

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 June 2024

DOCKET NUMBER: AR20230010881

APPLICANT REQUESTS: retroactive payment of 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)
- Orders Number 17-108-0060, 18 April 2019
- Orders Number HO-151-0138, 31 May 2019
- Orders Number HO-151-0138 (A2), 24 September 2019

FACTS:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. The applicant states, in pertinent part, he was not made aware of the deadline to submit the CP BRS request until attending drill at his unit in July 2023, when he was asked by the unit Readiness Noncommissioned Officer (NCO) if he received the CP BRS. He was also told there was a long list of Soldiers who were eligible but were not notified about the payment or the submission deadline. During the time of his deadline to submit his application for CP BRS he was deployed overseas and would not have been able to meet the deadline due to a lack of technological resources during the deployment. When he asked how to resolve the issue, he was directed to submit an application for correction of his records with the ABCMR.
3. A review of the applicant's available service record reflects the following:
 - a. On 27 June 2008, he enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG).

b. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) dated 4 August 2012 reflects an honorable discharge from the ■■■ ARNG to accept appointment as a commissioned or warrant officer with service from 27 June 2008 to 4 August 2012 for a net service this period of 4 years, 1 month, and 8 days.

c. On 5 August 2012 he was appointed as a Reserve commissioned officer and executed an oath of office.

d. On 27 September 2012, the Joint Forces Headquarters Indiana issued Orders Number 271-1084 honorably discharging him from the ARNG and as a Reserve of the Army for transfer to the Officer Corps as a graduate of Officer Candidate School with a retroactive effective date of 4 August 2012.

e. On 18 December 2018, the NGB issued Special Orders Number 328 extending Federal Recognition and promoting the applicant to the rank/grade of captain (CPT)/O-3, effective on with a date of rank of 12 September 2018.

f. On 18 April 2019, the Joint Force Headquarters Indiana issued Orders Number 17-108-60 ordering him to active duty in support of Operation Enduring Freedom (Spartan Shield) for a period of active duty of 399 days with a report date of 27 May 2019.

g. On 31 May 2019, Headquarters III Corps and Fort Hood issued Orders Number HO-151-0138 deploying him in a Temporary Change of Station (TCS) in support of Operation Enduring Freedom (Spartan Shield) Kuwait, effective 19 June 2019 not to exceed 373 days.

h. On 24 September 2019, Headquarters III Corps and Fort Hood issued Orders Number HO-151-0138 (A2) amending Orders Number HO-151-0138 to reflect the additional duty location of Saudi Arabia.

i. He completed 12 years of service on 26 June 2020.

j. Request for CP (BRS) shows he requested CP BRS at 4 times his monthly basic pay to be paid in a lump sum in return for 4-years of Additional Obligated Service (AOS) with endorsement by the Approval Authority on 27 March 2024 and the Certifying Official on 11 April 2024.

k. He continues service with the ■■■ ARNG.

4. On 11 March 2024, the Chief, Special Actions Branch, NGB, provided an advisory opinion recommending approval of the applicant's request stating:

a. The applicant enrolled in the BRS when it became available in 2018 and was eligible to apply for CP from 27 June 2019 to 26 June 2020 between his 11th and 12th year of service per Assistant Secretary of the Army for Manpower and Reserve Affairs Memorandum, Subject BRS CP – Calendar Year 2020 (CY20), 18 December 2019. He states that he was not made aware that he was eligible by his unit until July 2023 by his readiness NCO at drill, after his eligibility to apply had closed. His readiness NCO directed him to submit an ABCMR case to correct the error. He also states that he was deployed during his eligibility time with limited access to technology for the ability to apply. He submitted TCS orders for review.

b. In coordination with the ■■■ ARNG, it was confirmed that the applicant was fully eligible to apply for CP BRS from 27 June 2019 to 26 June 2020 based on his pay entry base date of 27 June 2008. He was deployed in support of Operation Enduring Freedom (Spartan Shield) from 6 May 2019 to 8 May 2020 during his eligibility period to apply for CP. The ■■■ ARNG confirmed that he was not notified of his eligibility for CP and there was no system of notification for CP BRS incentive at the time for any ■■■ ARNG eligible Soldier. The applicant was fully eligible and is entitled to CP BRS for CY20 and did not apply during his eligibility at no fault of his own.

c. It is the recommendation of this office that the applicant's request be approved. The applicant was not notified of the eligibility to apply for CP BRS and missed the opportunity of no fault of his own.

d. The ■■■ ARNG concurs with this advisory opinion.

5. On 14 March 2024, the applicant was provided with a copy of the advisory opinion to provide a response.

6. On 21 March 2024, he concurred 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 fully eligible for CP BRS and did not apply during his window of eligibility through no fault of his own. The Board determined the applicant's record should be corrected to show he submitted his application for CP BRS 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 and Army National Guard records of the individual concerned be corrected by showing he submitted his application for Blended Retirement System Continuation Pay prior to completing his 12th year of service.

12/19/2024

X █

CHAIRPERSON

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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. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 37 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.

3. 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.

4. Deputy Secretary of Defense Memorandum dated 18 December 2019, Subject: Blended Retirement System Continuation Pay – Calendar Year 2020, implements guidance for the BRS for the Uniformed Services, which was authorized in Public Law 114-92 section 631 through 635 of the NDAA for Fiscal Year 2016. Army National Guard. Any member who meets the following criteria is eligible to enter into an agreement to serve the obligation period specified in paragraph 6 below (four years). Is

covered under the BRS and has not previously received CP, has a PEBD from 1 January 2008 to 31 December 2008, and will complete 12 years of service during CY20 as calculated from the Soldier's PEBD, and 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. For National Guard serving in the Selected Reserve, CP is 4 times the active duty monthly basic pay.

5. 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//