

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2023

DOCKET NUMBER: AR20230006430

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)
- Timeline
- Email communication
- Leave and Earnings Statement (LES), May 2023
- DA Form 4856 (Developmental Counseling Form)
- Request for CP BRS, 1 September 2022
- Memorandum – Subject: Letter of Lateness for CP, 27 October 2022
- Timeline
- Email communication
- Certificate, BRS Opt-In, 17 May 2023
- Email communication
- Reserve Component Management System (RCMS) Automated Record Brief, 24 June 2022
- Email communication
- Office of U.S. Senator letter, 13 June 2023
- Privacy Act Consent Form
- DD Form 2870 (Authorization for Disclosure of Medical or Dental Information), 13 June 2023
- Self-authored letter
- Personnel Action Packet Checklist
- DD Form 577 (Appointment/Termination Record – Authorized Signature), 28 September 2022
- Request for CP BRS, 1 September 2022
- LES, September 2022
- USAR Form 22-R (Adjustment Certification Worksheet), 1 September 2022

FACTS:

1. The applicant states in pertinent part that he submitted his request for CP during Fiscal Year 2021 in accordance with the governing policy provided by assigned retention personnel. He further provides that he elected to opt-into the BRS in October 2018 and began his 11th year of service in January 2021. In March 2021, he was placed on active-duty orders with an April report date. He notes that he began inquiring about the BRS CP in October 2021, but experienced some challenges/delays with the personnel responsible for processing his request. By December 2021, he assumed he had reached the eligibility deadline, or his submitted packet was not processed through the appropriate channels. In August 2022, he was informed that he was still eligible for CP. However, in October 2022, he was advised that he would need to request an ETP. This timeline is further provided in its entirety within the supporting documents for the Board's review.
2. On 14 January 2010, the applicant enlisted in the Regular Army to serve as a 35M (Human Intelligence Collector) for 3 years 30 weeks.
3. On 11 August 2013, the applicant was honorably released from active duty and transferred into the U.S. Army Reserve (USAR) Control Group (Reinforcement).
4. On 5 September 2017, the U.S. Army Human Resources Command (AHRC) issued Orders Number D-09-721987 honorably discharging the applicant from the USAR, effective 5 September 2017.
5. On 18 October 2018, the applicant enlisted in the USAR for 6 years.
6. On 25 March 2021, AHRC issued Orders Number T-03-109129 ordering the applicant to Active Duty for Operational Support (ADOS) for a period of 183 days, effective 1 April 2021.
7. On 1 September 2021, AHRC issued Orders Number T-09-117811 continuing the applicant on active duty for 365 days, effective 1 October 2021.
8. An RCMS Automated Record Brief dated 24 June 2022, shows the applicant's pertinent personnel information to include PEBD (14 January 2010), expiration term of service date (17 October 2024), rank (specialist (SPC)) and date of rank (14 January 2010).
9. DA Form 4856, dated 1 September 2022, shows the applicant was counselled by Captain L_ C_ regarding his eligibility for entitlement to BRS CP. The applicant indicated that he had not completed more than 12 years of service, agreed to serve 4-years and would therefore like to receive CP.

10. A USAR Form 22-R and requests for CP BRS dated 1 September 2022, show the applicant's request for BRS CP 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 14 January 2010. The certifying officer and approval authority endorsed this document, and it contains the control number CP22090XX.

11. On 23 September 2022, AHRC issued Orders Number T-09-226725 continuing the applicant on active duty for 365 days, effective 1 October 2022.

12. The applicant provides a/an:

a. A Memorandum, Subject: Letter of Lateness for CP, dated 27 October 2022, reflective of the applicant's commander's statement regarding the late submission of his request for CP. Colonel R_ B_ provides that the lack of guidance and conflicting information received were contributing factors to the applicant's eligibility for entitlement to CP expiring.

b. His DD Form 577 dated 28 September 2022, shows Mr. V_ R_ was appointed as the applicant's assigned certifying officer, effective 28 September 2022.

c. His LES for September 2022 shows the applicant's pay and entitlements for the month of September 2022. This document is void of evidence of the applicant's participation in the BRS but does reflect pretax contributions under the ROTH plan.

d. A Certificate, BRS Opt-In dated 17 May 2023, reflective of the applicant's completion of the required BRS training.

e. LES for May 2023, reflective of the applicant's pay and entitlements for the month of May 2023. This document is void of evidence of the applicant's participation in the BRS but does reflect pretax contributions under the ROTH plan.

f. Office of U.S. Senator letter dated 13 June 2023, reflective of the applicant's congressional representative's request for the expeditious processing of the applicant's submitted request for relief noting that the applicant is currently serving on active duty.

g. Privacy Act Consent Form, reflective of the applicant's submitted consent authorizing the release of information pertaining to his submitted request for relief.

h. DD Form 2870 dated 13 June 2023, reflective of the applicant's submitted consent authorizing the release of applicable medical and dental information needed during the processing of his request for relief.

13. On 25 September 2023, AHRC issued Orders Number HR-3268-00003 continuing the applicant on active duty for 366 days, effective 1 October 2023.

14. On 12 January 2024, the applicant reenlisted for 6 years.

15. The applicant provides a/an:

a. Email communication, reflective of the applicant being advised to submit a letter of lateness through the Office of the Chief, Army Reserve (OCAR) requesting an ETP regarding eligibility for entitlement to CP. Contained within this email is the applicant's provided timeline pertaining to the actions taken between January – April 2023. In April 2023, the applicant was advised that OCAR's ability to grant ETPs was suspended in September 2022. This document is provided in its entirety within the supporting documents for the Board's review.

b. Timeline reflective of the applicant's chronological account of events related to his CP paperwork being submitted in a timely manner. The applicant notes that he was functioning with the understanding that he had a 31 December eligibility expiration date. The applicant notes that he is eligible for 11-14k in CP. This document is provided in its entirety within the supporting documents for the Board's review.

c. Email communication, reflective of the applicant being advised that he was not eligible to receive CP based upon his 14 January 2010, PEBD; he completed 12 years of service, effective 14 January 2022, and was therefore, required to submit an ETP request.

d. Email communication, reflective of the applicant being advised that OCAR was not permitted to process an ETP. The applicant was advised to submit his request for relief through this Board.

e. Email communication, reflective of an expedited request submitted on the applicant's behalf regarding the processing of his request for an ETP.

f. Self-authored letter, reflective of the applicant's submitted statement provided to his congressional representative regarding the processing of his request for entitlement to CP. The applicant notes several hardships being experienced at this time and the impact that the approval of his request would have. This document is provided in its entirety for the Board's review within the supporting documents.

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

16. 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 (SPC) with 12 years of service for pay purposes ($\$2,905.50 \times 4 = \$11,622.00$) less applicable taxes. The applicant submitted his request for BRS CP on 1 September 2022, however the end point for pay was 14 January 2022.

17. On 30 November 2023, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. The applicant responded in concurrence with the provided recommendation.

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 agrees with G-1 advisory opinion recommending approval of the applicant's request. The Board found sufficient evidence the applicant intended to apply for the BRS continuation pay in accordance with statutory requirements.

BOARD VOTE:

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:	:	:	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:

- a. correcting his record to show he timely completed and submitted his Blended Retirement System (BRS) Continuation Pay (CP) request and that his request was timely received, approved, and processed; and
- b. paying him based on his rank/grade of specialist (SPC)/E-4 with 12 years of service for pay purposes from the 2022 pay scale less applicable taxes.

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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 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//