

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230010475

APPLICANT REQUESTS: in effect –

- correction of his Pay Entry Base Date (PEBD) to 14 February 2010 instead of 26 June 2007
- an Exception to Policy (ETP) to apply for Continuation Pay (CP) under the provisions of the Blended Retirement System (BRS)
- "Army to recoup recurring overpayments"
- a personal appearance before the Board

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 on 12 December 2007
- DD Form 214, 23 March 2012
- Memorandum - Subject: Application for U.S. Army Reserve (USAR) Appointment, 29 September 2016
- Military Personnel (MILPER) Message Number 16-282, 29 September 2016
- Orders Number C-04-705716, 26 April 2017
- Email communication, 28 June 2022
- Request for CP (BRS), 9 December 2022
- DA Form 4856 (Developmental Counseling Form), 19 January 2022

FACTS:

1. The applicant states:

a. His points correction was incorrectly processed in 2022 causing an overpayment of \$8,090.85 for retroactive service time correction. Years in service continues to be in error and his pay is incorrectly calculated each pay period. PEBD of 14 February 2010 accurately characterizes the service time from initial entry to present with the break in service. Active duty started 26 June 2007 and ran to discharge on 23 March 2012, at which time he resigned his commission and continued his Individual Ready Reserve (IRR) obligation as an enlisted Soldier until 8 September 2014. His commission was

reappointed, and application was approved on 29 September 2016. He was reassigned to the Reserve component on 25 June 2017. The break in service was 2 years, 7 months, and 19 days. The correction allows for the processing of CP as part of the BRS, which was initiated in December 2021.

b. His PEBD has been changed 4 times since coming into the Reserves in 2017. In 2017, when he opted into the BRS, his PEBD was reported to him as 29 July 2012. Thus, he understood that 2024 was his last year of eligibility. In January 2022, he made an initial application for CP. In March 2022, his PEBD was adjusted to 26 June 2007, making him ineligible for CP by almost 3 years. The Office of the Chief Army Reserve declined to action the ETP request to allow for processing CP.

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

a. He enlisted in the Regular Army for a period of 3 years on 26 June 2007. He completed Officer Candidate School.

b. He was honorably discharged from his enlisted status on 12 December 2007. His DD Form 214 shows he was honorably discharged to accept a commission in the Army and was transferred to the USAR Control Group (Individual Ready Reserve). He completed 5 months and 17 days net active service this period.

c. He continued his active service on 13 December 2007, as a commissioned officer

d. On 29 March 2011, U.S. Army Human Resources Command (HRC) published Orders Number 088-037, promoting him to captain (CPT)/O-3, effective 10 March 2011.

e. On 28 December 2011, the Commander, HRC approved the applicant's request for an unqualified resignation with a separation effective date of 23 March 2012.

f. He was honorably discharged from active duty on 23 March 2012. His DD Form 214 shows he was discharged from active duty by reason of "miscellaneous/general reasons" and transferred to the USAR Control Group (Reinforcement). He completed 4 years, 3 months, and 11 days net active service this period with 5 months and 17 days total prior active service.

g. Between 24 March 2012 and 8 September 2014, the applicant was assigned to the Individual Ready Reserve (IRR)."

h. The applicant had a break in service from 9 September 2014 to 24 April 2017.

i. On 7 April 2017, by memorandum, HRC, Chief, Officer Accessions Branch, notified the applicant that he was re-appointed as a CPT in the U.S. Reserve effective on the date he executes his oath of office. His PEBD and DOR were adjusted.

j. DA Form 71 (Oath of Office - Military Personnel) shows he was appointed as a Reserve commissioned officer in the rank/grade of CPT/O-3 and executed his oath of office on 25 April 2017.

k. On 26 April 2017, HRC published Orders Number C-04-705716, which assigned the applicant to his USAR unit for appointment, effective 25 April 2017. The orders show his DOR as 13 April 2016 and PEBD as 29 July 2012.

l. On 9 August 2022, HRC published Orders Number B-08-204455, promoting the applicant to the rank/grade of major (MAJ)/O-4, effective on with a DOR of 8 July 2022.

m. His record contains DA Form 5016 (Retirement Accounting Statement) dated 9 November 2023, which shows his Date of Initial Entry to Military Service as 9 September 2006 and PEBD as 12 February 2010. In pertinent part, it also shows:

- 9 September 2014 to 24 April 2017, he had a break in service
- his total retirement points earned as –
 - 323 – Inactive Duty Training (IDT)
 - 151 – membership
 - 1822 – Active Duty Training (ADT)
 - 11 years qualifying for retirement
 - 2296 – points earned
 - 2296 – points creditable

n. DA Form 5016 (Chronological Statement of Retirement Points) dated 9 April 2024, shows his PEBD as 12 February 2010 and his total retirement points earned as:

- 257 – IDT
- 169 – membership
- 1812 – ADT
- 11 years and 3 months qualifying for retirement
- 2238 – total points creditable

3. In support of his case the applicant provides the following documents:

a. Memorandum - Subject: Application for USAR Appointment dated 29 September 2016, which shows, the June 2016, Department of the Army, USAR Direct

Appointment/Reappointment Selection Panel recommended he be appointed to the grade of CPT in the branch of Infantry.

b. MILPER Message Number 16-282 - Title: June USAR Direct Appointment/ Reappointment Selection Panel dated 29 September 2016, which shows his name listed as one of the selectees for direct reappointment in the USAR.

c. Email communication dated 28 June 2022, between the applicant's chain of command, Reserve Personnel Action Center, and Supervisor, HRC Retirements Point Team discussing the applicant's break in service, PEBD, and the restoration of his retirement points and PEBD with no break in service.

d. A Request for CP BRS dated 9 December 2022, only signed by the applicant, which shows his rank/grade as MAJ/O-4, and:

- he understood that he was receiving CP, as part of the BRS, in return for his continued service in the U.S. Army
- he agreed to accept CP in accordance with BRS CP provision Procedures Calendar Year 2022 (CY22)
- amount of payment, in accordance with the above policy message, would be 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 the Defense Finance and Accounting Service in effect on the date in block 8 (block 7 if digitally signed)
- he agreed to an Additional Obligated Service of 4 years commencing from the date in block 8 (block 7 if digitally signed)
- he requested his CP to be paid in on single, lump-sum payment
- he digitally signed the form on 9 December 2022
- the form is void of the certifying official and approval authority signature
- the form is void of a control number

e. DA Form 4856 dated 19 January 2022, which shows he was counseled regarding being eligible for CP under the BRS. He certified that he elected to participate in the BRS through his MyPay account and certified he had completed no more than 12 years of service, as calculated by the PEBD prior to his enrollment in the BRS. He acknowledged that his request for CP BRS must be approved prior to completing 12 years of service, as calculated by the PEBD, and agreed with the counseling. The form is void of the counselor's signature.

4. The Office of the Deputy Chief of Staff G-1, Program Analyst Compensation and Entitlements Division, provided an advisory opinion for this case and stated:

a. After careful review of the information provided, this office does not support the applicant's request due to incomplete and missing data on the CP form signed by the

applicant with an effective date of 9 December 2022. In accordance with reference 1.d, the CP application must be completed in its entirety prior to submission for payment.

b. The following information is required should the request for payment be favorably considered.

(1) Block 2: Should reflect the pay grade in effect at the time of entitlement; therefore, it should state O-3/CPT.

(2) Block 5: Should reflect the correct PEBD, which should be 12 February 2010.

(3) Block 6: Should reflect the control number as assigned by the Human Resource Office/S-1.

(4) Block 9: Requires printed name, rank, signature, and date of the certifying official.

(5) Block 11: Requires printed name, rank, signature, and date of the approval authority.

(6) A statement of service (DA Form 1506) should be prepared in accordance with 1.d, to correct the PEBD within the assigned military pay system.

c. Applicant's supporting documentation properly completed should indicate the authorized multiplier and compliance with the additional service obligation requirement for CP for CY22.

5. On 11 December 2023, the HRC, Chief, Personnel Services Division, also provided an advisory opinion for this case and stated, the applicant requested a review of his retirement points record and to have his PEBD verified and corrected. HRC - Essential Personnel Services, Retirement Points Team, reviewed the applicant's service history and a recalculation and correction of the PEBD was completed on 9 November 2023. The applicant's PEBD now reflects 12 February 2010 in the Integrated Personnel and Pay System-Army (IPPS-A). His Retirement Accounting Statement (DA Form 5016) now reflects 11 creditable years towards retirement and 2296 points.

6. On 11 January 2024, by email, he responded to the advisory opinions and stated:

a. In accordance with the G-1 memorandum, he has attached an updated request for CP with the pay grade changed to CPT/O-3 and updated the PEBD per the memorandum. However, regarding block 6; he has been advised by his RPAC and S-1 that there is no associated control number with the request because it has never been processed due to the long-standing PEBD discrepancy issue.

b. His PEBD was incorrectly re-calculated almost 2 years ago. In addition to the \$8,090.85 he received in March 2022 for miscalculated backpay, his drill pay was calculated with 15 years of service versus 11 years of service and resulted in an overpayment each month. In addition to approving the mid-career bonus, he is asking the Army to correctly square the overpayments to date. This includes the overpayment for backpay as well as the difference between the time-in-service calculation for each month back to approximately February 2022. Prior to February 2022, he believes his pay was being correctly calculated.

7. The applicant provided an updated Request for CP BRS, digitally signed on 4 January 2024, with the above-mentioned corrections albeit still missing the certifying official and approval authority signatures. It can be reviewed within the supporting documents.

8. On 15 April 2024, the applicant provided an updated CP BRS Request Form agreeing to an additional 4-years of service for a 4x multiplier in a single lump sum payment in the rank/grade of CPT/O-3. The form was endorsed by the certifying official on 15 April 2024 and the approval authority on 10 January 2024.

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.

a. The evidence shows the applicant served as an active duty enlisted Soldier from 26 June 2007 to 12 December 2007, as an active duty commissioned officer from 13 December 2007 to 23 March 2012, and a USAR/IRR commissioned officer from 24 March 2012 to 8 September 2014. He then had a break in service from 9 September 2014 to 24 April 2017. He was reappointed as a USAR commissioned officer on 25 April 2017. As such, upon his reentry into military service, his PEBD was adjusted to 12 February 2010. His PEB was correctly adjusted, albeit at a later date, and no further correction is required.

b. Based on his adjusted PEBD, the applicant reached his 12th year of service on 12 February 2022. He was eligible to enroll in the BRS before reaching his 12th year of service. He provides a Request for CP BRS dated 9 December 2022. The Board accepted this form as sufficient documentary evidence to grant relief.

c. The applicant also asks that the "Army to recoup recurring overpayments." He contends that his points correction was incorrectly processed in 2022 causing an overpayment of \$8,090.85 for retroactive service time correction. The applicant did not

provide, and his records does not contain sufficient information or documentation to show if he addressed his pay issue with his servicing Finance Office or, if he has incurred a debt and is asking for a waiver of this debt, he has applied to the appropriate office for a waiver of this debt.

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 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
- paying the applicant based on the appropriate pay grade with 12 years for pay purpose from the 2022 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. Army Regulation (AR) 15-185 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2–11 states that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Title 37, United States Code, 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.

3. 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.

f. Chapter 22 (Stoppages and Collections Other Than Courts-Martial Forfeitures) states in —

(1) Paragraph 22–1 (Policy provisions), the policies, provisions, and limitations for deductions from a Soldier's pay of other than courts-martial forfeitures are contained in Department of Defense Financial Management Regulation, Volume 7A.

(2) Paragraph 22-2 (General provisions), when the Secretary of Defense or any designee determines, a Soldier is indebted to the U.S. Government as a result of an erroneous payment made to or on behalf of the Soldier by a government agency, the amount of the debt may be collected from the Soldier's pay. DD Form 139 (Pay Adjustment Authorization) will serve to document the indebtedness for input into the pay system.

4. AR 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. In pertinent part, it states:

a. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

b. Chapter 1, paragraph 4c(4) states, the Deputy Chief of Staff, G-1 (DCS, G-1) will ensure the Commanding General, Human Resources Command will process application packets for remission or cancellation of debts to the Army. Adjudicate requests up to \$49,999 and forward packets to the DCS, G-1 above that amount. When appropriate, send the application for exception to policy with a recommendation to the Assistant Secretary of the Army (Manpower and Reserve Affairs) for final decision (see paragraph 4b).

5. Title 10, USC, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.

//NOTHING FOLLOWS//