



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

██████████
Docket No. 5369-17
JAN 09 2018

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

Subj: REVIEW OF NAVAL RECORD IC ██████████ USN ██████████

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) Directive-Type Memorandum (DTM) 09-003 of 22 Jun 09
 - (5) DoDI 1341.13 of 31 May 2013
 - (6) NAVPERS 1070/613, Administrative Remarks of 21 Feb 14
 - (7) NAVPERS 1070/613, Administrative Remarks of 10 Jun 14
 - (8) Screen-shot of ██████████ milConnect TEB disapproval of 30 Dec 09
 - (9) NPC memo 1780 PERS-314 of 21 Aug 14
 - (10) ██████████ rebuttal of 21 Oct 14 to PERS-314's memo of 21 Aug 14
 - (11) NPC memo 1780 PERS-314 of 7 Nov 14
 - (12) CNO memo 1780 Memo N12/029 of 13 Mar 15
 - (13) ██████████ rebuttal of 20 Apr 15 to CNO's memo of 13 Mar 15
 - (14) CNO memo 1780 Ser N12/120 of 24 Sep 15
 - (15) ██████████ rebuttal of 15 Oct 15 to CNO's memo of 24 Sep 15
 - (16) Results of 23 Oct 15 Board's denial decision
 - (17) ██████████ reconsideration request of 13 Jun 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 change his Obligation End Date (OED) to allow the transferability of his Post-9/11 GI Bill.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 29 September 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, relevant portions of Petitioner's 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. 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.

c. 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, "The transferability option must be elected while the member is serving in the Armed Forces (defined as active duty or SELRES)." See enclosures (2) and (3).

d. Petitioner claims that he originally submitted his Page 13 and request to transfer benefits through the Transfer of Education Benefits (TEB) webpage on 30 December 2009. However, Petitioner did not log back into the system to review his TEB request until 31 October 2013, at which time he discovered that his original request was disapproved for failure to commit to the required additional service time. Although Petitioner became aware that his TEB request was denied on 31 October 2013, he did not resubmit a request again until 29 January 2014, which was denied for the same reason as his initial TEB request. Petitioner was subsequently denied eight additional times for failure to commit to the additional service requirement before successfully submitting a request on 14 June 2014, after signing and uploading a Page 13 to his ESR on 10 June 2014. His request of 14 June 2014 was approved with an obligation end date (OED) of 13 June 2018, four years from date of approval per enclosure (5). See enclosures (1) and (5) through (9).

e. The Petitioner argues the Navy's Post-9/11 GI Bill transferability policies are arbitrary and capricious. Specifically, Petitioner points out that only the Department of the Navy requires additional documentary evidence of a service commitment in order to TEB and, further, that it is unjust that the requirement only extends to officers. PERS-314 forwarded Petitioner's case, and rebuttal of 23 October 2014, to the Office of the Chief of Naval Operations (OPNAV N1) for comments regarding his challenge that the Navy's policies on transferability of the Post-9/11 GI Bill are "arbitrary and capricious in nature." See enclosures (10) and (11). OPNAV N1 concluded that the Petitioner's claim of arbitrary and capriciousness is not supported by law or DoD policy. OPNAV N1 does note partial relief could be granted by backdating Petitioner's effective transfer date to 21 February 2014, with OED of 20 February 2018, to reflect the Page 13 dated 21 February 2014 that is recorded in his ESR. However, OPNAV N1 highlights Petitioner's failure to comply with the applicable regulations and disagrees with his burden shifting of the responsibility over his own record. See enclosure (12). Petitioner submitted additional rebuttals on 22 April 2015 and 20 October 2015, but offered no new or material evidence requiring a response. See enclosures (13) - (15).

f. On 23 October 2015, the Board heard Petitioner's case and unanimously voted to deny his petition to backdate the Obligation End Date (OED) for Post-9/11 GI Bill benefits transferability. See enclosure (16). The Board carefully considered the Petitioner's claims, to include the fact that he served over eight years from the date of his first attempt to TEB. However, the Board substantially agreed with the contents contained in the advisory opinions (enclosures (9) and (12)) and denied Petitioner's request due to his failure to complete the requirements established

in enclosures (2) and (3). Specifically, the Board concluded that the Petitioner did not provide sufficient proof that a Page 13 was uploaded in his electronic service record (ESR) until 10 June 2014. Further, the Board highlighted that it is the Petitioner's responsibility to ensure that a Page 13 committing to additional service is uploaded in their ESR prior to submitting the TEB request online. See enclosures (1), (3), (8), and (9). The Board substantially concurred with the advisory opinions on the issue of the arbitrary and capricious implementation of the program, as enclosure (4) directs that each service Secretary shall provide program regulations and implementation consistent with the needs of that service. Further, the Board highlighted that only officers sign a Page 13 because their commission is indefinite, whereas enlisted members are required to have their contract reflect the required obligated service in order to TEB. See enclosures (1), (4) and (9).

g. On 13 June 2017, Petitioner faxed in his request for a reconsideration of the Board's 23 October 2015 denial of his petition. See enclosure (17).

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Majority [REDACTED] concludes that Petitioner's request warrants favorable action. The Board carefully weighed the observations made in enclosures (9), (12) and (14) regarding Petitioner's responsibility. The Majority acknowledged that the Petitioner failed to ensure that a Page 13 was properly entered into his ESR prior to submitting his TEB request and that he failed to follow up on the status of the TEB in the electronic system. However, the Majority concluded that Petitioner made a good faith attempt to transfer his benefits and served double the additional period of obligated service that he would have had to serve if his initial TEB request had been approved. The Majority highlighted that Petitioner made eleven attempts to submit his TEB request before succeeding on his last submission, which may indicate an absence of program counselling that would have otherwise clarified the specific procedural requirements involved in making a TEB request. Therefore, although Petitioner did not adhere to the program's procedural requirements until over four years after his initial TEB request, the Board felt that under these circumstances a measure of relief is warranted.

MAJORITY RECOMMENDATION

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

Petitioner, in coordination with his command, completed the Page 13 acknowledgement of additional service obligation and successfully uploaded it to his ESR.

Petitioner elected to transfer unused educational benefits through the milConnect Transfer of Educational Benefits (TEB) web application on 30 December 2009 vice 14 June 2014. Petitioner incurred four years additional service obligation, expiring on 29 December 2013 vice 13 June 2018.

NPC reviewed the Petitioner's TEB application, and it was approved on 30 December 2009.

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Upon completion of the above changes, COMNAVPERSCOM (PERS 314) will execute an approved Transferability of Educational Benefits (TEB) application reflecting the transfer information.

For more information, Petitioner may contact GI Bill Programs Branch at (866) 827-5672, ext. 4258 or DSN: 882-4258.

MINORITY CONCLUSION

A minority of the Board [REDACTED] concurred with OPNAV N1's advisory opinion that Petitioner failed to follow Navy regulations by not uploading a Page 13 prior to submitting his 30 December 2009 TEB request and by failing to exercise due diligence by following up on the status of his electronic application. The Minority concurred with the advisory opinion that Petitioner's effective date of transferability should remain 14 June 2014 and that his OED should remain 13 June 2018. The Minority concluded that no error or injustice occurred in the Petitioner's record, therefore, no measure of relief should be granted.

MINORITY RECOMMENDATION

That Petitioner's request is denied.

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 a 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~~:

[REDACTED]

3/8/2018