

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 October 2024

DOCKET NUMBER: AR20240001072

APPLICANT REQUESTS:

- exception to policy (ETP) to opt into the Blended Retirement System (BRS)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 130-003 Order to Advanced Individual Training (AIT)
- BRS Opt-In Course Training Certification
- DA Form 4187 (Personnel Action) ETP for BRS opt in
- Leave and Earning Statement (LES) 1-30 November 2023
- Memorandum ETP to the BRS denial

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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. He was not enrolled in the BRS after receiving training in May 2018. Due to his enrollment not being processed, he sought an ETP in order to enroll into the BRS and receive back-pay for 5 percent matching contributions. He was denied compensation because the BRS opt-in window was available on MyPay from 1 January 2018 through 31 December 2018. He was no longer eligible to opt in. He would like a correction to his records to be made in order to receive compensation.

b. He received training and instruction, during AIT, which stated he had the option to opt into the BRS. After the training, he assumed he was enrolled in the BRS and would receive a matching contribution. He was informed that those that did not chose to stay in the legacy retirement system would automatically be moved into the BRS. He was

never enrolled in the BRS and as a result did not receive any percentage of matching contributions and lost out on the opportunity for retirement to invest.

c. There was no indication or notification that this error had been made. He has been contributing to the Thrift Savings Plan expecting a matching percentage, which he did not receive. This is potentially thousands of dollars that should have been contributed to the Soldier's retirement. Throughout his career, no government official, financial advisor, or otherwise noticed this issue as there was little to no indication other than the absence of enrollment on his LES.

3. The applicant provides the following documents:

a. Orders 130-003, published by Headquarters, United States Army Cyber Center of Excellence and Fort Gordon, 10 May 2018, show he was assigned to Fort Lewis, Washington with a reporting date of 31 May 2018.

b. Certificate showing he completed the BRS Opt-In Course on 21 May 2018.

c. DA Form 4187 (Personnel Action), 7 September 2023, requesting an ETP for enrollment into the BRS. As an AIT student he was eligible to opt into the BRS in calendar year 2018 but he did not have access to the BRS link on MyPay. He entered the military on 1 August 2017 and his pay entry basic date is 31 May 2018 [sic]. He completed mandatory training on financial literacy regarding opting into the BRS or to remain in the legacy retirement on 21 May 2018. He understood his enrollment into the BRS could not be revoked. His chain of command recommend approval of the ETP to opt into the BRS.

d. LES for the period of 1-30 November 2023, does not indicate the type of retirement plan he was enrolled in.

e. Memorandum from The Office of the Deputy Chief of Staff, G-1, 11 December 2023, subject Request and ETP to the BRS Opt-in Window [Applicant] states his ETP to the BRS opt-in window is disapproved. The opt-in window was available on MyPay from 1 January 2018 through 31 December 2018. The opt-in window expired and he is no longer eligible to opt-in.

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

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) show he enlisted in the Regular Army and entered active duty on 1 August 2017. He remained in the Regular Army through immediate reenlistments.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was in the Regular Army from 1 August 2017 through 16 February 2024. He completed 6 years, 6 months, and 16 days of active duty service. He completed his first full term of service and was honorably discharged for non-retention on active duty. His DD Form 214 does not indicate the type of retirement system he was enrolled in.

c. The applicant's service record is void of information regarding opting into the BRS.

5. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. The Board noted the applicant's completion of the course on 21 May 2018 and his commander's recommendation for approval based on him being a student without access to the system to opt-in on 17 October 2023. Upon review of the applicant's petition, available military records, and the applicant being new to service and receiving miscommunication regarding the Blended Retirement System (BRS), the Board granted relief to allow the applicant to opt-in to BRS.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

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:	:	:	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 elected into the blended retirement system
- his election was received and processed by the appropriate office in a timely manner

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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, U.S. Code, 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. Public Law 114-92, dated 25 November 2015, section 631 (Modernized Retirement System for Members of The Uniformed Services) (a) Regular Service, in the case of a member who first becomes a member of the uniformed services on or after 1 January 2018, or a member who makes the election. (B) Election to Participate in Modernized Retirement System, a member of a uniformed service serving on 31 December 2017, who has served in the uniformed services for fewer than 12-years as of 31 December 2017, may elect, in exchange for the reduced multipliers for purposes of calculating the retired pay of the member, to receive Thrift Savings Plan contributions. (C) Election Period, (i) a member of a uniformed service may make the election authorized only during the period that begins on 1 January 2018 and ends on 31 December 2018. (ii) Hardship Extension, the Secretary concerned may extend the election period for a member who experiences a hardship as determined by the Secretary concerned.

3. Title 10, USC, section 1409 (Retired pay multiplier), b (4) (Modernized retirement system), (A) Reduced multiplier for full tsp members, in the case of a member who first becomes a member of the uniformed services on or after 1 January 2018, or a member who makes the election. (B) (Election to participate in modernized retirement system), a member of a uniformed service serving on 31 December 2017, who has served in the uniformed services for fewer than 12-years for purposes of calculating the retired pay of the member, to receive Thrift Savings Plan contributions. (C) (Election period), a member of a uniformed service may make the election authorized only during the period that begins on 1 January and ends on 31 December 2018. (ii) (Hardship extension), the Secretary concerned may extend the election period for a member who experiences a hardship as determined by the Secretary concerned.

4. Deputy Secretary of Defense memorandum dated 27 January 2017, Subject Implementation of the Blended Retirement System, implements guidance for the Blended Retirement System for the Uniformed Services. Attachment 1 (Guidance for Implementation of the Blended Retirement System for the Uniformed Services), Paragraph 9 (Enrollment), a. Enrollment Period, (1) 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. b. (Procedures for Enrollment), (1) A member of a Uniformed Service who is eligible to enroll in the BRS 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, Navy, and Air Force, 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 and who choose to enroll in the BRS, must affirm on the MyPay website, or through procedures specified by the Secretary concerned that they have completed the mandatory training and that they acknowledge the decision to enroll in the BRS is irrevocable.

5. Uniformed Services Blended Retirement System Policy, Paragraph 9 (Enrollment),
a. Enrollment Period. (1) A member of a Uniformed Service who qualifies to enroll in the BRS may make the election to enroll on or after 1 January 2018, through 31 December 2018. (2) A member who, but for a break in service, would otherwise be eligible to elect to enroll in BRS who returns to service with a Uniformed Service on or after 2 December 2018, following a break in service that commenced prior to 1 December 2018 may make an election to enroll in the BRS: For members returning to the AC or affiliating in a paid status with the RC after separating from the AC, within 30-days of reentry; or, for members returning to a paid status in the RC following a break in service in the RC, no later than 31 December 2018, or 30-days from the date of reentry, whichever is later. (3) The terminal date of the election period may be extended, by approval of the Secretary concerned, in certain situations.

6. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

//NOTHING FOLLOWS//