

No. 22-888

IN THE
Supreme Court of the United States

JAMES R. RUDISILL,

Petitioner,

v.

DENIS R. MCDONOUGH, SECRETARY OF VETERANS AFFAIRS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL JOINT APPENDIX

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for Respondent*

SOLICITOR GENERAL

UNITED STATES DEPARTMENT
OF JUSTICE

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(For Continuation of Appearances See Inside Cover)

PETITION FOR CERTIORARI FILED MARCH 13, 2023

CERTIORARI GRANTED JUNE 26, 2023



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CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD. SAFEGUARD IT.

ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) RUDIS, JAMES RICHARDSON		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA		3. SOCIAL SECURITY NO. [REDACTED]	
4. GRADE, RATE OR RANK SPC	4. D. PAY GRADE E4	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]		6. RESERVE OBLIG. TERM. DATE Year 2007 Month 02 Day 24	
7. a PLACE OF ENTRY INTO ACTIVE DUTY RALEIGH, NC		7. b HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) [REDACTED]			
8. a LAST DUTY ASSIGNMENT AND MAJOR COMMAND USMA PREP SCHOOL STUDENT DET - MA		8. b STATION WHERE SEPARATED USMA West Point, NY 10996-1926			
9. COMMAND TO WHICH TRANSFERRED USAR CTRLGP (REINF) AR-PERSCOM, 1 RESERVE WAY, ST LOUIS, MO 63132-5200		10. SGLI COVERAGE		<input type="checkbox"/> None Amount \$250,000	
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 19K10 M1 ARMOR CREWMAN--2 YRS-2 MOS//NOTHING FOLLOWS		12. RECORD OF SERVICE			
		Year(s)		Month(s)	
		Day(s)			
		a. Date Entered AD This Period		2000 01 04	
		b. Separation Date This Period		2002 06 30	
		c. Net Active Service This Period		0002 05 27	
		d. Total Prior Active Service		0000 02 19	
		e. Total Prior Inactive Service		0000 07 27	
		f. Foreign Service		0001 00 05	
		g. Sea Service		0000 00 00	
		h. Effective Date of Pay Grade		2001 12 15	

13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of services)
 ARMY GOOD CONDUCT MEDAL//NATIONAL DEFENSE SERVICE MEDAL//KOSOVO CAMPAIGN MEDAL//ARMY SERVICE RIBBON//NATO MEDAL//EXPERT MARKSMANSHIP QUALIFICATION BADGE WITH PISTOL BAR (9MM)//EXPERT MARKSMANSHIP QUALIFICATION BADGE WITH GRENADE BAR//MARKSMAN MARKSMANSHIP QUALIFICATION BADGE WITH RIFLE BAR (M-16)//DRIVER AND MECHANIC BADGE WITH DRIVER-T BAR//NOTHING FOLLOWS

14. MILITARY EDUCATION (Course title, number of weeks and month and year completed)
 UNITED STATES MILITARY ACADEMY PREPARATORY SCHOOL, 42 WEEKS, JUN 2002//M1 ARMOR CREWMAN COURSE, 15 WEEKS, APR 2000//COMBAT LIFESAVER COURSE, 1 WEEK, OCT 2000//TANK CREW EVALUATOR COURSE, 1 WEEK, NOV 2000//NOTHING FOLLOWS

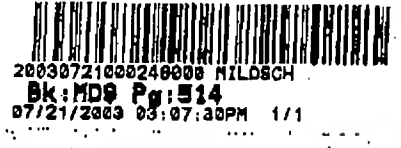
15. a MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM	Yes	No	15. b HIGH SCHOOL GRADUATE OR EQUIVALENT	Yes	No	16. DAYS ACCRUED LEAVE PAID
		X		X		NONE

17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAM AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION Yes No

18. REMARKS
 DATA HEREIN SUBJECT TO COMPUTER MATCHING WITHIN DOI OR WITH OTHER AGENCIES FOR VERIFICATION PURPOSES AND DETERMINING ELIGIBILITY OR COMPLIANCE FOR FEDERAL BENEFITS//EXCESS LEAVE (CREDITABLE FOR ALL PURPOSES EXCEPT PAY AND ALLOWANCES) -- 14.00 DAYS: 20020614--20020627//NOTHING FOLLOWS

CERTIFIED TRUE COPY OF ORIGINAL
[Signature]
 SIGNATURE & DATE 12-10-2003

FILED Wanda C. Scott
 Register of Deeds WATAUGA COUNTY, NC
 BY *[Signature]*
 Deputy



19. a MAILING ADDRESS AFTER SEPARATION (Include Zip Code)	19. b NEAREST RELATIVE (Name and address - include Zip code)
[REDACTED]	[REDACTED]

20. MEMBER REQUESTS COPY BE SENT TO: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) PAMELA M. JOZELI, CHIEF, PERSONNEL SERVICE, CTR
21. SIGNATURE OF MEMBER BEING SEPARATED: SOLDIER NOT AVAILABLE TO SIGN	

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION RELEASE FROM ACTIVE DUTY	24. CHARACTER OF SERVICE (Include upgrades) HONORABLE
25. SEPARATION AUTHORITY AR 612-205, SECTION II, PARAGRAPH 5D(2)	26. SEPARATION CODE NA
28. NARRATIVE REASON FOR SEPARATION TO ENTER SERVICE ACADEMY SA1	27. REENTRY CODE NA
29. DATES OF TIME LOST DURING THIS PERIOD NONE	30. MEMBER REQUESTS COPY 4 [initials]

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle) RUDISILL, JAMES RICHARDSON		2. DEPARTMENT, COMPONENT AND BRANCH ARMY / ARNGUS		3. SOCIAL SECURITY NUMBER [REDACTED]		
4a. GRADE, RATE OR RANK SGT	b. PAY GRADE E05	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]	6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 00000000			
7a. PLACE OF ENTRY INTO ACTIVE DUTY ERWIN, TENNESSEE		b. HOME OF RECORD A TIME OF ENTRY (City and state, or complete address if known) [REDACTED]				
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 020278ARTRP F CAV FC			b. STATION WHERE SEPARATED CAMP SHELBY, MS 39407			
9. COMMAND TO WHICH TRANSFERRED ARNG OF TN			10. SGLI COVERAGE <input type="checkbox"/> NONE AMOUNT: \$ 400,000.00			
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 19K20 M1 ARMOR CREWMAN - 5 YRS 8 MOS//NOTHING FOLLOWS		12. RECORD OF SERVICE		YEAR(S)	MONTH(S)	DAY(S)
		a. DATE ENTERED AD THIS PERIOD		2004	06	17
		b. SEPARATION DATE THIS PERIOD		2005	12	27
		c. NET ACTIVE SERVICE THIS PERIOD		0001	06	11
		d. TOTAL PRIOR ACTIVE SERVICE		0002	08	15
		e. TOTAL PRIOR INACTIVE SERVICE		SEE	BLOCK	#18
		f. FOREIGN SERVICE		0000	11	17
		g. SEA SERVICE		0000	00	00
h. EFFECTIVE DATE OF PAY GRADE		2005	03	22		
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) ARMY COMMENDATION MEDAL//ARMY GOOD CONDUCT MEDAL (2ND AWARD)//NATIONAL DEFENSE SERVICE MEDAL//NON COMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT RIBBON//ARMY SERVICE RIBBON//OVERSEAS SERVICE RIBBON//ARMED FORCES RESERVE MEDAL W/ M DEVICE//NATO MEDAL//GLOBAL WAR ON TERRORISM SERVICE MEDAL//CONT IN BLOCK 18			14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) WLC, 2 WEEKS, DEC 2005//NOTHING FOLLOWS			
15a. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM			YES	X	NO	
b. HIGH SCHOOL GRADUATE OR EQUIVALENT			X	YES	NO	
16. DAYS ACCRUED LEAVE PAID 0	17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION			YES	NO	
18. REMARKS DD FORM 215 WILL BE ISSUED TO PROVIDE MISSING INFORMATION//ITEM 12D ABOVE DOES NOT ACCOUNT FOR ANNUAL AND/OR WEEKEND TRAINING THIS SOLDIER MAY HAVE ACCOMPLISHED PRIOR TO DATE ENTERED IN ITEM 12A//INDIVIDUAL COMPLETED BE FOR WHICH ORDERED TO ACTIVE DUTY OR PURPOSE OF POST SERVICE BENEFITS AND ENTITLEMENTS//ORDERED TO ACTIVE DUTY IN SUPPORT OF OPERATION IRAQI FREEDOM 141 LAW TO USC 12302//MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//SERVICE IN KUWAIT IRAQ FROM 20011122-2005108 SERVED IN A DESIGNATED IMMINENT DANGER PAY AREA//CONT FROM BLOCK 13 KOSOVO CAMPAIGN MEDAL W/ BRONZE STAR//DRIVER T BADGE//EXPERT PISTOL BADGE//CONT FROM BLOCK 13//IRAQ CAMPAIGN MEDAL//NOTHING FOLLOWS The information contained here is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.						
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code)			b. NEAREST RELATIVE (Name and address - include ZIP Code)			
20. MEMBER REQUESTS COPY 6 BE SENT TO [REDACTED]			DIRECTOR OF VETERANS AFFAIRS X YES NO			
21. SIGNATURE OF MEMBER BEING SEPARATED 		22. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title and signature) CHARLES F. PETTIE, SGM, CHIEF PERSONNEL SGT				

23. TYPE OF SEPARATION RELEASE FROM ACTIVE DUTY				24. CHARACTER OF SERVICE (Include upgrades) HONORABLE	
25. SEPARATION AUTHORITY AR 635-200, CHAP 4		26. SEPARATION CODE LBK		27. REENTRY CODE NA	
28. NARRATIVE REASON FOR SEPARATION COMPLETION OF REQUIRED ACTIVE SERVICE					
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE				30. MEMBER REQUESTS COPY 4 (Initials) SA2	

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES

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ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY			
This Report Contains Information Subject to the Privacy Act of 1974, As Amended.			
1. NAME (Last, First, Middle) RUDISILL, JAMES R		2. DEPARTMENT, COMPONENT AND BRANCH ARMY/RA/AR	
3. SOCIAL SECURITY NUMBER [REDACTED]		[REDACTED]	
4a. GRADE, RATE OR RANK CPT	b. PAY GRADE 003	5. DATE OF BIRTH (YYYYMMDD) [REDACTED]	6. RESERVE OBLIGATION TERMINATION DATE (YYYYMMDD) 00000000
7a. PLACE OF ENTRY INTO ACTIVE DUTY BOONE, NORTH CAROLINA		b. HOME OF RECORD AT TIME OF ENTRY (City and state, or complete address if known) [REDACTED]	
8a. LAST DUTY ASSIGNMENT AND MAJOR COMMAND 010033ARHHT RSTA SQD FC		b. STATION WHERE SEPARATED FORT CAMPBELL, KY 42223-5000	
9. COMMAND TO WHICH TRANSFERRED N/A		10. SGLI COVERAGE AMOUNT: \$ 400,000.00	
11. PRIMARY SPECIALTY (List number, title and years and months in specialty. List additional specialty numbers and titles involving periods of one or more years.) 19A ARMOR, GENERAL - 3 YRS 9 MOS//NOTHING FOLLOWS		12. RECORD OF SERVICE	
		YEAR(S)	MONTH(S)
		DAY(S)	
		a. DATE ENTERED AD THIS PERIOD	2004 06 17
		b. SEPARATION DATE THIS PERIOD	2011 08 01
		c. NET ACTIVE SERVICE THIS PERIOD	0003 08 16
		d. TOTAL PRIOR ACTIVE SERVICE	0004 02 26
		e. TOTAL PRIOR INACTIVE SERVICE	0004 05 25
		f. FOREIGN SERVICE	0001 01 11
		g. SEA SERVICE	0000 00 00
		h. INITIAL ENTRY TRAINING	0000 00 00
		i. EFFECTIVE DATE OF PAY GRADE	2011 03 10
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service) AFGHANISTAN CAMPAIGN MEDAL W/ CAMPAIGN STAR //IRAQ CAMPAIGN MEDAL W/THREE CAMPAIGN STARS//BRONZE STAR MEDAL//ARMY COMMENDATION MEDAL//ARMY ACHIEVEMENT MEDAL//MERITORIOUS UNIT COMMENDATION//ARMY GOOD CONDUCT MEDAL //NATIONAL DEFENSE SERVICE MEDAL (2ND AWARD)//GLOBAL WAR ON//CONT IN BLOCK 18		14. MILITARY EDUCATION (Course title, number of weeks, and month and year completed) COMBAT LIFESAVER CRS, 2010//OFF BASIC CRS, 2008//SCOUT PLATOON LEADER CRS, 2009//NOTHING FOLLOWS	
15a. COMMISSIONED THROUGH SERVICE ACADEMY		YES	X NO
b. COMMISSIONED THROUGH ROTG SCHOLARSHIP (10 USC Sec. 2107b)		YES	X NO
c. ENLISTED UNDER LOAN REPAYMENT PROGRAM (10 USC Chap. 109) (If Yes, years of commitment: NA)		YES	X NO
16. DAYS ACCRUED LEAVE PAID 0	17. MEMBER WAS PROVIDED COMPLETE DENTAL EXAMINATION AND ALL APPROPRIATE DENTAL SERVICES AND TREATMENT WITHIN 90 DAYS PRIOR TO SEPARATION		YES NO X
18. REMARKS SERVICE IN IRAQ 20080926-20081102//SERVICE IN AFGHANISTAN 20100125-20110128//MEMBER HAS COMPLETED FIRST FULL TERM OF SERVICE//CONT FROM BLOCK 13: TERRORISM SERVICE MEDAL//NON COMMISSIONED OFFICER PROFESSIONAL DEVELOPMENT RIBBON//ARMY SERVICE RIBBON//OVERSEAS SERVICE RIBBON (3RD AWARD)//ARMED FORCES RESERVE MEDAL W/ M DEVICE//KOSOVO CAMPAIGN MEDAL WITH BRONZE SERVICE STAR//NATO MEDAL (2ND AWARD)//COMBAT ACTION BADGE//AIR ASSAULT BADGE//DRIVER AND MECH BADGE WITH DRIVER - TRACKED VEHICLE(S) CLASP//NOTHING FOLLOWS The information contained herein is subject to computer matching within the Department of Defense or with any other affected Federal or non-Federal agency for verification purposes and to determine eligibility for, and/or continued compliance with, the requirements of a Federal benefit program.			
19a. MAILING ADDRESS AFTER SEPARATION (Include ZIP Code) [REDACTED]		b. NEAREST RELATIVE (Name and address - Include ZIP Code) [REDACTED]	
20. MEMBER REQUESTS COPY 6 BE SENT TO (Specify state/locality) NC OFFICE OF VETERANS AFFAIRS		X	YES NO
a. MEMBER REQUESTS COPY 3 BE SENT TO THE CENTRAL OFFICE OF THE DEPARTMENT OF VETERANS AFFAIRS (WASHINGTON, DC)		X	YES NO
21a. MEMBER SIGNATURE ESIGNED BY: RUDISILL.JAM ES. RICHARDSON. [REDACTED]	b. DATE (YYYYMMDD) 20110609	22a. OFFICIAL AUTHORIZED TO SIGN (Typed name, grade, title, signature) ESIGNED BY: THEODORE W. PAULKNER, CST1 [REDACTED] TRANSITION	b. DATE (YYYYMMDD) 20110609

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)			
23. TYPE OF SEPARATION DISCHARGE		24. CHARACTER OF SERVICE (Include upgrades) HONORABLE	
25. SEPARATION AUTHORITY AR 600-8-24, PARA 3-5		26. SEPARATION CODE FND	27. REENTRY CODE NA
28. NARRATIVE REASON FOR SEPARATION MISCELLANEOUS/GENERAL REASONS			
29. DATES OF TIME LOST DURING THIS PERIOD (YYYYMMDD) NONE		30. MEMBER REQUESTS COPY 4 (Initials) JRR	

M23 CHAPTER 30 ELIGIBILITY AND ENTITLEMENT 03-19-15
FILE NUMBER [REDACTED] NAME J R RUDIS

CH 30 STATUS 06-PARTICIPANT CH 30 FULL TIME RATES RECALCULATED
EOD 01-01-00 RAD 06-30-02 IN SVC

S/C
DEDUCTIBLE TIME MOS DAYS BASIC KICKER
CH 34 TRANSF ENT MOS DAYS CONTRIB DATE AMT
UPGRADE 2 X 4 ELECTION TUITION ASSISTANCE MOS DAYS
ESR RSR S/C

ENL TERM 3 PERSIAN GULF REVIEW
ENTITLEMENT CH 34 CH 30
CH 32 KICKER ORIGINAL 36-00
CH 30 KICKER BQ REMAINING 10-16
PC PYMT IND USED 25-14

DROPPED PRS
DATA MATCH SUSP DATE CUM REDUCED
DELIM DATE ADJ TYPE MOS DAYS CUM RESTORED
FROM TO DELIMIT/TERM DATE 07-01-12
PRIOR VA TRAINING EDUCATION LEVEL 13 HS PLUS
TYPE
BIRTH DATE [REDACTED] CLAIM DATE 07-25-03 NEXT SCREEN



Department of Veterans Affairs

APPEAL TO BOARD OF VETERANS' APPEALS

IMPORTANT: Read the attached instructions before you fill out this form. VA also encourages you to get assistance from your representative in filling out this form.

1. NAME OF VETERAN (Last Name, First Name, Middle Initial) Rudisill, James, R.	2. CLAIM FILE NO. (Include prefix) [REDACTED]	3. INSURANCE FILE NO., OR LOAN NO.
---	--	------------------------------------

4. I AM THE:

VETERAN VETERAN'S WIDOWER VETERAN'S CHILD VETERAN'S PARENT

OTHER (Specify) Accredited Representative

5. TELEPHONE NUMBERS		6. MY ADDRESS IS. (Number & Street or Post Office Box, City, State & ZIP Code) [REDACTED]
A. HOME (Include Area Code) [REDACTED]	B. WORK (Include Area Code) [REDACTED]	

7. IF I AM NOT THE VETERAN, MY NAME IS:
(Last Name, First Name, Middle Initial)
McHugh, Timothy, L.

8. THESE ARE THE ISSUES I WANT TO APPEAL TO THE BOARD: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

A. I HAVE READ THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE I RECEIVED. I AM ONLY APPEALING THESE ISSUES:
(List below.)

B. I WANT TO APPEAL ALL OF THE ISSUES LISTED ON THE STATEMENT OF THE CASE AND ANY SUPPLEMENTAL STATEMENT OF THE CASE THAT MY LOCAL VA OFFICE SENT TO ME.

9. HERE IS WHY I THINK THAT VA DECIDED MY CASE INCORRECTLY: (Be sure to read the information about this block in paragraph 6 of the attached instructions.)

The Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. 110-252, 122 Stat. 2323 (codified as amended at 38 U.S.C. § 3301 et seq. (2013)) (the "Act"), established the Post-9/11 GI Bill program ("Ch. 33"). Congress created Ch. 33 because the existing "educational assistance program for veterans...[was] designed for peacetime service" and "[i]t is in the national interest for the United States to provide veterans who serve on active duty in the Armed Forces after September 11, 2001, with enhanced educational assistance benefits that are worthy of such service." 38 U.S.C. § 3301 note.

Under the Act, a veteran is entitled to Ch. 33 benefits if they have sufficient qualifying Post-9/11 active duty service. Id. at § 3311. As originally enacted, the Act contemplated that some veterans would have sufficient qualifying service to establish entitlement to Ch. 33 and other educational assistance benefits, such as the Montgomery GI Bill ("Ch. 30"), simultaneously, although it prohibited the concurrent use of multiple benefits in such instances. See id. at § 3322(a). Those with insufficient

(Continue on the back, or attach sheets of paper, if you need more space.)

10. OPTIONAL BOARD HEARING

IMPORTANT: Read the information about this block in paragraph 6 of the attached instructions. This block is used to request an optional Board of Veterans' Appeals (Board) hearing. DO NOT USE THIS FORM TO REQUEST A HEARING-BEFORE VA REGIONAL OFFICE PERSONNEL. Check one (and only one) of the following boxes:

A. I DO NOT WANT AN OPTIONAL BOARD HEARING. (Choosing this option often results in the Board issuing its decision most quickly. If you choose, you may write down what you would say at a hearing and submit it directly to the Board.)

I WANT AN OPTIONAL BOARD HEARING:

B. BY LIVE VIDEOCONFERENCE AT A LOCAL VA OFFICE. (Choosing this option will add delay to issuance of a Board decision.)

C. IN WASHINGTON, DC. (Choosing this option will add delay to issuance of a Board decision.)

D. AT A LOCAL VA OFFICE. (Choosing this option will add significant delay to issuance of a Board decision.)
*This option is not available at the Washington, DC, or Baltimore, MD, Regional Offices.

11. SIGNATURE OF PERSON MAKING THIS APPEAL	12. DATE (MM/DD/YYYY)	13. SIGNATURE OF APPOINTED REPRESENTATIVE, IF ANY (Not required if signed by appellant. See paragraph 6 of the instructions.) SA5 [Signature]	14. DATE (MM/DD/YYYY) 12/23/2015
--	-----------------------	--	-------------------------------------

CONTINUATION SHEET FOR ITEM 9

service to establish entitlement to multiple programs independently could irrevocably convert their entitlement to one program, such as Ch. 30, into entitlement to Ch. 33. See *id.* at §§ 3322(d) and 3301 note (establishing optional procedures for such individuals to "elect" participation in Ch. 33, by, in part, limiting their entitlement to Ch. 33 to the amount of their relinquished entitlement to Ch. 30). In 2011, the Act was amended to confirm, but clarify, this framework, by providing that "[a]n individual with qualifying service in the Armed Forces that establishes eligibility on the part of such individual for educational assistance under" Ch. 33 and another educational assistance program can "elect...under which authority such service is to be credited," so long as there is no "duplication of eligibility based on a single event or period of service." *Id.* at § 3322(h).

Despite the plain language of the statute, the VA's Ch. 33 regulations, forms, and policies require all veterans applying for Ch. 33 benefits to elect to receive benefits under Ch. 33 by irrevocably relinquishing their eligibility under other programs. See 38 C.F.R. § 21.9520(c). This is contrary to the Act, both as originally passed and as amended, and is arbitrary and capricious, as it has the effect of denying those veterans who have served the longest the full array of educational assistance benefits provided by Congress. Congress intended for those veterans to be able to credit their periods of qualifying service to individual educational assistance programs, so as to independently establish entitlement to such and have the option of using the same consecutively. Instead, the VA has forced them to comply with special procedures applicable only to veterans with minimal amounts of service who cannot independently qualify for multiple benefits, but who Congress did not want to deprive of 33 benefits.

Mr. Rudisill is a veteran negatively impacted by the VA's Ch. 33 regulations and policies. He served on active duty in the Army for a total of almost eight years, over six of which were after 9/11, deploying once to Kosovo, once to Afghanistan, and twice to Iraq. Mr. Rudisill became fully entitled to Ch. 30 benefits following several years of service as an enlisted soldier, a point the VA has conceded, and used some of those benefits to attend college and participate in his school's ROTC program. Following graduation, he was commissioned as an officer and served again on active duty for over three years. Because he did not attend college on an ROTC scholarship or graduate from a military service academy, all of Mr. Rudisill's active duty service as a commissioned officer is creditable towards Ch. 33 eligibility, which the VA has also conceded.

Despite Mr. Rudisill's extensive qualifying service, the VA's regulations forced him to, purportedly, elect Ch. 33, in lieu of Ch. 30, in order to utilize Ch. 33 benefits. The VA then applied 38 C.F.R. § 21.9550(b) to limit his entitlement to Ch. 33 to the amount of his relinquished entitlement to Ch. 30, which is 10 months and 16 days. As all requirements providing for such an election and limitation of entitlement are invalid as applied to a veteran such as Mr. Rudisill, he appeals all of the VA's decisions in response to his March 19, 2015 VA Form 22-1990 (Application for VA Educational Benefits), specifically the VA's March 20, 2015, May 21, 2015, and October 28, 2015 Certificates of Eligibility, its April 8, 2015 letter to Senator Tim Kaine regarding Mr. Rudisill's claim, and its October 28, 2015 Statement of the Case. In addition to the issues already discussed, the VA has also miscalculated Mr. Rudisill's total qualifying service under Ch. 33 in each of the Certificates of Eligibility.

Mr. Rudisill hereby takes exception to and preserves all errors the VA Regional Office may have made or the Board may hereafter make in deciding this appeal. This includes, but is not limited to, errors in failing to adjudicate issues or claims reasonably raised by the record, even though not specifically mentioned by the appellant, all legal and fact-finding errors, failure to follow VA manuals and guidance, failure to discharge the duty to assist, and any other due process errors.

(Attach additional sheets, if necessary)

SA6



**Department of
Veterans Affairs**

**APPLICATION FOR VA EDUCATION BENEFITS
(VA FORM 22-1990)**

Use this form to apply for educational assistance under the following benefit programs:

- Post- 9/11 GI Bill chapter 33 of title 38, U.S. Code
- Montgomery GI Bill (MGIB) chapter 30 of title 38, U.S. Code
- Montgomery GI Bill - Selected Reserve (MGIB-SR) chapter 1606 of title 10, U.S. Code
- Reserve Educational Assistance Program (REAP) chapter 1607 of title 10, U.S. Code
- Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) chapter 32 of title 38, U.S. Code, or section 901 or section 903 of Public Law 96-342

**INFORMATION AND INSTRUCTIONS
FOR COMPLETING THE APPLICATION FOR VA EDUCATION BENEFITS**

Do not use this form to apply for Vocational Rehabilitation and Employment benefits (chapter 31 of title 38, U.S. Code), Dependents Educational Assistance benefits (chapter 35 of title 38, U.S. Code), Transfer of Entitlement, or National Call to Service (section 510 of title 10, U.S. Code). These benefits require different application forms that can be completed on-line and printed at www.va.gov/vaforms or can be obtained from the nearest VA regional office. They may also be available where you received this application.

INTERNET VERSION AVAILABLE - You may complete and submit this application on-line at www.gibill.va.gov. Click "Apply On Line" and select the "Education" option.

VA VOCATIONAL AND EDUCATIONAL COUNSELING HELP AVAILABLE - If you need help planning your individual educational and career goals, VA offers a wide range of counseling services to help you make these decisions. Services include educational and vocational guidance and such testing as necessary for you to develop a greater understanding of your skills, talents, and interests. For further information on VA counseling, call VA toll-free at 1-888-GI-BILL-1 (1-888-442-4551) or TDD at the Federal Relay, 711.

NOTE: The numbers on the instructions match the item numbers on the application. Items not mentioned are self-explanatory.

Part II

(This section provides an overview of the general eligibility requirements for various education programs. Additional requirements not listed on this form may be necessary.)

ITEM 7. The Department of Treasury requires all Federal benefit payments be made by electronic funds transfer (EFT), also called direct deposit (Direct Deposit is not available for Chapter 32 recipients.) Please attach a voided personal check or deposit slip or provide the information requested below to enroll in direct deposit. If you do not have a bank account, you must receive your payment through Direct Express Debit MasterCard. To request a Direct Express Debit MasterCard you must apply at www.usdirectexpress.com or by telephone at 1-800-333-1795. If you elect not to enroll, you must contact representatives handling waiver requests for the Department of Treasury at 1-888-224-2950. They will address any questions or concerns you may have and encourage your participation in EFT.

ITEM 9A. You may be eligible for benefits under the Post-9/11 GI Bill, also referred to as chapter 33, if you served at least 90 aggregate days on active duty (excluding entry level and skill training) after September 10, 2001. You may also qualify if you were discharged due to a service-connected disability after serving at least 30 continuous days on active duty after September 10, 2001.

ITEM 9B. You may be eligible for the Montgomery GI Bill, also referred to as MGIB or chapter 30, if you served on active duty and meet certain conditions. NOTE: You do not have to be on active duty to apply for benefits under this program. You must meet any one of the following conditions (there are additional requirements):

You first entered service on or after July 1, 1985, and you didn't decline this benefit at your initial entry into service

OR

You entered service (or agreed to delayed entry) before January 1, 1977, and you have educational assistance entitlement remaining under the Vietnam Era GI Bill (also known as "chapter 34")

OR

You were voluntarily separated under the Voluntary Separation Incentive (VSI) or Special Separation Benefit (SSB) programs and had your military pay reduced by \$1,200

OR

You were involuntarily separated from active duty after February 2, 1991

OR

You were on active duty and a participant in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) program on or before October 9, 1996, or you first entered the National Guard under title 32, U.S. Code, between July 1, 1985, and November 28, 1989, you elected chapter 30 benefits between October 9, 1996, and October 8, 1997, and you paid \$1,200

OR

You were on active duty and eligible for VEAP benefits on October 9, 1995, or elected chapter 30 benefits between November 1, 2000, and October 31, 2001, and you paid \$2,700.

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ITEM 9C. You may be eligible for the Montgomery GI Bill - Selected Reserve Educational Assistance Program, also known as MGIB-SR or chapter 1606, if you are a member of the Selected Reserve and meet certain requirements, including a 6-year commitment. (The Departments of Defense and Homeland Security determine eligibility for this program.)

To expedite processing, attach a copy of your DD 2384, Selected Reserve Educational Assistance Program (GI BILL) Notice of Basic Eligibility. This form is also called a "NOBE." Your reserve unit should have issued this notice to you when you became eligible for the Montgomery GI Bill - Selected Reserve Educational Assistance Program. If you are unable to locate your copy, request a duplicate from your reserve unit.

ITEM 9D. You may be eligible for benefits under the Reserve Educational Assistance Program (REAP), also known as chapter 1607, if you are a member of the Ready Reserve and were called or ordered to active service to support a contingency operation for at least 90 consecutive days on or after September 11, 2001. (The Department of Defense and Homeland Security determine eligibility for this program.)

Attach a copy of any notice of eligibility to this program that you have received from your service component. Also, attach a copy of your orders showing you were called up to active service. If you do not have a copy of your orders, request a duplicate from your unit.

ITEM 9E. You may be eligible for benefits under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP), also known as Chapter 32, if your service began on or after January 1, 1977, and before July 1, 1985, and you contributed to a VEAP account.

You may be eligible for benefits under the Post-Vietnam Era Non-Contributory Veterans' Educational Assistance Program, also known as "Non-Contributory VEAP" or Section 903", if your service began on or after November 30, 1980, and before October 1, 1981, and your branch of service paid contributions into your VEAP account.

ITEM 9F. If you are eligible for MGIB, MGIB-SR, OR REAP, you must elect to give up eligibility under the program for which you are eligible in order to receive benefits under the Post-9/11 GI Bill (chapter 33). If you are eligible for more than one of the programs listed (MGIB, MGIB-SR, and REAP), you are only required to give up one of the programs for which you are eligible in order to receive benefits under the Post-9/11 GI Bill. You may not receive more than a total of 48 months of benefits under two or more programs. If you elect chapter 33 in lieu of chapter 30, your months of entitlement under chapter 33 will be limited to the number of months of entitlement remaining under chapter 30 on the effective date of your election. If you wish to elect to receive benefits under the Post-9/11 GI Bill, check the box next to the program (only check one box) you are giving up.

NOTE: An election to give up benefits under an existing program and receive benefits under the Post-9/11 GI Bill is **IRREVOCABLE**. You should carefully consider your decision before completing this section. If you need more information to make a choice, you should visit our at www.gibill.va.gov or call our toll-free customer service number at 1-888-GIBILL-1 (1-888-442-4551).

PART III

ITEM 10A. Self explanatory, except for the following items:

"Vocational Flight Training." You must already have a private pilot's license. If you are taking an Airline Transport Pilot course, you must have a valid first-class medical certificate on the date that you enter training. For all other flight courses, you must have a valid second-class medical certificate on the date that you enter training.

"National Test Reimbursement." You can be reimbursed for the cost of approved tests for admission to, or credit at, institutions of higher learning.

"Licensing or Certification Test Reimbursement." A licensing test is a test offered by a state, local, or federal agency that is required by law to practice an occupation. A certification test is a test designed to provide affirmation of an individual's qualifications in a specific occupation. Examples include EMT, CPA, MCSE, CCNP, etc.

"Tuition Assistance Top-Up" This benefit is payable only under MGIB and the Post-9/11 GI Bill programs. You can receive benefits to pay for the difference between what the military pays with Tuition Assistance (TA) and the total costs of these courses.

PART VIII

QUESTIONS ARE ONLY FOR APPLICANTS WHOSE SERVICE BEGAN BEFORE JANUARY 1, 1977, (or delayed entry before January 2, 1978). If you are currently married or if you have children under age 18 (under age 23 if in school), you should complete and return VA Form 21-686c. If your children are in school, you should also complete and return VA Form 21-674 for each child. If your parent(s) are dependent on you for financial support, you should complete and return VA Form 21-509. These forms may require additional documentation. VA cannot pay any additional benefits for dependents without properly completed forms and documentation. You can find VA forms 21-686c, 21-674, and 21-509 on-line at www.va.gov/vaforms.

ITEM 23. If you are certifying that you are married for the purpose of VA benefits, your marriage must be recognized by the place where you and/or your spouse resided at the time of marriage, or where you and/or your spouse resided when you filed your claim (or a later date when you became eligible for benefits) (38 U.S.C. § 103(c)). Additional guidance on when VA recognizes marriages is available at www.va.gov/opa/marriage/.

ADDITIONAL HELP

If you need more help in completing this application, call VA TOLL FREE at 1-888-GI-BILL-1 (1-888-442-4551). If you use the Telecommunications Device for the Deaf (TDD), the Federal Relay number is 711. You can also get education assistance after normal business hours at our education Internet site www.gibill.va.gov.

HOW TO FILE YOUR CLAIM

Be sure to do the following:

(A) **If you have selected a school or training establishment:**

Step 1: Mail the completed application to the VA Regional Processing Office for the region of that school's physical address. See next page for the addresses of these VA Regional Processing Offices.

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Department of Veterans Affairs

APPLICATION FOR VA EDUCATION BENEFITS
 (See attached information and instructions)

INTERNET VERSION AVAILABLE - You may complete and send your application over the Internet at: www.gibill.va.gov

PART I - APPLICANT INFORMATION

1. SOCIAL SECURITY NUMBER OF APPLICANT <input type="text"/> - <input type="text"/> - <input type="text"/>	2. SEX OF APPLICANT <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	3. APPLICANT'S DATE OF BIRTH Month Day Year <input type="text"/> - <input type="text"/> - <input type="text"/>
4. NAME (First, Middle Initial, Last) <input type="text"/>		
5. APPLICANT'S ADDRESS Number and Street <input type="text"/> <input type="text"/> Apt./Unit Number <input type="text"/> City, State, ZIP Code <input type="text"/>		
6A. APPLICANT'S TELEPHONE NUMBERS (Include Area Code) Primary: <input type="text"/> <input type="text"/> <input type="text"/> Secondary: <input type="text"/> <input type="text"/> <input type="text"/>		
6B. APPLICANT'S E-MAIL ADDRESS (if applicable) <input type="text"/>		
7. DIRECT DEPOSIT (Attach a voided personal check or provide the following information. Direct Deposit is not available for Chapter 32 recipients. See instructions for additional Direct Deposit information.) Routing or Transit Number Account Type Account Number <input type="text"/> Checking <input type="checkbox"/> Savings <input type="checkbox"/> <input type="text"/>		
8. PLEASE PROVIDE THE NAME, ADDRESS, AND PHONE NUMBER OF SOMEONE WHO WILL ALWAYS KNOW WHERE YOU CAN BE REACHED		
A. NAME	B. ADDRESS	C. PHONE NUMBER

PART II - EDUCATION BENEFIT BEING APPLIED FOR (See instructions for benefit eligibility criteria)

<input type="checkbox"/> 9A. Chapter 33 - Post-9/11 GI Bill (Complete 9F if you are eligible for chapter 30, chapter 1606, or chapter 1607)
<input type="checkbox"/> 9B. Chapter 30 - Montgomery GI Bill Educational Assistance Program (MGIB)
<input type="checkbox"/> 9C. Chapter 1606 - Montgomery GI Bill - Selected Reserve Educational Assistance Program (MGIB-SR)
<input type="checkbox"/> 9D. Chapter 1607 - Reserve Educational Assistance Program (REAP)
<input type="checkbox"/> 9E. Chapter 32 or Section 903 - Post-Vietnam Era Veterans' Educational Assistance Program (VEAP)
<input type="checkbox"/> 9F. By electing Chapter 33, I acknowledge that I understand the following: <ul style="list-style-type: none"> • I may not receive more than a total of 48 months of benefits under two or more programs. • If electing chapter 33 in lieu of chapter 30, my months of entitlement under chapter 33 will be limited to the number of months of entitlement remaining under chapter 30 on the effective date of my election. • My election is irrevocable and may not be changed. <p>I elect to receive chapter 33 education benefits in lieu of the education benefit checked below, effective _____</p> <p>I understand that my election is irrevocable and may not be changed. (Check only one) _____ (date)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Chapter 30 - Montgomery GI Bill Educational Assistance Program (MGIB) <input type="checkbox"/> Chapter 1606 - Montgomery GI Bill - Selected Reserve Educational Assistance Program (MGIB-SR) <input type="checkbox"/> Chapter 1607 - Reserve Educational Assistance Program (REAP)

PART III - TYPE AND PROGRAM OF EDUCATION OR TRAINING

10A. TYPE OF EDUCATION OR TRAINING (See instructions for additional information)	
<input type="checkbox"/> COLLEGE OR OTHER SCHOOL (Including on-line courses)	<input type="checkbox"/> APPRENTICESHIP OR ON-THE-JOB
<input type="checkbox"/> VOCATIONAL FLIGHT TRAINING	<input type="checkbox"/> CORRESPONDENCE
<input type="checkbox"/> NATIONAL TEST REIMBURSEMENT (SAT, CLEP, ETC.)	<input type="checkbox"/> TUITION ASSISTANCE TOP-UP (Chapter 30 & 33 only)
<input type="checkbox"/> LICENSING OR CERTIFICATION TEST REIMBURSEMENT (MCSE, CCNA, EMT, NCLEX, ETC.)	

VA DATE STAMP
 (Do Not Write In This Space)

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