

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 13 February 2024

DOCKET NUMBER: AR20230004526

APPLICANT REQUESTS: payment of Continuation Pay (CP) under the provisions of the Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- Defense Finance and Accounting Service (DFAS) Leave and Earnings Statement (LES), 12 April 2023

FACTS:

1. The applicant states at the time of his 11-to-12-year service mark, he was not notified or received a briefing of the process for applying for CP. The first time he heard about CP was when an S-3 master sergeant was informing her staff sergeant (SSG)/E-6 that they need to start providing the Soldiers in their unit this information. If justice is considered in his favor, he would like a lump sum payment.

2. A review of the applicant's military records show the following:

a. The applicant's U.S. Marine Corps (USMC) DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he enlisted in the USMC Reserve (USMCR) under the Delayed Entry Program on 27 August 1996 (8-year service obligation through 27 August 2004].

b. He enlisted in the USMC and entered active duty on 30 June 1997. He was honorably released from active duty (USMC) on 29 January 2002 and transferred to the USMC Reserve (USMCR)

c. He served in the USMCR from 30 January 2002 to 12 February 2003. He then served on active duty (USMC) from 13 February to 29 October 2003, and transferred back to the USMCR. He was discharged from the USMCR on 27 August 2004.

d. After a break in service from 28 August 2004 to 27 May 2014, he enlisted in the California Army National Guard (CAARNG). His DD Form 4 (Enlistment/Reenlistment

Document - Armed Forces of the United States) shows he enlisted in the CAARNG for 6 years on 28 May 2014. He later transferred to the NVARNG around March 2016.

e. On 21 August 2019, he executed a 1-year extension of his enlistment. His DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows he extended in the ARNG for 1 year, which changed his Expiration Term of Service (ETS) date to 27 May 2021.

f. He was discharged from the NVARNG on 21 January 2021. His NGB Form 22 (Report of Separation and Record of Service) shows he was discharged from the NVARNG for reenlistment into the CAARNG. He completed 6 years, 7 months, and 23 days net service this period.

g. On 30 March 2021, he executed a 3-year extension in the ARNG. His DA Form 4836 shows he extended in the ARNG for 3 years, which changed his ETS date to 27 May 2024. His Pay Entry Basic Date (PEBD) is shown as 30 March 2007. His Enlisted Record Brief also shows his PEBD as 30 March 2007.

h. Orders Number 0001371871.00 published by the CAARNG promoted the applicant to the rank/grade of SSG/E-6, effective 26 July 2021.

i. On 9 January 2023, he executed a 5-month extension. His DA Form 4836 shows he extended in the ARNG for 5 months, which changed his ETS date to 27 October 2024.

j. The applicant's NGB Form 23A (ARNG Current Annual Statement) prepared on 28 May 2023, shows in pertinent part, the applicant earned a total of 17 years of qualifying service for non-regular retirement.

k. The applicant reached his 12th year of service on xxxxxx. His record is void of a formal request for CP-BRS. The Army uses the Request for Continuation Pay (Blended Retirement System) as the CP contract to document the Soldier's CP election and obligated service].

(1) The CP-BRS would include the Control Number, commitment to extend/reenlist for a number of years/service obligation, signatures by the certifying and approval authorities, and method of payment.

(2) The team chief contacted the applicant by email requesting the formal CP-BRS form. The applicant did not respond.

3. The applicant provides a DFAS LES dated 12 April 2023, which shows his pay date as 30 March 2007 and Thrift Savings Plan/ROTH deduction of \$30.34. His grade is shown as E-6 and years of service "16" at the time.

4. On 26 October 2023, the NGB, Chief, Special Actions Branch provided an advisory opinion and recommended approval of the applicant's request to be paid CP bonus. The advisory official stated:

a. The applicant enlisted in the Marine Corps in 1997 and served until 2004. After his civilian break, he enlisted in the NVARNG in 2014 and was entitled to Continuation Pay (CP) since he opted into the Blended Retirement System. He transferred to the CAARNG in 2021. He did not receive any information about CP until after his 12th year anniversary. The applicant is requesting back pay of his CP bonus.

b. The applicant's records show that he joined the NVARNG on 28 May 2014. His 12th year anniversary was in May 2018. He opted into the BRS and is currently making and receiving payments towards his Roth plan. However, the applicant did not submit his CP request packet by his 12th year because his unit did not inform any of their eligible applicants of this requirement. During his 11th and 12th year anniversaries, the unit had still not processed the information about CP and had not informed Soldiers. The unit operations section began sending out the information about CP after his anniversary window had passed.

c. On 27 January 2017, the Deputy Secretary of Defense implemented guidance for the BRS for uniformed services, authorized by Public Law 114-92 (National Defense Authorization Act for Fiscal Year 2016). The BRS is a one-time payout available to Active Duty, ARNG, and Reserve Service Members covered under the BRS with between 8 and 12 years of service who can enter into an agreement to perform additional obligated service. BRS includes a CP provision to encourage Service Members to continue serving. CP is a mid-career bonus payment given in exchange for an agreement to serve a specific number of years and is a direct cash payout, like a bonus. Per the BRS CP Implementation guidance, all Soldiers may submit their CP request no earlier than 180 days prior to completing their 12th year of service, based on their PEBD. Soldiers should submit their CP request no later than 30 days prior to completing their 12th year of service.

d. Based on the applicant's claims and the documents he provided in support of his request, there was a clear miscommunication and lack of information sent to the Soldiers from the unit about their BRS-CP benefit. The unit acknowledges the issue and fully supports the applicant's request for his CP.

e. For these reasons, it is the recommendation of this office that the applicant's request be approved. Based on the applicant's records, he did not submit his BRS-CP

request in time because he was unaware of the benefit and the requirement to receive the benefit. It is recommended that the applicant's CP be processed retroactively.

f. The ARNG Incentives Branch did not provide input for this recommendation and CAARNG concurs with this recommendation.

5. On 27 October 2023, the applicant was provided a copy of the NGB advisory opinion to allow for comments and/or rebuttal. He did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant served in the USMC from 1997 to 2004. After a break, he enlisted in the ARNG in 2014 and was entitled to Continuation Pay (CP) since he opted into the Blended Retirement System. He transferred to the CAARNG in 2021. He did not receive any information about CP until after his 12th year anniversary. The applicant is requesting back pay of his CP bonus.

a. The applicant reached his 12th year anniversary in May 2018. He opted into the BRS and is currently making and receiving payments towards his Roth plan. However, the applicant did not submit his CP request packet by his 12th year because his unit did not inform any of their eligible applicants of this requirement. During his 11th and 12th year anniversaries, the unit had still not processed the information about CP and had not informed Soldiers. The unit operations section began sending out the information about CP after his anniversary window had passed. It is the recommendation of this office that the applicant's request be approved. Based on the applicant's records, he did not submit his BRS-CP request in time because he was unaware of the benefit and the requirement to receive the benefit.

b. The Board reviewed and agreed with the NGB advisory official's determination that based on the applicant's claims and the documents he provided in support of his request, there was a clear miscommunication and lack of information sent to the Soldiers from the unit about their BRS-CP benefit. The unit acknowledges the issue and fully supports the applicant's request for his CP. For these reasons, the Board determined relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	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 an approved Exception to Policy for BRS enrollment to include a retroactive start date with payment and Thrift Savings Plan (TSP) funds (provided all other requirements (control number, signature approvals, service obligations, etc.), are met).

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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. Army Regulation 15–185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency.

2. Title 37, United States Code (USC), section 356 (Continuation Pay: full TSP (Thrift Savings Plan) members with 8 to 12 years of service) provides:

a. The Secretary concerned shall make payment of 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 (subsection b) 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 a Regular 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

//NOTHING FOLLOWS//