

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 February 2024

DOCKET NUMBER: AR20230004505

APPLICANT REQUESTS: exception to policy (ETP) for the Blended Retirement System Continuation Pay (BRS-CP) time in service eligibility requirement.

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant Statement
- Request for Continuation Pay, 13 March 2023
- Memorandum, Subject: Blended Retirement System (BRS) Continuation Pay (CP) - Calendar Year 2023 (CY23)

FACTS:

1. The applicant states the policy was poorly written not stating time allotted to apply. He has served 12 years but not over or at 13 years which makes him eligible for BRS Continuation Pay. He also states via a personal statement:

a. He would like to be considered eligible for the BRS Continuation Pay. Upon applying for the BRS Continuation Pay there was a miscommunication within the wording of the BRS Continuation Policy. The policy was poorly written without a thorough explanation of the eligibility requirements to receive said benefits stated above. It was stated within the policy that service members who had reached 8 to 12 years of service, but not under 8 years or over 12 years being 13 years may be eligible for BRS Continuation Pay. It did not clearly state that service members who had reached 12 years and 1 day would not be eligible for benefits.

b. He, who has reached his 12-year mark and after carefully reading the policy it was written as if a service member with 7 years or 13 years would not be eligible, being that said service member would be under or over the stated requirements within the BRS Continuation Pay policy. He is asking to be considered eligible being that he meets the 12-year requirement that was poorly communicated within the policy. He would also like to be considered eligible for BRS Continuation Pay to advise and guide soldiers who are unaware of this amazing opportunity due to lack of knowledge, miscommunication of policies, and inadequate Blended Retirement System counseling.

2. Review of the applicant's service records shows:

a. He enlisted in the Army National Guard (ARNG) on 30 June 2010, establishing this date as his PEBD (Pay Entry Basic Date). He served in an aviation specialty.

b. He submitted an application for appointment as a commissioned officer and subsequently executed an oath of office and was appointed as a Reserve commissioned officer of the [REDACTED] Army National Guard on 21 October 2016.

c. He was promoted to captain in the ARNG in April 2023.

d. The applicant reached 12 years of service on 30 June 2022.

3. The applicant provides a Request for Continuation Pay, dated by himself on 23 March 2023 (some 9 months after he reached his 12th year). The form is also signed by the certifying official on the same date. It is not signed by the approving authority.

4. On 1 December 2023, the National Guard Bureau provided an advisory opinion in the processing of this case. An advisory official restated the applicant's request for an exception to policy (ETP) for the Blended Retirement System Continuation Pay (BRS-CP) time in service eligibility requirement, and recommended disapproval. The advisory official stated:

a. The applicant states in his application that he would like to be considered eligible for BRS-CP due to a "miscommunication within the wording of the BRS Continuation Policy." The Soldier states that the policy was poorly written, and the eligibility requirements were unclear because the policy did not state that service members who had reached 12 years and 1 day would not be eligible for benefits.

b. Eligibility for BRS-CP is limited to members who: are covered under BRS and have not previously received BRS-CP and will complete 12 years of service during the calendar year as calculated from the Soldier's PEBD. In exchange for BRS-CP, Soldiers must agree to serve and be eligible to complete four years of additional service in the component in which they are serving at the time BRS-CP is approved. The Soldier must show proof of BRS enrollment status and complete the request form before the 12th year of service. Soldiers may elect to receive BRS-CP in a single lump sum or in a series of equal installments, either paid directly to the Soldier or to their Thrift Savings Plan (TSP).

c. The Soldier submitted a memorandum outlining the BRS-CP Calendar Year 2023 guidance as supporting evidence in his application. This memorandum and Title 37 USC section 356 both state the eligibility requirements to receive continuation pay, which are that a Soldier should be covered under BRS and has

completed no less than eight and not more than 12 years of service, as computed from the Soldier's pay entry base date (PEBD).

d. The applicant signed a request for continuation pay on 13 March 2023. This request was signed by a certifying official on the same day. Based on his PEBD of 30 June 2010, he was eligible to apply for BRS-CP between 30 June 2021 and 30 June 2022. This office recommends denial of the Soldier's request for an ETP of the time in service eligibility requirement for BRS-CP because his claim that "the policy" is unclear is insufficient to recommend an approval.

e. The opinion was coordinated with the assistance of the Army National Guard Retirement section.

5. The applicant was provided a copy of this advisory opinion and responded by email stating that he was informed by Chief [REDACTED] that by submitting his signed CP form to the ABCMR that it would be approved and that he would still receive a CP payment. He also spoke with a Mr. [REDACTED] who advised him that he should submit his CP form to the ABCMR for approval and CP payment. He does not understand why "denial" is the recommendation regarding his claim. He has heard of several others who were severely past the 12 year mark that received approvals and payments.

6. By law (37 USC), the Secretary concerned shall pay continuation pay 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.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found that, given the applicant's explanation of his understanding of BRS CP eligibility, it is clear the requirement to apply prior to reaching 12 years of service was not adequately explained to him. A majority of the Board found that, had he applied for BRS CP in a timely manner, his application would have been approved, barring any errors in the application. Based on a preponderance of the evidence, a majority of the Board determined the applicant's record should be corrected to show he submitted a timely application for BRS CP and he should be paid any monies he is due as a result of this correction.

3. The member in the minority concurred with the advisory official's conclusion that the evidence does not support relief. The member in the minority noted that the requirement

to request BRS CP prior to completing 12 years of service is well established in law and BRS program guidance and determined the applicant's claim that guidance was unclear is insufficient as a basis for relief.

BOARD VOTE:

<u>Mbr 1</u>		<u>Mbr 2</u>		<u>Mbr 3</u>	
█	:		:	█	GRANT FULL RELIEF
:	:	:	:		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 he submitted a completed application for BRS CP prior to completing his 12th year of service, which was approved. He should be paid any monies he is due as a result of this correction.

5/6/2024

X

CHAIRPERSON

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 37 U.S. Code § 356 - Continuation pay: full TSP members with 8 to 12 years of service,

a. Continuation Pay.—The Secretary concerned shall make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who—

(1) has completed not less than 8 and not more than 12 years of service in a uniformed service; and

(2) enters into an agreement with the Secretary to serve for not less than 3 additional years of obligated service.

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 regular component or a reserve component, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10), 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 active Guard or Reserve 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—

(1) in the case of a member of a regular component— (A) the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus (B) 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); and

(2) in the case of a member of a reserve component— (A) 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 (B) at the discretion of the Secretary concerned, the amount of monthly basic pay described in subparagraph (A) multiplied by such number of months (not to exceed 6 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a).

c. Additional Discretionary Authority.— In addition to the continuation pay required under subsection (a), the Secretary concerned may provide continuation pay under this subsection to a full TSP member described in subsection (a), and subject to the service agreement referred to in paragraph (2) of such subsection, in an amount determined by the Secretary concerned.

d. Timing of Payment.— The Secretary concerned shall pay continuation pay 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.

e. Lump Sum or Installments.— A full TSP member may elect to receive continuation pay provided under subsection (a) or (c) in a lump sum or in a series of not more than four payments.

f. Relationship to Other Pay and Allowances.— Continuation pay under this section is in addition to any other pay or allowance to which the full TSP member is entitled.

g. Repayment.— A full TSP member who receives continuation pay under this section (a) [1] and fails to complete the obligated service required under such subsection shall be subject to the repayment provisions of section 373 of this title.

2. Assistant Secretary of the Army (Manpower and Reserve Affairs), Subject: Blended Retirement System (BRS) Continuation Pay (CP) - Calendar Year 2023 (CY23) establishes eligibility, amounts, and additional service obligation for CP in CY23 as authorized in reference 1.a. of this memorandum.

a. Applicability. This guidance is effective 1 January 2023, and expires on 31 December 2023. It applies to regular Army (RA), Army National Guard/Army National Guard of the United States, and United States Army Reserve Soldiers who are covered under the BRS.

b. Eligibility. Regular Army and Active Guard Reserve (AGR). Any member who meets the following criteria is eligible to enter into an agreement to serve the obligation period specified in paragraph 6 below: (1) Is covered under the BRS; and (2) Has completed no less than 8 and not more than 12 years of service, as computed from the Soldier's pay entry base date (PEBD). Army Reserve and Army National Guard, not in an AGR status, must meet the eligibility criteria listed in paragraph 4.a and be a member of the Selected Reserve or otherwise a member of the Ready Reserve in a status in which the member is eligible to receive basic pay.

//NOTHING FOLLOWS//