

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 May 2024

DOCKET NUMBER: AR20230010261

APPLICANT REQUESTS: in effect, an exception to policy to apply for Continuation Pay (CP) under the provisions of the Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement
- Defense Finance and Accounting Service (DFAS) Military Leave and Earnings Statement (LES), 5 March 2021
- National Guard Bureau (NGB) Form 23A (Army National Guard (ARNG) Current Annual Statement), 10 March 2021
- LESs, 15 June 2021 and 15 May 2023
- NGB Form 23A, 30 January 2023
- Statement on behalf of applicant, 13 June 2023
- BRS Opt-In course certificate, 13 July 2023
- Request for CP BRS, 13 July 2023

FACTS:

1. The applicant states:

a. Thank you for your consideration of his application despite it being past the deadline. He has been compliant with all drills, annual trainings and military obligations over his career to include his most recent deployment to Africa from January to May 2023. He has attempted to learn as much as he can about the BRS throughout his career when opting into the retirement system opportunity. There are details that are confusing, and he is still in need of additional education. At the time of the approaching deadline to his 12-year mark, he was not aware of the incentive of CP for a 4 year extension and he has queried his peers in the ARNG and they were also not aware of the incentive.

b. He cannot recall any trainings or information that briefed the BRS information. He also does not remember denying the opportunity. This is an incredible incentive, and he would like to be considered for it given that he will gladly continue to serve for the next 4

years while also taking advantage of all the incentives possible. In his role, he oversees mental health evaluations for the state of Wisconsin which requires a lot of time, consultation, and availability after hours and his full undivided attention during drill weekends which often results in having to problem-solve emergencies and high-risk situations that deter from his ability to fully participate in all the trainings that are required during drill. He always makes his best effort to attend; and, however, there are times where clinical emergencies will counter his attendance. It does not happen often, but he also wants to acknowledge that it is not impossible that he missed the training and was not aware. Hence, why he queried his peers to gain collateral information.

c. The first time he learned of the CP was 30 June 2023 when his unit Active Guard/Reserve training Noncommissioned Officer (NCO) sent the information out. He humbly asks the Board's consideration to grant him acceptance for the continuation and he will proudly serve the next 4 years. Thank you for your time, effort, and consideration.

2. A review of the applicant's official records show the following:

a. On 28 January 2009, DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a Reserve commissioned officer and he executed his oath of office.

b. On 12 January 2011, the U.S. Army Human Resources Command (HRC) published Orders Number T-01-100774, which ordered the applicant to Active Duty for Training for 45 days with a report date to the Adler School of Professional Psychology on 15 February 2011. The purpose shown on the orders is listed as Health Professions Scholarship Program.

c. On 10 June 2011, DA Form 71 shows he was appointed as a captain (CPT)/O-3 in the Regular Army Medical Service Corps and he executed his oath of office.

d. On 15 April 2016, he was honorably released from active duty and was transferred to his [REDACTED] ARNG ([REDACTED] ARNG) unit. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 4 years, 10 months, and 6 days net active service this period.

e. On 16 April 2016, HRC notified the applicant that he was appointed as a Reserve commissioned officer in the rank of CPT/O-3. The memorandum also shows:

- Scroll Date/Rank – 30 July 2015
- Date of Acceptance – 16 April 2016
- Effective Date – 16 April 2016

f. On 4 December 2017, HRC published Orders Number B-12-707993, which promoted the applicant to the rank/grade of major (MAJ)/O-4, effective 8 November 2017.

g. On 26 March 2018 –

- DA Form 71 shows he was appointed as a MAJ in the Reserve and he executed his oath of office
- NGB Form 337 (Oaths of Office) shows he was appointed as a MAJ in the ■■■ ARNG and he executed his oath of office

h. On 16 November 2023, the ■■■ ARNG published Order Number 0006582401.00, which promoted the applicant to rank/grade of lieutenant colonel (LTC)/O-5, effective 7 August 2023.

i. His record contains DA Form 5016 (Chronological Statement of Retirement Points) dated 29 April 2024, which shows his Pay Entry Base Date (PEBD) as 28 January 2009.

j. The applicant completed 12 years of service on 28 January 2021.

3. In support of his case the applicant provides:

a. DFAS LES dated 5 March 2021, which shows his grade as MAJ, years of service 9 at the time, and his TSP contributions. His retirement plan is blank.

b. NGB Form 23A dated 10 March 2021, which shows, in pertinent part, 1867 Active Duty Training (ADT) points, 2223 total career points, 2223 total points for Retired pay, and 10 years creditable service for Retired pay.

c. DFAS LESs dated 15 June 2021 and 15 May 2023, which show his grade as MAJ, 10 and 11 years of service, and his TSP and ROTH contributions. His retirement plan is blank.

d. NGB Form 23A dated 30 January 2023, which shows, in pertinent part, 1922 ADT points, 2402 total career points, 2402 total points for Retired pay, and 12 years creditable service for Retired pay.

e. A statement dated 13 June 2023, wherein, the Brigade Retention NCO states:

(1) The applicant opted into the Blended Retirement Program and became eligible for CP when he reached his 10 years of time in service. His PEBD is 28 January 2009, which made him eligible on 29 January 2019. He had up until

26 January 2021 (12 years) in order to submit a request, in accordance with All Army Activities (ALARACT) Message Number 014-2020.

(2) Upon review of processes, in accordance with ALARACT Message Number 014-2020 and Calendar Year 2020 (CY20) Blended Retirement Continuation Pay Policy, Commander or unit representative did not notify or assist the applicant in the process of completing a CP request before 12 years of time in service. The unit did not put out guidance for CY20 and the ARNG CY21 BRS-CP was not published until 11 February 2021 which was right after he reached 12 years.

(3) The applicant was in U.S. Army Reserve (USAR) Control Group and USAR Troop Program Unit from 28 October 2009 until 9 June 2011. During this time, he did not have credible service for retirement pay. He did not start with Regular Army until 10 June 2011 and thought his PEBD was 10 June 2011 due to not having credible service for the first 2 years. With the applicant not being notified from unit representatives, he did not realize he was in the window of eligibility at that time.

f. His BRS Opt-In course certificate dated 13 July 2023, which shows he completed the 2-hour BRS Opt-In course.

g. His Request for CP BRS dated 13 July 2023, which shows, he acknowledged that he understood he would be receiving CP, as part of the BRS, in return for his continued service in the ARNG. He agreed to accept CP in accordance with BRS CP CY21 and the amount of payment would be in accordance with the above policy message at 4 times the monthly basic pay for his current pay grade and years of service as listed on the monthly basic pay table provided by DFAS in effect on the date in block 8. He agreed to an Additional Obligated Service of 4 years commencing from the date in block 8. He also requested his CP to be paid in one single lump-sum payment. The form does not contain a control number and is not signed by the certifying official nor approval authority.

4. On 23 February 2024, the Chief, Special Actions Branch, NGB, provided an advisory opinion for this case and recommended approval. The advisory official stated:

a. The [REDACTED] Army National Guard is unable to offer relief for the applicant. In accordance with Memorandum, Office of the Assistant Secretary of the Army for Manpower and Reserve Affairs, 18 December 2019, Subject: BRS CP – Calendar Year 2020, a Soldier must apply for and be approved for CP prior to reaching the 12th year of service. The CP is part of the military's BRS. It is a one-time cash payout to service members who have 10 years but not more than 12 years of service as computed from PEBD.

b. The objective of CP is to offer midcareer service members a financial incentive to remain in their service in exchange for committing to at least four more years. Time of service is calculated from the service member's PEBD. The current law does not allow for the acceptance of a CP contract beyond the 12th year of service. Soldiers may elect to receive CP BRS 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. Each State Retirement Service Officer verifies and certifies eligibility for CP BRS. The applicant was eligible to apply for CP BRS however due to lack of education on the process of BRS, and miscommunication of BRS timelines at the state level the applicant was unaware the CP BRS incentive and therefore missed the application date.

d. CP BRS is an entitlement from the Department of the Army and is restricted to the criterion of Title 37, United States Code (USC), Section 356. Because of this, the NGB is unable to approve an exception to policy without adjudication by the ABCMR. This office recommends approval of the applicant's request for payment of CP BRS because of his eligibility to apply for the entitlement and the lack of education on the BRS process at the state level, we recommended the applicant be allowed to apply for CP BRS. The opinion was coordinated with the assistance of the [REDACTED] ARNG.

5. On 12 March 2024, the applicant responded to the NGB advisory opinion and reiterated his previous statement to the Board.

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 miscommunication and a lack of education on BRS led the applicant to miss his BRS CP application deadline through no fault of his own. Based on a preponderance of the evidence, the Board determined the applicant's record should be corrected to show he submitted his BRS CP application prior to completing his 12th year of service and he should be paid the incentive.

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 and Army National Guard records of the individual concerned be corrected by showing he applied for BRS CP prior to completing his 12th year of service.

9/20/2024

X

CHAIRPERSON

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. Army Regulation (AR) 15–185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. The ABCMR is not an investigative agency.
2. Department of Defense memorandum dated 27 January 2017 (Implementation of the Blended Retirement System (BRS)), Attachment 1, provides guidance for the implementation of the Uniformed Services' BRS. This memorandum was effective as of

27 January 2017. Unless otherwise stated, the policies contained herein that implement the BRS shall be effective simultaneous with the effective date of the BRS, 1 January 2018. In pertinent part:

a. Paragraph 6b.(3) (Eligibility) provides that, any member of the Reserve Component (RC) of a Uniformed Service who is performing reserve component service as a member of the Ready Reserve or on the Active Status List of the Standby Reserve on 31 December 2017 is covered under the provisions of the BRS, who: (a) Has a date of initial entry into military service (DIEMS)/date of initial entry into uniform service (DIEUS) that is on or before 31 December 2017; and, (b) Is in receipt of basic pay or inactive duty pay under Sections 204 or 206, respectively, of Title 37, USC, on or after 31 December 2017; and, (c) Has accumulated fewer than 4,320 retirement points, in accordance with the provisions of Section 12733 of Title 10, USC, as of that date; and, (d) Elects to enroll in the BRS under provisions outlined in section 9.b. (Procedures for Enrollment).

b. Paragraph 8b.(2) (Continuation Pay) provides that, a Reserve Component member is eligible to receive CP who: (a) Is covered under the BRS; and, (b) Has completed not less than 8 and not more than 12 years of service as computed from that member's PEBD; and, (c) If elected to enroll in the BRS in accordance with section 6.b.(3), as calculated under provisions of Section 12733 of Title 10, USC, did not complete more than 12 years of service as calculated from PEBD prior to enrollment in the BRS. (d) Is a member of the Selected Reserve, or otherwise a member of the Ready Reserve in a status in which the member is eligible to receive basic pay or inactive duty pay, when otherwise eligible in accordance with criteria published by the Secretary concerned as specified in paragraph 8.f.; and, (e) Is eligible to enter into an agreement to serve not less than an additional 3 years in the Selected Reserve.

3. Title 37, USC, Section 356 (CP: Full Thrift Savings Plan (TSP) Members with 8 to 12 years of service) states:

a. 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

b. The amount of CP payable to a full TSP member shall be the amount that is equal to:

(1) 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 as the Secretary concerned shall specify in the agreement; and

(2) 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; plus at the discretion of the Secretary concerned, the amount of monthly basic pay multiplied by such number of months as the Secretary concerned shall specify in the agreement.

c. In addition to the CP, the Secretary concerned may provide CP to a full TSP member in an amount determined by the Secretary concerned.

d. The Secretary concerned shall pay CP to a full TSP member when the member completes 12 years of service. If the Secretary concerned also provides CP to the member, that CP shall be provided when the member completes 12 years of service.

e. A full TSP member may elect to receive CP in a lump sum or in a series of not more than four payments.

f. CP is in addition to any other pay or allowance to which the full TSP member is entitled.

g. A full TSP member who receives CP and fails to complete the obligated service required shall be subject to the repayment provisions.

4. AR 637-1 (Army Compensation and Entitlements Policy), paragraph 18–26 (Continuation Pay), states in pertinent part:

a. CP application points, rates, and years of required commitment may vary from year to year or from one military occupational specialty to another, and application criteria will be published annually by the Deputy Assistant Secretary of the Army for Military Personnel and Quality of Life. CP is not automatic, and Soldiers must apply before the established deadline, or they will forfeit their eligibility to receive CP.

b. Soldiers must meet the following criteria to qualify for CP:

(1) Must be enrolled in BRS.

(2) Must be within 180 days of the established application year point (between 8 and 12 years of service) as determined from their PEBD.

(3) Must have an approved application no later than the anniversary date of the established application year point as determined from their PEBD.

c. Commanders or designated representatives will —

(1) Verify Soldiers requesting CP elected BRS.

(2) Assist Soldiers in completing the CP contract and acquiring the appropriate approval prior to Soldier's 8th to 12th year of service as computed from the PEBD (based on year's criteria). Current law does not allow for the acceptance of a CP contract beyond the 12th year of service.

(3) Identify and ensure Soldiers eligible for CP submit their requests within the established timelines.

d. Soldiers enrolled in BRS will —

(1) Use the approved (CP (BRS)) request as published by Deputy Chief of Staff, G-1 plans and resources to apply for CP.

(2) Submit the completed contract to their respective S1 for approval and processing to Finance Officers (FO)/Army Military Pay Officers (AMPO).

e. Personnel office/S1 will —

(1) Include the unit identification code in block 3 of the CP contract. Also, complete item 4 of the CP contract with a 9-digit control number prior to forwarding to the FO/AMPO (CP1801001 is an example of such a number). First two characters (CP) represents continuation pay. The next two numbers represent the fiscal year the CP contract is approved. The fourth and fifth numbers represents the month and the last three numbers depicts the cumulative number(s) of CP contracts processed by the assigned unit for a particular month.

(2) Forward the CP contract to the FO/AMPO within 7 duty days in accordance with established procedures to finance for payment.

(3) Process the CP contract for filing in Interactive Personnel Electronic Records Management System under the service and finance folders.

//NOTHING FOLLOWS//