

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230012931

APPLICANT REQUESTS: correction of his record to show he is eligible to be paid Continuation Pay (CP) Blended Retirement System (BRS). In the alternative, if he cannot receive CP he requests to be placed back into the High 3 retirement plan.

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

- DD Form 149 (Application for Correction of Military Record)
- Request for Continuation Pay (Blended Retirement System)

FACTS:

1. The applicant states in effect, he opted into the BRS when it first came out. He was never informed about his eligibility to receive CP BRS. When he attempted to receive it between his 12th and 13th-years of service, it was denied because he applied a year too late.

2. A review of the applicant's service record shows:

a. On 2 September 2009, the applicant enlisted in the Regular Army (RA). He had continuous service through extensions and reenlistments.

b. On 2 May 2019:

(1) Orders Number 19122-70, issued by Headquarters (HQs), U.S. Army Maneuver Center of Excellence, the applicant was discharged from active duty, effective 16 May 2019, for the purpose of accepting a commission in the U.S. Army.

(2) Orders Number 19122-264, issued by HQs, U.S. Army Maneuver Center of Excellence, the applicant was ordered to active duty for an active duty commitment for 3-years obligated volunteer officer, effective 17 May 2019.

c. On 16 May 2019, the applicant was honorably released from active duty and assigned to the U.S. Army Reserve Control Group (Individual Ready Reserve).

DD Form 214 (Certificate of Release or Discharge from active Duty) shows the applicant completed 9-years, 8-months, and 15-days of active service.

d. On 17 May 2019, the applicant executed his oath of office and was appointed a RA officer in the rank/grade of second lieutenant (2LT)/O-1.

e. On 2 September 2021, the applicant obtained 12-years of service based on his Pay Entry Base Date (PEBD).

f. On 22 March 2022, the applicant's CP BRS contract shows he requested CP BRS at 2.5x his base pay and agreed to 4-years Additional Obligated Service (AOS) which he requested a lump-sum payment. The applicant signed his contract on 3 February 2022 and was certified and approved on 22 March 2022.

4. On 29 February 2024, in the processing of this case, the Office of the Deputy Chief of Staff G1, provided an advisory opinion regarding the applicant's request for retroactive CP BRS. The advisory official recommended approval of the applicant's request in the interest of fairness and equity. The applicant's unit did not provide a timely notification of the entitlement; therefore, he did not find out about his eligibility and filing requirements until 3 February 2022. The end point of 12-years of service for pay was 2 September 2021. The applicant's request for payment for BRS CP should be based on the date of qualification in the pay grade of first lieutenant with 12-years of service for pay on 2 September 2021. His AOS ending date should be adjusted to 2 September 2025 based on the last day of CP BRS eligibility. If the Board grants administrative relief, the payment would be based on the pay grade of O-2E with 12-years of service from the 2021 pay scale in the amount of \$15,212.25 less 22 percent Federal tax of \$3,346.70 for a net payment of \$11,865.55.

5. On 1 March 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

6. On 26 March 2024, the applicant responded via email stating he agreed with the advisory opinion recommendation.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and Office of the Deputy Chief of Staff G-1, Compensation and Entitlements Division advisory opinion, the Board concurred with the advising official recommendation for approval in

the interest of fairness and equity. The opine noted the applicant's unit did not provide a timely notification of the entitlement; therefore, he did not find out about his eligibility and filing requirements until 3 February 2022.

2. The Board determined the end point of 12-years of service for pay was 2 September 2021. The Board agreed the applicant's request for payment for BRS CP should be based on the date of qualification in the pay grade of first lieutenant with 12-years of service for pay on 2 September 2021. The Board noted, based on the advising official, the applicant's AOS ending date should be adjusted to 2 September 2025 based on the last day of CP BRS eligibility. Based on the preponderance of evidence the Board granted relief to correct the applicant's record to show he is eligible to be paid Continuation Pay (CP) Blended Retirement System (BRS). In the alternative, if he cannot receive CP he requests to be placed back into the High 3 retirement plan. The payment should be based on the pay grade of O-2E with 12-years of service from the 2021 pay scale in the amount of \$15,212.25 less 22 percent Federal tax of \$3,346.70 for a net payment of \$11,865.55.

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 that the evidence presented was 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:

1. showing the applicant was in receipt of a completed continuation pay (CP) request prior to the completion of 12 years of service as computed from the PEBD

2. DFAS paying his entitlement to CP utilizing the Military Pay Account and not the ABCMR funds payable through Debts and Claims. The payment would be based on the pay grade of O-2E with 12-years of service from the 2021 pay scale in the amount of \$15,212.25 less 22 percent Federal tax of \$3,346.70 for a net payment of \$11,865.55.



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. 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.

2. Title 37, United States Code (USC), section 356 (CP) states:

a. The Secretary concerned shall pay CP under subsection (a) to a full 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 Active Guard/Reserve 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. 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.

5. Department of the Army Assistant Secretary of the Army Manpower and Reserve Affairs memorandum dated 19 January 2021, Subject: Blended Retirement (BRS)

Continuation Pay (CP) – Calendar Year 2021 (CY21) states the guidance was effective immediately and expired on 31 December 2021 and it applied to Regular Army (RA), Army National Guard/Army National Guard of the United States, and the U. S. Army Reserve Soldiers who were covered under the BRS. For eligibility for RA Soldiers:

- covered under the BRS and
- would complete 11-years of service but not more than 12-years of service during the CY21 as computed from the Soldier's Pay Entry Base Date (PEBD)

For RA Soldiers performing active service in a career status program, CP is 2.5 times the monthly basic pay, based on current pay grade and years of service at the time CP is approved. In exchange for CP, Soldiers must agree to serve for 4-years of additional service in the component in which they are serving at the time CP is approved. The service obligation commences upon approval of the CP request. At a minimum, the BRS CP election packet will include the proof of BRS enrollment status and the request for CP contract. All Soldiers may submit the CP request once they become eligible for CP based on the PEBD and should submit the CP request no later than 60-days prior to completing 12-years of service. The request for BRS CP must be approved prior to the Soldier completing 12-years of service. The approval authority for RA Soldiers is colonels or civilian equivalent (GS-15) and will appoint appropriate personnel to serve as the program certifying officials.

6. Department of Defense Financial Management Regulation 7000.14, Volume 7B states retired base pay - High-Three Average (High 36 Month Average). For members who entered the military service on or after 8 September 1980, the retired pay base is generally the average of the highest three years (36 months) of monthly basic pay to which the member received for any 36 months of active service whether consecutive or not.

//NOTHING FOLLOWS//