

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230010766

APPLICANT REQUESTS:

- Exception to Policy (ETP) to apply for Continuation Pay (CP) under the provisions of the Blended Retirement System (BRS)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Request for CP BRS, 14 January 2021
- Leave and Earnings Statement (LES), 1-31 January 2021, 1-31 July 2021, and 19 August 2022
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 1 February 2021
- Memorandum for Record (MFR) - Subject: Assumption of Command, 26 April 2021
- Memorandum - Subject: BRS CP Provision Procedures Calendar Year (CY) 2021, 30 July 2021
- Memorandum - Subject: ETP for CP Bonus Request, 29 August 2022
- DA Form 4856 (Developmental Counseling Form), 30 August 2022
- USAR Form 22-R (Adjustment Certification Worksheet), 30 August 2022
- DD Form 577 (Appointment/Termination Record - Authorized Signature), 31 August 2022
- Request for CP BRS, 31 August 2022
- Personnel Action Packet Checklist, 1 September 2022

FACTS:

1. The applicant states:

a. She extended her contractual obligation in the U.S. Army Reserve (USAR) in order to receive the CP bonus prior to completion of her 12th year of service. She

applied and received the bonus while serving as an Active Guard/Reserve (AGR) member.

b. Upon voluntary release from active duty her entire bonus was recouped. She attempted to put in a new CP bonus application and requested an ETP since she was past her 12th year of service. Her ETP was denied, and she was told that the recoupment of her CP bonus was valid and therefore she was no longer entitled to the bonus.

c. She is still serving in the USAR under that extension contract for the CP BRS. She received an email last month from the USAR, Office of the Chief of Army Reserve stating the following. "Per guidance from HQDA [Headquarters Department of the Army], we cannot process an ETP to the CP BRS pay law. Please ask the Soldier to submit a case through the Army Board for Correction of Military Records (ABCMR) to correct the injustice and request payment. Please ask the Soldier to explain that the error was due to a system error that has been fixed and that he/she is entitled to the CP BRS. The Soldier may submit the request online. Please include all CP BRS documents and forms. We apologize for any inconvenience. Thanks for your inquiry."

d. She is currently paying back the bonus she initially received while serving on AGR status and is hoping that she can get her CP BRS entitlement in her current status as an active Troop Program Unit reservist.

e. It has not been more than 3 years. As soon as she got to her new unit, she attempted to get this rectified, but she was also trying to transfer to a unit closer to her home of record. With that her action got denied and she was told to resubmit at the new unit. She resubmitted all of this in the fall of 2022. Once it was denied, she also put in for an Inspector General (IG) investigation to determine if she was able to receive the bonus since she was still serving under the extension that allowed her to get the bonus. She thinks at the time it was unknown that there was a system error because her IG investigation closed December 2022. She received the email stating there was an error in May 2023 and that she should explain that there was an error in the system and request the CP BRS once again.

2. A review of the applicant's military records shows:

a. She enlisted in the Regular Army on 20 January 2009.

b. While serving in the Regular Army she enlisted in the USAR.

c. On 19 January 2014, she was honorably released from active duty and was transferred to her USAR unit in TX.

d. On 31 October 2016, she reenlisted in the USAR for 6 years.

e. On 16 June 2018, the U.S. Army Human Resources Command (HRC) published Orders Number R-06-802111, which ordered the applicant to active duty in an AGR status for 3 years with a report date of 9 July 2018. The orders show her Pay Entry Base Date (PEBD) as 20 January 2009.

f. DA Form 1506 (Statement of Service - For Computation of Length of Service for Pay Purposes), dated 7 January 2019, also shows her PEBD as 20 January 2009.

g. On 13 January 2021, the applicant completed and signed a request for CP BRS. It was certified on the same date and approved on 14 January 2021. The request for CP BRS shows, in pertinent part, the applicant acknowledged that she understood she would be receiving CP, as part of the BRS, for her continued service in the USAR.

(1) She agreed to accept CP as an Active Component member, which was her monthly basic pay at 12 years of service multiplied by 2.5 for Additional Obligated Service (AOS) of 4 years. Payment would be made in accordance with Assistant Secretary of the Army (Manpower and Reserve Affairs) CY 2020 Guidance, dated 18 December 2019.

(2) The incentive program was a voluntary retention program; she would not be voluntarily released from her current duty status before fulfilling the term of AOS agreed to.

(3) The effective date of her entitlement to CP and AOS start date was the date this request was approved by the Approval Authority. (Start date is identified in Block 10 (Block 9 if digitally signed)).

(4) She requested her CP to be paid in one single, lump-sum payment.

h. On 1 February 2021, DA Form 4836 shows the applicant was a member of the USAR-AGR and extended her USAR enlistment for 2 years and 1 month, which changed her expiration term of service to 19 February 2025.

i. On 12 February 2021, HRC published Orders Number R06802111A01, which amended Orders Number R-06-802111 by changing the applicant's Release from Active Duty (REFRAD) date to 19 February 2025, and amended the additional instructions to read "REFRAD Alignment/Extended to meet SRR [service remaining requirement] for the Blended Retirement System (BRS) Continuation Pay (CP)."

j. On 8 July 2021, the applicant was honorably released from active duty and was transferred to her USAR unit in Richmond, VA. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 3 years of active service.

k. The applicant completed 12 years of service on 20 January 2021.

3. In support of her case the applicant provides:

a. An LES, dated 1-31 January 2021, which shows, her branch, grade, years of service, BRS CP payment, and BRS retirement plan.

b. MFR - Subject: Assumption of Command, dated 26 April 2021, which shows Captain C_ H_ assumed command of Headquarters and Headquarters Company, 5th Brigade (Health Services), 94th Training Division (Force Sustainment), effective 26 April 2021.

c. Memorandum - Subject: BRS CP Provision Procedures Calendar Year 2021, dated 30 July 2021, which states, in relevant part, the CP BRS provision is a one-time, mid-career bonus in exchange for an agreement to perform AOS. The CP is in addition to any other career field-specific pay, incentives, or retention bonuses.

d. LESs dated 1-31 July 2021 and 19 August 2022, which show, the applicant's branch, BRS CP entitlement, debt, years of service, grade, and pay date. The July LES also shows a debt in the amount of \$7,294.91.

e. Memorandum - Subject: ETP for CP Bonus Request, dated 29 August 2022, wherein, her commander states, in part, the applicant is submitting the request for Continuation Pay Bonus late due to incurring a debt to payback the bonus received while she was serving on Active-Duty in the AGR program.

f. DA Form 4856, dated 30 August 2022, which shows she was counseled regarding her eligibility for CP. In relevant part, the applicant stated, she applied for CP Bonus in January 2021 and extended her contract to meet the service requirement. Prior to January 2021, she requested REFRAD from the AGR program. She received the CP Bonus in February 2021. In July 2021 on her last active duty LES, she incurred a debt to repay the CP Bonus. She is applying again to receive the bonus so that she may repay the debt that she incurred. She is still serving; her contract extension was for USAR not the AGR program and she is still entitled to a CP Bonus in the Selected Reserve (SELRES).

g. USAR Form 22-R, dated 30 August 2022, shows the applicant requested processing of her request for CP BRS.

h. DD Form 577, dated 31 August 2022, which appointed J_ P_ as the certifying officer for CP BRS requests.

i. Request for CP BRS, dated 31 August 2022, which shows the applicant submitted an additional request to receive CP in accordance with CP BRS provision procedures dated 18 March 2022.

j. Personnel Action Packet Checklist, dated 1 September 2022, which lists the required forms and documents submitted by the applicant for CP BRS.

4. On 17 January 2024, 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, we do not support the applicant's request. She submitted a completed request for CP effective 14 January 2021; however, the applicant was REFRAD on 8 July 2021. She received a payment of \$8,963.25, which only the unearned portion of the bonus (\$7,873.97) was recouped. The applicant received payment credit of \$1,089.28 for the 175 days earned.

b. Submission of a second payment request of CP, regardless of component, "is not authorized." The applicant does not provide verification of a signed agreement prior to the 12th year of service, based on the PEBD of 3 November 2009.

5. On 23 January 2024, the applicant was provided a copy of the G-1 advisory opinion for comments or rebuttal. She did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and the Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Division advisory opinion, the Board concurred with the advisory official finding the applicant submitted a request for continuation pay; however, she was released from active duty prior to her request. She was credited with the appropriate amount and the unearned portion was recouped. Therefore, the Board denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and

equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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. Deputy Secretary of Defense Memorandum – Subject: Implementation of the Blended Retirement System (BRS), dated 27 January 2017, Attachment 1 – Guidance for Implementation of the BRS for the Uniformed Services states, in pertinent part:

a. Paragraph 8 (Continuation Pay), in addition to provisions related to retirement compensation and Thrift Saving Plan (TSP), Public Law (P.L.) 114-92 enacted a continuation pay to ensure sufficient retention at critical longevity points in the force structure. CP will be enacted under Section 356 of Title 37, United States Code (USC), effective on 1 January 2018, which was further modified by P.L. 114-328.

b. Members of the Uniformed Services who are covered by the BRS are eligible to receive a one-time, mid-career bonus payment in exchange for an agreement to perform AOS. This one-time bonus payment is in addition to any other career field-specific incentives or retention bonuses.

c. Active Component (AC) Soldiers are eligible to receive CP who are:

(1) Covered under the BRS; and,

(2) Has completed not less than 8 and not more than 12 years of service, as computed from that member's PEBD; and,

(3) Is eligible to enter into an agreement to serve not less than an additional 3 years in the AC.

d. Reserve Component Soldiers are eligible to receive CP who:

(1) Is covered under the BRS; and,

(2) Has completed not less than 8 and not more than 12 years of service as computed from that member's PEBD; and,

(3) 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.

(4) 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,

(5) Is eligible to enter into an agreement to serve not less than an additional 3 years in the Selected Reserve.

2. Office of the Chief of Army Reserve Memorandum – Subject: BRS CP Provision Procedures CY 2021, dated 30 July 2021, states in relevant part, the BRS CP provision is a one-time, mid-career bonus in exchange for an agreement to perform Additional Obligated Service. The CP is in addition to any other career field-specific pay, incentives, or retention bonuses.

a. Paragraph 3b (Eligibility) states, in pertinent part, a qualifying Soldier must be covered under the BRS and cannot have previously received CP.

b. Paragraph 3c states, AGR Soldiers must have a PEBD between 1 January 2009 and 31 December 2009 and will complete 12 years of service during CY21 as calculated from the Soldier's PEBD.

c. Paragraph 3d states, TPU or Individual Mobilization Augmentee Soldiers must have a PEBD between 1 January 2009 and 31 December 2010, and will complete no more than 12 years of service in CY21 based upon the PEBD.

d. Paragraph 4 (Service Obligation) states, in exchange for the CP described in paragraph 5, Soldiers must agree to serve four years of AOS in the USAR SELRES. The additional obligated service commences on the date of the Soldier's CP request.

e. Paragraph 5 (Repayment) states, a member who received CP but who fails to complete the period of AOS described in paragraph 4, is subject to full or partial repayment provisions in accordance with Section 373 of Title 37, USC, and the Department of Defense Financial Management Regulation, Volume 7A, Chapter 2.

3. Title 37, USC, Section 356 (CP: Full TSP Members with 8 to 12 years of service) provides that:

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. Army Regulation 15-185 (ABCMR) states, 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.

//NOTHING FOLLOWS//