

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-00789
COUNSEL: NONE
HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His active duty service commitment (ADSC) of 6 Jan 14 be removed due to his divorce from his former spouse.

APPLICANT CONTENDS THAT:

His Post-9/11 GI Bill benefits were never used by his former spouse. He has revoked all months and the Defense Manpower Data Center (DMDC) website shows it was revoked 18 Apr 11.

In support of his request, the applicant provides a copy of his divorce decree.

The applicant's complete submission, with attachment, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of major.

The remaining relevant facts pertaining to this application are contained in the letter prepared by the appropriate office of the Air Force, which is attached at Exhibit B.

AIR FORCE EVALUATION:

HQ AFPC/DPSIT recommends denial. DPSIT states that based on the information reported in the Transfer of Education Benefits (TEB) and counseling notes in the Right Now Technology (RNT) by Total Force Service Center (TFSC) personnel, the applicant was provided with instructions/requirements that he needed to accomplish prior to his TEB application being approved. Specifically, he needed to sign a Statement of Understanding (SOU) agreeing to the obligated service required to participate in the TEB option under the Post-9/11 GI Bill. When a member applies for TEB on the DMDC website the first thing that appears is the Submit Transfer Request, under the members personal

information is a message which states "Please note the following: 1) Do not transfer benefits unless you are willing to complete the service obligation. While you may revoke your transfer at any time, a revocation DOES NOT automatically cancel the associated ADSC, even if benefits have not been used. 2) AFPC WILL NOT pro-rate ADSCs for members who have used any part of their VA educational benefits."

The applicant signed the SOU and his TEBs were approved on 9 Feb 10. The SOU clearly states the member would incur a service obligation period of four years and the ADSC will be updated in the member's record effective from the date of application in the DMDC TEB website.

The complete DPSIT evaluation, with attachment, is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states the AFPC/DPSIT advisory opinion does not address his unique issue nor does it explain the facts of his case. The advisory opinion merely states the fact that he signed a SOU agreeing to a four year ADSC. When he signed the SOU he was married and intended to give it to his spouse and serve the ADSC. What is not stated is that after a lengthy deployment, he came home in Apr 11 and he and his spouse divorced shortly thereafter. He revoked the TEB and his former spouse never used any of his Post-9/11 GI Bill. The government incurred ZERO DOLLARS of educational debt on his behalf.

The applicant states that according to the SOU under Title 38 U.S.C. chapter 33 "failure to complete the service obligation will result in overpayment which will be recouped by the Department of Veterans Affairs." According to AFI 36-2107, *Active Duty Service Commitments* "members incurring an ADSC on or after 1 Apr 06 who fail to complete their ADSC are subject to recoupment unless waived by the Secretary, of a prorated portion of the cost of educational assistance, financial bonus, or benefit." Once again, this amount is ZERO. The statute only references the ADSC obligation where the GI Bill has been used. This is not his case.

The applicant states he is divorced and has no dependents. Therefore, there is no transfer or ability to transfer his Post-9/11 GI Bill benefits. In short, he has incurred a four year ADSC but received nothing in return. He promised to pay four years to the Air Force in exchange for his spouse to use his GI Bill. However, the benefits were never used. As such, he took a promise of a four year ADSC off the table when he cancelled the TEB making it impossible for them to be used.

The applicant's complete submission is at 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. Insufficient relevant evidence has been presented to demonstrate the existence of error or injustice. We took notice of the applicant's complete submission to include his rebuttal statement in judging the merits of the case; however, we agree with the opinion and recommendation of the Air Force office of primary responsibility and adopt its rationale as the basis for our conclusion that the applicant has not been the victim of an error or injustice. The applicant's interpretation of the statement of understanding (SOU) is noted; however, in our view, the SOU put the applicant on notice that he would possibly have to serve the ADSC even if he had not used any of the benefits. While the circumstances of the applicant's case are regrettable, he has not provided evidence that supports he is being treated any differently than others similarly situated. Therefore, in the absence of evidence to the contrary, we find no basis to recommend granting the relief sought in this application.

THE BOARD DETERMINES THAT:

The applicant be notified that the evidence presented did not demonstrate the existence of material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered AFBCMR BC-2012-00789 in Executive Session on 13 Sep 12, under the provisions of AFI 36-2603:

Panel Chair
Member
Member

The following documentary evidence pertaining to AFBCMR Docket Number BC-2012-00789 was considered:

- Exhibit A. DD Form 149, dated 7 Feb 12, w/atch.
- Exhibit B. Letter, AFPC/DPSIT, 29 Mar 12, w/atch.
- Exhibit C. Letter, SAF/MRBR, dated 30 Apr 12.
- Exhibit D. Letter, Applicant, dated 15 May 12.

Panel Chair