

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: `1

COUNSEL: NONE

HEARING DESIRED: NO

THE APPLICANT REQUESTS THAT:

He be allowed to transfer his Post 9/11 GI Bill educational benefits to his dependents.

THE APPLICANT CONTENDS THAT:

He applied for the Post 9/11 GI Bill prior to retirement; however, the transferability portion of the benefit had not been established at that time and believes for that reason he should be given an opportunity to complete this transfer.

In support of his appeal, the applicant provides copies of his retirement order, Special Order (SO) AC-000501; DD Form 214, *Certificate of Release or Discharge from Active Duty*, issued in conjunction with his 30 Sep 09 separation, pre-separation checklist, and other supporting documents.

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

STATEMENT OF FACTS:

The applicant was relieved from active duty, on 30 Sep 09, with a reason for separation of Voluntary Retirement: Sufficient Service for Retirement.

AIR FORCE EVALUATION:

AFPC/DPSIT recommends denial, noting the applicant submitted his application for retirement on 6 Oct 08 and was approved on 14 Oct 08. He attended a four-day Transition Assistance Program (TAP) class on 25 Sep 08 and checked the box indicating that he would like counseling on Education benefits. At the time of his TAP briefing in Sep 08 not much information was available. However, he received a letter from the mission support squadron

on 18 May 09 stating that he has been identified for a TAP briefing, considering that the information for Post 9/11 benefits had not been available at the time of his initial briefing on 25 Sep 08 it would have benefited him to attend this briefing on either of the dates mentioned in the email. The applicant states that he applied for the 9/11 GI Bill right before he retired (no date of when this happened), but the transferability requirement for dependents had not been established yet, however, as noted in his education records, he out-processed on 3 Aug 09, clearly the requirements were available at that time, and he could have received counseling as to what would be required for TEB. Also, his out-processing checklist from the Virtual Military Personnel Flight (VMPF) dated 24 Aug 09, stated actions accomplished to include Education Office. The applicant had ample opportunity to seek out information for the TEB program but failed to do so. He references the Department of Veterans Affairs (DVA) website which talks about the one year additional service required to transfer benefits, but states that he was not informed of this requirement because it was not made public. However, the Directive Type Memo (DTM) was published on 22 Jun 09 and made available to all base Education Offices, again an opportunity for the member to seek out information but failed to do so. Therefore, they found no injustice to the extent that the applicant did not receive adequate counseling as required by law and DoD regulation.

The complete AFPC/DPSIT evaluation, with attachments, is at Exhibit B.

APPLICANT'S REVIEW OF THE AIR FORCE EVALUATION:

The applicant indicates that AFPC/DPSIT misrepresented the group email received from the MPF on 18 May stating that he was offered timely educational assistance. In fact, the email states that a DD Form 2648, *Transition Assistance Program (TAP) Checklist for Deactivating/Demobilizing National Guard and Reserve Service Members*, was required but they did not have one on file. In response, he simply sent them a completed DD Form 2648. At that time the transferability program had not been published and he had already attended a TAP class in Sep 08. Had he attended three of the four offered TAP programs the Post GI Bill information would not likely have been included because the referenced DTM had not been published.

He received approval of the Post 9/11 GI Bill from the DVA on 19 Jun 09. Notably, it does not mention the transferability benefit. In Jul 09, he began permissive TDY, job hunting and terminal leave processes returning in August for a retirement ceremony and out processing. The DTM 09-003 required military

departments to provide and document individual pre-separation counseling on Post-9/11 GI Bill benefits. The Air Force has no such documentation as this counseling was not accomplished even when he revisited the Air Force education office on 24 Aug 09. AFPC admits that the Air Force did not "engage in a Service-wide effort to seek out members who were already on terminal leave, or who had completed their pre-separation counseling, in order to provide them with additional counseling on the Post-9/11 GI Bill." AFPC/DPSIT mentions that during this time most communication articles discussed the transferability and some mentioned the active duty status requirement but it does not state that the message was accurately or completely communicated.

The Air Force erred in not providing him this mandatory counseling and is now attempting to shift the responsibility to him for not re-attending a TAP class to find out about a program that was not available at the time he applied for the benefit. The Air Force failed to communicate and document this benefit to all airmen as required by the DTM. It is very clear that the record reflects this injustice. With two children in high school at the time of my retirement, he would have stayed in the Air Force for the additional year from August 09 had he known about the requirement for transferability.

The complete applicant's response, with attachments, 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. Sufficient relevant evidence has been presented to demonstrate the existence of 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 properly counseled regarding the steps necessary to transfer his benefits to his dependents. We do not find it reasonable that he would have knowingly elected not to pursue use of this important entitlement. As such, in the interest of justice we find the evidence is sufficient to allow him to transfer his benefits. Therefore we 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 APPLICANT, be corrected to show that on 30 September 2009, he elected to transfer his Post 9/11 GI Bill Educational Benefits.

The following members of the Board considered AFBCMR Docket Number BC-2012-01391 in Executive Session on 13 November 2012, under the provisions of AFI 36-2603:

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

- Exhibit A. DD Form 149, dated 9 Apr 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIT, dated 20 Apr 12, w/atchs.
- Exhibit C. Letter, SAF/MRBR, dated 11 May 12.
- Exhibit D. Letter, Applicant, undated.

Panel Chair