

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009145

APPLICANT REQUESTS: in effect –

- disenrollment from the Blended Retirement System (BRS) and to be enrolled in the High 3 retirement system
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- BRS frequently asked questions documentation, 28 March 2018
- Leave and Earnings Statements (LES), June 2022 to May 2023
- Email communication, April to June 2023
- Screenshot of Integrated Web Services (IWS) transactions and notes related to applicant's Active/Guard Reserve (AGR) application, 10 June 2023
- Microsoft Teams screenshot chat, various dates

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:

a. There has been a recent change in his Retirement Plan on his LESs between February and March of 2023 from Choice (High 3 retirement) and BRS. He believes this error is unjust due to the lapse in change in the system of 5 years from 2018 to 2023. He has not used the BRS system and had never planned to since he believed he was in the High 3 retirement system all these years. In 2018 when the BRS system went live he understood this system was useful for Soldiers that were unsure if they were going to stay in the Army for 20 years. He was on Active Duty Operational Support (ADOS) orders with the 76th Operational Response Command at this point and loved being a full-time paralegal for the U.S. Army Reserve (USAR).

b. He decided then that he would complete 20 years in the Army and submitted his AGR packet on 5 October 2017 and recommended by the panel on 3 December 2017 as a specialist. He reenlisted in August of 2021 because he loved being an AGR paralegal and he is now currently serving as a Military Justice Noncommissioned Officer in Charge and Senior Paralegal outside the continental United States.

c. There have been many times in his career he has reconfirmed that he was in the High 3 retirement system and those times have been when the BRS system was first launched, when he accepted his first AGR assignment in September of 2018, reenlisted in 2021, and during mobilization (MOB) training at the MOB site for his current mobilization. Each time he was given the answer of it says it in the Retirement Plan (RET PLAN) box on your LES.

3. A review of the applicant's official records show the following:

a. He enlisted in the USAR on 16 July 2014.

b. On 29 September 2017, the 88th Regional Support Command published Orders Number 001213, which ordered the applicant to ADOS-Reserve Component for 365 days with a report date to Salt Lake City, UT on 1 October 2017.

c. On 17 July 2018, the U.S. Army Human Resources Command (HRC) published Orders Number R-07-802939, which ordered the applicant to active duty in an AGR status for 3 years with a report date to Fort Bragg, NC, on 10 September 2018.

d. On 2 April 2021, DA Form 1506 (Statement of Service - For Computation of Length of Service for Pay Purposes) was completed and shows the applicant's Pay Entry Base Date (PEBD) as 16 July 2014.

e. On 5 April 2021, HRC amended Orders Number R-07-802939 to read released from active duty on 15 July 2022.

f. On 6 August 2021, DA Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States) shows he reenlisted in the USAR for a period of 6 years. The remarks state he understood that the effective date of his reenlistment was one day following his current expiration of term of service date of 6 August 2021.

g. On 12 August 2021, HRC published Orders Number R-08-104485, which ordered the applicant to active duty in an AGR status for 6 years with a report date to Fort Bragg, NC, on 7 August 2021.

h. DA Form 5016 (Chronological Statement of Retirement Points) dated 27 March 2024 shows he is currently serving in the AGR and lists his PEBD as

16 July 2014. It also shows he earned a total of 6 years, 1 month, 25 days qualifying for retirement and 1854 total points creditable.

4. In support of his case the applicant provides:

a. BRS frequently asked questions documentation dated 28 March 2018, which provides answers to questions related to the BRS.

b. LESs which show his retirement plan as "choice" for the period June 2022 through February 2023 and then BRS from March 2023 through May 2023. The LESs for March 2023 through May 2023 are void of Thrift Savings Plan (TSP) matching contributions.

c. Email communication during the period of April to June 2023, between the applicant and a Human Resources Technician discussing the applicant's LESs, change in retirement plan, and percentages of contributions. The emails also discuss how the applicant can correct the problem and submitting a request to the Army Review Boards Agency.

d. Screenshot of IWS transactions and notes dated 10 June 2023, related to his AGR application.

e. Microsoft Teams screenshot discussing his BRS enrollment in the BRS in March 2023, wherein he requests assistance concerning his enrollment in the BRS and the change of his retirement plan on his March 2023 LES. The applicant was informed that it appeared he actually opted into BRS through myPay on 3 January 2018 and he would not be eligible for prior matching contributions if he chose to stick with BRS.

5. On 16 November 2023, the Office of the Deputy Chief of Staff G-1, Program Analyst, Compensation and Entitlements Division, provided an advisory opinion for this case and recommended approval. The advisory official stated:

a. After careful review of the information provided, this office supports the applicant's request for administrative relief to be disenrolled from BRS. His military record should be changed to reflect removal from BRS and placed into High 3 retirement system. He mistakenly enrolled into BRS without benefit, while a member of the Reserves in January 2018.

b. The applicant's LES was changed to reflect "BLENDED" in March 2023 without receiving the 1 percent agency automatic or matching contributions. The February 2023 LES reflected "CHOICE," which indicated enrollment in the High 3 or legacy retirement system.

6. On 4 December 2023, in an email, the applicant responded to the G-1 advisory opinion and stated he agrees with the advisory opinion and would like to say that it was not his intention to enroll into the BRS but only to complete the training. Further, if he would have known he was in the BRS system when the mistake happened in 2018, he would have had almost 6 years of contributions for his retirement but having it be changed to show he joined the BRS in 2023 without receiving the 1 percent agency automatic or matching contributions scares him as his retirement would be \$0 as of March 2023 after 9 years of honorable service.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board concurred with the conclusion of the advisory official that the evidence indicates the applicant was place in the BRS in error. The Board determined the applicant’s record should be corrected to show he remained in the “High 3” retirement system.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing he did not enroll in BRS and remained in the “High 3” retirement system.

8/27/2024

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. 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. Army Regulation (AR) 15-185 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2–11 states that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
3. AR 637-1 (Army Compensation and Entitlements Policy) provides Department of the Army policies for entitlements and collections of pay and allowances for active duty Soldiers. In pertinent part:
 - a. Paragraph 8-13 (Thrift Savings Plan (TSP) for Soldiers enrolled in Blended Retirement System) states, BRS became effective 1 January 2018 under Public Law 114–92, sections 631 through 635. A Soldier will be auto-enrolled in BRS by virtue of the Soldier's accession into the Army on or after 1 January 2018. This policy applies to both auto enrolled and opt-in Soldiers.

b. Paragraph 18-18 (Agency contributions for Blended Retirement System opt-in Soldiers) states –

(1) Agency automatic (1 percent) contributions. (a) Start date. Commencing with the pay period that follows a Soldier's BRS opt-in, the agency will automatically contribute to that Soldier's TSP account at no cost to the Soldier and without relation to the amount the Soldier contributes, an amount equal to:

- One percent of basic pay earned by that Soldier during that pay period for active service; or
- One percent of inactive duty pay earned by that Soldier during that pay period for inactive duty training (IDT)

(2) End date. The agency (1 percent) contribution will continue for each pay period in which a Soldier receives either basic pay or inactive duty pay, or both, through the end of the pay period during which the Soldier attains 26 years of service, as calculated from the Pay Entry Base Date (PEBD).

(3) Agency matching contributions. (a) Start date. Commencing with the pay period that follows a Soldier's BRS opt-in election the agency will contribute an amount that matches the Soldier's individual contribution to TSP (up to 4 percent) in accordance with Department of Defense Financial Management Regulation, Volume 7A chapter 51, table 51–3. (b) End date. No matching agency contributions will be made to a Soldier's TSP account after the pay period during which the Soldier attains 26 years of service, as calculated from the PEBD.

c. Paragraph 18–23 (BRS erroneous enrollment and TSP) states, BRS enrollment will be voided for any Soldier who is found to be ineligible to be enrolled or to elect to enroll in BRS under the provisions outlined in the Deputy Secretary of Defense Memorandum, dated 27 January 2017, Implementation of the Blended Retirement System. Such Soldiers will be placed under the correct retirement system upon discovery of the error. Any erroneous agency TSP contributions made to the Soldier's TSP account will be subject to correction in accordance with Federal Retirement Thrift Investment Board (FRTIB) regulations.

4. Department of Defense memorandum dated 27 January 2017 (Implementation of the Blended Retirement System (BRS)), Attachment 1, provides guidance for the implementation of the Uniformed Services' BRS. This memorandum is effective as of 27 January 2017. Unless otherwise stated, the policies contained herein that implement the BRS shall be effective simultaneous with the effective date of the BRS, 1 January 2018. In pertinent part:

a. Paragraph 6b.(3) (Eligibility) provides that, any member of the Reserve Component (RC) of a Uniformed Service who is performing reserve component service as a member of the Ready Reserve or on the Active Status List of the Standby Reserve on 31 December 2017 is covered under the provisions of the BRS, who: (a) Has a date of initial entry into military service (DIEMS)/date of initial entry into uniform service (DIEUS) that is on or before 31 December 2017; and, (b) Is in receipt of basic pay or inactive duty pay under Sections 204 or 206, respectively, of Title 37, USC, on or after 31 December 2017; and, (c) Has accumulated fewer than 4,320 retirement points, in accordance with the provisions of Section 12733 of Title 10, USC, as of that date; and, (d) Elects to enroll in the BRS under provisions outlined in section 9.b. (Procedures for Enrollment).

b. Paragraph 9.a. (Enrollment Period) provides that, a member of a Uniformed Service who qualifies to enroll in the BRS under any of the provisions outlined in paragraphs 6.b.(2) through 6.b.(6) may make the election to enroll on or after 1 January 2018 through 31 December 2018.

c. Paragraph 9.b. (Procedures for Enrollment) provides that:

(1) A member of a Uniformed Service who is eligible to enroll in the BRS under any of the provisions outlined in 6.b.(2) through 6.b.(6), must complete the mandatory training on opting into the BRS provided by the ASD(R), in accordance with procedures prescribed by the Secretary concerned, prior to making an election to enroll.

(2) For members of the Army enrollment in the BRS shall be completed on the "myPay" website (<https://mypay.dfas.mil/>) in accordance with procedures separately promulgated by DFAS.

(3) The decision to elect to enroll in the BRS is irrevocable.

(4) Prior to making the election to enroll in the BRS, members of the Uniformed Services who are eligible under provisions outlined in paragraphs 6.b.(2) through 6.b.(6), and who choose to enroll in the BRS, must affirm on the myPay website, or through procedures specified by the Secretary concerned as detailed in paragraph 9.b.(2), that they have completed the mandatory training referred to in paragraph 9.b.(1), and that they acknowledge the decision to enroll in the BRS is irrevocable.

//NOTHING FOLLOWS//