



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 9706-23
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO ■■■■■■■■■■
XXX XX ■■■■■ USMCR

Ref: (a) 10 U.S.C. § 1552
(b) 37 U.S.C. § 536
(c) DEPSECDEF Memo, subj: Implementation of the Blended Retirement System, 27 January 2017
(d) MCBUL 1800, subj: Blended Retirement System (BRS) Policy, 15 June 2021
(e) MARADMIN 084/22, subj: Calendar Year 2023 Continuation Pay Program for Blended Retirement System Participants, dtg 281936Z FEB 22

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) MCTFS Basic Individual Record, 4 December 2023
(4) MCTFS Basic Training Record, 4 December 2023
(5) MCTFS Blended Retirement Eligibility Election 870 Remark, 4 December 2023
(6) MCTFS Chronological Records 130 Remarks, 4 December 2023
(7) BRS-CP LES Notifications ICO [Petitioner] (May 2022 – April 2023)
(8) Marine Online Entries
(9) MCTFS Blended Retirement Continuation Pay 405 Remark, 4 December 2023
(10) HQMC Memo 1070 MPO, subj: BCNR Application Case of [Petitioner], 20 November 2023
(11) NAVMC 11908, Reserve Component Blended Retirement System (BRS) Continuation Pay Statement of Understanding (SOU), signed 1 April 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his naval record be corrected to establish entitlement to Continuation Pay (CP) pursuant to the Blended Retirement System (BRS).

2. The Board reviewed Petitioner's allegations of error or injustice on 20 March 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies.

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3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner was appointed as an officer in the Marine Corps and began a period of active duty service on 27 May 2011.¹ See enclosure (2).

c. The BRS was authorized in reference (b) pursuant to the Fiscal Year (FY) 2016 National Defense Authorization Act (NDAA), as modified by the FY 2017 NDAA, and implemented by the Department of Defense with an effective date of 1 January 2018 in reference (c). Reference (c) permitted participation in the BRS for any Reserve Component (RC) Service member performing RC service as a member of the Ready Reserve who entered the service on or before 31 December 2017; who is in receipt of basic pay or inactive duty pay on or after 31 December 2017; has accumulated fewer than 4,320 retirement points as of 31 December 2017; and who elects to enroll in the BRS. It also assigned responsibility to the individual Service Secretaries to establish criteria for CP. The procedures for BRS enrollment included a requirement to complete training prior to opting into the BRS.

d. On 2 March 2017, Petitioner completed BRS training. See enclosure (4).

e. On 16 January 2018, Petitioner opted into the BRS. See enclosure (5).

f. On 1 September 2018, Petitioner was released from active duty and transferred to the Individual Ready Reserve. See enclosures (2) and (6).

g. On 27 July 2019, Petitioner joined the Selected Marine Corps Reserve Individual Mobilization Augmentee (IMA) program. He was assigned as a "Marine for Life" representative IMA with the [REDACTED], at [REDACTED]. See enclosure (6).

h. On 15 June 2021, the Marine Corps published its BRS policy in reference (d). This policy established that CP is available to Marines in the Selected Reserve who complete 12 years of service (as computed from their PEBD) contingent upon an agreement to serve an additional four years in the Selected Reserve.

i. On 28 February 2022, the Marine Corps published reference (e) announcing the CP Program for BRS participants scheduled to complete 12 years of service during calendar year 2023 and who commit to serve four additional years.² Reference (e) provided that eligible Marines must sign a statement of understanding (SOU) (i.e., NAVMC 11908 for Select Reserve), accepting or declining CP before reaching 12 years of service to be eligible for CP.

¹ This established Petitioner's Pay Entry Base Date (PEBD) as 27 May 2011. See enclosure (3).

² Petitioner completed 12 years of service as computed from his PEBD on 27 May 2023.

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j. Between May 2022 and April 2023, Petitioner was notified of his eligibility to elect BRS CP in his monthly Leave and Earnings Statement (LES).³ This monthly notification informed Petitioner of the requirement to agree to serve four additional years before his 12-year PEBD anniversary for CP and referred Petitioner to reference (e). See enclosure (7).

k. Petitioner failed to elect CP prior to 27 May 2023. See enclosure (9).

l. Petitioner asserts that he failed to make this election because he was not informed of the deadline. He claims to meet all CP eligibility requirements and agrees to incur the four-year obligation of additional Select Reserve service. See enclosure (1).

m. By memorandum dated 20 November 2023, the HQMC Manpower Military Policy Branch provided an advisory opinion (AO) for the Board's consideration, recommending that Petitioner's request be denied. Specifically, the AO noted that, contrary to his contention, Petitioner received multiple BRS CP enrollment notifications via MOL and LES messaging, and that he had a full year leading up to 27 May 2023 to complete and submit his SOU via MOL to elect BRS CP.⁴ See enclosure (10).

n. On 1 April 2024, after the Board adjourned, Petitioner provided a signed NAVMC 11908 upon request of the case examiner, electing CP in a lump sum payment. See enclosure (11).

MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority of the Board found sufficient evidence of an injustice warranting relief.

The Majority found no error in Petitioner's denial of CP under the BRS. References (d) and (e) required Petitioner to affirmatively elect CP on a NAVMC 11908 and to commit to four additional years of service prior to reaching 12 years of service on 27 May 2023. Petitioner failed to make such an election prior to that date. Accordingly, there was no error in the denial of CP for Petitioner.

Although the Majority found no error in the denial of CP for Petitioner, it did find an injustice in such denial warranting relief. Specifically, the Majority found that Petitioner may not have received adequate notice or counseling regarding the requirement to elect CP prior to reaching 12 years of service. In reaching this conclusion, the Majority noted that Petitioner otherwise met the criteria for CP, and that his request to the Board for corrective action was timely. Accordingly, the Majority determined that equitable relief is warranted in the interests of justice.

³ The record reflects that Petitioner was notified of his eligibility and of the requirement to agree to serve four additional years prior to his 12-year PEBD anniversary 12 separate times on his LES during the year leading up to that anniversary date. This notice was also posted to Marine Online (MOL) 12 times between 10 June 2022 and 12 May 2023. See enclosure (8).

⁴ A copy of this AO was provided to Petitioner for comment via e-mail dated 4 December 2023, but Petitioner failed to provide any response within the 30 days provided.

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MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner's naval record be corrected in all regards necessary to reflect that he completed and submitted the required NAVMC 11908, electing CP with the lump sum option, prior to 27 May 2023, and that HQMC validated Petitioner's CP eligibility and released CP authorization to the Defense Finance and Accounting Service (DFAS).

Upon completion of this corrective action, Petitioner's corrected records and a copy of this record of proceeding shall be forwarded to DFAS to conduct an audit of Petitioner's finance records to determine what, if any, payments may be due to him.

That a copy of this record of proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority conclusion that there was no error in the denial of BRS CP for Petitioner.

The Minority did not, however, concur with the Majority conclusion that there existed an injustice in such denial. In this regard, the Minority failed to find any evidence to support the Majority's finding that Petitioner may not have received sufficient notice or counseling regarding his requirement to submit a SOU prior to 27 May 2023. To the contrary, the record reflects that Petitioner received more than adequate notice of this requirement. Specifically, he received monthly reminders of the requirement on his LES and through MOL. Further, references (d) and (e) provided such notice. Petitioner was a field-grade officer performing garrison duties at HQMC who had previously completed BRS transition training. Any lack of awareness of the requirement to submit the SOU to elect CP prior to reaching 12 years of service was clearly due to his own negligence. As such, the Minority found no injustice in the denial of BRS CP. The Minority also found that granting Petitioner equitable relief under these circumstances would establish a bad precedent and essentially negate the requirements of reference (d).

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

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5. The foregoing action of the Board is submitted for your review and action.

4/15/2024

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the corrective action recommended by the Majority above.)

___ MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

[REDACTED]

Assistant General Counsel (M&RA)