



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

[REDACTED]
Docket No. 7687-16
MAY 05 2017

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USNR RET, [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) NAVADMIN 187/09 of 26 Jun 09
(3) NAVADMIN 203/09 of 11 Jul 09
(4) CNRFC ltr 5420 Ser N1/0022 dtd 17 Jan 17

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show that one month of Post 9/11 GI Bill benefits were transferred to each of his dependents.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 9 March 2017 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 29 September 1991, Petitioner and [REDACTED] married. See enclosure (1).

c. The Post-9/11 Veterans Education Assistance Act (Post 9/11 GI Bill, Public Law 110-252) was signed into law on 30 June 2008 and became effective on 1 August 2009. The bill provides financial support for education and housing for service members with at least 90 days of service on or after 11 September 2001. The act also includes a provision for qualifying service members to transfer educational benefits to dependents. General descriptions of the essential components of the new law were widely available beginning in summer 2008 but specific implementing guidance was not published until summer 2009.

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USNR RET, [REDACTED]

d. The Navy's guidance implementing the Post-9/11 GI Bill was published by NAVADMIN 187/09, released on 26 June 2009, and NAVADMIN 203/09, released 11 July 2009. Under the guidance, "active duty sailors that separate, retire, transfer to the Fleet Reserve or who are discharged prior to 1 August 2009 are not eligible to elect transferability." See enclosures (2) and (3).

e. Petitioner's application claims that he did not know that at least 1 month of benefits had to be allocated to each dependent prior to retirement to established continued education transfer eligibility. Petitioner claims that he thought that he transferred eleven months to his daughter and one month to his wife, vice all twelve months to his daughter. Note: Petitioner successfully transferred his education benefits to his daughter on 30 July 2012 but did not know he had to allocate at least 1 month to his wife to establish her eligibility to receive education benefits. Petitioner was transferred to the retired Reserve on 1 July 2015. See enclosures (1) and (4).

f. In correspondence attached as enclosure (4), Commander, Navy Reserve Forces Command (CNRFC) has recommended the request be denied. Per DOD Instruction 1341.13, an individual approved to transfer entitlement to educational assistance may transfer such entitlement to eligible dependents only while serving on active duty or in the Selected Reserve. An individual may not add family member after retirement or separation from Military Service. Petitioner transferred 12 months of Post-9/11 GI Bill education benefits to his daughter [REDACTED] and no one else prior to transferring to the Retired Reserve on 1 July 2015.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosure (4) regarding Petitioner's responsibility under the Post 9/11 GI Bill program. The Board found that had the Petitioner been given clear counselling about his obligation to transfer at least one month of his education benefits to each dependent prior to retirement, he would have followed the proper steps to successfully transfer his benefits. Had the Navy provided the Petitioner with sufficient notice of the fact that eligibility to transfer would be lost post-retirement, the Petitioner would have allocated at least one month of education benefits per dependent. Although the proper administrative requirements were not completed by the Petitioner, the Board felt that under these circumstances, a measure of relief is warranted.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner elected and allocated [REDACTED] 11 months and [REDACTED] 1 month the transfer of unused educational benefits through the MILCONNECT Transfer of Educational Benefits (TEB) web application on 30 July 2012.

Subj: REVIEW OF NAVAL RECORD ICO
[REDACTED] USNR RET, [REDACTED]

b. CNRFC reviewed the Petitioner's TEB application, and it was approved on 31 July 2012. Petitioner incurred one year additional service obligation, with an end date of 4 August 2013.

c. Upon completion of the above changes, the Navy Personnel Command will execute an approved Transferability of Educational Benefits (TEB) application reflecting the transfer information.

d. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)), it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]
Recorder

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]
Executive Director

Reviewed and approved/disapproved