

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

[REDACTED], XXX-XX [REDACTED]

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

b. Petitioner was appointed as an officer in the Navy upon his graduation from the United States Naval Academy on 24 May 2000. See enclosure (2). His active duty service date (ADSD) is 25 May 2004. See enclosure (3).

c. Petitioner was married on 7 April 2010. He and his wife have three children.¹ See enclosure (4).

d. On 7 April 2010, the Navy published reference (b) to implement and provide information to Navy personnel regarding the Post 9/11 GI Bill Educational Assistance Program.² Reference (b) announced the eligibility criteria to transfer Post-9/11 GI Bill education benefits to eligible dependents and the administrative requirements for doing so. In relevant part, the eligibility criteria required the individual to be serving in the Armed Forces as of 1 August 2009 with at least six years of service, and to agree to serve at least four additional years in the Armed Forces from the date of election. The relevant administrative requirement for active duty officers to transfer their Post-9/11 education benefits was for the command to complete a NAVPERS Form 1070/613 in the Navy Standard Integrated Personnel System (NSIPS) Electronic Service Record (ESR) stating as follows: "I understand by signing this NAVPERS 1070/613, I agree to complete 4 more years in the Armed Forces (active or SELRES) from the date I request transferability of Post-9/11, REAP or MGIB-SR education benefits to my dependents/family members. I understand that failure to complete this 4-year obligation may lead to an overpayment by the [Department of Veterans Affairs] that may be recoupled for any payments made to dependents/family members." The NAVPERS 1070/613 had to be signed by the member, witnessed and dated. Reference (b) specifically advised that "[m]embers should check the [transfer of education benefits (TEB)] Web site periodically for status of their applications," and that the member should see their command career counselor and take corrective action and reapply if an application is disapproved.

e. On 25 July 2012, Petitioner accepted an appointment as an Ensign in the Navy to attend medical school at the [REDACTED].³ See enclosure (5).

f. On 27 July 2012, Petitioner began medical school at the [REDACTED]. See enclosure (6).

¹ J.E.O was born on [REDACTED]. [REDACTED] was born on [REDACTED]. [REDACTED] was born on 28 September 2014.

² Reference (b) incorporated informed contained in NAVADMIN 187/09, Post 9/11 GI Bill Eligibility and Benefits; NAVADMIN 203/09, Post 9/11 GI Bill REAP, and MGIB-SR Transferability Policy and Interim Provisions for Retirement Eligible Members; and NAVADMIN 354/09, Post 9/11 GI Bill Update.

³ Petitioner was serving as a Lieutenant Commander (LCDR) prior to this appointment. The Board presumes that this apparent reduction in grade was a requirement for participation in the Health Professions Scholarship Program (HPSP).

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g. On 29 December 2013, Petitioner submitted a transfer of education benefits (TEB) application to transfer his Post 9/11 GI Bill education benefits to his spouse and his two children who had been born at that time.⁴ See enclosure (7).

h. On 31 December 2013, Petitioner's TEB application was rejected because he did not commit to the required additional service time.⁵ See enclosure (7).

i. On 21 June 2016, Petitioner completed medical school at the [REDACTED]. See enclosure (6). On the same date, he was released from active duty and transferred to U.S. Navy Reserve (USNR) to attend civilian school.⁶ See enclosure (8).

j. On 22 June 2016, Petitioner was appointed to his previous grade of LCDR in the USNR in an inactive duty status. See enclosure (9).

k. Petitioner conducted his residency in anesthesia, presumably at [REDACTED], from 22 June 2016 to 30 June 2020, in an inactive duty for training status.⁷ See enclosure (6).

l. On 21 June 2020, Petitioner was appointed as a LCDR in the Regular Navy and returned to active status. See enclosure (10).

m. Petitioner currently has an approved retirement date of 1 July 2024. See enclosure (3).

n. Petitioner claims to have only recently discovered to his surprise that his TEB application was denied in December 2013. In explaining why the requested correction should be made, he states that during his four deployments to the Middle East, he "was hunting terrorists, not sitting behind a desk checking on VA benefits."⁸ He admits that it was his fault that he didn't verify that his request was approved, but asserts that the purpose of the Post 9/11 GI Bill is to reward those, like him, who actually fought the enemy, and requests that his "administrative naivety" be excused.

MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority of the Board found sufficient evidence of an injustice warranting relief.

The Majority found that Petitioner met the basic eligibility criteria to transfer his Post-9/11 GI Bill education benefits stated in reference (b) (see paragraph 3d above), but simply failed to follow through with the administrative requirements to do so after his first request was rejected.

⁴ It appears that Petitioner attempted to transfer one month of his Post-9/11 GI Bill education benefit to his spouse, and to split the remaining 35 months between [REDACTED] and [REDACTED].

⁵ This reason for rejection implies that the required NAVPERS 1070/613 was not included with the Petitioner's request (see paragraph 3d above).

⁶ Petitioner was released from active duty for four years of residency training in anesthesia at the [REDACTED].

⁷ This period accounts for the four-year difference between Petitioner's original appointment date and his ADSD (see paragraph 3b above).

⁸ Petitioner served as a member of [REDACTED] prior to attending medical school at [REDACTED].

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It was clear that the Subject attempted to transfer his education benefits, but was unaware that his request had been denied and of his need to take further action. Although Petitioner did not comply with the administrative requirements to transfer his education benefits, the Majority found this oversight to be understandable and excusable given the circumstances of Petitioner's career at the time. Specifically, Petitioner had just transitioned from extensive combat service as a member of [REDACTED] to begin medical school at [REDACTED] further, the Majority found it likely that the [REDACTED] command was not well versed in the administrative requirements necessary for members of its command to transfer their education benefits given its mission, its status as a joint organization, and the fact that most [REDACTED] students, unlike Petitioner, would not meet the minimum time in service requirements to transfer their education benefits.

The Majority noted that the Petitioner failed to complete four years of active duty after submission of his TEB application due to his release from active duty to complete residency training at [REDACTED]. However, the Majority found it likely that Petitioner's operational duties as a member of [REDACTED] prevented him from acting to transfer his education benefits earlier in his career, resulting in the situation where he had to do so while under a [REDACTED] command unlikely to be familiar with the requirements with insufficient time remaining to complete four years of active duty service before he would have to leave active duty to complete his residency training requirement.

Given these circumstances, the Board found the existence of an injustice warranting corrective action in the fact that Petitioner is denied this benefit that he otherwise likely would enjoy but for the unique circumstances of his career at the time.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner's naval record be corrected to reflect that he, in coordination with his command, completed the required NAVPERS 1070/613 with all of the necessary language and signatures referenced in paragraph 3d above on 21 June 2012 (i.e., four years prior to his release from active duty) in the NSIPS ESR in accordance with reference (b).

That Navy Personnel Command (NPC) (PERS-314) approved Petitioner's TEB application of 21 June 2012, with a four-year active-duty service obligation.

That Petitioner elected to transfer 18 months of his unused Post-9/11 GI Bill education benefit to [REDACTED] of those benefits to [REDACTED]; and [REDACTED] of those benefits to his spouse, through the MilConnect TEB portal on 21 June 2012.

That NPC ensure Petitioner's Benefits for Education Administrative Services Tool Family Member History and Service Member History is updated with the aforementioned approved allocation of educational benefits.

That a copy of this record of proceedings be filed in Petitioner's naval record.

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MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority did not concur with the Majority conclusion that there exists an injustice in Petitioner's ineligibility to transfer his Post-9/11 GI Bill education benefits. Specifically, the Minority noted that the Navy's policies pertaining to TEB have been in effect since 2009, and that the eligibility criteria and instructions for TEB are clearly outlined in published messages. Reference (b) specifically directed Petitioner to check the TEB Web site periodically for the status of his application, and to reapply after taking corrective action if the application was disapproved. He failed to do so. Additionally, Petitioner had more than 13 years of service, had been promoted to LCDR, and was in medical school pursuant to the HPSP at the time of his TEB application; he should not have required an instruction to periodically check on the status of such an important benefit request. It was Petitioner's responsibility to familiarize himself with the TEB requirements and to ensure that his application was complete and accepted. His inability to transfer his Post-9/11 education benefits now is no one's fault but his own.

The Minority also noted that Petitioner would not have satisfied the four-year active duty service requirement even if his original TEB application had been approved. Petitioner requested TEB on 29 December 2013 and was released from active duty on 21 June 2016. As such, he served less than 30 months on active duty after his TEB application was submitted. This would have disqualified him for the benefit even if his request had been properly submitted and approved at the time. The Post-9/11 GI Bill TEB is intended to be a retention tool for the services; to grant this relief to Petitioner when he did not even approach the minimum active duty service requirement would negate this purpose and provide him a benefit not afforded to other Service members. Unlike the Majority, the Minority was not persuaded that Petitioner's previous high operational tempo in his previous assignment to [REDACTED] justified his failure to apply for TEB earlier. First, the record reflects that the Subject had left [REDACTED] in July 2012, more than 17 months prior to the submission of his TEB application. If he had submitted the application at that time, he could have completed the four-year active-duty service requirement while enrolled at [REDACTED]. It was not his combat service in Afghanistan and Iraq which prevented Petitioner from applying for this benefit, as he claims. Second, while Petitioner claims that he was too busy "hunting terrorists" to apply for this benefit earlier, he was apparently not too busy to research and apply for HPSP or to pursue the administrative requirements necessary to attend [REDACTED]. This is not at all to demean Petitioner's honorable combat service; rather, it reflects the observation that one need not be "sitting behind a desk" to complete certain administrative requirements as Petitioner claims in his justification for this relief. Petitioner would be far from the only Service member expected to perform such administrative tasks in a deployed environment.

Finally, the Minority noted that Petitioner had the opportunity to transfer his education benefits when he reentered active duty after completion of his residency at [REDACTED]. The record reflects that Petitioner reentered active duty on 21 June 2020, and that he has an approved retirement date of 1 July 2024. Accordingly, he could have properly applied to transfer his benefits at that time and satisfied the four-year active-duty service obligation without incurring any additional service

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obligation beyond that which he presumably already had through the HPSP. In fact, the record reflects that he was aware of the requirement and unsuccessfully attempted to transfer his benefits. Specifically, enclosure (7) reflects unsuccessful efforts to transfer Petitioner's education benefits absent the submission of the required NAVPERS 1070/613 on 29 January 2020, 17 July 2020, 4 August 2020, 10 December 2020, 13 July 2021, and 3 August 2022. Not only does this evidence call into question Petitioner's claim to have only just recently learned that his original TEB application was disapproved, but it demonstrates that Petitioner's continuing failure to comply with the administrative requirements to transfer his education benefits even after learning that his original request was unsuccessful.

Many Service members must adjust their career plans in order to ensure that they can meet the minimum active-duty service requirements to transfer their education benefits to eligible dependents. This requirement often occurs through no fault of the Service member. Given that Petitioner's inability to transfer his benefits was due to his own continuing neglect, the Minority found that it would be an injustice to permit him to transfer his benefits without making a similar sacrifice that many less fortunate Sailors and Marines are required to make even in the absence of such neglect.

MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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

5/6/2024

[REDACTED]

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the corrective action recommended by the Majority above.)

— MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

