

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2024

DOCKET NUMBER: AR20230003266

APPLICANT REQUESTS: payment of Continuation Pay Blended Retirement System (CP BRS); personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- BRS CP Fiscal Year (FY) 2021 Names
- BRS CP FY 2022 with Applicant's Name
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment)
- Request for CP (BRS)
- Email BRS CP Initial Submission
- Email Correspondence
- DA Forms 2823 (Sworn Statement) Staff Sergeant (SSG) [REDACTED] and Applicant

FACTS:

1. The applicant states, in effect:

a. The applicant is being told that he is not eligible for CP BRS due to signing his contract after 12 years of service, although he was notified by Battalion, Division, and Joint Force Headquarters levels he was eligible, during the time of signature.

b. Upon initial notification of being eligible for CP BRS, it had been the applicant's understanding that he would receive CP for his service. He believes this is an injustice on the military's part for not informing him of his proper application window as well as leading him to believe he was eligible for almost an entire year, while his packet was being processed. He believes he is entitled to CP for these reasons and the evidence provided from Army Regulation (AR) 637-1 (Amy Compensation and Entitlements Policy).

c. The applicant was not notified of his eligibility for CP BRS until 22 April 2022, which was after he had 12 years of service. He was also not informed of his eligibility during FYs 2021 or 2020.

d. Per AR 637-1, paragraph 18-26c (Roles and Responsibilities) (1) the Deputy Chief of Staff (DCS), Plans and Resources will continue coordination with Defense Finance and Accounting Service to ensure CP payments are disbursed within 10 duty days of receipt of an approved CP contract at finance; (2) Commanders or designated representative will (a) verify Soldiers requesting CP elected BRS; (b) assist Soldiers in completing the CP contract and acquiring the appropriate approval prior to Soldier's 8th to 12th year of service as computed from the Pay Entry Basic Date (PEBD) (based on years criteria). Current law does not allow for acceptance of a CP contract beyond the 12th year of service. (c) Identify and ensure Soldiers eligible for CP submit their requests within the established timelines; (3) Soldiers enrolled in BRS will (a) use the approved CP BRS request as published by DCS, plans and resources to apply for CP; (b) submit the completed contract to their respective S1 for approval and processing; (c) failure to complete the required period of obligated service for CP is subject to full or partial repayment in accordance with Title 37 U.S. Code (USC) 373 and DoD FMR, Volume 7A. The period of obligated service and the amount payable can change annually; (4) Regular Army, Army National Guard (ARNG), U.S. Army Reserve, and career counselor retention noncommissioned officers will ensure soldiers who do not have sufficient service remaining to qualify for CP take retention action to meet the minimum service remaining requirement.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), dated 12 February 2010, shows the applicant enlisted in the ARNG for a period of 8 years.

b. DA Forms 4836 (Oath of Extension of Enlistment or Reenlistment), show the applicant extended his enlistment on:

- 12 June 2011, for a period of 1 year
- 20 December 2012, for a period of 1 year
- 8 February 2014, for a period of 1 year
- 6 August 2014, for a period of 3 years
- 24 April 2017, for a period of 2 years
- 14 July 2019, for a period of 6 years
- 22 April 2022, for a period of 2 months and 11 days

c. NGB Form 22 (Department of the Army and the Air Force National Guard Bureau Report of Separation and Record of Service) shows the applicant enlisted in the ARNG on 12 February 2012 and was honorably transferred to the Army Reserve Control Group (Reinforcement) on 11 February 2014. He had completed 4 years of service. The documents showing the applicant's reentry into the ARNG are not available for the Board's consideration.

d. NGB Form 23A (ARNG Current Annual Statement), dated 12 February 2023, shows the applicant has 13 creditable years of service for retired pay.

3. The applicant provides the following documents, not previously considered:

a. Document the applicant titled FY 2021 CP BRS, which does not contain the applicant's name.

b. Document the applicant titled FY 2022 CP BRS, which shows the applicant's name with his PEBD as 12 February 2010, years of service was 13, he had completed 12 years of service, and his retirement plan was BRS.

c. Request for CP (BRS), dated 22 April 2022, shows the applicant's PEBD was 12 February 2010. He was requesting CP BRS at 4 times the monthly basic pay for his current pay grade and he agreed to an additional obligated service of 4 years.

d. Email from SSG [REDACTED] dated 23 May 2022, which was the applicant's CP BRS request.

e. Email from SSG [REDACTED] dated 6 February 2023, requesting assistance for the applicant to apply to the Board for CP BRS. The SSG did not get the applicant's name for CP BRS until after his window to apply had closed.

f. DA Form 2823, dated 15 February 2023, from SSG [REDACTED] states, in effect, on 13 April 2022, SSG [REDACTED] received a roster of individuals who needed to request CP BRS. The applicant's name was on the list. The SSG completed the applicant's extension and CP BRS request form. The applicant signed both documents on 22 April 2022 and the documents were forwarded to Division for processing. On 6 February 2023, the SSG was informed the applicant was not paid due to his contract signature date being past the 12-year time in service window. Upon reviewing the roster, the SSG found that the notification to request CP BRS arrived after the applicant was past the window of eligibility. The SSG then looked at the previous year's CP-BRS roster generated on 17 May 2021 and found the applicant's name was not listed. This was of no fault of the applicant.

g. DA Form 2823, dated 17 February 2023, from the applicant states, in effect, on 22 April 2022, the applicant was notified he was eligible for CP by SSG [REDACTED]. This was the first time he had been notified. Upon notification, the applicant signed the CP BRS request and an extension. During the deployment, SSG [REDACTED] followed up on the status of the applicant's CP-BRS through Brigade and Division to Joint Forces Headquarters. That was when it was identified the applicant signed the CP BRS request after 12 years of service. He was notified of his eligibility after his 12 years of service, in which he was showing eligible on the CP BRS roster.

4. On 5 February 2024, in the processing of this case, an advisory opinion was obtained from the Office of the Deputy Chief of Staff, G-1. The advisory official stated:

a. After careful review of the information provided, this office does not support the applicant's request due to incomplete and missing data on the CP form. In accordance with reference 1.d the CP application must be completed in its entirety prior to submission for payment. The CP application is missing block 6 (control number), and block 9 (certifying official printed name, rank, signature, and date). The missing information is required should the request for payment be favorably considered.

b. Supporting documentation properly completed would indicate the authorized multiplier and compliance with the additional service obligation requirement for CP for Calendar Year 2022.

5. On 9 February 2024, the applicant was provided with a copy of the advisory opinion to provide a comment or rebuttal.

6. On 22 February 2024, by email, the applicant responded to the advisory opinion which included an updated Request for CP BRS showing the certifying official signed the form on 2 August 2022. Additionally, he states because he is beyond his 12th year of service the J-1 stated a bonus control number cannot be generated. Furthermore, he has attached a memorandum that states he did not appear on the CP BRS eligibility roster until he was at 12 years and 2 months of service.

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records, and the Office of the Deputy Chief of Staff, G-1-Program Analyst Compensation and Entitlement Division advisory opinion, the Board considered the advising official recommendation of not supporting the applicant's claim. However, the Board determined at no fault of the applicant, there is sufficient evidence to support the applicant's contentions for payment of Continuation Pay Blended Retirement System.

2. The Board agreed, the applicant was not properly counsel and evidence show the applicant met the criteria for Continuation Pay Blended Retirement System. Therefore, the Board granted relief for correction of the applicant records to show payment of Continuation Pay Blended Retirement System.

REFERENCES:

1. Title 37, United States Code, Section 356 (CP: Full TSP Members with 8 to 12 years of service) states:

a. The Secretary concerned shall make a payment of CP to each full TSP member of the uniformed services under the jurisdiction of the Secretary who:

- completes 12 years of service; and
- enters into an agreement with the Secretary to serve for an additional 4 years of obligated service

b. The amount of CP payable to a full TSP member shall be the amount that is equal to:

(1) In the case of a member of a regular component, the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus 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 as the Secretary concerned shall specify in the agreement; and

(2) 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; plus at the discretion of the Secretary concerned, the amount of monthly basic pay multiplied by such number of months as the Secretary concerned shall specify in the agreement.

c. In addition to the CP, the Secretary concerned may provide CP to a full TSP member in an amount determined by the Secretary concerned.

d. The Secretary concerned shall pay CP to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides CP to the member, that CP shall be provided when the member completes 12 years of service.

e. A full TSP member may elect to receive CP in a lump sum or in a series of not more than four payments.

f. CP is in addition to any other pay or allowance to which the full TSP member is entitled.

g. A full TSP member who receives CP and fails to complete the obligated service required shall be subject to the repayment provisions.

2. AR 637-1, provides Department of the Army policies for entitlement and collections of pay and allowances for active duty Soldiers. The term "active duty" means full-time duty in the active service of a uniformed service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the Army. It states:

a. The BRS provides for CP in exchange for additional service obligation by Soldiers when they reach between the 8 and 12 year point in their career. Soldiers will receive a minimum of 2.5 times base pay for Regular Component and .5 times base pay for Reserve Component, if they commit to a minimum of 3 years of additional service.

b. Soldiers must be enrolled in BRS, must be within 180 days of the established application year point (between 8 and 12 years of service) as determined from their PEBD, and must have an approved application no later than the anniversary date of the established application year point as determined from their PEBD.

3. AR 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 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.

//NOTHING FOLLOWS//