

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2012-01770
COUNSEL: NONE
HEARING DESIRED: YES

APPLICANT REQUESTS THAT:

She be allowed to transfer her Post 9/11 GI Bill benefits to her dependents.

APPLICANT CONTENDS THAT:

She was told before she was medically retired that she would be able to transfer her education benefits to her dependent.

She enrolled and paid into her education benefits in 1986. She wanted to continue to serve her country but was medically retired.

She is unable to use her education benefits due to her disabilities.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS:

The applicant retired in the grade of senior master sergeant effective 28 May 09 after serving 23 years, 2 months, and 3 days of active duty service.

Additional relevant facts pertaining to this application, extracted from the applicant's military records, are contained in the letter prepared by the appropriate office of the Air Force at Exhibit B.

AIR FORCE EVALUATION:

AFPC/DPSIT recommends denial. DPSIT states, the applicant was retired effective 28 May 09. The Program was not in effect until 1 Aug 09. Since 38 United States Code (USC) Chapter 33 Section 3319 (f)(1) states that "an individual...may transfer such entitlement only while serving as a member of the Armed Forces when the transfer is executed," we can only recommend deny. DPSIT found no injustice to the extent that the service member

did not receive adequate counseling as required by law and DoD regulation.

DPSIT states in part, service members enrolled in 38 U.S.C., Chapter 33 (Post-9/11 Educational Assistance), are able to transfer unused educational benefits to their dependent spouses or children. Any member of the Armed Forces, Active Duty or Selected Reserve, officer or enlisted, on or after 1 Aug 09, who is eligible for the Post 9/11 GI Bill, has at least 6 years of service in the Armed Forces on the date of election, and agrees to serve a specified additional period in the Armed Forces from the date of election (if applicable), may transfer unused Post-9/11 benefits to their dependents pursuant to Service regulations. The transfer must be initiated while the member is serving in the Armed Forces, which is defined as limited to those on active duty or in the Selected Reserve.

The Air Force issued AFI 36-2306, *Voluntary Education Program*, on 23 Jul 09, which was subsequently replaced with AFI 36-2306, Attachment 9. Paragraph A9.4.3.15.4., requires pre-separation counseling, documented on DD Form 2648, *Pre-Separation Counseling Checklist*. However, the Air Force did not engage in a Service-wide effort to seek out members who were already on terminal leave, or who had already completed their pre-separation counseling, in order to provide them with additional counseling on the Post-9/11 GI Bill.

The complete DPSIT evaluation is at Exhibit B.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

The applicant states when she was (Temporary Medically Retired) (sic) placed on the Temporary Disability Retirement List (TDRL) she was told by the base education office that her dependents would be able to get her education benefits. She was officially retired on 19 Sep 10, which qualifies her for the benefits.

There is nothing in the recommendation that states what type of retirement which can cause misrepresentation.

She should have the same rights as those who received a retirement date on or after Aug 09, that were allowed to transfer their education benefits. The Air Force medically retired her due to no fault of her own. She served for 24 years in the military and would like to be able to give her education benefits to her son.

The applicant's complete response 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 not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of an error or injustice. The applicant's contentions are duly noted; 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. Although the applicant was initially placed on the TDRL on 28 May 09, and not permanently retired until 19 Sep 10, time on the TDRL is not considered active duty service. The Transfer of Education Benefits (TEB) program was implemented on 1 Aug 09 and required that you be on active duty at the time of transfer. The applicant was already in a retired status and therefore was not eligible for the program. In view of the above, we find no basis to recommend granting the relief sought in this application.
4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

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 Docket Number BC-2012-01770 in Executive Session on 13 Nov 12, under the provisions of AFI 36-2603:

- , Panel Chair
- , Member
- , Member

The following documentary evidence pertaining to Docket Number BC-2012-01770 was considered:

- Exhibit A. DD Form 149, dated 24 Apr 12, w/atchs.
- Exhibit B. Letter, AFPC/DPSIT, dated 22 May 12.
- Exhibit C. Letter, SAF/MRBR, dated 19 Jun 12.
- Exhibit D. Letter, Applicant, dated 8 Aug 12, w/atrch.

Panel Chair