

IN THE CASE OF: ██████████

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230005124

APPLICANT REQUESTS: an Exception to Policy (ETP) resulting in entitlement to Continuation Pay (CP) under the Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Form 23C (Army National Guard (ARNG) Retirement Points History Statement – Application for Retired Pay), 31 August 2020
- Memorandum – Subject: BRS CP, 22 September 2021
- Leave and Earnings Statement (LES), 31 March 2023
- Request for CP (BRS), 24 April 2023

FACTS:

1. The applicant states in pertinent part she was not properly notified about the CP BRS in a timely manner and believes that this occurred because she was on Title 10 orders at the time. She contests that when she was transferred from Title 10 to Title 32 status, she was removed from the BRS for approximately a year. The problem has now been resolved, but she will need an ETP to receive CP. She was later notified about the CP BRS, but the email was again delayed because she transferred back to a Title 32 status.

2. A review of the applicant's available service records reflects the following:

a. On 30 June 2009, the applicant enlisted in the ARNG for 6 years, and on 15 June 2015, the applicant extended her enlistment by 6 years resulting in a 29 June 2021 expiration term service date.

b. On 27 November 2018, the applicant was ordered to active duty, and on 31 August 2020, the applicant was honorably released from active duty and returned to her ARNG unit.

c. On 1 September 2020, the applicant was ordered to active duty, and on 30 June 2021 the applicant completed 12 years of service.

d. On 2 September 2021, [REDACTED] ARNG issued Orders Number 1369575 announcing her promotion to staff sergeant (SSG)/E-6, effective 19 July 2021.

e. On 29 September 2023, the applicant was honorably released from active duty.

3. The applicant provides the following a:

a. NGB Form 23C dated 31 August 2020, reflective of the applicant's qualifying service completed between 30 June 2009 – 30 June 2020. This document further provides the applicant's Basic Active Service Date of 25 September 2016.

b. Memorandum – Subject: BRS CP dated 22 September 2021, reflective of the applicant being advised that a recent audit of her personnel records indicated that she was not informed of her eligibility to receive CP BRS. The applicant was afforded 45 days (suspense of 6 November 2021) to submit her request to receive CP.

c. LES, ending on 31 March 2023, reflective of the applicant's pay and entitlements for the month of March 2023. This document shows her retirement plan as the BRS, and she had matching contributions under the Thrift Savings Plan (TSP).

d. Request for CP (BRS) dated 24 April 2023, reflective of the applicant's submitted request to receive CP at a rate of 4 times her monthly basic pay to be paid in a lump sum. The applicant agreed to serve an Additional Obligated Service (AOS) of 4-years in accordance with the CP BRS - Calendar Year 2022 (CY22). The applicant has a 30 June 2009, Pay Entry Basic Date (PEBD). The form is endorsed by the applicant but does not contain the endorsement of the certifying official nor the approval authority.

4. On 21 March 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request noting that she was disenrolled from BRS when she began participating in the Active Guard/Reserve (AGR) program. Once the enrollment was fixed, she was over the 12-year maximum Time in Service (TIS) (as of 30 June 2021). The [REDACTED] ARNG notified the applicant of eligibility for CP after missing the enrollment window. Aside from not requesting the CP BRS prior to reaching 12 years TIS, the applicant was enrolled in BRS and was otherwise qualified. On 30 September 2021, a Notification of Eligibility email was sent to the applicant informing her of lack of notice sent for CP BRS eligibility between 30 December 2020 to 30 June 2021 and advising her to submit an application to the ABCMR. After further review of the applicant's documents provided, discussions with the [REDACTED] ARNG and ARNG Incentives Oversight Branch Office concluded that the applicant was eligible for CP BRS but did not apply due to lack of notification.

5. On 22 March 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 25 June 2024, the applicant has not responded.

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 applicant's Pay Entry Basic Date (PEBD) is 30 June 2009. She reached her 12th year of service on 30 June 2021. According to the NGB, the applicant was disenrolled from BRS when she began participating in the AGR program. Once the enrollment was fixed, she was over the 12-year maximum Time in Service (TIS) (as of 30 June 2021). The CAARNG notified her of eligibility for CP after missing the enrollment window. Aside from not requesting the CP BRS prior to reaching 12 years TIS, the applicant was enrolled in BRS and was otherwise qualified. On 30 September 2021, a Notification of Eligibility email was sent to the applicant informing her of lack of notice sent for CP BRS eligibility between 30 December 2020 to 30 June 2021 and advising her to submit an application to the ABCMR. The Board reviewed and agreed with the NGB advisory official's determination that the applicant was eligible for CP BRS but did not apply due to lack of notification, which the Board considered an error that warranted relief.

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 the applicant submitted to the National Guard Bureau an exception to policy for BRS enrollment to include a retroactive start date to her 12th year of service mark (20 June 2021)
- showing her exception to policy was timely received and approved by the NGB
- providing her the opportunity to open a case to pursue any retroactive matching and agency automatic TSP funds, if applicable, provided all other criteria is met

9/9/2024

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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.

REFERENCE:

Title 37 United States Code (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 four 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.

c. In exchange for the CP described in paragraph 5, Soldiers must agree to serve for four years of additional service in the component in which they are serving at the time CP is approved. The service obligation commences upon approval of the CP request.

//NOTHING FOLLOWS//