

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 November 2024

DOCKET NUMBER: AR20230005647

APPLICANT REQUESTS:

- Exception to Policy (ETP) for Continuation Pay (CP) in the Blended Retirement System (BRS)
- An appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Defense Finance and Accounting Service (DFAS) Military Leave and Earnings Statement (LES)(7)
- Emails (4)
- Request for Continuation Pay Blended Retirement System (BRS)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. The reason for the ETP is because upon his accession into the Active Guard Reserve (AGR) program in 2020, he was involuntary removed from the BRS. He lost 2.5 years of continuation pay eligibility due to the BRS coverage mandate and LES reflecting "Choice". He requests re-enrollment into BRS with agency matching, backdated to August 2020 and an ETP for continuation pay. The date he initially entered military service and his pay entry basic date (PEBD) is 7 September 2010. He should not have been moved to the "Choice" retirement plan in August 2020, as this was no longer a viable retirement plan option since 2018. He opted into BRS on 3 January 2018, and he should have remained on BRS when assessed into the AGR program in August 2020. The U.S. Army Human Resources Command (HRC) never replied to his emails or phone calls to assist. His career manager never replied to his

email or phone calls to assist. His S1 (personnel section) gave him incorrect guidance telling him that he was ineligible for the continuation pay as he was never enrolled into BRS. He requests action to be taken to place him back into the BRS, which is evident on his 23 April 2023 LES. The March 2023 LES shows blended; however, matching is zero on the bottom. All other LES' dated back to his AGR accession on 8 August 2020 show "Choice" as his retirement plan.

3. The applicant provides:

a. DFAS LES' shows period covered:

- Check date 22 July 2020 does not show a retirement plan
- 1-30 September 2020 retirement plan "Choice"
- 1-31 December 2022 retirement plan "Choice"
- 1-31 January 2023 retirement plan "Choice"
- 1-28 February 2023 retirement plan "Choice"
- 1-31 March 2023 retirement plan "Blended" matching shows .00
- 1-30 April 2023 retirement plan "Blended"

b. Email from the applicant to HRC, 2 March 2023 show bottom line up front (BLUF): While in the National Guard from 2010 to 2016, he enrolled into the BRS program 2013 and transitioned to the U. S. Army Reserve (USAR) in 2017. At the time of his transition into the USAR he was still enrolled into the BRS. Upon being accessed into the AGR program on 10 August 2020, he was no longer enrolled into the BRS and was not counseled or advised that he would need to "Opt-In" again. He was under the impression that he was automatically enrolled into BRS after 2014. None the less, here he is, and he needs to understand his options going forward.

c. Email, 2 March 2023 shows the applicant emailed Major P___, he was informed by finance that he was kicked out of the BRS upon being assessed into the AGR program, thus making him ineligible for Continuation Pay and matching contributions since 2020. He needs guidance on how to proceed with getting back into the BRS program and retroactively getting back the opportunities that he lost over the past two years. He had sent the following questions to HRC:

- Do I have the option to OPT-IN to the BRS again?
- If I'm not in the BRS am I considered on the High 3?
- What happens to my matching contributions during 2015 - 2020?
- How does this affect my 20 year retirement timeline?
- If allowed back into the BRS program, will my 2020 - 2023 contributions receive the matching contributions from the Army?
- What is my next best course of action (COA)?

d. Email, 30 March 2023 shows an email from Specialist ASR__ (S1) that he attached a copy of the applicant's signed DA Form 4187 (Personnel Action). He could send this to finance; however, he would highly recommended hand delivering it to finance since this is a DFAS correction. He was not entirely sure if finance will except this form from them. Regardless he will be sending this on a UTL to finance just in case.

e. Email, 24 April 2023 shows Mr. FDW__ Army Military Pay Office, emailed the applicant "CMS Case 27295450 - SM was in the Reserve and came active in August 2020". The applicant was getting TSP Matching in the Reserve and in the BRS. When he was accessed, his LES showed Choice and matching stopped. The applicant called DFAS and was instructed to come to the local Finance Office (FO) and create a case to correct. S-1 was also told even though he is past 12 years, a DFAS technician could process his Continuation Pay bonus. Please advise and correct as needed. DFAS responded with: Verified the applicant opted in to BRS on 3 January 2018. If the applicant digitally signed the request form prior to 6 September 2022, then he can be paid because the pay will be based on the 10 year of service (YOS) basic pay. If the applicant digitally signed the request after 6 September 2022, the CP cannot be paid at all. He will need to go through the Army Board for Correction of Military Record (ABCMR) to appeal the BRS CP. Assigned to work BRS enrollment 37 March 2023. Other notes that they may have issues with less than 4 years left in current component and over 12 years of service. ABCMR packet was attached.

f. A Request for Continuation Pay Blended Retirement System (BRS), signed 10 March 2023 shows in:

- item c: "the amount of payment, in accordance with above policy message, will be 2.5 times the monthly basic pay for his current pay grade and years of service"
- item d: "the applicant agreed to an Additional Obligated Service (AOS) of 0 years commencing from the date in block 8 (10 March 2023)"

4. A review of the applicant's records show the following information:

a. DD Form 4 (Enlistment/Reenlistment Document Armed forces of the United States) reflects the applicant enlisted in the Oregon Army National Guard (ORARNG) on 7 September 2010.

b. He entered active duty for training on 18 October 2010. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he honorably released from active duty (REFRAD) on 21 January 2011 and transferred to the ORARNG. He completed 3 months and 4 days net active service.

c. NGB Form 22 (Report of Separation and Record of Service) reflects he was honorably separated from the ORARNG on 9 August 2012 due to officer commission.

d. Special Orders Number 97, 12 April 2013 shows the applicant was appointed to the ARNG on 10 August 2012 as a second lieutenant/2LT/O-1.

e. He entered active duty for training on 13 January 2013. His DD Form 214 shows he honorably REFRAD on 2 May 2013 in the rank of first lieutenant/1LT/O-2 and transferred to the ORARNG. He completed 3 months and 20 days net active service.

f. He entered active duty on 11 June 2014. His DD Form 214 shows he honorably REFRAD on 27 June 2015 in the rank of first lieutenant/1LT/O-2 and transferred to the ORARNG. He completed 1 year, and 17 days net active service.

g. NGB Form 22 reflects he was honorably separated from the ORANG on 5 August 2017 and transferred to the USAR.

h. DA Form 71 (Oath of Office-Military Personnel) shows the applicant was appointed a Reserve Commissioned Officer on 5 August 2017 in the rank of 1LT.

i. Orders B-11-810408, 21 November 2018 reflect the applicant was promoted to the rank of CPT on 30 August 2018.

j. He entered active duty on 8 August 2020. His DD Form 214 shows he honorably REFRAD on 8 August 2023 in the rank of CPT. He was transferred to the USAR. He completed 2 years, 11 months, and 29 days net active service.

k. A Request for Continuation Pay Blended Retirement System (BRS), signed 20 September 2023 shows in:

- item c: "the amount of payment, in accordance with above policy message, will be 2.5 times the monthly basic pay for his current pay grade and years of service"
- item d: "the applicant agreed to an AOS of 4 years commencing from the date in block 8 (10 March 2023)"

5. In the processing of this case an advisory opinion was obtained from the Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Division, who opined in pertinent part:

a. After careful review, this office does not support the applicant's request for request due to failure to submit the CP request. In accordance with reference 1.c, the

applicant must sign the CP request by the 12th year of service and agree to an additional AOS of four years.

b. Verified with the Defense Finance and Accounting Service that the applicant's Thrift Savings Plan (TSP) Matching for September 2020-April 2023 was completed in the month of April 2023. The only actions that showed on his LESs were 2023; therefore, he will need to request a copy of his TSP history to verify all historical matching has been posted to his account.

c. If the applicant can provide the CP request and agree to the correct AOS, this office would support correction of the military record and payment of CP request based on the date of that the applicant would have otherwise been qualified for in accordance with reference 1.c.

6. The applicant was provided with a copy of the advisory opinion to provide a response.

7. The applicant responded to the advisory opinion in an email on 27 September 2023, which states:

a. "I've attached the CP request agreeing to the correct AOS. I couldn't tell by the language in paragraph 4 if the board would approve the CP request with the current year and date. Or if he would need to produce the CP that fell within the 12-year mark?

b. With-that-said, as a Soldier he relies heavily on our subject matter expert's (SME's) in the shops to know the regulations and provide accurate guidance. I believes that based on the documents I originally presented to the S1, they were correct in their guidance that I would not be eligible for the CP based on his LES statement. This LES statement that I provided as evidence in my packet had zeroed out the BRS contributions and indicated that I was on the high 3 retirement plan. Because of this error, not of his doing, I was not permitted to submit my CP packet.

c. It's taken a great deal of his time to run everything to ground and get my accounts squared away. Now I have one final hurdle. I would ask the board to take into consideration the misinformation that was presented to me and allow me to deduct the three years of time in service, that my LES reflected the High 3 retirement plan, from my total time in service to be eligible for the CP. I look forward to the [ARBA] decision and forthcoming response".

7. 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions.

BOARD DISCUSSION:

1. The Board determined 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.

2. 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 PEBD is 7 September 2010. In accordance with Assistant Secretary of the Army for Manpower and Reserve Affairs memorandum (BRS CP Calendar Year 2020(CY20)), 18 December 2019, the applicant must sign the CP request by the 12th year of service and agree to an additional AOS of four years. Additionally, the Army G-1 verified with DFAS that the applicant's TSP Matching for September 2020-April 2023 was completed in the month of April 2023. The applicant reached the 12th year mark in September 2022. He has submitted a CP form agreeing to the additional service obligations. Therefore, the Board determined, as a matter of equity, the applicant should be granted relief to have his record corrected by showing he submitted the appropriate CP BRS form prior to reaching 12 years of service, on the date he would have been otherwise qualified.

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 records of the individual concerned be corrected by:

- showing the applicant timely submitted his Request for Continuation Pay – Blended Retirement System (CP – BRS) on 6 September 2022

- showing the appropriate office timely received and processed his approved request for CP BRS
- paying the applicant based on the appropriate pay grade in September 2022 from the 2022 pay scale, less applicable federal and state taxes (DFAS determines the exact amount), provided all other criteria is met

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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. Department of Defense Financial Management Regulation, Volume 7B states pursuant to the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2016, as amended by the NDAA FY 2017, the Department of Defense established the modernized retirement system, commonly known as the BRS. The BRS is the retired pay system for all Service members who entered military service on or after 1 January 2018. All members serving as of 31 December 2017 were grandfathered under the applicable legacy retirement system. The law permits active-duty Service members with less than 12 years of service on 31 December 2017, the option of electing to be covered under the BRS or to remain with their applicable legacy retirement system. The law provides a one-year election period for those Service members eligible to opt into the BRS from 1 January 2018 and ends on 31 December 2018. The decision to opt into the BRS is irrevocable.

2. 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 begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. 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//