

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230006125

APPLICANT REQUESTS: an Exception to Policy (ETP) pertaining to the "maximum of 12- years' Time In-Service (TIS) opt-in Restriction" for 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)
- Leave and Earnings Statement (LES), October 2022
- DD Form 577 (Appointment/Termination Record – Authorized Signature), 27 October 2022
- DA Form 4856 (Developmental Counseling Form), 29 October 2022
- U.S. Army Reserve (USAR) Form 22-R (Adjustment Certification Worksheet), 31 October 2022
- Personnel Action Packet Checklist
- USAR Form 26-R (Pay Document Transmittal Letter (TL), 30 November 2022
- Request for CP (BRS)
- Email communication

FACTS:

1. The applicant states in pertinent part that at the time of application, he met the eligibility requirement to receive CP under the BRS. However, upon application, he was denied and redirected to this Board by the U.S. Army Office of the Chief Army Reserve (OCAR) to request relief. He notes that his unit submitted an inquiry to OCAR who advised that he was eligible, but a system error precluded the processing of his request.

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

- a. On 10 February 2010, the applicant enlisted in the USAR for 8 years.
- b. On 14 October 2010, the applicant was appointed a Reserve commission.
- c. On 25 October 2010, the U.S. Army Human Resources Command (AHRC) issued Orders Number C-10-015286 assigning the applicant to a Troop Program Unit.

d. On 2 December 2021, AHRC issued Orders Number B-12-106932 announcing the applicant's promotion to the rank/grade of major (MAJ)/O-4, effective 5 November 2021.

a. The applicant completed 12 years of service on 10 February 2022.

b. On 22 October 2022, the applicant submitted his request for entitlement to CP under the BRS at a rate of 4 times his monthly basic pay to be paid in a single, lump sum. The applicant agreed to 4 years of additional obligated service in the USAR. The applicant's Pay Entry Basic Date (PEBD) reflects 10 February 2010. The certifying official endorsed the form on 27 October 2022 and the approval authority endorsed the form on 25 November 2022. The form bears control number [REDACTED].

3. The applicant provides the following a:

a. LES, ending October 2022, reflective of the applicant's pay and entitlements for the month of October 2022. This document is void of evidence of the applicant's participation in the BRS but does reflect pretax contributions under the ROTH plan.

b. DD Form 577 dated 27 October 2022, reflective of Mr. [REDACTED] being appointed to serve as the Certifying Officer authorized to verify that a Soldier meets the CP BRS eligibility requirements.

c. DA Form 4856 dated 29 October 2022, reflective of the applicant being counselled by Mr. [REDACTED] regarding his eligibility for entitlement to CP BRS. The applicant indicated that he had not completed more than 12 years of service, agreed to serve no less than 4-years and would therefore like to receive CP. Further, the applicant acknowledged that his request must be approved prior to his completion of 12-years of service as calculated by his PEBD.

d. USAR Form 22-R dated 31 October 2022, reflective of the applicant's submitted request for the processing of his CP BRS request.

e. Personnel Action Packet Checklist, reflective of the applicant's submission of several required documents needed in the processing of his CP BRS request.

f. USAR Form 26-R dated 30 November 2022, reflective of the applicant's submitted request for CP BRS entitlement.

g. Email communication, reflective of the applicant being advised to submit his request for CP BRS through the ABCMR.

4. On 16 November 2023, the Department of the Army, Office of the Deputy Chief of Staff, G-1, Program Analyst Compensation and Entitlements Division, provided an advisory opinion recommending approval of the applicant's request noting that payment should be based on his rank (MAJ) with 12 years of service for pay purposes ( $\$8,284.50 \times 4 = \$33,138.00$ ) less applicable taxes. The applicant submitted his request for BRS CP on 22 October 2022, however the end point for pay was 10 February 2022
5. The applicant was provided with a copy of the advisory opinion and afforded the opportunity to provide comments. As of 26 February 2024, the applicant has not responded.

#### 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and Office of the Deputy Chief of Staff G-1 -Compensation and Entitlements Division advisory opinion, the Board concurred with the advising official recommendation for approval finding in the interest of fairness and equity to the applicant claim he was not provided the proper guidance for submission of his application prior to his 12th year of service. The Board noted, the applicant submitted his request for CP on 22 October 2022 although the end point for pay was 10 February 2022.
2. The Board agreed there is sufficient evidence to support an Exception to Policy (ETP) pertaining to the "maximum of 12- years' Time In-Service (TIS) opt-in Restriction" for Entitlement to Continuation Pay (CP) Under the Blended Retirement System (BRS) , based on the opine and fairness to the applicant who stated he was not afforded the opportunity to submit his CP due to improper guidance. As noted by the opine, the applicant's payment should be based on his rank (MAJ) with 12 years of service for pay purposes ( $\$8,284.50 \times 4 = \$33,138.00$ ) less applicable taxes. Therefore, the Board granted 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 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 of the individual concerned be corrected to show the applicant is authorized an Exception to Policy (ETP) pertaining to the "maximum of 12- years' Time In-Service (TIS) opt-in Restriction" for Entitlement to Continuation Pay (CP) Under the Blended Retirement System (BRS). Additionally, the applicant's payment should be based on his rank (MAJ) with 12 years of service for pay purposes (\$8,284.50 x 4 = \$33,138.00) less applicable taxes.

3/19/2024

X █

CHAIRPERSON

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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.

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 Thrift Savings Plan (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 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//