



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

██████████
Docket No. 2951-25
Ref: Signature Date

████████████████████
████████████████████
██

Dear ██████████,

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 13 November 2025. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies. In addition, the Board considered the advisory opinion contained in Commander, Navy Personnel Command memorandum 1780 PERS-311 of 22 May 2025 and your response to the advisory opinion.

In October 2005 you married ██████████

You transferred to the Fleet Reserve with an Honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 9 December 1988 to 31 January 2006 upon having sufficient service for retirement.

In August 2006 your dependent child ██████████ was born.

In accordance with the Benefits for Education Administrative Services Tool, your 20th VA Education Benefits Payment was received on 31 August 2006.

In accordance with Title 38 U.S.C. § 3319, Authority to transfer unused education benefits to family members. (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).

In accordance with DTM 09-003 published on 22 June 2009, Transferability of Unused Education Benefits to Family Members. Subject to the provisions of this attachment, the Secretary of the Military Department concerned, to promote recruitment and retention of members of the Armed Forces, may permit an individual described in paragraph 3.a. of this attachment, who is entitled to educational assistance under the Post-9/11 GI Bill, to elect to transfer to one or more of the family members specified, all or a portion of such individual's entitlement to such assistance.

Eligible Individuals. 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: (I) 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;...

An individual may not add dependents after retirement or separation from the Armed Forces, but may modify the number of months of the transferred benefit or revoke transferred benefits after retirement or separation for those dependents who had received transferred benefits prior to separation or retirement.

In accordance with NAVADMIN 187/09 published on 26 June 2009, the Post 9-11 GI Bill becomes effective 1 August 2009. This education assistance program offers sailors and their families a tax free option to pay for college and should be considered as you plan your navy career and support your family's education needs.

The Department of Veterans Affairs (DVA) is responsible for final determination of service member eligibility. Navy is responsible for verifying applications for transferability.

Transferability Eligibility: (1) Eligible for the Post 9-11 GI Bill. (2) In the Armed Forces (defined as active duty or SELRES) when election is made. (3) Completed a minimum of six (6) years in the Armed Forces on the date of election. (4) Obligate for an additional four (4) years. (5) 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.

In accordance with DoDI 1341.13, 3.3. Transferability of Unused Education Benefits to Family Members. TEB is available to all members of the uniformed services. Any references specifically to Service members in this paragraph apply only to individuals in the Military Services; while member(s) include those serving in the uniformed services as defined in the Glossary.

a. Overview. (1) Subject to the provisions of Paragraph 3.3. of this issuance, the Secretary concerned, to promote recruitment and retention in the uniformed services, may permit an individual eligible for Post-9/11 GI Bill educational assistance to elect to transfer to one or more of their eligible family members all or a portion of their entitlement to such assistance. Transferability is neither an entitlement nor a transition or readjustment benefit. The DoD will continue to track recruit quality and retention metrics carefully to adjust policy and force management tools to support any major shifts in retention trends. (2) The Military Departments will not automatically approve a Service member's request to elect to transfer benefits. Before approving an individual's request to elect to transfer benefits, the Secretary of the Military Department concerned must determine whether the Service member is eligible for retention under the Military Department or Service retention policies (e.g., high year tenure) and is not precluded by either DoD, Military Department, Service policy, or statute from being retained for 4 additional years from the date of election.

g. Time for Transfer, Revocation, And Modification. (1) Time for Transfer.

(a) An individual approved to transfer entitlement to educational assistance under Paragraph 3.3. of this issuance may transfer such entitlement to the individual's family member only while serving in the Military Services (active duty or Selected Reserve), NOAA Corps, or USPHS. An individual may not normally add family members after retirement or separation from the uniformed services; a limited exception is provided for in Section 3319(k) of the Post-9/11 GI Bill, upon the death of the originally designated family member.

Glossary...Service member: An individual serving on active duty or in the Selected Reserve. Does not include other members of the Ready Reserve (such as the Individual Ready Reserve, participants in the CIP, standby Reserve, or retired Service members, unless they are serving on active duty).

In accordance with Supreme Court of the United States Syllabus *Rudisill V. McDonough*, Secretary of Veterans Affairs Certiorari to the United States Court of Appeals for the Federal Circuit No. 22–888. Argued November 8, 2023—Decided April 16, 2024, III The question before us is this: When service members have separate entitlements to both Montgomery and Post- 9/11 benefits, can they use their benefits, in any order, up to §3695's aggregate 48-month cap?

The bottom line is this: Veterans who separately accrue benefits under both the Montgomery and Post-9/11 GI Bills are entitled to both benefits. Neither §3322(d) nor §3327 restrict veterans with two separate entitlements who simply seek to use either one. Thus, *Rudisill* may use his benefits, in any order, up to §3695's 48-month aggregate benefits cap. If the statute were ambiguous, the proveteran canon would favor *Rudisill*, but the statute is clear, so

we resolve this case based on statutory text alone. Because the Federal Circuit incorrectly limited Rudisill's benefits, we reverse its judgment and remand the case for further proceedings consistent with this opinion.

You requested to establish eligibility to transfer Post-9/11 GI Bill to your dependent and extend your entitlement period to utilize the education benefits based on Department of Defense Instruction (DoDI) 1341.13 and on the Supreme Court ruling of Rudisill versus McDonough. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. The Board concluded that you did not meet the criteria to TEB to your dependents in accordance with Title 38 U.S.C. § 3319 because you retired on 1 February 2006, prior to the 1 August 2009 effective date. You state that, "I firmly reject the assertion that I was 'no longer a member of the armed forces.' As a Fleet Reservist, I remain in a recallable status, reflecting continued affiliation with the Navy—not separation." However, in accordance with DoDI 1341.13, "[a]n individual approved to transfer entitlement to educational assistance under Paragraph 3.3. of this issuance may transfer such entitlement to the individual's family member only while serving in the Military Services (active duty or Selected Reserve)." This does not include other members of the Ready Reserve, which includes retired Service members, unless they are serving on active duty. Therefore, the Board determined the intent of the policy is that a member must request to TEB while still on active duty and you were not on active duty or in the Selected Reserve at the time of enactment. Furthermore, the opinion of the court in Rudisill versus McDonough did not change the existing policies to TEB. Therefore, in this connection, the Board substantially concurred with the comments contained in the advisory opinion and determined a change to your record is not warranted.

Regarding extending your limiting date as a result of the Rudisill decision, the Board noted that the Department of Veterans Affairs is responsible for determining eligibility for education benefits under the Post-9/11 GI Bill. For additional information on how to apply for the GI Bill and related benefits, visit <https://www.va.gov/education/how-to-apply/> or contact the GI Bill hotline at (888) 442-4551.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

11/19/2025

