

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,
XXX-XX-[REDACTED]

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy (DON).

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and to consider Petitioner's application on its merits.

c. On 30 May 2006, Petitioner was discharged from the Delayed Entry Program and entered active duty.¹ See enclosure (2).

d. On 20 December 2017, the Chief of Naval Operations (CNO) published NAVADMIN 302/17 to announce the BRS enrollment period for opt-in eligible service members.² Specifically, the opt-in period for eligible members was announced as 1 January 2018 through 31 December 2018, during which period eligible service members could enroll in the BCRS via the myPay website. Paragraph 8 of NAVADMIN 302/17 specified that "opt-in eligible service members who are eligible for BRS continuation pay (CP) in CY18 and desire to elect CPT, *must enroll in the BRS first and elect to take CP prior to reaching 12 YOS (emphasis added).*"³ See enclosure (3).

e. On 10 January 2018, Petitioner elected to opt into the BRS. She did not, however, indicate her election for CP and agreement to serve an additional four years of obligated service from the date of her eligibility.⁴ See enclosure (4).

f. On 26 April 2018, Petitioner reenlisted four years.⁵ See enclosure (5).

g. On 8 March 2022, Petitioner reenlisted for two years.⁶ See enclosure (5).

h. On 16 June 2022, Petitioner advanced to Hospital Corpsman First Class (HM1)/E-6. See enclosure (6).

i. Petitioner asserts that relief is warranted because she was neither notified of nor properly counseled regarding the process to elect BRS CP. She elected BRS during the initial roll-out because she was close to her high year tenure (HYT) and it was suggested to her that if involuntarily separated upon reaching her HYT that she would benefit from receiving the CP.⁷ See enclosure (1).

j. By memorandum dated 11 October 2023, the Office of the CNO (OPNAV N130) provided an advisory opinion (AO) recommending that the Petitioner's request for relief be denied. Specifically, the AO noted that, in accordance with reference (b), it is the Service member's

¹ This event established Petitioner's Pay Entry Base Date (PEBD).

² Opt-in eligible service members included active component service members whose Date Initially Entered Military Service was on or before 31 December 2017, and who had less than 12 years of service (YOS) as of 31 December 2017, based on their PEBD.

³ Based upon Petitioner's PEBD of 30 May 2006, her last day to elect BRS CP was 29 May 2018.

⁴ Enclosure (4) reflects that Petitioner neither elected nor declined CP.

⁵ This reenlistment extended Petitioner's end of obligated active service (EOAS) date to 25 April 2022.

⁶ This reenlistment extended Petitioner's EOAS date to 7 March 2024.

⁷ Petitioner claimed that she would have reached her HYT in June 2022 in enclosure (8).

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responsibility to submit a request for CP prior to reaching 12 YOS from the member's PEBD and to ensure that their e-mail address is accurate within the Navy personnel system. It further noted that the Navy personnel system will send notifications to BRS-eligible members first at six months, then at 90 days prior to the CP election deadline, reminding members of the deadline, before a final e-mail is sent to the address registered in the Navy personnel system one month prior to the deadline, and that a NAVADMIN is released annually notifying the fleet about CP. Accordingly, OPNAV N130 opined that the requirements and process to receive CP are clearly delineated, and that there error on behalf of the Navy or injustice to the member. It was Petitioner's responsibility to elect BRS continuation pay. See enclosure (7).

k. By e-mail dated 30 October 2023, Petitioner provided a statement in response to the OPNAV 130 AO referenced in paragraph 3i above. Specifically, she stated that her decision to enroll in BRS was due to the low advancement opportunities in the Hospital Corpsman rating. If she did not advance to HM1/E-6, she intended to reenlist for an additional four years up to her HYT date of June 2022 to receive CP. She also asserted that the automated e-mail notifications referenced by the AO were not received, and cited the publication date of NAVADMIN 158/18, which was after her CP election deadline, to suggest that she did not receive the notice referenced by the AO.⁸ See enclosure (8).

l. By e-mail dated 4 December 2023, Petitioner acknowledged CP eligibility; CP obligated service requirements; and elected lump-sum payment. See enclosure (9).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board found an injustice warranting relief.

The Board found no error by the DON in failing to provide Petitioner with CP upon her opt-in to the BRS in 2018. It was Petitioner's responsibility to affirmatively elect CP *after* opting in to the BRS, and it is apparent that she failed to do so. Accordingly, the Board found no error in the denial of BRS CP which was never actually requested.

Despite finding no error in the denial of BRS CP, the Board found an injustice under the circumstances. Petitioner met the eligibility criteria for CP when she opted in to the BRS on 10 January 2018, and soon thereafter reenlisted for the four year period required for CP in accordance with reference (b). Although Petitioner failed to complete the administrative requirements to receive CP at the time, the Board found it highly unlikely that she would have opted in to the BRS and subsequently reenlisted for four years without the expectation that in doing so she would become eligible to receive CP. In this regard, the Board agreed with the OPNAV N130 belief, expressed in enclosure (8), that "a member with more than 8 years of service would not have opted into BRS without the expectation that they were going to receive CP." The fact that she did not complete the administrative requirements to receive CP under these circumstances added credibility to her claim that she was not adequately informed or made

⁸ NAVADMIN 158/18, which was published to remind eligible Sailors of the BRS opt in period, was published on 2 July 2018, after Petitioner's 29 May 2018 deadline. However, NAVADMIN 302/17 was the relevant notice in Petitioner's case.

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aware of those requirement. Finally, the Board attributed Petitioner's untimely request for relief to her unawareness of the Board process.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected to reflect that Petitioner, in coordination with her command, completed the required CP NAVPERS 1070/613 (Administrative Remarks) prior to reaching 12 years of service, and submitted it to Commander, Navy Personnel Command (NPC) for inclusion in her Official Military Personnel File, and that the Commander, NPC (PERS-8) validated Petitioner's CP eligibility and released CP authorization to Defense Finance and Accounting Service in a timely manner. Note: Defense Finance and Accounting Service will complete an audit of Petitioner's pay records to determine retroactive pay entitlement.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

5. The foregoing action of the Board is submitted for your review and action.

12/7/2023

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

___ Board Recommendation Approved (Grant Relief – I concur with the Board’s conclusion and therefore direct the relief recommended by the Board above.)

Board Recommendation Disapproved (Deny Relief – I do not concur with the Board’s finding of an injustice in the denial of BRS CP for Petitioner under the circumstances. The requirement for members to affirmatively elect CP after enrolling in the BRS was clearly delineated in NAVADMIN 302/17 and in reference (b). As Petitioner elected BRS just three weeks after publication of NAVADMIN 302/17 in the midst of the 2017 holiday schedule, it is likely that she was aware of, and acted based upon, that message. Even if she were unaware of the message and of the separation election requirement, however, it was her obligation to educate herself with regard to the process before making such a momentous election. It is also reasonable to expect a noncommissioned officer with nearly 12 years of service at the time to do so. While I do not doubt that it was the Petitioner’s intent to elect CP after opting into the BRS, I simply find no injustice in the fact that she was denied a benefit because she failed to follow the instructions which were provided and applicable to every eligible Service member. Accordingly, I agree with the AO’s recommendation, and direct that no corrective action be taken on the Petitioner’s naval record.

1/20/2024

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]