

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 February 2024

DOCKET NUMBER: AR20230006343

APPLICANT REQUESTS: an exception to policy for payment of his Continuation Pay in the U.S. Army Reserve (USAR) for opting into the Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum, subject: Exception to Policy, dated 3 October 2022
- Continuation Pay Packet – Request for Continuation Pay BRS), dated 21 August 2022

FACTS:

1. The applicant states he switched to BRS at the time of change in 2018. When he came off Active duty and went into the Reserve Component (RC), his BRS was stopped. He was eligible for Continuation Pay (CP) in December 2021, but that is when he realized his BRS was stopped. After a period of several months, it was corrected and he was then able to submit his packet for CP in 2022. He required a letter of lateness as well since he was outside the window for submitting. He needed OCAR (Office of the Chief of Army Reserve) approval which they would not give since he was beyond the time requirement for submitting. Now has been told by the inspector general, his S-1, and RPAC that he needs to submit through this Board to get paid for CP. He needs the letter of lateness/exception to policy to be approved by the Board so he can then submit for pay. This was caused as a result of not recognizing that his BRS was stopped, and then OCAR not responding to approve his letter of lateness to submit for pay. At this time, he has been told this is his only option to submit to get paid is to get his letter of lateness approved by this Board.

2. Review of the applicant's service records shows:

a. He enlisted in the USAR on 8 October 2008. He entered active duty for training from 22 January 2009 to 14 August 2009 and completed training for award of military occupational specialty 68W, Health Care Specialist. His Pay Entry Basic Date (PEBD) was established as 22 January 2009.

b. He also entered active duty from 10 April 2016 to 1 February 2019, completing 2 years, 9 months, and 22 days of active service.

c. On 3 February 2019, he executed an oath of office and was appointed as a Reserve Commissioned Officer of the Army, in the rank of second lieutenant/O-1.

d. He was promoted to first lieutenant/O-2 in August 2018 and to captain/O-3 in August 2023. The applicant reached his 12th year of service on 22 January 2021.

3. The applicant provided a Continuation Pay (BRS) packet, together with a letter of lateness:

a. Request for Continuation Pay (BRS), with No Control Number, signed by the applicant on 13 July 2022. He agreed to an Additional Obligated Service of 4 years, the amount of payment would be four times the monthly basic pay for his current pay grade and years of service as listed on the monthly basic pay table provided by the Defense Finance and Accounting Service (DFAS) in effect on the date signed, and he requested to be paid in one single lump sum payment. The Certifying Official signed this form on 3 August 2022 and the Approving Authority signed it on 21 August 2022.

b. Letter, dated 3 October 2022, Subject: Exception to Policy for the applicant's CP packet submitted past the deadline. The author states the applicant is requesting CP for Calendar Year 2021 for PEBD between 1 January 2009 and 31 December 2009. The applicant was made aware of the CP in November 2021. It was then that he recognized his CP was no longer active and he was no longer receiving matching funds from DFAS. He contacted several individuals and/or agencies in an effort to resolve it. It turned out that when he transferred from active duty to the RC, BRS is often deactivated.

4. On 29 September 2023, the Army G-1 Compensation and Entitlements Division provided an advisory opinion in the processing of this case. The advisory official referenced/stated:

a. Title 37, United States Code, Section 356; Office of The Secretary of Defense, memorandum (Implementation of the BRS), 27 January 2017; Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)), memorandum (BRS Continuation Pay (CP) – Calendar Year 2021 (CY21)), 19 January 2021.

b. After careful review of the information provided, the Army G-1 recommends this case be approved in the interest of fairness and equity. [Applicant's] records reflect an error in the transfer of the BRS enrollment from active to reserve pay account. The applicant would have otherwise submitted the application of CP prior to his 12th year of

service. The applicant did submit a completed request for CP signed effective 13 July 2022; however, the end point prior to 12 years of service for pay was 22 January 2021.

c. 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 O-2E with 12 years of service for pay on 22 January 2021. Additionally, the control number (block 6) needs to be changed to reflect CP2101001.

d. If the Board grants administrative relief, the payment would be based on the pay grade of O-2E with 12 years for pay purposes from the 2021 pay scale ($\$6,084.90 \times 4.0$ (Multiplier) = $\$24,339.60$ Less 22% Federal Tax = $\$18,984.89$ net entitlement).

5. The applicant was provided with a copy of this advisory opinion. He responded saying that this is exactly what he wanted and that his is thankful for the response.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.
2. The Board reviewed and concurred with the Army G-1's advisory opinion and determined the applicant's request for continuation pay should be made based on the date he would have been otherwise qualified in the pay grade of O-2E with 12 years of service on 22 January 2021.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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■	■	■	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 was entitled to Continuation Pay, retroactive to 22 January 2021. Additionally, add control number to reflect CP2101001.

[REDACTED]

[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.

REFERENCE:

Title 37 U.S. Code § 356 - Continuation pay: full TSP members with 8 to 12 years of service,

a. Continuation Pay.—The Secretary concerned shall make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who—

(1) has completed not less than 8 and not more than 12 years of service in a uniformed service; and

(2) enters into an agreement with the Secretary to serve for not less than 3 additional years of obligated service.

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 regular component or a reserve component, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10), 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 active Guard or Reserve 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—

(1) in the case of a member of a regular component— (A) the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus (B) 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); and

(2) in the case of a member of a reserve component— (A) 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 (B) at the discretion of the Secretary concerned, the amount of monthly basic pay described in subparagraph (A) multiplied by such number of months (not to exceed 6 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a).

c. Additional Discretionary Authority.— In addition to the continuation pay required under subsection (a), the Secretary concerned may provide continuation pay under this subsection to a full TSP member described in subsection (a), and subject to the service

agreement referred to in paragraph (2) of such subsection, in an amount determined by the Secretary concerned.

d. Timing of Payment.— The Secretary concerned shall pay continuation pay 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.

e. Lump Sum or Installments.— A full TSP member may elect to receive continuation pay provided under subsection (a) or (c) in a lump sum or in a series of not more than four payments.

f. Relationship to Other Pay and Allowances.— Continuation pay under this section is in addition to any other pay or allowance to which the full TSP member is entitled.

g. Repayment.— A full TSP member who receives continuation pay under this section (a) [1] and fails to complete the obligated service required under such subsection shall be subject to the repayment provisions of section 373 of this title.

//NOTHING FOLLOWS//