RECORD OF PROCEEDINGS

AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF: DOCKET NUMBER: BC-2010-02531

XXXXXXX COUNSEL: NONE

HEARING DESIRED: NO

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT REQUESTS THAT:

His record be corrected to reflect he transferred his entitlement to educational benefits under the Post 9/11 GI Bill to his dependents.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT CONTENDS THAT:

He was denied the opportunity to transfer his benefits when he, acting in good faith, tried to make the transfer after he retired based on sketchy guidance and without the benefit of a formal command or education center briefing. He attended the transition assistance program almost ten months prior to his retirement when there was very limited information available regarding the transfer of benefits under this new program.

In support of his request, the applicant provides an expanded statement and copies of correspondence to his Senator and the Department of Veterans Affairs (DVA) regarding the matter under review.

The applicant’s complete submission, with attachments, is at Exhibit A.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATEMENT OF FACTS:

The applicant’s military personnel records indicate he was retired for length of service in the grade of lieutenant colonel (O-5), effective 1 Nov 09.

Post-9/11 GI Bill: Any member of the Armed Forces (active duty or Selected Reserve, officer or enlisted) who, on or after 1 Aug 09, is eligible for the Post-9/11 GI Bill, and satisfies the following service requirements, is eligible to transfer their unused educational benefits to a qualifying dependent:

* Has at least 6 years of service in the Armed Forces on the date of election and agrees to serve 4 additional years in the Armed Forces from the date of election.
* 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
* Is or becomes retirement eligible during the period from August 1, 2009, through August 1, 2013.  A service member is considered to be retirement eligible if he or she has completed 20 years of active duty or 20 qualifying years of reserve service.
  + For those individuals eligible for retirement on August 1, 2009, no additional service is required.
  + For those individuals who have an approved retirement date after August 1, 2009, and before July 1, 2010, no additional service is required.
  + For those individuals eligible for retirement after August 1, 2009, and before August 1, 2010, 1 year of additional service after approval of transfer is required.
  + For those individuals eligible for retirement on or after August 1, 2010, and before August 1, 2011, 2 years of additional service after approval of transfer are required.
  + For those individuals eligible for retirement on or after August 1, 2011, and before August 1, 2012, 3 years of additional service after approval of transfer required.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AIR FORCE EVALUATION:

AFPC/DPSI does not provide a recommendation, but indicates that members may have had the impression that being on active duty or in the Selected Reserve on the effective date of the law, 1 Aug 09, was sufficient to “vest” them with the right to transfer benefits at some time in the future. Had those members sought clarification from an educational counselor, read the DoD or Air Force guidance that was very clear on that point, or taken other measures to make timely decisions before their separation or retirement, they could have initiated a timely transfer of benefits. However, the Board could find that there was an injustice if the members were on active duty on 1 Aug 09, were not personally counseled about the need to execute a transfer while serving in the Armed Forces, and did not have ready access to DoD and Air Force guidance because of their terminal leave status. The transfer date could be effective as early as 1 Aug 09 and there would be no need to place the member on active duty since the TEB system allows for correction of the record by Air Force personnel.

A complete copy of the AFPC/DPSI evaluation is at Exhibit C.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 15 Oct 10 for review and comment within 30 days. As of this date, no response has been received by this office (Exhibit D).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD CONCLUDES THAT:

1.  The applicant has exhausted all remedies provided by existing law or regulations.

2.  The application was timely filed.

3.  Sufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. While we note the steps the Air Force office of primary responsibility indicates were taken to inform eligible personnel of this new benefit, it appears that through no fault of the applicant, he was not timely made aware of his eligibility and the steps necessary to transfer his benefits to his dependents. In addition, we find no basis to question his account in this matter and do not find it reasonable that he would have knowingly elected not to pursue use of this important entitlement. Therefore, we elect to resolve any doubt in this matter in behalf of the applicant and recommend the records be corrected as indicated below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to the APPLICANT be corrected to show that on 31 October 2009 he elected to transfer his Post 9/11 GI Bill Educational Benefits to his spouse and daughters, effective 1 November 2009.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following members of the Board considered AFBCMR Docket Number BC-2010-02531 in Executive Session on 1 Mar 11, under the provisions of AFI 36-2603:

Mr. XXXXXXXXXX, Panel Chair

Mr. XXXXXXXXXX, Member

Mr. XXXXXXXXXX, Member

All members voted to correct the records as recommended. The following documentary evidence was considered:

Exhibit A.  DD Form 149, dated 25 Jun 10, w/atchs.

Exhibit B.  Applicant’s Master Personnel Records.

Exhibit C.  Letter, AFPC/DPSI, dated 4 Oct 10.

Exhibit D.  Letter, SAF/MRBR, dated 15 Oct 10.

XXXXXXXXXX

Panel Chair