

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230006137

APPLICANT REQUESTS: to be placed back into the "High 3" Retirement system instead of the "Blended Retirement System."

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statements, February and March 2023

FACTS:

1. The applicant states he started his military service career in July 2012 where he enlisted into the Navy while serving active duty for 4 years, then transitioned to the Navy Reserves for a short time. He then transitioned to the [REDACTED] Army National Guard so he could attend Army ROTC (Reserve Officers' Training Corps) while going to college and return to the active Army as an Officer where he is currently serving. He recently noticed on my March 2023 LES that his retirement Block says "Blended" but his February 2023 LES says "Choice". He does not recall ever opting into or wanting to be a part of the Blended retirement system because he planned on completed at least 20 years of active-duty service which is a far better retirement system than what the Blended system has to offer. He does however remember in 2018 his National Guard unit telling him that he needed to log into MYPAY and select to not opt into the Blended system if he wanted to continue with my High 3 Legacy Retirement. I very well may have selected the wrong choice and not realized at the time. He has not received any agency auto or match since the opt in/out period, so he assumed he was still in the High 3 retirement system. He sent up a pay inquiry to his finance office in Fort McCoy WI on 19 March 2023 and the finance office had informed him that he was not in the High 3 retirement system but actually apart of Blended. Hearing this news was devastating knowing he was going to take a significant pay cut after completing his 20 years of Federal Active Service if he were to stay in the Blended System. He is requesting to be placed back into the High 3 Retirement system so he can retire under the system which he initially signed up for back in 2012.

2. Review of the applicant's service records shows:

a. The applicant's Navy DD Form 214 (certificate of Release or Discharge from Active Duty) show she served on active duty in the U.S. Navy from 19 July 2012 to 18 July 2016, completing 4 years of active service. His Pay Entry Basic Date (PEBD) was established as 19 July 2012.

b. He enlisted in the Army National Guard (ARNG) on 24 April 2017. He also signed a senior ROTC cadet Contract. He was discharged from the ARNG on 23 May 2019, after competing 2 years and 1 month of ARNG service.

c. He was appointed a Reserve commissioned officer, second lieutenant/O-1, and executed an oath of office on 24 May 2019. He was promoted to first lieutenant/O-2 on 19 April 2021 and to captain/O-3 on 1 October 2023.

3. He provides his February 2023 Leave and Earnings Statement reflecting a "Choice" Retirement Plan and his March 2023 Leave and Earnings Statement reflecting a "Blended" Retirement Plan.

4. On 10 January 2024, an official at the Office of Entitlement and Compensation at the Army G-1 provided an advisory opinion in the processing of this case. The advisory official referenced/stated:

a. Title 37, United States Code, Section 356 and Office of the Secretary of Defense, memorandum (Implementation of the Blended Retirement System), 27 January 2017

b. After careful review of the information provided, this office does not support the Soldier's request. Soldier was made aware of the irrevocable election that was made to participate in the BRS. The Soldier completed the enrollment process 31 December 2018, of which there is no evidence the Soldier made this election in error. Pursuant to the 1.b, paragraph 9b(3), Department of Defense (DoD) Implementation Guidance states: "The decision to enroll in the BRS is IRREVOCABLE." The DoD and the Department of Army published clear instructions regarding the eligibility and made all Soldiers aware of the irrevocable nature when electing BRS.

c. On 1 January 2018, eligible Soldiers were given access to the BRS link on myPay to enroll into the BRS. The system process required Soldiers to follow 5 separate screens to include providing their current address and date of birth. Screen 2 required the Soldier to acknowledge the understanding that the decision to opt in was irrevocable once they complete the election. On screen 3 and 4, Soldiers had to check a box and answer a question respectively that stated, "I fully understand that I am opting into the BRS". Screen 5 allowed the Soldier to save and print the confirmation and again informed the Soldier that they were opting into the BRS.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal. No response was received.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the Army G-1, Office of Entitlement and Compensation advisory opinion, the Board concurred with the advising official recommendation for disapproval finding the applicant was made aware of the irrevocable election that was made to participate in the BRS. The opine noted, the applicant completed the enrollment process 31 December 2018, of which there is no evidence the applicant made this election in error. Based on regulatory guidance the advising official opine, the Board found insufficient evidence to place the applicant back into the "High 3" Retirement system instead of the Blended Retirement System. Therefore, relief was denied.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

2/29/2024

X

CHAIRPERSON

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. On 27 January 2017, the Deputy Secretary of Defense implemented guidance for the Blended Retirement System (BRS) for uniformed services, authorized by Public Law 114-92 (National Defense Authorization Act for Fiscal Year 2016). The BRS is a one-time payout available to Active Duty, Army National Guard, and Reserve Service Members covered under the BRS with between 8 and 12 years of service who can enter into an agreement to perform additional obligated service. BRS includes a Continuation Pay provision to encourage Service Members to continue serving. Continuation pay is a mid-career bonus payment given in exchange for an agreement to serve a specific number of years and is a direct cash payout, like a bonus. Per the BRS Continuation Pay Implementation guidance, all Soldiers may submit their continuation pay request no earlier than 180 days prior to completing their 12th year of service, based on their pay entry basic date. Soldiers should submit their continuation pay request no later than 30 days prior to completing their 12th year of service.

2. Title 37 U.S. Code § 356 - Continuation pay: full TSP members with 8 to 12 years of service,

a. Continuation Pay.—The Secretary concerned shall make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who—

(1) has completed not less than 8 and not more than 12 years of service in a uniformed service; and

(2) enters into an agreement with the Secretary to serve for not less than 3 additional years of obligated service.

b. **Payment Amount.**—The Secretary concerned shall determine the payment amount under this section as a multiple of a full TSP member's monthly basic pay. The multiple for a full TSP member who is a member of a regular component or a reserve component, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10), shall not be less than 2.5 times the member's monthly basic pay. The multiple for a full TSP member who is a member of a reserve component not performing active Guard or Reserve duty (as so defined) shall not be less than 0.5 times the monthly basic pay to which the member would be entitled if the member were a member of a regular component. The maximum amount the Secretary concerned may pay a member under this section is—

(1) in the case of a member of a regular component— (A) the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus (B) at the discretion of the Secretary concerned, the monthly basic pay of the member at 12 years of service multiplied by such number of months (not to exceed 13 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a); and

(2) in the case of a member of a reserve component— (A) the amount of monthly basic pay to which the member would be entitled at 12 years of service if the member were a member of a regular component multiplied by 0.5; plus (B) at the discretion of the Secretary concerned, the amount of monthly basic pay described in subparagraph (A) multiplied by such number of months (not to exceed 6 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a).

c. **Additional Discretionary Authority.**— In addition to the continuation pay required under subsection (a), the Secretary concerned may provide continuation pay under this subsection to a full TSP member described in subsection (a), and subject to the service agreement referred to in paragraph (2) of such subsection, in an amount determined by the Secretary concerned.

d. **Timing of Payment.**— The Secretary concerned shall pay continuation pay under subsection (a) to a full TSP member when the member has completed not less than 8 and not more than 12 years of service in a uniformed service.

e. **Lump Sum or Installments.**— A full TSP member may elect to receive continuation pay provided under subsection (a) or (c) in a lump sum or in a series of not more than four payments.

f. Relationship to Other Pay and Allowances.— Continuation pay under this section is in addition to any other pay or allowance to which the full TSP member is entitled.

g. Repayment.— A full TSP member who receives continuation pay under this section (a) [1] and fails to complete the obligated service required under such subsection shall be subject to the repayment provisions of section 373 of this title.

//NOTHING FOLLOWS//