

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 November 2023

DOCKET NUMBER: AR20230003085

APPLICANT REQUESTS: change his retirement plan from the Blended Retirement System (BRS) to the legacy retirement.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3822 (Report of Mental Status Evaluation)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he is requesting to change his retirement from the BRS to the legacy retirement due to an irrational decision being made. It was an irrational decision made on his end because when he made the decision, his head was not clear as he was being seen in behavioral health and was dealing with a lot of mental stressors that he has since overcome, and he is now fully excelling. He feels that due to an irrational decision being made on an extremely important part of his future, it would be in the interest of justice to approve his request. He understands if it cannot be possible; however, he would like the possibility to be considered.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) dated 11 May 2012 shows the applicant enlisted in the U.S. Army Reserve (USAR) Delayed Entry Program (DEP) for a period of 8 years. On 6 November 2012, he was discharged from the USAR DEP and entered active duty for a period of 4 years.

b. DA Form 1695 (Oath of Extension of Enlistment), dated 14 June 2016, shows he extended his enlistment for a period of 14 months.

c. DD Forms 4, show he reenlisted on 11 October 2018 for a period of 6 years and on 26 July 2022 for a period of 6 years.

d. The applicant's service record is void of behavioral health records or documentation showing he elected to enroll in the BRS.

4. The applicant provides a DA Form 3822, dated 20 March 2018, which shows he was command directed to behavioral health for evaluation. He had no duty limitations due to behavioral health reasons. There was no diagnosis causing the applicant to fall below retention standards for behavioral health. A review of the applicant's records documented a behavioral health history; however, the applicant was fit for duty. The applicant was not cleared for deployment without a behavioral health waiver. The form shows he had normal cognition, normal behavior, normal perceptions and normal impulsivity.

5. On 6 October 2023, the Office of the Deputy Chief of Staff G-1, Program Analyst, Compensation and Entitlements Division, provided an advisory opinion, which states, in effect:

a. After careful review of the information provided, G-1 did not support the applicant's request for removal from the BRS based on the documentation provided.

b. On 1 January 2018, eligible Soldiers were given access to the BRS link on myPay to enroll in the BRS. The system process required Soldiers to follow five separate screens to include providing their current address and date of birth.

c. Screen two required the Soldier to acknowledge that they understood that the decision to opt-in was irrevocable once they completed the election.

d. On screen three and four, Soldiers had to check a box and answer a question respectively that stated, "I fully understand that I am opting into the BRS."

e. Screen five allowed the Soldier to save and print the confirmation and again informed the Soldier that they were opting into the BRS.

6. On 13 October 2023, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The

evidence shows on 1 January 2018, eligible Soldiers were given access to the BRS link on myPay to enroll in the BRS. The system process required Soldiers to follow five separate screens to include providing their current address and date of birth. Screen two required the Soldier to acknowledge that they understood that the decision to opt-in was irrevocable once they completed the election. On screen three and four, Soldiers had to check a box and answer a question respectively that stated, "I fully understand that I am opting into the BRS." Screen five allowed the Soldier to save and print the confirmation and again informed the Soldier that they were opting into the BRS. The Board was not persuaded by the applicant's argument that he made an irrational decision and/or that his head was not clear as he was being seen in behavioral health and was dealing with a lot. The Board determined there is insufficient evidence to grant him the requested relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. All Army Activity Message Number 028/2018 states, effective 1 January 2018, eligible Soldiers who completed the mandatory training were eligible to enroll in the BRS. The Department of Defense policy is that this informed decision by a Soldier eligible to enroll in the BRS is irrevocable.
3. Department of Defense Financial Management Regulation 7000.14, chapter 2 states the BRS is the retired pay system for all Service members who enter military service on or after 1 January 2018. Service members who were already in uniformed service before 1 January 2018, were grandfathered under the applicable legacy retirement system. The law permitted active duty Service members with less than 12 years of service on 31 December 2017, or Service members in the Reserve Component who were in a paid status and had accrued fewer than 4,320 retirement points as of 31 December 2017, the option to elect to be covered under the BRS or to remain with their applicable legacy retirement system. The law provided a 1-year election period for those Service members who were eligible to opt into BRS from 1 January 2018 and ending on 31 December 2018. The decision to opt into BRS was irrevocable.

//NOTHING FOLLOWS//