

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230003241

APPLICANT REQUESTS:

- entitlement to Continuation Pay (CP) as associated with the Blended Retirement System (BRS)
- matching contributions from November 2018 – December 2022

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statements (LES)

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 pertinent part that he was released from active-duty and transferred into the Army National Guard (ARNG) on 4 November 2018. He contests that at that time, he had already opted into the BRS. However, the ARNG failed to create an account for him resulting in his inability to receive matching contributions or to be entitled to \$20,500.00 in CP. He notes that although his pay account was not established in the system, his LESs reflected his enrollment in the BRS.
3. A review of the applicant's available service records reflects the following:
  - a. On 11 December 2010, having had prior enlisted service in the AKARNG from 24 February 2005 to 11 July 2006, the applicant was appointed as a Reserve commissioned officer and executed an oath of office.
  - b. On 25 April 2011, the applicant was ordered to active duty.

c. On 3 November 2018, the applicant was released from active duty and transferred into the ARNG at the rank/grade of captain (CPT)/O-3.

d. On 29 May 2019, the National Guard Bureau (NGB) issued Special Orders Number 142 announcing Federal recognition of the applicant's transfer into the AKARNG, effective 4 November 2018.

e. On 1 September 2020, the applicant was granted temporary Federal recognition in the rank of chief warrant officer two (CW2)/W-2 within the AKARNG.

f. On 14 September 2020, the AKARNG issued Orders Number 655902 voluntarily separating the applicant from the ARNG, effective 31 August 2020, as a commissioned officer at the rank/grade of CPT/O-3.

g. On 16 September 2020, the AKARNG issued Orders Number 661363 rehiring the applicant in the AKARNG at the rank of CW2, effective 1 September 2020.

h. The applicant's Officer Record Brief shows his Pay Entry Basic Date (PEBD) as 12 June 2009. Based on his PEBD, the applicant completed 12 years of service on 12 June 2021.

4. The applicant provides LES covering the periods of October 2018, December 2018 and May 2021.

- October 2018 LES reflects participation in the Thrift Savings Plan (TSP) with matching agency contributions but is void of information pertaining to the BRS
- December 2018 LES is void of TSP contributions, BRS participation and matching agency contributions
- May 2021 LES is void of TSP contributions, BRS participation and matching agency contributions

5. The applicant did not provide nor does review of his available records reflect a Request for Continuation Pay (Blended Retirement System) or CP contract.

6. On 28 June 2023, the Department of the Army, Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Division, provided an advisory opinion denying support of the applicant's request noting that he had not submitted a CP application prior to reaching his 12th year of service based on his pay entry basic date.

7. On 6 July 2023, the applicant was provided with a copy of the advisory opinion and afforded 30 days to provide comments.

8. In response to the advisory opinion, the applicant provided the following a:

a. Email communication from the AKARNG Inspector General's office wherein the applicant was advised that an assistance inquiry was conducted pertaining to his requested relief. Upon review, it was determined that the error was not at the fault of the applicant, rather it was the result of an oversight made by the finance office during his accession.

b. Memorandum – Subject: Continuation Pay Entitlement, dated 26 July 2023 reflective of the State Army Aviation Officer's support of the applicant's requested relief noting that the error made in not properly creating a Reserve BRS account on behalf of the applicant was made by the U.S. Property and Fiscal Office (USPFO). The error was discovered during the period that the applicant would have been eligible to receive his CP. The issues that negativity affected the applicant have been identified as a failure in organizational processes and procedures within the finance office as identified by the Inspector General office. The issue has affected hundreds of other Soldiers and is not isolated. It is his recommendation that the applicant receive the CP that would have been available to him had this purely administrative error not occurred.

c. All Army Activity Message Number 014/2020 BRS CP Guidance reflective of the parameters associated within the BRS to include eligibility and requirements. This document is provided in its entirety for the Boards review within the supporting documents.

d. Memorandum – Subject: Recommendation to Receive his Entitlement to CP from the BRS, dated 31 July 2023, reflective of the applicant's commanders support of his requested relief noting that since the discovery of the systematic failure identified by the Inspector General's office of the in-processing and finance office practices, the USPFO within the AKARNG was forced to make drastic changes to their policies, procedures as well as addition to their staff. This document is provided in its entirety for the Boards review within the supporting documents.

e. NGB Form 23A1 (Army National Guard Current Annual Statement), dated 24 February 2023, reflective of the applicant's creditable service between 24 February 2005 to 24 February 2023. The applicant has accrued 14 years of creditable service. Further review of this document indicates that he is on active duty as a member of the Active Guard/Reserve (AGR) under Title 32, USC, or State Controlled and ARNG Active Duty Operational Support (ADOS) under Title 32 USC as of 24 June 2022.

f. Self-authored letter dated 27 July 2023, reflective of the Financial Services Officer, USFPO statement regarding the applicant's requested relief noting that the errors made were not at the fault of the applicant. He acknowledges that the accessions error resulted in the applicant missing BRS contributions from November

2018-January 2023. Due to this error his matching TSP contributions were not being properly accounted for and he did not receive them from the start of his accession until the end of January 2023, leading to him being unable to meet requirements for CP. Since noticing the issue with his TSP matching contributions there have been 3 cases sent to the Defense Finance and Accounting Service (DFAS). The first case was opened 2 November 2022, which closed out 12 December 2022. The second case opened 12 January 2023 and closed out 19 January 2023 resolved his matching contributions issue, and he has since received contribution payments. The most recent case with DFAS opened 3 April 2023 is to resolve issues of backpay going back to March 2019. This document is provided in its entirety for the Boards review within the supporting documents.

g. Memorandum – Subject: BRS CP – Calendar Year 2021, reflective of the guidance associated with BRS CP eligibility and payment requirements. This document is provided in its entirety for the Boards review within the supporting documents.

h. Screen shots reflective of information currently available within the applicant's finance transaction history. This document reflects supportive evidence as stated in item 8f. above pertaining to the 3 cases initiated to address the applicant's TSP matching history.

i. LES covering the period of April 2019 – January 2023. The documents reflect the applicant's pay entitlements, deductions and TSP contributions during this period. These documents are void of evidence of payment of CP or TSP matching contributions. These documents are further provided in their entirety for the Boards review within the supporting documents.

#### 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 applicant's Officer Record Brief shows his Pay Entry Basic Date (PEBD) as 12 June 2009. Based on his PEBD, the applicant completed 12 years of service on 12 June 2021. The Board reviewed and agreed with the G-1 advisory official's finding that the applicant had not submitted a CP application prior to reaching his 12th year of service based on his pay entry basic date.

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. Title 37 USC, section 356 (Continuation Pay) provides:

a. The Secretary concerned shall pay CP 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. Enters into an agreement with the Secretary to serve for not less than three additional years of obligated service. A full TSP member may elect to receive CP in a lump sum or in a series of not more than four payments.

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 Reserve Component, if the member is performing AGR duty (as defined in Title 10, USC, section 101(d)(6)), 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 AGR 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—

- in the case of a member of an Active Component—the monthly basic pay of the member at 12 years of service multiplied by 2.5
- in the case of a member of a Reserve Component—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

3. The Uniform Services Blended Retirement System states DIEMS is the Date of Initial Entry into Military Service while PEBD is the Pay Entry Base Date. DIEMS marks the day a member first enters military service by signing a contract or agreement to serve, even if on that day he or she is in an inactive status such as in the Delayed Entry Program (DEP), or as a student in one of the Service Academies or ROTC. PEBD is the day a member first begins earning Basic Pay or Inactive Duty Pay (drill pay). For many Service members, these days are essentially the same, while for many others DIEMS is earlier than PEBD. Determining whether a member is grandfathered under legacy High-3 or automatically enrolled in BRS is based on DIEMS. If DIEMS is on or before 31 December 2017, he or she is grandfathered. If DIEMS is on or after 1 January 2018, he or she is automatically enrolled in BRS. Of those who are grandfathered, determining

eligibility to opt into BRS is based on PEBD (as is eligibility for Continuation Pay). Fewer than 12 years of service since PEBD makes an otherwise grandfathered Active Component member eligible to opt into BRS.

4. Memorandum – Subject: BRS CP, 26 October 2017, is effective 1 January 2018, and applies to Active Army, Army National Guard/Army National Guard of the United States, and United States Army Reserve Soldiers who are covered under the BRS. Paragraph 4c. (Eligibility) provides that inter-service transfers joining one of the Army's BRS eligible groups must complete the transfer before their 12th year of service based upon the PEBD. Army leaders will ensure these Soldiers were not paid CP by another service or component before executing a CP payment. For those eligible to apply for CP during CY18, the CP amount will be computed as follows:

a. For Active Component, and Title 10 and Title 32 Active Guard Reserve (AGR) Soldiers performing active service in a career status program, CP is 2.5 times the monthly basic pay, based on current pay grade and years of service at the time CP is approved.

b. For Reserve Component Soldiers serving in the SELRES (minus AGR), CP is 0.5 times the active duty monthly basic pay, based on current grade and years of service at the time CP is approved.

c. The Army will use the enclosed Request for Continuation Pay (Blended Retirement System) as the CP contract which will document the Soldier's CP election and obligated service.

d. All Soldiers may submit their CP request no earlier than 180 days prior to completing their 12th year of service, based upon the PEBD. Soldiers should submit their CP request no later than 30 days prior to completing their 12th year of service, based upon PEBD.

5. Guidance for Implementation of the Blended Retirement System for the Uniformed Services provides that a member covered under BRS who re-enters service after a break in service and who previously qualified for government matching contributions will resume receiving agency matching contributions into his or her TSP account concurrent with re-enrollment.

//NOTHING FOLLOWS//