

IN THE CASE OF: ██████████

BOARD DATE: 22 February 2024

DOCKET NUMBER: AR20230006138

APPLICANT REQUESTS: correction of his records to show he is eligible for blended retirement system continuation pay (BRS CP)

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Completion BRS Opt-In Course
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States)
- DA Form 3240 (Certificate and Acknowledgement of U.S. Army Reserve (USAR) Service Requirements and Methods of Fulfillment)
- Orders 21-176-00019 Transfer to USAR Control Group (Reinforcement)
- Orders C-11-111640 Assignment to USAR Troop Program Unit (TPU)
- Request for CP (BRS)
- Personnel Action Packet Checklist
- USAR Form 22-4 (Adjustment Certification Worksheet)
- DD Form 544 (Appointment/Termination Record - Authorized Signature)
- Leave and Earnings Statement (LES) 19 November 2021
- USAR Form 26-R (Pay Document Transmittal Letter)
- Soldier Summary USAR TPU
- LES 26 April 2023

FACTS:

1. The applicant states, his unit submitted a BRS on the last eligible day for fiscal year 2022, during the temporary extension given to eligible Soldiers on their 13th year of service. The applicant was sent the following message from the OCAR RSO Team, "Per guidance from Headquarters, Department of the Army, we cannot process an exception to policy to the BRS CP law. Please ask the applicant to submit a case through the Army Board for Correction of Military Records (ABCMR) to correct the injustice and request payment. Please ask the applicant to explain that the error was due to system error that has been fixed and that he is entitled to the BRS CP. Please include all BRS CP documents and forms. We apologize for the inconvenience. Thanks for your

inquiry." The applicant's application was submitted within the parameters. Guidance from his OCAR RSO team states he should appeal through this system.

2. The applicant provides the following documents:

a. Joint Knowledge Online Certificate showing he successfully completed the BRS Opt-In Course on 17 October 2017.

b. Orders 21-176-00019, published by Headquarters, 88th Readiness Division, dated 25 June 2021, assigned the applicant to USAR Control Group (Reinforcement) for expiration of Army National Guard (ARNG) or USAR Service Obligation, effective 25 June 2021.

c. Orders C-11-111640, published by U.S. Army Human Resources Command, dated 4 November 2021, voluntarily transferred the applicant from USAR Control Group (Reinforcement) to a USAR TPU effective 3 November 2021.

d. Request for CP BRS, dated 15 November 2021, shows the applicant, as a member of the USAR, was requesting BRS CP and agreed to an additional obligated service of 2 years. The certifying official and approval authority signed the form on 29 November 2021.

e. LES, dated 26 April 2023, shows the applicant, as a member of the USAR, had a Thrift Savings Plan (TSP) Contribution. It shows his expiration term of service (ETS) as 6 December 2025.

3. The applicant's service record contains the following documents:

a. DD Form 4, dated 20 February 2009 shows the applicant enlisted in the ARNG for a period of 8 years.

b. NGB Form 22 (Report of Separation and Record of Service) shows the applicant was in the ARNG from 20 February 2009 through 19 February 2015. He completed 6 years of net service this period and had a total of 5 years of service for retired pay. The applicant was transferred to USAR Control Group (Reinforcement).

c. The applicant's service record was void of orders transferring the applicant from USAR Control Group (Reinforcement) to a TPU of the USAR; however, his service record contains DA Forms 4836 showing the applicant extended his enlistment in a TPU of the USAR on:

- 6 November 2016, for a period of 2 years
- 20 November 2018, for a period of 2 years

- 1 December 2021, for a period of 1 year

d. DD Form 4, dated 6 February 2021 shows the applicant reenlisted in the USAR for a period of 3 years.

e. DA Form 5016 (Chronological Statement of Retirement Points), dated 12 February 2024 shows the applicant was in the USAR from 20 February 2015 through 19 February 2022. The DA Form 5016 is void of his ARNG service and void of any service performed beyond 19 February 2022. He had 5 years qualifying service for retirement.

4. On 10 January 2024, the Program Analyst, Compensation and Entitlements Division, Office of the Deputy Chief of Staff G-1, provided an advisory opinion, which states after careful review of the information provided, G-1 did not support the applicant's request. The applicant submitted a completed request for CP effective 15 November 2021, which reflected an agreement to serve an additional obligated service of 2 years. The minimum additional service obligation requirement is 4 years; therefore, the applicant is not eligible for CP based on the request.

5. On 26 January 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 30 January 2024, the applicant responded stating:

a. Per paragraph 2 of the G-1 memorandum, the applicant's claim was denied for service obligation of 2 years and not the required 4 years of continuing service to fulfill the CP obligation.

b. This claim is unequivocally false. The applicant was not sure where this error occurred, but he does hope the list of attachments provided are sufficient to answer any doubts concerning his CP request.

c. For the sake of redundancy and clarity his CP request was submitted on 15 November 2021. At the time, he had 13 months of Individual Ready Reserve time, which had been reactivated to TPU status, in addition to satisfy the CP time necessary, he signed a 3 year Rule J extension, which took his effective ETS to 6 December 2025 for a grand total of 49 months of continued service. The requirement for CP is 48.

d. On 15 November 2021, he had over 48 months remaining on his service obligation. He imagines that if his records were pulled as a snapshot in time, an error could have occurred, while these documents were being processed to his service record.

e. In any event, the applicant attached the response he was given from [REDACTED] from the USAR OCAR team, which explicitly states he was to explain there was a

system error, at the time of his submission, that had been remedied, and that he was entitled to the CP bonus.

f. After reviewing the initial request for CP, he understands that block D states an additional obligated service agreement of 2 years. The applicant is unsure why that does not reflect the full 4 years, which he agreed to as these documents were prepared by retention and brigade staff. A clerical error outside of his control should not effect his eligibility for CP, as he met all of the eligibility requirements as they are stated in the regulations. Furthermore, in the initial email thread, which he responded to Sergeant First Class (SFC) ■■■ these documents could be amended after the fact, so long as they were submitted by the respective due date.

6. The applicant provides the following documents, not previously considered, with his rebuttal:

a. Email from SFC ■■■ dated 26 October 2021, which states after all the information the SFC gathered and looking at the applicant's pay entry basic date, they were against the clock. Time was of the essence. The applicant was at 12 years of service and that is typically the max for payout and they needed to file for BRS CP quickly. From the verbiage of the email they send out to Soldiers who are potentially eligible, the applicant had 120 days to apply for the CP from the date the policy was signed. The policy was signed on 30 July 2021 and 120 days later would be 27 November 2021. It appeared if the applicant opted in for the BRS and transferred to a TPU, he would be eligible for this.

b. Email from OCAR RSO, dated 15 May 2023, states per guidance from Headquarters, Department of the Army, they could not process an exception to policy to the BRS CP law. Pleas ask the applicant to submit a case through the ABCMR to correct the injustice and request payment. Ask the applicant to explain that the error was due to a system error that has been fixed and that he is entitled to the BRS CP.

c. Memorandum BRS CP Provision Procedures Calendar Year 2023, states under its parameters, the BRS authorizes CP. The BRS CP provision is a one-time, mid-career bonus in exchange for an agreement to perform additional obligated service. The CP is in addition to any other career field-specific pay, incentives, or retention bonuses. The entire memorandum is available for the Board's consideration.

d. A slide excerpt frequently asked question #1: Is there an exception to policy for those who missed the CP window? There is no exception to policy.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant’s contentions, the military record, and regulatory guidance were carefully considered. Based upon the justification provided for recommending denial of the request by the G1 advisory official, the rebuttal submitted by the applicant, and the evidence within the record supporting the rebuttal statement of the applicant, the Board concluded there was sufficient evidence to recommend changing the applicant’s record showing he made an appropriate and timely submission for blended retirement system continuation pay (BRS CP). The amount of Continuation Pay will be calculated based upon his submission from November 15, 2021.

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 Army records of the individual concerned be corrected by correcting the applicant’s records to show he is eligible for blended retirement system continuation pay (BRS CP) based upon his submission of 15 November 2021.

5/15/2024

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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.

REFERENCES:

1. Public Law 114-92, National Defense Authorization Action (NDAA) for Fiscal Year (FY 2016, section 634 (CP for Full Thrift Savings Plan (TSP) Member with 12-Years of Service), (a) CP, 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

a. Amount, the amount of CP payable to a full TSP member under subsection (a) shall be the amount that is equal to 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 (not to exceed 13-months) as the Secretary concerned shall specify in the agreement of the member under subsection (a)

b. Timing of Payment, the Secretary concerned shall pay CP under subsection (a) to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides CP under subsection (c) to the member, that CP shall be provided when the member completes 12 years of service.

2. Title 37, United States Code, section 356 (CP) states:

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 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 Active Guard/Reserve 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.

c. 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.

3. Deputy Secretary of Defense Memorandum dated 27 January 2017, Subject: Implementation of the BRS, implements guidance for the BRS for the Uniformed Services, which was authorized in Public Law 114-92 section 631 through 635 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016. Members of the Uniformed Service are covered under the provisions of the BRS who served in a Uniformed Service for fewer than 12-years as calculated from their PEBD.

4. Army Regulation (AR) 637-1 (Army Compensation and Entitlements Policy), provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active duty Soldiers. Paragraph 18-26 (Continuation Pay), the BRS provides for CP in exchange for additional service obligation by Soldiers when they reach between the 8 and 12-years point in their career. Soldiers will receive a minimum of 2.5 times base pay for Regular component and .5 times base pay for Reserve components if they commit to a minimum of 3-years of additional service.

//NOTHING FOLLOWS//