 09-003]. Family members eligible to receive transferred benefits are outlined in paragraph 3.b. of [the DTM].

7. Transferability of Education Benefits (TEB) web application:

a. The TEB web application provides an eligible servicemember the ability to elect to transfer educational benefits to an eligible dependent. Via the TEB web application, all CG applications will be reviewed by the Coast Guard Personnel Service Center (PSC). Accepted applications are automatically sent to the VA for processing once the transfer is approved by PSC. Once approved, the dependent must apply to the DVA for a certificate of eligibility by submitting VA form 22-1990, Application for VA Education Benefits as indicated in paragraph 3. Servicemembers do not need to apply for education benefits through the VA prior to applying for transferability via the TEB web application.

b. The TEB web application is scheduled to open on 29 JUN 2009. The link is: <https://www.dmdc.osd.mil/teb/>. This link will not be operational until 29 JUN 2009. Service members are directed to apply to their appropriate service component, active or reserve.

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10. Members with questions regarding VA education benefits are encouraged to contact their Education Services Officer (ESO) for clarification and guidance. ESOs are encouraged to familiarize themselves with general DVA guidelines concerning Post-9/11 G.I. Bill and direct members to the DVA website for detailed clarification. The DVA is the authority for the Post-9/11 G.I. Bill. Transferability policy, however, is directed by the Office of the Secretary of Defense (OSD) and detailed in [DTM-09-003]. ESO questions regarding transferability policy only may be directed to [name redacted], COMDT (CG-1221), at [phone number redacted].

- ALCOAST 443/09, issued on July 31, 2009, noted that applications to transfer education benefits to dependents under the Post-9/11 GI Bill that had been submitted through TEB would start being approved effective as of August 1, 2009, and that members could check the status of their applications by logging into the TEB web application and reading the “status indicator.” It stated that as soon as an application was approved, the dependent could apply to receive the benefits and should visit a VA website for detailed information and FAQs. Members were encouraged to contact their ESOs or an ESO blog with FAQs about the Post-9/11 GI Bill.

Directive Type Memorandum (DTM) 09-003, June 22, 2009

On June 22, 2009, DoD set forth the policies and procedures for carrying out the Post-9/11 GI Bill in DTM 09-003. The DTM states that it is effective immediately and is applicable to the Office of the Secretary of Defense and the Military Departments including the Coast Guard by agreement with the Department. It states that the effective date of the Post-9/11 GI Bill is August 1, 2009. The regulation defined “Military Services” as the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Paragraph 1.a. of Attachment 2 to DTM 09-003 states that the “DVA is responsible for determining eligibility for education benefits under the Post-9/11 GI Bill. Generally, to be eligible for the Post-9/11 GI Bill, individuals must serve on active duty on or after September 11, 2001,” for a specified period of time.

Paragraph 1.b.(8) of Attachment 2 states that members who are eligible for educational benefits under the MGIB or another program could elect to receive benefits under the Post-9/11 GI Bill instead and receive refunds of their contributions. Paragraph 1.e.(2) of Attachment 2 states that the method and process of making an election to receive educational assistance under the Post-9/11 GI Bill will be determined by DVA. Paragraph 1.e.(3) states that such an election is irrevocable.

Paragraph 1.e.(1)(f) of Attachment 2 states that even members who are not entitled to educational assistance under the MGIB, by reason of an election to disenroll, also “may elect to receive education assistance under [38 U.S.C. Chap. 33]” if, as of the date of the election, they meet the requirements for entitlement to educational assistance with [38 U.S.C. Chap. 33].” (During recruit training on February 7, 1995, the applicant signed a Statement of Disenrollment to disenroll from participation in MGIB.)

Paragraph 3 of Attachment 2 governs the transferability of unused education benefits to family members. Paragraph 3.a. states the following about eligibility:

Any member of the Armed Forces on or after August 1, 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, and

(1) Has at least 6 years of service in the Armed Forces (active duty and/or Selected Reserve) on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election, or

(2) 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

(3) Is or becomes retirement eligible during the period from August 1, 2009, through August 1, 2013, and agrees to serve the additional period, if any, specified in paragraphs 3.a.(3)(a) through 3.a.(3)(e) of this attachment. A Service Member 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 section 12732 of Reference (b).

(a) For those individuals eligible for retirement on August 1, 2009, no additional service is required.

(b) For those individuals who have an approved retirement date after August 1, 2009, and before July 1, 2010, no additional service is required.

(c) For those individuals eligible for retirement after August 1, 2009, and before August 1, 2010, 1 year of additional service is required.

(d) For those individuals eligible for retirement on or after August 1, 2010, and before August 1, 2011, 2 years of additional service is required.

(e) For those individuals eligible for retirement on or after August 1, 2011, and before August 1, 2012, 3 years of additional service is required.

Paragraph 3.g.(1) of Attachment 2 states that the transfer must be made while the member is still serving on active duty or in the Selected Reserve.

Paragraph 3.h.(5)(a) of Attachment 2 states that if a member fails to complete the service required to transfer education benefits, “the amount of any transferred entitlement under paragraph 3.a. of this attachment that is used by a dependent of the individual as of the date of such failure shall be treated as an overpayment of educational assistance ... and will be subject to collection by the DVA.”

Paragraph 3.i. of Attachment 2 states that “[a]ll requests and transactions for individuals who remain in the Armed Forces will be completed through the Transferability of Educational Benefits (TEB) Web application at <https://www.dmdc.osd.mil/TEB/>. The TEB Users’ Manual will provide instruction for enrollment; verification; and additions, changes, and revocations.” Paragraph 3.g.(2) states that a member on active duty or in the Selected Reserve may also modify or revoke a transfer at any time through the TEB website.

TEB

On the TEB web portal, it states that before a member can transfer his “Post-9/11 GI Bill, Chapter 33,” education benefits to a dependent, the member must acknowledge the following by checking boxes:

- a) I am eligible for the Post-9/11 GI Bill, the program I am applying to transfer.
- b) I understand I may transfer up to 36 months (or my remaining months of eligibility, whichever is less) of my education benefits to spouse and/or children, and can modify or revoke my election at any time.
- c) I understand that my spouse may use the benefit immediately and children (ages 18 – 26) after I have served 10 years.
- d) I understand and agree to remain in the Armed Forces for the period required. I understand that failure to complete that service may lead to an overpayment by the Department of Veterans Affairs for any payments made. (Service documentation will remain on file with the Service.)
- e) I understand that I am responsible for any overpayments due to not completing my additional obligated term of service agreement.
- f) I understand that in order to request this transfer, if I'm eligible for the MGIB (Chapter 30, 38 USC), or the MGIB-SR (Chapter 1606, 10 USC) or REAP (Chapter 1607, 10 USC), I am converting from that program to the Post-9/11 GI Bill. This conversion is irrevocable.
- g) I may not receive more than a total of 48 months of benefits under two or more programs.
- h) If electing Chapter 33 in lieu of Chapter 30, my months of entitlement under Chapter 33 will be limited to the number of months of entitlement remaining under Chapter 30 on the effective date of my election. However, if I completely exhaust my entitlement remaining under Chapter 30 before the effective date of my Chapter 33 election, I may receive up to 12 additional months of benefits under Chapter 33.
- i) My conversion to the Post-9/11 GI Bill is irrevocable and may not be changed. However, I retain the right to change or modify months of entitlement at any time until they are exhausted.

The TEB web portal advises members to contact the VA with questions about their eligibility for benefits under the Post-9/11 GI Bill and to contact a Service career counselor, personnel center, or website for questions about eligibility to transfer those benefits to a dependent.

Military Separations Manual, COMDTINST M1000.4

Article 1.B.36. of the Military Separations Manual describes the information that is provided to members who are separating. Article 1.B.36.f. states that members are advised “of their rights and benefits as a veteran before they depart from their last duty station” and that education benefits are one of the more important matters about which they are advised. Members are also advised of their right to apply to the BCMR.

COMDTINST 1900.1 states that one of the matters about which a member must be counseled upon separation is entitlement to educational benefits.

PREVIOUS BOARD DECISIONS

The Board has sometimes granted relief in cases wherein the applicant alleged that prior attempts to transfer their educational benefits had failed:

- In BCMR Docket No. 2017-054, the applicant, who had been eligible to transfer his benefits without obligating additional service, submitted copies of documents showing that two attempts to transfer his benefits through the DMDC website had been rejected because of errors in his submissions.⁴ He claimed that he had corrected those errors, submitted his transfer request a third time, and thought it had been accepted. The Coast Guard’s program manager confirmed that these documents proved that the applicant had tried to transfer his education benefits in 2012. The Board found the following:

Although the applicant should have taken steps to ensure that his third transfer request was successfully processed before he retired from active duty, in light of the circumstances, the Board finds that his failure to follow-up on the processing of his third request should not prevent a 30-year veteran of the Coast Guard from receiving a valuable benefit. Therefore, his record should be corrected to show that he transferred his Post-9/11 GI Bill education benefits to his dependents before retiring from active duty.

- In BCMR Docket No. 2017-215, the Board granted relief by backdating the date of transfer for an applicant on active duty who was going to retire on September 1, 2018. She had submitted copies of emails showing that she had tried to transfer her educational benefits in TEB in March 2013 but was unsuccessful and could not understand why. She showed that she had received automatic replies from the Program Manager’s office stating that due to hundreds of emails and phone calls concerning perceived cuts to the Post-9/11 GI Bill and sequestration, the office had temporarily suspended responding to emails except for emergencies. She stated that her calls to that office had also not been returned. The Board found that, although the applicant should have persisted in trying to apply through TEB, because she had proven that she had repeatedly attempted to transfer her benefits in March 2013, “her lack of successful persistence in 2013 should not prevent a 20-year veteran of the Coast Guard from receiving a valuable benefit.”

The Board has also denied relief in cases where applicants asked the Board to backdate their dates of transfer:

- In BCMR Docket No. 2014-200, the Board denied relief to an applicant who had been discharged for alcohol abuse in 2014 and asked the Board to backdate the transfer of his education benefits to his dependents from 2011 to 2009 so that his record would show that he had completed his obligated service. He alleged that he should have been counseled about transferring his benefits earlier, but the Board found that he had been timely counseled when his enlistment was expiring.
- In BCMR Docket No. 2014-208, the Board denied relief to an applicant who retired in 2015 and asked the Board to backdate the transfer of her education benefits to 2009. She alleged that when she transferred her benefits in 2012 she was unaware of the obligated service requirement and that she would have transferred her benefits earlier if she had

⁴ According to the Coast Guard’s “The Post-9/11 GI Bill” PowerPoint training, the DoD’s Transfer of Education Benefits web portal shows both the date of transfer and the “Obligation End Date” four years later for an approved transfer.

known. But the Board found that she had been timely counseled when her enlistment was expiring.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.⁵ The alleged error in this case is the date of transfer of the applicant's education benefits in the TEB web application, which is July 6, 2010. The applicant stated that he did not discover the error in his record until October 2020, but the record shows that he knew that he needed to remain in the service until at least July 5, 2013, to be entitled to transfer his education benefits and that he voluntarily retired earlier than that. Therefore, although the applicant may have forgotten the requirements for benefits transfer in the interim, the Board finds that his application is untimely because it was received more than three years after he voluntarily retired, which was several months before he should have retired to be eligible to transfer his education benefits to his dependents.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁶ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"⁷ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."⁸ In accordance with this direction, the Board has conducted a cursory review of the merits and finds no reason to excuse the untimeliness of the application:

- a. The applicant did not explain or justify why he waited many years after his retirement to request correction of his military record. He failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.
- b. The applicant has not submitted any evidence of error or injustice, and the Board's cursory review of the merits of this case indicates that his claim cannot prevail. The record shows that he signed a Page 7 on August 21, 2010, documenting that he had been counseled that he would need to remain in the SELRES until July 5, 2013, if he wanted to successfully transfer his unused education benefits to his

⁵ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

⁶ 10 U.S.C. § 1552(b).

⁷ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁸ *Id.* at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

dependents. But the record shows that the applicant voluntarily retired from the Reserve on December 1, 2012, approximately seven months too early to successfully transfer his unused education benefits. The applicant is no longer eligible to transfer his unused education benefits because he retired in 2012. Paragraph 3.g.(1) of Attachment 2 (Time of Transfer) of the DTM states that an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's family member only while serving as a member of the Armed Forces. The DTM's glossary defines "member of the Armed Forces" as a member serving on active duty or in the Selected Reserve and expressly excludes retired members.

4. Accordingly, the Board will not excuse the application's untimeliness or waive the statute of limitations and his request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of HS1 [REDACTED] [REDACTED] [REDACTED] USCG (Retired), for correction of his military record is denied.

November 5, 2021

[REDACTED] Digitally signed by [REDACTED]
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