

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 April 2024

DOCKET NUMBER: AR20230007782

APPLICANT REQUESTS: in effect, correction of his record to show he submitted a timely request 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)
- 2017 and 2018 Orders (and amendment) to Full Time National Guard Duty
- Army National Guard Retirement Points History Statement
- February 2018 Leave and Earnings Statement
- Continuation Pay – Blended Retirement System (CP-BRS) Form (No Control Number) signed on 27 November 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he elected to join BRS in February of 2018 and completed his 12th year of service on 8 May 2018. He was made aware of BRS CP on 16 March 2020. At the time he was already past his eligibility window and was told that he was not eligible to receive BRS CP. On 26 October 2022, he was told that there might be a way for him to still request CP. He followed up on this with his incentives office but did not get the information on what he actually needed to do. On 11 April 2023, he received an email from his incentives office with eligibility information for the current FY (Fiscal Year) and it mentioned that anyone past the 12th anniversary of their PEBD (Pay Entry Basic Date) would have to have an approved ABCMR case. That information has led him to this application process. He is requesting this ABCMR case in hopes of getting his BRS CP as he would have filled out the proper paperwork or done this case sooner if he knew it was available. Supporting documentation attached to this request shows when he elected to be part of the BRS system, his status as an AGR (Active Guard Reserve) at the time, when he hit his 12th year of service and subsequently completed his 16th year of service which would have fulfilled the 4-year obligation that comes with the BRS

CP. His current ETS (expiration of term of service) is 8 May 2027, and he is not eligible for an AGR retirement until 2036. He will complete in excess of another 4-years if the obligation were to start with the approval of this ABCMR case and subsequent BRS CP.

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

a. He enlisted in the Army National Guard (ARNG) on 9 May 2006. He served through multiple extensions in the ARNG, the last two of which were a 1-year extension on 30 April 2018 and a 6-year extension on 22 September 2020.

b. The applicant reached his 12th year of service in May 2018.

c. The applicant provides a Request for Continuation Pay (Blended Retirement System) (without a Control Number from his unit or command), signed by him on 23 May 2023, by his certifying official on 28 November 2023, and by the approval authority on 28 November 2023. He requested 2.5 times his basic pay, to be paid in one lump sum, and agreed to additional obligated service of 4 years.

d. He continues to serve in the ARNG and has completed 17 qualifying years of service towards non-regular retirement (as of May 2023).

4. On 4 December 2023, the Army G-1 provided an advisory opinion in the processing of this case. The advisory official referenced Title 37, United States Code, Section 356, Office of the Secretary of Defense, memorandum (Implementation of the Blended Retirement System), 27 January 2017, and Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)), memorandum (Blended Retirement System (BRS) Continuation Pay (CP) - Calendar Year 2018 (CY18)), 26 October 2017. The advisory official stated:

a. After careful review of the information provided, Army G1 officials do not support the Soldier's request. Soldier submitted a completed request for CP effective 27 November 2023; however, the last day of eligibility was 9 May 2018.

b. The Soldier does not provide verification of a signed agreement prior to the 12th year of service based on his pay entry basic date.

5. The applicant responded to the advisory opinion as follows:

a. The advisory opinion from the ODCS G-1 for his case is to not support his request based on not having a signed agreement prior to the end of his eligibility window on 9 May 2018. He requests that the ABCMR reject the advisory opinion. He was not aware of his eligibility or the process for requesting BRS CP until roughly two years after his eligibility window had already closed. If he had known and signed the

agreement prior to his eligibility window closing, then there would be no need for him to have submitted this case.

b. His eligibility window for requesting BRS CP was less than three months. This eligibility window occurred during the opt in timeframe for BRS. His S1 and the incentives team for their state at that time were still learning the new program and information on the CP portion was not widely known.

c. He learned about CP on 16 March 2020 when one of his Soldier's became eligible to receive CP pay. Even at that time it was difficult for him to find information on CP and the process for properly requesting it. After educating himself on this program and working with the incentives office to request CP for his Soldier, he inquired about his own eligibility. was told that he had already missed his window and there was no recourse. On 11 April 2023, he learned that filing this ABCMR case was his one chance at still getting BRS CP even though he is still well outside his window of eligibility.

d. He requests the ABCMR reject the advisory opinion oand grant him BRS CP based on his status as of 09 May 2018. His failure to submit the request during his eligibility window was due to a communal lack of knowledge and understanding of the Army's new retirement system and not personal negligence or inaction.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

2. The Board found the applicant's explanation of the reasons he failed to submit a timely request for BRS CP to be credible, noting that the program was relatively new at the time he opted into BRS and it is likely that he was not properly counseled on the requirements for BRS CP. The Board further found the evidence confirms the applicant would have been approved for BRS CP had he submitted a timely request and he has already served the 4-year obligation he would have incurred as a result of an approved request for BRS CP. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected to show he submitted a request for BRS CP prior to completing his 12th year of service, which was approved. He should be paid BRS CP as a result of this correction with no additional service obligation.

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 a request for BRS CP was submitted and approved prior to completion of his 12th year of service. As a result of this correction, he should be paid BRS CP in accordance with the program's rules with no additional service obligation.

8/18/2024

X █

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, U.S. Code, 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. On 27 January 2017, the Deputy Secretary of Defense implemented guidance for the Blended Retirement System (BRS) for uniformed services, authorized by Public Law 114-92 (National Defense Authorization Act for Fiscal Year 2016). The BRS is a one-

time payout available to Active Duty, Army National Guard, and Reserve Service Members covered under the BRS with between 8 and 12 years of service who can enter into an agreement to perform additional obligated service. BRS includes a Continuation Pay provision to encourage Service Members to continue serving. Continuation pay is a mid-career bonus payment given in exchange for an agreement to serve a specific number of years and is a direct cash payout, like a bonus. Per the BRS Continuation Pay Implementation guidance, all Soldiers may submit their continuation pay request no earlier than 180 days prior to completing their 12th year of service, based on their pay entry basic date. Soldiers should submit their continuation pay request no later than 30 days prior to completing their 12th year of service.

3. 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//