

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230006520

APPLICANT REQUESTS: an Exception to Policy (ETP) resulting in 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)
- DA Form 1559 (Inspector General Action Request), 4 February 2021
- Memorandum – Subject: BRS-CP Request, 8 March 2022
- Request for CP (BRS), 9 March 2022
- Email communication

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states in pertinent part that he submitted his request for CP BRS to his State Incentive Manager on 17 December 2019, in accordance with the Calendar year (CY) 2019 CP BRS policy requirements based upon his Pay Entry Basic Date (PEBD). The State Incentive Manager intended to obtain the signatures from the Certifying Official and the Approval Authority prior to processing the request for payment. He contests that he submitted all required paperwork and trusted that the process would occur as normal. However, to date he has not received CP BRS despite his adherence to the required Additional Obligated Service (AOS).
3. A review of the applicant's available service records reflects the following:
 - a. From 10 March 2004 – 7 July 2006, the applicant served in the U.S. Air Force. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects a total of 2 years and 4 months of active federal service.

b. On 2 April 2010, the applicant enlisted in the Army National Guard (ARNG) for 3 years with an established PEBD of 5 January 2008.

c. On 15 September 2011, the Joint Force Headquarters issued Orders Number 258-027 ordering the applicant to Full-Time National Guard Duty (FTNGD) for 3-years, effective 1 October 2011.

d. On 16 September 2011, the applicant elected to extend his enlistment by 1 year and 6 months.

e. On 15 August 2014, the Joint Force Headquarters issued Orders Number 227-081 extending the applicant on FTNGD for the period 1 October 2014 through 30 September 2020.

f. On 13 April 2020, the applicant elected to extend his enlistment by 6 years.

g. On 5 May 2020, the Joint Force Headquarters issued Orders Number 126-062 extending the applicant on FTNGD for 6-years effective 1 October 2020.

4. The applicant provides the following a:

a. LES reflective of the applicant's pay and entitlements for the month of November 2019. This document further confirms the applicant's PEBD of 5 January 2008 and his participation in the BRS with matching contributions in the Thrift Savings Plan (TSP).

b. DA Form 1559 dated 4 February 2021, reflective of the applicant's submitted request for assistance with obtaining justification for his non-receipt of CP BRS. The applicant also submitted the later referenced email communications in support of his request.

c. Memorandum – Subject: BRS-CP Request dated 8 March 2022, reflective of the District of Columbia ARNG, Deputy Chief of Staff (DCS)/G-1 statement regarding a signature issue on the applicant's submitted Request for CP (BRS) noting that the delay and oversight made was not on behalf of the applicant. The DCS further provides that the applicant submitted the appropriate paperwork and entered the AOS in good faith.

d. Request for CP (BRS) dated 9 March 2022, reflective of the applicant's submitted request to receive CP at a rate of 2.5 times his monthly basic pay to be paid in a lump sum. The applicant agreed to serve an AOS of 4-years in accordance with the CP BRS - Calendar Year 2019 (CY19). The form was endorsed by the applicant on 17 December 2019 but does not contain the name or endorsement of the certifying official. On 9 March 2022, the approval authority endorsed the document.

e. Email communication reflective of communication between the applicant and various members of the [REDACTED] ARNG concerning his submitted request for CP BRS. On 4 April 2022, the applicant was advised to seek relief through the ABCMR since his CP BRS request was not endorsed by a colonel (COL)/O-6 or higher prior to reaching his 12th year anniversary of service. The applicant was further provided that a recent change in the CP BRS policy provides that the eligibility date is based upon when the applicant endorses the request - not the O-6.

5. On 10 April 2024, the National Guard Bureau, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request.

a. On 17 December 2019, the applicant signed and dated DA Form 1559 to request payment of the BRS-CP career incentive. He agreed to accept the CP at 2.5 times his base pay for an additional obligated service of four years. He completed this action before his twelfth year of service, as required by the ASA (M&RA) Calendar Year Guidance, dated 4 December 2018. He submitted all required documentation in a timely manner to [REDACTED] Army National Guard ([REDACTED] ARNG) Incentives Manager. The Soldier later found out that the Incentives Manager was unable to obtain the required O-6/GS-15 level certifying official signature on time for submission of the payment request. The Soldier filed an Inspector General Action Request to investigate the point of failure of his BRS-CP submission.

b. Eligibility for BRS-CP is limited to members who: are covered under BRS and have not previously received BRS-CP and will complete 12 years of service during the calendar year as calculated from the Soldier's PEBD. In exchange for BRS-CP, Soldiers must agree to serve and be eligible to complete four years of additional service in the component in which they are serving at the time BRS-CP is approved. The Soldier must show proof of BRS enrollment status and complete the request form before the 12th year of service. Soldiers may elect to receive BRS-CP in a single lump sum or in a series of equal installments, either paid directly to the Soldier or to their Thrift Savings Plan (TSP).

c. The Deputy Chief of Staff of the [REDACTED] ARNG wrote a memorandum for record (MFR) on 8 March 2022 to address the discrepancy in signature dates on the DA Form 1559. The MFR states the Soldier did everything correctly to receive payment and entered into the agreement in good faith. BRS-CP is an entitlement from Department of the Army and is restricted to the criterion of Title 37, United States Code, Section 356. Because of this, the National Guard Bureau is unable to approve an Exception to Policy without adjudication by the ABCMR.

d. The applicant relied on the subject matter experts of the [REDACTED] ARNG to verify and certify his request for payment of BRS-CP. Through no fault of his own, this action was not completed in a timely manner and as a result, the Soldier was not allowed to

participate fully in the program. This office recommends approval of his request to have all records be corrected to reflect that the request for Continuation Pay was submitted on time, that his request was accepted and processed by the appropriate certifying official, and that he was paid Continuation Pay. [REDACTED] Army National Guard concurs with the opinion of this office per the enclosed memorandum from [REDACTED] ARNG dated 08 March 2022.

6. On 11 April 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 26 June 2024, the applicant has not responded.

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 evidence shows on 17 December 2019, the applicant signed and dated a request for payment of the BRS-CP career incentive. He agreed to accept the CP at 2.5 times his base pay for an additional obligated service of four years. He completed this action before his twelfth year of service, as required by the ASA (M&RA) Calendar Year Guidance, dated 4 December 2018. He submitted all required documentation in a timely manner to the [REDACTED] ARNG Incentives Manager. He found out that the Incentives Manager was unable to obtain the required O-6/GS-15 level certifying official signature on time for submission of the payment request. The applicant clearly relied upon the subject matter experts of the [REDACTED] ARNG to verify and certify his request for payment of CP BRS. Through no fault of his own, this action was not completed in a timely manner and as a result, he was not allowed to participate fully in the program. The Board agreed with the NGB official's finding that an injustice occurred. Therefore, the Board determined the applicant should have his records corrected to reflect that the request for CP BRS was submitted on time, accepted, and processed by the appropriate certifying official resulting in his entitlement to BRS-CP payment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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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 and Army National Guard records of the individual concerned be corrected by:

- showing the applicant submitted a timely exception to policy for BRS enrollment to include a retroactive start date to his 12th year of service mark
- showing his exception to policy was timely received and approved
- providing him the opportunity to open a case to pursue any retroactive matching and agency automatic TSP funds, if applicable, and provided all other criteria is met

9/9/2024

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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. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 37 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 four 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.

c. In exchange for the CP described in paragraph 5, Soldiers must agree to serve for four years of additional service in the component in which they are serving at the time CP is approved. The service obligation commences upon approval of the CP request.

//NOTHING FOLLOWS//