

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-02172

XXXXXXXXXXXXXXXX

COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

He be eligible to receive his Continuation Pay (CP) under the Blended Retirement System (BRS).

APPLICANT'S CONTENTIONS

On 2 June 2020 he received the initial myPers notification of eligibility for Blended Retirement System Continuation Pay and acknowledged receipt; however, the form did not specify that the Statement of Understanding had to be signed and dated within 90 days from his 12 year service anniversary date. As such, he acted on the notification immediately and he and his commander signed the Statement of Understanding on 5 June 2020, which was outside of the window. Therefore, his election to receive Continuation Pay was never processed.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is an Air Force Reserve captain (O-3).

On 2 January 2018, according to the Military Personnel Data System (MilPDS), the applicant chose to opt into the Blended Retirement System. It further shows that the applicant has a "Pay Date" (also referred to as the Pay Entry Base Date [PEBD]) of 4 November 2008. Under the new retirement plan, the applicant was eligible for Continuation Pay, provided his election was made prior to the 12th anniversary of his "Pay Date" (4 November 2020).

On 5 June 2020, according to "Continuation Pay Statement of Understanding and Election," provided by the applicant, he requested Continuation Pay. On that same date, his commander approved his request; however, the request was initiated 90 days prior to the 4 November 2021 anniversary date of his 12th year from his Pay Date.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit D.

APPLICABLE AUTHORITY/GUIDANCE

General Blended Retirement System Guidance: Sections 631 through 635 of Public Law 114-92, the National Defense Authorization Act for Fiscal Year 2016, amended in Public Law 114-80, National Defense Authorization Act for Fiscal Year 2017.

On 27 January 2017, the Deputy Secretary of Defense implemented guidance for the newly created retirement system for the Uniformed Services, which was enacted in the 2016 National Defense Authorization Act for Fiscal Year 2016. This system, called the Blended Retirement System combines the traditional legacy retirement pension, also known as a defined benefit, with

a defined contribution benefit into a Thrift Savings Plan. The Blended Retirement System went into effect on 1 January 2018.

Active component Service members with fewer than 12 years of service as of 31 December 2017, calculated from their Pay Entry Base Date [PEBD] (for the Air Force it is referred to as the "Pay Date"), and members of the National Guard or Reserve who have accrued fewer than 4,320 points as of 31 December 2017, are also grandfathered under the current retirement system but may choose to opt-in to the Blended Retirement System.

Guidance on Continuation Pay: In accordance with AFI 36-3012, Military Entitlements, Chapter 4, Continuation Pay and Personnel Services Delivery (PSD) Guide, Blended Retirement System (BRS) Continuation (CP) Execution, Organization, and Responsibilities:

Members of the Uniformed Services who are covered by the Blended Retirement System are eligible to receive a one-time, mid-career bonus payment in exchange for an agreement to perform additional obligated service. The amount is determined by applying a multiplier to the member's monthly base pay. For RegAF Airmen, the multiplier is 2.5 and for ANG or AFR Airmen, the multiplier is 0.5.

Service members eligible to receive continuation pay must have completed not less than 8 and not more than 12 years of service, as computed from the members Pay Entry Base Date (otherwise referred to in the Air Force as the "Pay Date"). In addition, the member must complete the Statement of Understanding and Election (SOU), obtain their commander's approval for Continuation Pay, and commit to a four year military service obligation. The election for Continuation Pay must be made prior to the member's 12th year of service based on pay date but no earlier than 90 days in advance.

According to a myPers article, *Blended Retirement System Continuation Pay*, updated on 12 March 2021, "Airmen will be notified of their potential eligibility for BRS CP and receive a BRS CP Election SOU via myPers messaging starting approximately 90 days prior to the potential BRS CP effective date." In addition, the Continuation Pay fact sheet pulled from myPers states that notification for Continuation Pay will start 60 days before a member's 12th year of service.

For more information, see Exhibit C.

AIR FORCE EVALUATION

USAF A1PA, recommends granting the application. The documentation provided by the applicant shows that he received his MyPers notification of Eligibility for Blended Retirement System (BRS) Continuation Pay (CP) on 2 June 2020. The notification did not convey that the Continuation Pay application had to be signed and dated within 90 days from the 12 years of service per the Personnel Services Delivery (PSD) Guide, *Blended Retirement System (BRS) Continuation (CP) Execution, Organization, and Responsibilities*. As such, the applicant immediately acted on the notification and obtained his commander's approval on 5 June 2020 which exceeded the 90 day window and resulted in the continuation pay not being processed as expected.

The applicant, absence of clear guidance, took the appropriate actions and should not be penalized based on the lack of instructions provided. The applicant has not received Continuation Pay based on the election notification date and his actions demonstrate clear intent to complete the necessary requirements for making a Continuation Pay election.

The complete advisory opinion is at Exhibit D.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 October 2021 for comment (Exhibit E), but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is the victim of an error or injustice. The Board concurs with the rationale and recommendation of USAF A1PA and finds a preponderance of the evidence substantiates the applicant's contentions. The Board notes the notification for Continuation Pay did not provide instruction that the election had to be made no earlier than 90 days in advance and his actions demonstrate his clear intent to complete the necessary requirements for making a Continuation Pay election. Therefore, the Board recommends correcting the applicant's records as indicated below.

RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show that on 15 August 2020, the applicant submitted a timely and effective Continuation Pay Statement of Understanding and Election to accept Continuation Pay in accordance with Public Law 114-80.

CERTIFICATION

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-02153 in Executive Session on 15 March 2022:

- , Panel Chair
- , Panel Member
- , Panel Member

All members voted to correct the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 16 June 2021.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Blended Retirement System Guidance.
- Exhibit D: Advisory opinion, USAF A1PA, w/atch, dated 18 October 2021.
- Exhibit E: Notification of advisory, SAF/MRBC to applicant, dated 18 October 2021.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.