

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 7 May 2024

DOCKET NUMBER: AR20230010663

APPLICANT REQUESTS: retroactive entitlement to 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)
- BRS CP Policy Calendar Year (CY) 2021
- BRS CP Policy CY 2022
- Request for CP (BRS), 28 January 2022
- Leave and Earnings Statement (LES), covering 1-30 June 2023

FACTS:

1. The applicant states, in pertinent part, the CP BRS for CY 2022 guidance was published on 27 January 2022, two days before his deadline to apply of 29 January 2022. This prevented him from applying in a timely manner and caused him to be ineligible under the CY21 or CY22 CP BRS Policy. The CY22 CP BRS Policy states, "4. Eligibility. a. Regular Army and Active Guard/Reserve (AGR). (2) Is between 10 and no more than 12 years of service, as computed from the Soldier's Pay Entry Base Date (PEBD)." (He reached 12 years of service two days after the CY 22 CP BRS Policy was released) The CY 21 CP BRS Policy states, "4. Eligibility. b. Army Reserve. (2) If an AGR Soldier, must have a PEBD between 1 January 2009 and 31 December 2009, and will complete 12 years of service during CY 21 as calculated from the Soldier's PEBD"; (Not eligible during CY21 because his PEBD was 29 January 2010).

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

a. On 29 January 2010, he enlisted in the Virginia Army National Guard (VAARNG) for a period of 8 years.

b. On 24 May 2012, National Guard Bureau (NGB) Form 22-5 (Addendum to DD Form 4 Approval and Acceptance by Service Representative for Interstate Transfer in

the ARNG) was completed showing he requested and was approved for an interstate transfer from the VAARNG to the South Carolina ARNG (SCARNG).

c. On 10 August 2013, the State of South Carolina Military Department, Office of the Adjutant General, issued Orders Number 222-810 honorably discharging him from the ARNG and as a reserve of the Army, effective 13 August 2013.

d. NGB Form 22 (Report of Separation and Record of Service), dated 13 August 2013, shows an honorable discharge from the SCARNG to accept an appointment as a commissioned or warrant officer with service from 24 May 2012 to 13 August 2013 for a net service this period of 1 year, 2 months, and 20 days.

e. On 14 August 2013, he was appointed as a Reserve warrant officer and executed an oath of office as Reserve warrant officer in the SCARNG.

f. NGB Form 23A (ARNG Current Annual Statement) shows his initial service date as of 29 January 2010.

g. He continues service with the SCARNG.

3. The applicant provides the following:

- CP BRS Policy CY 2021 showing the policy requirements for 2021.
- CP BRS Policy CY 2022 showing the policy requirements for 2022.
- Request for CP (BRS), showing he requested CP BRS at 2.5x his monthly basic pay to be paid in a lump sum in return for four years of additional service obligation with the ARNG. The approval authority and certifying official signatures were completed on 2 February 2022. The form is void of a control number.
- LES covering 1-30 June 2023 showing his retirement plan as the BRS.

4. On 21 March 2024, the NGB, Chief, Special Actions Branch, provided an advisory recommending approval of the applicant's request stating, in effect:

a. The applicant states the CP BRS for FY22 guidance was published on 27 January 2022. This was two days prior to his enrollment window which ended 29 January 2022. He states this prevented him from applying on time at no fault of his and was not eligible under the CY21 nor the CY22 CP BRS Policies.

b. He references CY 22 CP BRS policy eligibility Regular Army and AGR paragraph 4(b)(2) which states "Is between 10 and no more than 12 years of service, as computed from the Soldier's PEBD." He reached 12 years of service 2 days after the CY 22 CP BRS Policy was released.

c. He also references CY 21 CP BRS Policy eligibility army reserves paragraph 4 (b) (2) which states "If an AGR Soldier, must have a PEBD between 1 January 2009 and 31 December 2009, and will complete 12 years of service during CY 21 as calculated from the Soldier's PEBD." He was not eligible during CY 21 because due to a PEBD of 29 January 2010.

d. The applicant provides a CP BRS – request dated 2 February 2022, BRS CP - CY 21 and CY 22 policies, and LES dated for June 2023 as supporting documents.

e. The SCARNG G-1 Sergeant Major confirms the applicant's explanation and timeline of events caused denial of CP BRS payments.

f. A review by the ARNG Incentives Oversight Branch confirms ARNG CY 21 guidance was further limited to ARNG Service Members (SM) who have a PEBD from 1 January 2009 through 31 December 2010, and were due to complete 12 years of service during CY 21 as calculated from the Soldier's PEBD. The ARNG CY 22 Policy published 22 March 2022 states "The SM is between 10 and no more than 12 years of service, as computed from the Soldiers PEBD during CY 22 (eligible PEBDs will range between 1 January 2010 and 31 December 2012 throughout the year)."

g. After further review of the applicant's documents provided, discussions with the SCARNG and ARNG Incentives Oversight Branch Office, it is the conclusion of this office, that the applicant was unable to profile an CP BRS enrollment packet by the eligibility deadline window due to the FY 22 guidance being published two days prior. This office recommends granting CP BRS payment.

h. The ARNG Incentives Oversight Branch concurs with recommendation. The SCARNG concurs with recommendation.

5. On 9 April 2024, the applicant was provided with a copy of the advisory opinion to provide a response. As of 24 April 2024, he 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 evidence shows the applicant's PEBD is 29 January 2010. He reached 12 years of service on 29 January 2022, 2 days after the CY 22 CP BRS Policy was released. He provides a CP BRS Form signed by himself on 28 January 2022 and by his certifying and approving officials on 2 February 2022. The Board accepted the applicant's argument and also agreed with the NGB advisory official's finding that the applicant was unable to submit his CP BRS enrollment packet by the eligibility deadline window due to

the FY 22 guidance being published two days prior. The Board determined an injustice occurred and voted to grant the requested relief.

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 the applicant timely submitted his Request for Continuation Pay – Blended Retirement System (CP – BRS) 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)

■

■

■

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 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//