

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 November 2024

DOCKET NUMBER: AR20230005717

APPLICANT REQUESTS:

- payment of blended retirement system (BRS) continuation pay (CP)
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statement (LES)
- NGB Form 23B (Army National Guard (ARNG) Retirement Points History Statement)
- Request for CP BRS
- Memorandum for Board

FACTS:

1. The applicant states she was denied BRS CP due to her request being submitted beyond her 12th year of service. She was transferring units, at the time, and the information regarding BRS CP was not being forwarded to her, as she was transferring. When she did find out about the information, she was just a few days past her 12th year of service. Her unit did not submit her request for BRS CP before her 12th year of service, which was 25 March 2023. Her documents were submitted to the Iowa Education office on 4 May 2023 but it was rejected due to being over the 12th year by one month and nine days. She was not made aware of the payment until after her 12th year. Her unit contacted the state education center to confirm her eligibility and they stated she was still eligible because she had not reached her 13th year of service and the documents should be submitted. Since her unit was given incorrect information by one individual, she believes she should still receive the payments. Her unit full time staff had changed and she was transferring units. The spreadsheet, provided by the education center, was not up to date stating eligibility as of 4 April 2023 and her unit identification code (UIC) did not change to her new unit, which caused her new unit to not be aware of the request for payment needing to be submitted.

2. The applicant provides:

a. Request for CP BRS, 3 May 2023, shows she requested CP at four times her monthly basic pay and she agreed to an additional obligated service of 4 years. The certifying official and approval authority signed the form on 4 May 2023.

b. Memorandum for the Board from the Unit Administrative Noncommissioned Officer (NCO), 4 May 2023, states:

(1) The applicant should have submitted her BRS CP request prior to her 12th year and 1 day anniversary. Her full time unit staff went through a rapid transition of four different individuals in a six month period, which resulted in her request not being submitted in a timely manner.

(2) The NCO attended an MS Teams meeting with the State Education Office on 4 April 2023, which was when she was made aware of the BRS CP. She was provided a list of names for the UICs of Soldiers who were eligible for BRS CP. Prior to the meeting, the NCO was not aware of the BRS CP program.

(3) Once she received the list of names in a spreadsheet, she began gathering the documents and reaching out to the Soldiers that were eligible. The applicant had been transferred to another unit and the full time unit staff for that unit was out of the office, so the NCO did not get a chance to speak with them regarding the applicant's request. The NCO reached out to the applicant on 2 May 2023 to ask if she had filled out and submitted her BRS CP request but she had not.

(4) Since the applicant was over her 12th year anniversary, the NCO called the state BRS CP representative to confirm she was still eligible. The NCO was told she was still eligible within her 12th year until she reached the 13th year, which meant they could submit the documents to request payment.

(5) The applicant was able to complete the documents and return them to request payment on 4 May 2023. They submitted the documents to the State Education Center on 4 May 2023 at 9:21 a.m. By 10:36 a.m. on 4 May 2023, they received an email stating she was over her 12th year of service and was no longer eligible by a different representative in the education office. The NCO does not believe the applicant is at fault and should be granted an exception to receive the BRS CP for requesting payment only one month and nine days after her 12th year anniversary.

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

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows she enlisted in the ARNG on 25 March 2011. She remains in the ARNG through immediate reenlistments/oaths of extension of her enlistment.

b. NGB Form 23A (Annual ARNG Current Annual Statement), 25 March 2024, shows she has been in the ARNG since 25 March 2011. She has 13 creditable years of service for retired pay.

4. On 22 March 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion, which states:

a. The applicant requests to receive BRS CP for calendar year (CY) 2023. NGB recommended approval of her request.

b. She was eligible for BRS CP CY 2023 until her 12th year time in service (TIS), 25 March 2023. She states she was not notified by her unit of her eligibility until after 25 March 2023 but she was told to still submit her application to the education office, as she was eligible throughout her 12th year TIS.

c. She submitted her BRS CP application to the Iowa ARNG Education office with a signature date of 3 May 2023. Her application was denied because it was past her eligibility date of 25 March 2023. She submitted her BRS CP application, LES, NGB Form 23B, and an exception to policy request memorandum from her unit administrative NCO for review of her request.

d. After review of her submission, to include a memorandum for her full time unit administrative NCO, she was not notified of her eligibility for BRS CP until after her 12th year TIS and was no longer eligible to receive BRS CP CY 2023. She was instructed by her unit to apply for BRS CP and she submitted the application to the Iowa ARNG education office with a signature date of 3 May 2023. Her request was denied for being submitted after 25 March 2023. She was not notified or trained per Headquarters, Department of the Army, Execute Order 140-21 stating Soldiers in BRS will complete training for CP at least 90 days prior to the last date an individual is eligible through online training, face-to-face, or group training.

e. It is the recommendation of NGB that her request be approved. She missed the application eligibility window through no fault of her own and was not notified or trained.

5. On 26 March 2024, the advisory opinion was provided to the applicant to allow her the opportunity to respond. The applicant did not respond.

6. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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 National Guard Bureau, Chief, Special Actions Branch advisory opinion, the Board concurred with the advisory official finding the applicant was eligible to receive CP BRS.
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:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records and Army National Guard records of the individual concerned be corrected by:

- showing the applicant was in receipt of a completed continuation pay (CP) request prior to the completion of 12 years of service as computed from the PEBD
- DFAS paying the entitlement to CP utilizing the Military Pay Account and not the ABCMR funds payable through Debts and Claims

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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. Department of Defense memorandum dated 27 January 2017 (Implementation of the Blended Retirement System (BRS)), Attachment 1, provides guidance for the implementation of the Uniformed Services' BRS. This memorandum was effective as of 27 January 2017. Unless otherwise stated, the policies contained herein that implement the BRS shall be effective simultaneous with the effective date of the BRS, 1 January 2018. In pertinent part:

a. Paragraph 6b.(3) (Eligibility) provides that, any member of the Reserve Component (RC) of a Uniformed Service who is performing reserve component service as a member of the Ready Reserve or on the Active Status List of the Standby Reserve on 31 December 2017 is covered under the provisions of the BRS, who: (a) Has a date of initial entry into military service (DIEMS)/date of initial entry into uniform service (DIEUS) that is on or before 31 December 2017; and, (b) Is in receipt of basic pay or inactive duty pay under Sections 204 or 206, respectively, of Title 37, USC, on or after 31 December 2017; and, (c) Has accumulated fewer than 4,320 retirement points, in accordance with the provisions of Section 12733 of Title 10, USC, as of that date; and, (d) Elects to enroll in the BRS under provisions outlined in section 9.b. (Procedures for Enrollment).

b. Paragraph 8b.(2) (Continuation Pay) provides that, a Reserve Component member is eligible to receive CP who: (a) Is covered under the BRS; and, (b) Has completed not less than 8 and not more than 12 years of service as computed from that member's PEBD; and, (c) If elected to enroll in the BRS in accordance with section 6.b.(3), as calculated under provisions of Section 12733 of Title 10, USC, did not complete more than 12 years of service as calculated from PEBD prior to enrollment in the BRS. (d) Is 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 or inactive duty pay, when otherwise eligible in accordance with criteria published by the Secretary concerned as specified in paragraph 8.f.; and, (e) Is eligible to enter into an agreement to serve not less than an additional 3 years in the Selected Reserve.

2. Title 37, USC, Section 356 (CP: Full Thrift Savings Plan (TSP) Members with 8 to 12 years of service) states:

a. 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

b. The amount of CP payable to a full TSP member shall be the amount that is equal to:

(1) 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 as the Secretary concerned shall specify in the agreement; and

(2) 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; plus at the discretion of the Secretary concerned, the amount of monthly basic pay multiplied by such number of months as the Secretary concerned shall specify in the agreement.

c. In addition to the CP, the Secretary concerned may provide CP to a full TSP member in an amount determined by the Secretary concerned.

d. The Secretary concerned shall pay CP to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides CP to the member, that CP shall be provided when the member completes 12 years of service.

e. A full TSP member may elect to receive CP in a lump sum or in a series of not more than four payments.

f. CP is in addition to any other pay or allowance to which the full TSP member is entitled.

g. A full TSP member who receives CP and fails to complete the obligated service required shall be subject to the repayment provisions.

3. Army Regulation 637-1 (Army Compensation and Entitlements Policy), paragraph 18–26 (Continuation Pay), states in pertinent part:

a. CP application points, rates, and years of required commitment may vary from year to year or from one military occupational specialty to another, and application criteria will be published annually by the Deputy Assistant Secretary of the Army for Military Personnel and Quality of Life. CP is not automatic, and Soldiers must apply before the established deadline, or they will forfeit their eligibility to receive CP.

b. Soldiers must meet the following criteria to qualify for CP:

(1) Must be enrolled in BRS.

(2) Must be within 180 days of the established application year point (between 8 and 12 years of service) as determined from their PEBD.

(3) Must have an approved application no later than the anniversary date of the established application year point as determined from their PEBD.

c. Commanders or designated representatives will —

(1) Verify Soldiers requesting CP elected BRS.

(2) Assist Soldiers in completing the CP contract and acquiring the appropriate approval prior to Soldier's 8th to 12th year of service as computed from the PEBD (based on year's criteria). Current law does not allow for the acceptance of a CP contract beyond the 12th year of service.

(3) Identify and ensure Soldiers eligible for CP submit their requests within the established timelines.

d. Soldiers enrolled in BRS will —

(1) Use the approved (CP (BRS)) request as published by Deputy Chief of Staff, G-1 plans and resources to apply for CP.

(2) Submit the completed contract to their respective S1 for approval and processing to Finance Officers (FO)/Army Military Pay Officers (AMPO).

e. Personnel office/S1 will —

(1) Include the unit identification code in block 3 of the CP contract. Also, complete item 4 of the CP contract with a 9-digit control number prior to forwarding to the FO/AMPO (CP1801001 is an example of such a number). First two characters (CP) represents continuation pay. The next two numbers represent the fiscal year the CP contract is approved. The fourth and fifth numbers represents the month and the last three numbers depicts the cumulative number(s) of CP contracts processed by the assigned unit for a particular month.

(2) Forward the CP contract to the FO/AMPO within 7 duty days in accordance with established procedures to finance for payment.

(3) Process the CP contract for filing in Interactive Personnel Electronic Records Management System under the service and finance folders.

4. 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//