

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20230003831

APPLICANT REQUESTS:

- payment of the Blended Retirement System Continuation Pay (BRS CP)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Memorandum
- Excerpt from BRS Opt-In Course
- BRS CP - Calendar Year (CY) 2020
- BRS CP- CY 2021, 11 February 2021 and 5 March 2021
- Unit List
- Email Battle Training 21-21
- Email BRS CP Packet
- Email Applicant's BRS CP Packet
- Order 337-0001 Order to Active Guard/Reserve (AGR) Status
- Memorandum Reconsideration to Process BRS CP

FACTS:

1. The applicant states:

a. There were numerous issues that prevented timely submission of her BRS CP that were no fault of her own:

- Lack of information regarding the newly implemented BRS CP program, eligibility window and application process during the BRS initial training
- The New York Army National Guard's (NYARNG) failure to publish the CY 20 guidance, which would have notified her of her eligibility and provided her with the necessary information to submit her application on time
- The ARNG and NYARNG publishing CY 21 guidance three months past her eligibility window to apply

b. She is requesting the Army Board for Correction of Military Records (ABCMR) to retroactively apply for the BRS CP due to lack of timely information dissemination from the National Guard Bureau (NGB) and the NYARNG state headquarters.

c. She opted into the BRS program in 2018, with the primary reason of receiving the one-time mid-career bonus known as BRS CP. Her pay entry basic date (PEBD) is 21 January 2009, which meant she was eligible for the bonus once she completed 12 years of active service in CY 2021. However, she was not afforded the information in a timely manner to submit her packet.

d. The BRS initial training that she was required to take on Joint Knowledge Online did not provide any information on how a Soldier would apply to receive BRS CP. Therefore, she was unaware of the application procedure and timeline requirements.

e. The CY 20 ARNG guidance only allowed personnel with a PEBD between 1 January 2008 and 31 December 2008 to apply for BRS CP. The NYARNG did not publish CY 20 guidance. Although her PEBD does not fall within this eligibility window, the NYARNG CY 20 guidance would have included a roster of Soldiers eligible to apply for BRS CP. This roster would have encompassed December 2009 Soldiers due to the condition to apply 30 days prior to completing 12 years of service. As a result, she would have received an email notification from her unit regarding her eligibility and requirement to submit her application no later than 9 December 2020.

f. The CY 21 ARNG guidance allowed personnel with a PEBD between 1 January 2009 through 31 December 2010 to apply for BRS CP. This guidance permitted her to apply given her PEBD is 21 January 2009; however, the ARNG did not issue it until 11 February 2021 and the NYARNG did not publish its execution guidance until 5 March 2021. She submitted her original BRS CP form to her unit on 19 March 2021 via email within one day of receiving the NYARNG letter of instruction from her unit. On 24 March 2021, she was told by the Education Services Office the BRS CP payment would not be accepted by the ARNG processing team because it was not 30 days prior to completing her twelfth year of service. She was then told by the state G1 office that a group ABCMR requests would be completed for all Soldiers who were affected by the lack of guidance. On 6 March 2023 she received notification that she was required to complete an individual ABCMR request because NGB would not accept a group ABCMR request.

g. She is requesting favorable consideration of this request to receive the BRS CP bonus due to the numerous issues that prevented timely submission that were no fault of her own. CP is a BRS entitlement that she should not lose because the ARNG, as a whole, did not provide timely information.

h. The NYARNG supports her request and assumes responsibility for not providing the CY 20 guidance and providing CY 21 guidance past her application eligibility window.

i. If approved, she is requesting to receive the M-Day BRS CP payout (4 times their monthly base pay). She was not an AGR Soldier until 18 December 2021, which is after the date she would have received her BRS CP if she was provided the information to apply on time (no later than 9 December 2020).

2. The applicant provides the following documents:

a. Screen shot of the BRS Opt-In Course, which shows the basis for CP amounts and important CP information for Reserve component members. It does not say when they had to request CP. It states only members with fewer than 12 years of service measured from their PEBD would be eligible for CP.

b. Memorandum BRS CP CY 2020, from NGB, 10 January 2020, states eligibility: any member who is covered under the BRS and has not previously received CP and has a PEBD from 1 January 2008 to 31 December 2008, and will complete 12 years of service during CY 20 as calculated from their PEBD.

c. Memorandum BRS CP CY 2021, from NGB, 11 February 2021, states eligibility: is limited to ARNG Soldiers in an active status that are enrolled in BRS and have not previously received CP and has a PEBD from 1 January 2009 to 31 December 2010, and will complete 12 years of service during CY 21 as calculated from their PEBD. The NYARNG published their guidance on 5 March 2021.

d. Email regarding her BRS CP packet, 23 March 2021, states in regards to the applicant the system was showing she had over 12 years of service, so she was not eligible to receive payment. The guidance published states Soldiers may submit their CP request no earlier than the completion of their 11th year of service based on their PEBD and should submit their CP request no later than 30 days prior to completing their 12th year of service based on their PEBD. They were discussing how they were going to capture the group they missed, and likely course of action.

e. Request for CP BRS, 21 October 2021, shows the applicant was in the ARNG and was requesting BRS CP at four times the monthly basic pay for her current pay grade. She agreed to an additional obligated service of four years. She signed the form on 21 October 2021. It is not signed by the certifying official or approval authority.

f. Order 337-0001, published by the State of New York, 3 December 2021, ordered her to AGR duty with a reporting date of 18 December 2021 for a period of three years.

g. Memorandum from the Director, Military Personnel, NYARNG, 13 January 2023, states:

(1) The NYARNG requests reconsideration to the denial of BRS CP for the applicant due to her application being submitted late due to no fault of her own.

(2) Her PEBD is 21 January 2009. Due to a mobilization, the NYARNG never received the CY 20 BRS CP Execution Guidance. The State Education Services Officer was deployed and none of her successors ever received the CY 20 guidance. As a result, the state did not publish guidance and was not prepared to submit her packet in January 2021 when she was eligible to apply.

(3) The CY 20 guidance only allowed personnel with a PEBD between 1 January 2008 through 31 December 2008 to apply for CP. This means that even if the guidance had been received by the NYARNG, she would not have been able to apply under the eligibility and submission guidelines in that guidance at any time during 2020.

(4) Due to no fault of the applicant, the CY 21 ARNG guidance was not issued until 11 February 2021 and New York did not publish its execution guidance until 5 March 2021. She should not be punished for the guidance being published late. In addition, that guidance gave a PEBD eligibility window of 1 January 2009 through 31 December 2010, but required the packet to be submitted not later than 30 days prior to the completion of 12 years of service based on the PEBD. That submission date (21 December 2020) was one and a half months prior to the guidance being published by the ARNG and over two months prior to the NYARNG guidance being published.

(5) The applicant signed her BRS CP form on 21 March 2021, within 16 days of the NYARNG letter of instruction being issued, but when the education Services Officer submitted her packet, BRS CP payment was denied by the ARNG processing team as a late submission.

(6) Request favorable consideration of this request to allow the applicant's BRS CP request to be processed without delay due to the numerous issues that prevented timely submission that were not fault of the applicant.

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

a. Report of Separation and Record of Service shows she entered the ARNG as an enlisted Soldier on 21 January 2009 and was honorably separated on 13 May 2011.

b. An Oath of Office - Military Personnel shows she took the oath of office as a U.S. Army Reserve Commissioned Officer on 14 May 2011.

c. ARNG Current Annual Statement, 21 January 2024 shows she has been in the ARNG from 21 January 2009 to 21 January 2024, and is currently serving in the ARNG Active Guard Reserve (AGR). She had completed 15 years of service toward retirement.

4. 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.

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. Upon review of the applicant's petition, available military records, and the Director of Military Personnel for the New York Army National Guard's recommendation for favorable consideration of the applicant's request, the Board concurred finding guidance was issued late for the processing of the blended retirement system continuation pay and due to no fault of the applicant, her application was submitted late. The Board concluded, as a matter of equity, relief was warranted.

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 and Army National Guard records of the individual concerned be corrected by:

- showing the applicant timely submitted the appropriate request/form for payment of BRS CP
- showing the appropriate office timely received her request and authorized payment as a result of this correction

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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. Public Law 114-92, National Defense Authorization Action (NDAA) for Fiscal Year (FY 2016, section 634 (CP for Full Thrift Savings Plan (TSP) Member with 12-Years of Service), (a) CP, 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

a. Amount, the amount of CP payable to a full TSP member under subsection (a) shall be the amount that is equal to 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 (not to exceed 13-months) as the Secretary concerned shall specify in the agreement of the member under subsection (a)

b. Timing of Payment, the Secretary concerned shall pay CP under subsection (a) to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides CP under subsection (c) to the member, that CP shall be provided when the member completes 12 years of service.

2. Title 37, United States Code, section 356 (CP) states:

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 Active Guard/Reserve 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.

c. The maximum amount the Secretary concerned may pay a member under this section is — 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.

3. Deputy Secretary of Defense Memorandum dated 27 January 2017, Subject: Implementation of the BRS, implements guidance for the BRS for the Uniformed Services, which was authorized in Public Law 114-92 section 631 through 635 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016. Members of the Uniformed Service are covered under the provisions of the BRS who served in a Uniformed Service for fewer than 12-years as calculated from their PEBD.
4. Army Regulation (AR) 637-1 (Army Compensation and Entitlements Policy), provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active duty Soldiers. Paragraph 18-26 (Continuation Pay), the BRS provides for CP in exchange for additional service obligation by Soldiers when they reach between the 8 and 12-years 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 components if they commit to a minimum of 3-years of additional service.
5. 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 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//