

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 July 2024

DOCKET NUMBER: AR20230013194

APPLICANT REQUESTS: payment of Blended Retirement System Continuation Pay (BRS CP)

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

- DD Form 149 (Application for Correction of Military Record)
- Order 004-0004 Order to Full Time National Guard Duty (FTNGD)
- Memorandum BRS CP for Calendar Year (CY) 2021
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment)
- Request for CP (BRS)
- Teams Messages
- Email regarding BRS CP
- Email regarding Army Board for Correction of Military Records (ABCMR) Process

FACTS:

1. The applicant states:

a. His application for BRS CP CY 21 was wrongly denied for it being signed on 1 June 2021, two days prior to completing his 12th year of service. There were challenges outside his control (i.e. contract extension processing, COVID orders, transfer of units, inexperienced unit readiness noncommissioned officer (NCO)) to complete the form, which resulted in delaying the signature. Nevertheless, he still managed to sign before completion of his 12th year of service.

b. At the time of his request, he was quoted as active Guard/Reserve (AGR) and no one time occasion tour (OTOT) orders were available. This was an administration mistake by the unit that generated his orders. This has been rectified and he attached his OTOT orders. The CP application must be approved prior to completion of the Soldier's 12th year of service as computed from the pay entry basic date (PEBD). There were challenges outside of his control to complete the form. He did his best to push it along, but it resulted in only his signature being before completion of his 12th year of service.

c. Additionally, he extended his service contract to meet the requirements to get this additional money that would help his family's financial situation. He got married in August 2020 and saw this opportunity in CY 2021. They purchased a new home and welcomed two stepdaughters, access to this additional money will help relieve some financial stress. It took over a year to finally get the results of his application only to discover it was denied.

2. The applicant provides the following documents:

a. Orders 004-0004, published by Joint Force Headquarters – Arizona Army National Guard (AZARNG) on 4 January 2021, which ordered him to FTNGD in an AGR status from 1 January 2021 through 31 August 2021 (8 months). On 9 May 2022, the orders were amended to read they were OTOT orders.

b. Memorandum BRS CP - CY 21, 11 February 2021 establishes eligibility, amounts, and additional service obligation requirements for CP in CY 21. It states, eligibility is limited to Army National Guard (ARNG) Soldiers that have a PEBD from 1 January 2009 through 31 December 2010 and will complete 12 years of service during CY 21 as calculated from the Soldier's PEBD. For ARNG Soldiers serving in the Selected Reserve (non-AGR) CP is four times the active duty monthly basic pay. All Soldiers may submit their CP request once they become eligible for CP based on their PEBD. Soldiers may submit their CP request no earlier than the completion of their 11th year of service based on PEBD and should submit their CP request no later than 30 days prior to completing their 12th year of service based on PEBD.

c. Teams messages, 28 April 2022, wherein his unit was checking on his CP BRS request. It was sent to Defense Finance and Accounting Service on 30 March 2022 with others on the same transition log and none had been paid.

e. Email from National Guard Bureau (NGB), 22 May 2022 which states his CP BRS request was kicked back. The entire email is available for the Board's review.

f. Email from an Arizona ARNG Education and Incentives Specialist, 27 June 2022, informing him of the discrepancies on his CP BRS and the process of submitting an ABCMR application. The entire email is available for the Board's review.

3. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows he enlisted in the ARNG on 3 June 2009. He remained in the ARNG through oaths of extension of his enlistment or reenlistment.

b. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) 12 April 2021, shows he extended his enlistment for a period of three years. His PEBD was 3 June 2009 and his new expiration term of service was 2 December 2025.

c. Request for CP (BRS), 1 June 2021, shows he indicated his PEBD (Pay Entry Basic Date) is 3 June 2009. He requested CP at four times the monthly basic pay and he agreed to an additional obligated service of four years. He requested payment in one lump sum payment. The applicant signed this form on 1 June 2021. The certifying official signed on 30 June 2021 and the approval authority signed it on 6 July 2021.

d. NGB Form 22 (National Guard Report of Separation and Record of Service) shows he was honorably discharged from the ARNG (as an enlisted Soldier) on 30 September 2023 to accept appointment as a commissioned or warrant officer in the ARNG.

e. DA Form 71 (Oath of Office - Military Personnel) shows he took the oath of office as a Reserve Commissioned Officer on 1 October 2023.

f. NGB Form 23A (ARNG Current Annual Statement), 3 June 2024 shows he entered the ARNG on 3 June 2009 and remained in the ARNG through the date of the form. He has completed 15 years creditable service for retired pay.

4. On 14 March 2024, the Chief, Special Actions Branch, NGB provided an advisory opinion, which states:

a. The applicant applied for BRS CP CY 21 and was denied. Reasons cited for denial was he signed the application on 1 June 2021, but it was not signed by the certifying official until 30 June 2021 and the brigade commander until 6 July 2021, which was after 12 years from his PEBD, 3 June 2009, making him ineligible for BRS CP CY 21 per BRS CP CY 21 policy, 11 February 2021. He was incorrectly on AGR orders and should have been on OTOT orders, which was later corrected on 9 May 2022 with order 129-0001. He states the delay of signatures and incorrect order type were of no fault of his own.

b. After review of his submission, he met eligibility for BRS CP CY 21 but was denied because of the delay of signatures causing it to be more than 12 years after his PEBD. He initially applied for BRS CP CY 21 but it was returned stating he needed to extend his contract. He extended his contract on 12 April 2021 and signed his BRS CP on 1 June 2021, two days prior to the 12th year of service. Per the BRS CP CY 21 policy, Soldier's requests should be completed no later than 30 days prior to completing their 12th year of service. He cites changing units, extension processing time, COVID orders, and inexperience of the unit readiness NCO inhibiting a timely request. He was

also incorrectly on AGR orders vice OTOT orders, which was corrected on 9 May 2022, which would change the amount of CP eligibility.

c. He did extend his service obligation to be eligible to receive BRS CP CY 21. He signed the request prior to his 12th year of service and met all other requirements to be eligible to receive BRS CP CY 21 in the amount of four times his active duty monthly basic pay. Starting in CY 22 BRS CP eligibility was changed to only the Soldier's signature being required before the 12th year of service rather than a complete request approved before the Soldier's 12th year of service.

d. It is the recommendation of NGB that his request be approved. His BRS CP CY 21 request was delayed by signatures he had no control over. Administrative errors in his order type were corrected and he was on OTOT orders. National Guard Incentive Branch has since changed eligibility to the date of the Soldier's signature on the request starting in CY 22.

5. On 15 March 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. 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.

a. The evidence shows the applicant applied for BRS CP CY 21 and was denied because he signed his application on 1 June 2021, but it was not signed by the certifying official until 30 June 2021 and the brigade commander until 6 July 2021, which was after the 12-year mark, based on his PEBD, 3 June 2009, making him ineligible for per BRS CP CY 21 policy, dated 11 February 2021. He was incorrectly on AGR orders and should have been on OTOT (one time occasional tour) orders, which was later corrected on 9 May 2022 with order 129-0001.

b. The applicant contends that delay and errors were caused by changing units, extension processing time, COVID orders, and inexperience of the unit readiness NCO inhibiting a timely request. He was also incorrectly on AGR orders vice OTOT orders, (corrected on 9 May 2022) which would change the amount of CP eligibility. The evidence shows the applicant did in fact extend his service obligation to be eligible to receive BRS CP CY 21. He signed the request prior to his 12th year of service (on 12 April 2021) and met all other requirements to be eligible to receive BRS CP CY 21 in the amount of four times his active duty monthly basic pay.

c. The Board found the applicant's argument and agreed with the NGB advisory official's determination that the applicant's BRS CP CY 21 request was delayed by signatures he had no control over. The administrative errors committed by others constitute an injustice. Therefore, the Board determined relief is warranted.

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 completed and signed Blended Retirement System (BRS) Continuation Pay (CP) request prior to reaching his 12th year of service
- showing the appropriate office timely received, processed, and approved his BRS CP for payment at four times the monthly basic pay in one lump sum payment, based on his rank on 1 June 2021

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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. 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, 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 (AR) 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//