

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230008226

APPLICANT REQUESTS: correction of his record to show he is eligible to be paid Continuation Pay (CP) Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- Request for CP (BRS) Form
- DA Form 4856 (Developmental Counseling Form)
- DD Form 577 (Appointment/Termination Record – Authorized Signature)

FACTS:

1. The applicant states in effect, due to a system error he has not received his CP BRS which he requested. The error has been corrected and he requests the correction of his record to show he is eligible to be paid CP BRS.

2. A review of the applicant's service record shows:

a. On 12 January 2009, the applicant enlisted in the U.S. Army Reserve (USAR) for a period of 6 years which created an Expiration Term of Service (ETS) of 11 January 2015. His Pay Entry Basic Date (PEBD) was established as 12 January 2009

b. On 14 January 2009, Orders Number 9014013, issued by the Military Entrance Processing Station, ordered him to initial active duty for training (ADT), effective 25 February 2009.

c. The applicant was honorably released from ADT on 31 July 2009. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 5 months and 6 days of active service.

d. On 12 November 2009, Orders Number 09-316-00018, issued by the 416th Theater Engineer Command, ordered him to active duty in support of Operation Enduring Freedom, effective 12 February 2010.

e. On 16 February 2011, Orders Number A-02-103356, issued by the U.S. Army Human Resources Command (HRC), ordered his retention on active duty to participate in Reserve component warriors in transition medical retention processing program for completion of medical evaluation, effective 16 February 2011.

f. The applicant was honorably released from active duty on 30 April 2011. His DD Form 214 for this period shows he completed 1 year, 2 months, and 15 days of active service.

g. On 5 February 2015, Orders Number 15-036-00074, issued by Headquarters, 88th Regional Support Command, assigned the applicant to the USAR Control Group (Reinforcement), effective 2 March 2015,

h. On 4 August 2016, Orders Number C-08-610432, issued by HRC, the applicant was assigned to a USAR Troop Program Unit, effective 27 July 2016. The orders also show his ETS as 11 January 2018. His service record is void of an extension or reenlistment.

i. On 15 May 2018, the applicant reenlisted for 6-years in the USAR.

j. On 11 January 2019, the applicant obtained 10-years of service based on his Pay Entry Basic Date (PEBD).

k. On 11 January 2021, the applicant obtained 12-years of service based on his PEBD.

l. The applicant's DD Form 214 shows he was ordered to active duty for training, effective 10 May 2021. He was honorably released from active duty on 22 June 2021 after completion of 1-month and 13-days of active service.

m. On 23 June 2021, the applicant executed his oath of office and was appointed a Reserve warrant officer in the rank of Warrant Officer One.

o. On 8 January 2022, the applicant requested to receive BRS CP at a rate of 4 times his monthly basic pay and agreed to an additional obligated service of 4-years. The certifying official certified the applicant's eligibility on 12 January 2022 and was approved by B- W- on 18 January 2022. The form bears control number CP22010XX.

p. DD Form 214 shows the applicant was ordered to ADT effective 24 April 2022 and he was honorably released from active duty on 13 September 2022 after completion of 4-months and 20-days of active service.

3. The applicant provides:

a. Request for CP (BRS) form which shows the applicant's PEBD is 12 January 2009. On 8 January 2022, the applicant requested to receive his BRS CP and agrees to an additional obligation of service of 4-years. The certifying official A-G-certified the applicant's eligibility on 12 January 2022 and his commander approved his request on 18 January 2022.

b. On 18 November 2021, the applicant's commander counseled him on his eligibility for CP BRS. The points of discussion were:

- election to participate in the BRS
- completion of no more than 12-years of service based on his PEBD
- member of the Selected Reserve and eligible to receive basic pay
- elected to request BRS CP and agreed to the additional obligation of service of 4-years
- CP BRS must be approved prior to completing 12-years of service

c. DD Form 577 which shows Major (MAJ) R- N- was appointed as the certifying officer for CP BRS by the commander, B- B- on 6 January 2022. MAJ R- N- acknowledged the appointment on 20 December 2021.

4. On 26 January 2024, in the processing of this case the Office of the Deputy Chief of Staff G-1, provided an advisory opinion regarding the applicant's request for payment of CP BRS. The advisory official stated after review of the applicant's documents and service record it was recommended approval of the request in the interest of fairness and equity due to errors at the applicant's unit which caused his request for CP BRS not to be submitted until 8 January 2022 which was past the end point of 12-years of service on 12 January 2021. The applicant's request for CP BRS should be based on the date of qualification in the pay grade of E-6 with 12-years of service. Additionally, the control number should reflect CP22010XX. If the Board grants administrative relief the payment should be based on the pay grade of E-6 with 12-years of service on 12 January 2021 in the amount of \$16,458.00 less Federal and applicable State taxes.

5. On 26 January 2024, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. The applicant did not respond.

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 errors at his unit which caused his request for CP BRS not to be submitted until 8 January 2022 which was past the end point of 12-years of service on

12 January 2021. The Board was persuaded by his argument and also agreed with the advisory official's the applicant's request for CP BRS should be based on the date of qualification in the pay grade of E-6 with 12-years of service. The Board determined relief is warranted (based on the pay grade of E-6 with 12-years of service on 12 January 2021 in an amount to be determined by DFAS less Federal and applicable State taxes).

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 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 (control number should reflect CP22010XX)
- paying the applicant based on the appropriate pay grade with 12 years for pay purpose from the 2021 pay scale, less applicable federal and state taxes (DFAS determines 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. Public Law 114-92, National Defense Authorization Action (NDAA) for Fiscal Year (FY 2016, section 634 (CP for Full Thrift Savings Plan (TSP) Member with 12-Years of Service), (a) CP, 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

a. Amount, the amount of CP payable to a full TSP member under subsection (a) shall be the amount that is equal to 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 (not to exceed 13-months) as the Secretary concerned shall specify in the agreement of the member under subsection (a)

b. Timing of Payment, the Secretary concerned shall pay CP under subsection (a) to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides CP under subsection (c) to the member, that CP shall be provided when the member completes 12 years of service.

2. Title 37, United States Code, section 356 (CP) states:

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 Active Guard/Reserve 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.

c. 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.

3. Deputy Secretary of Defense Memorandum dated 27 January 2017, Subject: Implementation of the BRS, implements guidance for the BRS for the Uniformed Services, which was authorized in Public Law 114-92 section 631 through 635 of the National Defense Authorization Act (NDAA) for Fiscal Year 2016. Members of the Uniformed Service are covered under the provisions of the BRS who served in a Uniformed Service for fewer than 12-years as calculated from their PEBD.

4. Army Regulation (AR) 637-1 (Army Compensation and Entitlements Policy), provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active duty Soldiers. Paragraph 18-26 (Continuation Pay), the BRS provides for CP in exchange for additional service obligation by Soldiers when they reach between the 8 and 12-years point in their career. Soldiers will receive a minimum of 2.5 times base pay for Regular component and .5 times base pay for Reserve components if they commit to a minimum of 3-years of additional service.

//NOTHING FOLLOWS//