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## UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

### RECORD OF PROCEEDINGS

IN THE MATTER OF:

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DOCKET NUMBER: BC-2024-01584

COUNSEL: NONE

HEARING REQUESTED: YES

### APPLICANT'S REQUEST

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

### APPLICANT'S CONTENTIONS

On 26 Sep 23, she received a BRS CP eligibility notification. The deadline to opt-in was 31 Jan 24. On 1 Feb 24, she received an automated email the application window closed; however, she still submitted all required documents on 1 Feb 24, including her commander's endorsement and signed Statement of Understanding (SOU). On 9 Feb 24, she was notified through myFSS that AFPC denied the application because she signed the SOU after her 12-year pay date anniversary (31 Jan 24), but she is willing to accept the additional four-year Active-Duty Service Commitment (ADSC) if this request is approved by the AFBCMR.

She believes the correction should be made because she is a superior performer and loves serving as an officer in the Judge Advocate General's (JAG) Corps. She recognizes she missed the deadline; however, she was unable to access the system on 31 Jan 24 and submitted all required documents less than 24 hours after the application window closed. Additionally, she will promote to the grade of lieutenant colonel (O-5) effective 1 Jun 24 and will not have an ADSC after 20 Jun 24. While she intends to remain on active-duty, denial of the BRS CP could impact whether she chooses to accept an assignment upon completion of her current tour at the Pentagon in 2025. She is willing to appear in person, via video, or telephonically if the Board requires additional information. However, if her case can be appropriately adjudicated with the information provided, she will waive the opportunity to appear before the Board.

In support of her appeal, the applicant provides copies of her performance reports, a signed CP SOU, and a letter of support from her supervisor, who supports her request, attests to her superior performance and states the Air Force will benefit greatly from her continued service over the next four years.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a Regular Air Force lieutenant colonel (O-5).

The Military Personnel Data System (MilPDS) reflects the applicant's actual "Pay Date" (also referred to as the Pay Entry Base Date [PEBD]) is 31 Jan 12. Since she had less than 12 years of service as of 31 Dec 17, she was eligible to opt-in to the BRS and MilPDS reflects an opt-in date of 21 Dec 18. Furthermore, under the BRS, the applicant was eligible for CP, provided her election

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was made prior to the 12th anniversary of her “Pay Date” (31 Jan 24) and she obtained 48 months of retainability from the effective date.

On 1 Feb 24, according to “Continuation Pay Statement of Understanding and Election,” provided by the applicant, she requested CP and on that same date, her commander approved her request; however, the SOU was signed and submitted one-day after the anniversary of her 12th year from her “Pay Date.”

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

#### **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 Jan 17, 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 Jan 18.

Active component Service members with fewer than 12 years of service as of 31 Dec 17, 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 Dec 17, 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 Mar 21, “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 and

according to DAFI 36-3012, paragraph 2.4.3.4. AFPC will “notify Airmen and Guardians of their eligibility for continuation pay at least 60 days prior to the member’s 12-year pay date.”

### **AIR FORCE EVALUATION**

AFPC/DPMSSM recommends denying the application. Based on the documentation provided by the applicant and analysis of the facts, there is no evidence of an error or injustice. The applicant’s “Pay Date” is 31 Jan 12, and she has a date of separation (DOS) of 8/8/3888. Based on the applicant’s “Pay Date,” her 12-year anniversary date to make the election occurred on 31 Jan 24. On 26 Sep 23, the applicant was sent an initial e-mail via myFSS case **Work-Product** notifying her of her eligibility to elect BRS-CP, but no election was made prior to the deadline. On 1 Feb 24 the case was closed and the applicant was informed she was no longer eligible as her 12-year pay date anniversary had passed. Although the system only sent out the initial notification to the applicant, she did not attempt to sign the Statement of Understanding (SOU) until after she received the myFSS closed case notification.

The complete advisory opinion is at Exhibit C.

### **APPLICANT’S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 3 Jun 24 for comment (Exhibit D), and the applicant replied on 17 Jun 24. In response, the applicant provided a letter of support from the Headquarters Air Force Judge Advocate General (HQ/AF JAG) and a letter of support from the Air Combat Command Staff Judge Advocate (ACC/SJA). The letters confirm her exceptional performance as an officer in the JAG Corps, supports her request for CP in exchange for a four-year ADSC, and believes an exception to policy should be made in this circumstance as it is in the best interest of the Air Force.

The applicant’s complete response is at Exhibit E.

### **ADDITIONAL AIR FORCE EVALUATION**

AFPC/DPMSSM, after further review, changed their recommendation to grant the applicant’s request. Based on the documentation provided by the applicant and analysis of the facts, there is evidence of an error or injustice. Although the applicant did not sign the SOU on or before her 12-year pay date anniversary, the myFSS system only sent out the initial notification and failed to send out additional notifications every month until the applicant’s 12-year Pay Date anniversary.

The complete advisory opinion is at Exhibit F.

### **APPLICANT’S REVIEW OF ADDITIONAL AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 7 Aug 24 for comment (Exhibit G), 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 notes the conflicting advisory opinions prepared in this case; however, after

thoroughly reviewing this application, the Board concurs with the rationale and recommendation of AFPC/DPMSSM advisory opinion dated 5 Aug 24 and finds a preponderance of the evidence substantiates the applicant's contentions. Specifically, the Board notes the applicant only received a single e-mail notification regarding her eligibility for BRS-CP and the myPers system failed to send any follow-up notifications. In addition, the applicant has provided letters of support from her supervisor, HQ/AF JAG and the ACC/SJA who all support her request and attest to her exceptional performance as a JAG officer. As such, the purpose of the BRS CP program is to retain our trained and talented Airmen who will continue contributing to the Air Force mission for years to come and the Board recognizes the applicant has displayed these qualifications. Given the applicant signed and submitted the SOU only one day after her 12-year pay date anniversary, and the fact she is willing to accept the four-year ADSC associated with CP, the Board believes she met the intent of the program, and a procedural oversight should not preclude her from receiving the CP. Therefore, the Board recommends correcting the applicant's records as indicated below.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

## RECOMMENDATION

The pertinent military records of the Department of the Air Force relating to APPLICANT be corrected to show on 31 January 2024, the applicant submitted a timely and effective Blended Retirement System Continuation Pay Statement of Understanding and Election to accept Continuation Pay in accordance with Public Law 114-80; her election for Continuation Pay was accepted; and the applicant received a 48 month active duty service commitment in exchange for the approved Continuation Pay election.

## CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01584 in Executive Session on 10 Sept 24:

Work-Product Chair, AFBCMR

Work-Product Panel Member

Work-Product Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 29 Apr 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory opinion, AFPC/DPMSSM, w/atchs, dated 30 May 24.
- Exhibit D: Notification of advisory, SAF/MRBC to applicant, dated 3 Jun 24.
- Exhibit E: Applicant's Response, w/atchs, dated 17 Jun 24 and 18 Jun 24.
- Exhibit F: Advisory Opinion, AFPC/DPMSSM, dated 5 Aug 24.
- Exhibit G: Notification of Advisory, SAF/MRBC to Applicant, dated 7 Aug 24.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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