

IN THE CASE OF: ██████████

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20230009149

APPLICANT REQUESTS: retroactive entitlement to Blended Retirement System (BRS) Continuation Pay (CP).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 14 January 2021
- DD Form 214, ending 31 October 2022
- BRS Enrollment Packet:
 - Memorandum, Subject: Request for Exception to Policy for the Late Submission of the CP Packet, 7 September 2022
 - Personnel Action Packet Checklist
 - DD Form 577 (Appointment/Termination Record - Authorized Signature)
 - CP (BRS) Request
 - Leave and Earnings Statement (LES), 20 October 2021
 - USAR Form 22-R (Adjustment Certification Worksheet)
 - Email Correspondence
- Email Correspondence

FACTS:

1. The applicant states, in pertinent part, he submitted his application and supporting documents for CP BRS in 2021, in his 12th year. However, it was denied as he was notified of his eligibility late (still during COVID pandemic), after his Pay Entry Basic Date (PEBD), for the CP. He provided email correspondence from the Office of the Chief of the Army Reserve (OCAR) on 16 May 2023 notifying him that "the error was due to a system error that has been fixed and that you are entitled to the CP BRS" and was ultimately referred to contact the Army Board for Correction of Military Records (ABCMR) for assistance with resolving this matter.

2. A review of the applicant's available service record reflects the following:

a. On 5 August 2009:

(1) The U.S. Army Human Resource Command (HRC) issued a Memorandum for Appointment as a Reserve Commissioned Officer of the Army.

(2) He was appointed as a Reserve commissioned officer and executed an oath of office.

b. DA Form 5016 (Retirement Account Statement), dated 3 September 2023 reflects his PEBD as 5 August 2009.

c. He continues service with the U.S. Army Reserve (USAR).

3. The applicant provides the following:

a. DD Form 214, ending 14 January 2021 showing he served on active duty from 2 May 2020 to 14 January 2021 for a net active service this period of 8 months and 13 days. The form shows his date of rank for promotion to the rank/grade of major (MAJ) as 8 November 2018.

b. DD Form 214, ending 31 October 2022 showing he served on active duty from 15 June 2022 to 31 October 2022 for a net active service this period of 4 months and 16 days.

c. BRS Enrollment Packet to include the following documents:

(1) Memorandum, Subject: Request for Exception to Policy for the Late Submission of the CP Packet, dated 7 September 2022 stating, in effect, the applicant was notified after the eligibility deadline that he qualified for the CP BRS. Once he received notification, he submitted his request within 60 days. Therefore, it is an error due to no fault of his own.

(2) Personnel Action Packet Checklist as part of the application packet.

(3) DD Form 577 showing MAJ ██████ was appointed as the certifying officer for CP BRS request.

(4) CP (BRS) Request showing he requested CP BRS at 4 times his monthly basic pay to be paid in a lump sum in return for four years of additional obligated service with approval authority and certifying official signature completed on 26 January 2022. The form does not bear a control number.

(5) LES, dated 20 October 2021 showing he was participating in the Thrift Savings Plan (TSP) and was receiving matching contributions.

(6) USAR Form 22-R submitted as a request for CP BRS.

(7) Email correspondence with the OCAR, G-1, notifying the applicant of the required timeframes for eligibility to submit his CP BRS request.

d. Email correspondence with the OCAR, G-1, recommending he contact the Army Review Boards Agency for assistance with his BRS request.

4. On 17 January 2024, in the processing of this case, the 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, stating in effect:

a. After careful review of the information provided, we recommend this case be approved in the interest of fairness and equity. The applicant's unit did not provide timely notification of the entitlement; therefore, he did not find out about the eligibility and filing requirements until submission of the CP application on 18 November 2021. The end point prior to 12 years of service for pay was 5 August 2021.

b. His request for payment of CP should be made based on the date of qualification in accordance with reference 1.c, specifically, in the pay grade of O-4 with 12 years of service for pay on 5 August 2021. Additionally, the control number (block 6) needs to be input to reflect CP21100XX.

c. If the Board grants administrative relief, the payment would be based on the pay grade of O-4 with 12 years for pay purpose from the 2021 pay scale ($\$8,066.70 \times 4.0$ (Multiplier) equals $\$32,266.80$, less 22 percent Federal tax and applicable state tax).

5. On 12 February 2024, the applicant was provided with a copy of the advisory opinion to provide a response. He responded concurring with the advisory opinion.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board concurred with the conclusion of the advisory official that the applicant was not counseled on BRS CP in a timely manner and therefore missed his deadline to apply through no fault of his own. The Board determined the evidence supports

correction of the record to show he submitted his BRS CP application prior to completing his 12th year of service.

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 his application for BRS CP was submitted prior to completing his 12th year of service.

8/27/2024

X [REDACTED]

CHAIRPERSON

[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.

REFERENCES:

1. Title 37 United States Code (USC), section 356 (CP) states:
 - a. The Secretary concerned shall pay CP under subsection (a) to a full Thrift Savings Plan (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.

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.

2. 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.

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 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//