

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 5 March 2024

DOCKET NUMBER: AR20230006150

APPLICANT REQUESTS: in effect, an exception to policy for payment of Continuation Pay (CP) under the provisions of the Blended Retirement System (BRS).

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), 15 March and 19 May 2023
- DA Form 4856 (Developmental Counseling Form), 23 March 2023
- DA Form 5016 (Chronological Statement of Retirement Points), 23 March 2023
- DD Form 577 (Appointment/Termination Record - Authorized Signature), 3 April 2023
- Request for CP BRS, 3 April 2023
- Personnel Action Packet Checklist for CP BRS, 14 April 2023
- USAR Form 26-R (Pay Document Transmittal Letter), 14 April 2023
- Reserve Incentive Management Subsystem screenshot

FACTS:

1. The applicant states:

a. The Office of the Chief of Army Reserve (OCAR) RSO [Retirement Services Office] Team was unable to process CP BRS due to his Pay Entry Base Date (PEBD) being over 12 years and Fiscal Year 2022 (FY22) CP policy. His PEBD includes noncommissioned Cadet Simultaneous Member Program (SMP) time that should not be counted against him for CP BRS. His PEBD date shows as 19 August 2010, while actual commissioning date shows 19 December 2012 as per his DA Form 5016 (Chronological Statement of Retirement Points). As per OCAR RSO Team: Error was due to a system error that has been fixed, and he is entitled to the CP BRS.

b. He is seeking a much-needed financial incentive to remain in the military. He has excellent evaluations and contributions to Department of Defense operations, including a Central Command tour. He is a degreed engineer and brings an experienced

technical approach to the USAR. He is dual 12A/38A military occupational specialty with no derogatory counseling or articles.

2. A review of the applicant's official military records show the following:

a. He enlisted as a Cadet in the USAR on 19 August 2010.

b. Orders Number 352-01 published by the U.S. Army Reserve Officers' Training Corps (ROTC) Golden Knight Battalion, Clarkson University, Potsdam, NY, released the applicant from the USAR Control Group (ROTC) to accept a commission in the U.S. Armed Forces, effective 18 December 2012.

c. On 19 December 2012, DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a Reserve commissioned officer and executed an oath of office.

d. Orders Number B-01-800419 published by the U.S. Army Human Resources Command promoted the applicant to the rank/grade of captain (CPT)/O-3 with an effective date of rank of 15 November 2017.

e. DA Form 5016 (Retirement Accounting Statement) dated 14 October 2023 and DA Form 5016 (Chronological Statement of Retirement Points) dated 19 February 2024 show his Pay Entry Base Date (PEBD) as 19 August 2010.

f. The applicant completed 12 years of service on 19 August 2022.

3. In support of his case, the applicant provides:

a. LESs dated 15 March and 19 May 2023, which shows in pertinent part, his pay grade as O-3 with a pay date of 19 August 2010, and Thrift Savings Plan (TSP) data. The retirement plan box is void of an entry.

b. DA Form 4856 dated 23 March 2023, showing he was counseled for CP BRS and certified that he elected to participate in the BRS through his MyPay account. In pertinent part, he also certified that he completed no more than 12 years of service, as calculated by the PEBD prior to his enrollment in the BRS and agreed to serve no less than 4 years. He further acknowledged that his request for CP BRS must be approved prior to completing 12 years of service, as calculated by the PEBD.

c. DD Form 577 dated 3 April 2023, which appointed him as the certifying officer for CP BRS requests.

d. A Request for CP BRS approved on 3 April 2023, which shows the applicant acknowledged he understood he would be receiving CP, as part of the BRS, in return

for his continued service in the USAR. He agreed to accept CP and the amount of payment would be 4 times the monthly basic pay for his current pay grade and years of service listed on the monthly basic pay table provided by DFAS in effect on the date he signed the form. He also agreed to an Additional Obligated Service of 4 years commencing from the date he signed the request form, and he requested his CP to be paid in one single lump-sum payment. The form was endorsed by the certifying official on 23 March 2023 and the approval authority on 3 April 2023. The form does not show a control number.

e. USAR Form 26-R and Personnel Action Packet Checklist dated 14 April 2023, which show he requested the processing of his BRS CP and the required forms and documents.

f. A RIMS screenshot showing his detailed Soldier information.

4. On 6 October 2023, the Office of the Deputy Chief of Staff G-1, Program Analyst, Compensation and Entitlements Division, provided an advisory opinion for this case and recommended approval. The advisory official stated:

a. After careful review of the information provided, we recommend this case be approved in the interest of fairness and equity. The applicant states he was not provided with timely and accurate guidance regarding this application of CP prior to his 12th year of service, and otherwise would have submitted this request within the published timeframe. The applicant submitted a completed request for CP effective 23 March 2023; however, the end point for pay was 19 August 2022.

b. The applicant's request for payment of CP should be made based on the date he would have been otherwise qualified for in accordance with reference 1.c., specifically, in the pay grade of "E-5" (sic) [O-3] with 12 years of service for pay on 19 August 2022.

c. If the board grants administrative relief, the payment would be based on the pay grade of O-3 with 12 years for pay purpose from the 2022 pay scale ( $\$7,362.90 \times 4.0 = \$29,451.60$ , gross entitlement, less applicable federal and state taxes).

5. On 13 October 2023, by email, the applicant responded to the G-1 advisory opinion and stated, he had no comments.

#### 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 contends he was not provided timely and accurate guidance regarding this

application of CP prior to his 12th year of service, and otherwise would have submitted this request within the published timeframe. The applicant reached his 12th year of service on 19 August 2022. He submitted a completed request for CP effective 23 March 2023, beyond the 12th year of service. There is no error. However, the Board was convinced by and accepted the applicant’s argument regarding not receiving timely and proper guidance and determined an injustice occurred.

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 before reaching his 12th year of service
- Showing the appropriate office timely received and processed his approved request for CP BRS
- Paying the applicant based on the pay grade of O-3 with 12 years for pay purpose from the 2022 pay scale, less applicable federal and state taxes (DFAS determined the exact amount)

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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. Title 37, United States Code (USC), Section 356 (CP: Full TSP Members with 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.

2. Office of the Assistant Secretary of the Army Manpower and Reserve Affairs memorandum – Subject: Blended Retirement System (BRS) Continuation Pay (CP) - Calendar Year 2022 (CY22), 27 January 2022, establishes eligibility, amounts, and additional service obligation for CP in CY22 as authorized in Title 37, USC, Section 356 and 373. This guidance is effective immediately and expires on 31 December 2022. It applies to Regular Army (RA), Army National Guard/Army National Guard of the United States, and United States Army Reserve Soldiers who are covered under the BRS.

a. Paragraph 4a (Eligibility) states, RA and Active Guard Reserve (AGR) members who meets the following criteria are eligible to enter into an agreement to serve the obligation period specified in paragraph 6 below:

- Is covered under the BRS; and
- Is between 10 and no more than 12 years of service, as computed from the Soldier's Pay Entry Base Date (PEBD).

b. Paragraph 4b states, Army Reserve and Army National Guard, not in an AGR status, must meet the eligibility criteria listed in paragraph 4.a and be a member of the Selected Reserve (SELRES) or otherwise a member of the Ready Reserve in a status in which the member is eligible to receive basic pay.

c. Paragraph 4c states, inter-service transfers joining one of the Army's BRS eligible groups must complete the transfer before starting their 12th year of service based upon the PEBD. Army leaders will ensure these Soldiers were not paid CP by another service or component before executing a CP payment.

d. Paragraph 5 (CP Amount) states, for those eligible to apply for CP during CY22, the CP amount will be computed using their current pay grade and years of service as listed on the monthly basic pay table provided by the Defense Finance and Accounting Service in effect on the date of the Soldier's request and as follows:

(1) For RA, and Title 10 and Title 32 AGR Soldiers performing active service in a career status program, CP is 2.5 times the monthly basic pay.

(2) For Army Reserve and Army National Guard Soldiers serving in the SELRES (minus AGR), CP is 4 times the active duty monthly basic pay.

e. Paragraph 6 (Service Obligation) states, in exchange for the CP described in paragraph 5, Soldiers must agree to serve four years of additional service in the component in which they are serving at the time CP is requested. The service obligation commences on the date of the Soldier's CP request.

f. Paragraph 7 (Application Process) states, the Army will use the Request for Continuation Pay (Blended Retirement System) as the CP contract to document the Soldier's CP election and obligated service. The CP contract will be placed in the Interactive Personnel Electronic Records Management System, referred to as iPERMS, under the service and finance subfolders. At a minimum, the BRS CP election packet will include the following:

(1) Proof of BRS enrollment status.

(2) Request for Continuation Pay (Blended Retirement System)/CP contract.

g. All Soldiers may submit their CP request once they become eligible for CP based on meeting eligibility criteria listed in paragraph 4. Soldiers must sign their CP request on or before the start of their 12th year of service based on PEBD. Payments are not payable until BRS opt-in can be verified, and the CP is approved. Commanders may appoint appropriate personnel to serve as CP certifying officials. When no appointment has been made, the certifying official will be the Soldier's servicing military personnel office and/or servicing human resources specialist.

h. Paragraph 8 (Payment Options) states:

(1) Soldiers may elect to receive CP in a single lump sum or in a series of equal installments, not to exceed four annual payments over four consecutive years.

(2) Soldiers who want to have their CP payment(s) directed to their TSP must update their allotment allocations in myPay and their TSP settings to ensure the CP funds are distributed in accordance with their personal financial plan prior to submitting the CP request.

i. Paragraph 9 states, the approval authority will be the requesting Soldier's immediate commander.

//NOTHING FOLLOWS//