

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014701

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 BRS he requests to be paid an incentive bonus.

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

- DD Form 149 (Application for Correction of Military Record)
- E-mail Communication, re: CP BRS
- Memorandum, Subject: Request for CP and Exception to Policy (ETP) Pay Entry Base Date (PEBD) 10 October 2008

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states in 2017, he opted into the BRS, and an important part of his decision was the possibility to receive CP BRS. The program is an incentive that waives the possibility of a legacy retirement which is a benefit to the Government. First, Soldiers are not notified of their eligibility to receive CP BRS in a timely manner which would provide them sufficient time to receive an approved request prior to completion of their 12-years of service. To deny CP BRS based only on a missed deadline is patently unfair given the Government has the capacity and record to process the incentive at any point.

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

a. On 9 March 2010, with prior U.S. Coast Guard Reserve service, the applicant executed his oath of office and was appointed as a Reserve commissioned officer.

b. On 20 May 2010, Orders Number C-05-007647, issued by the U.S. Army Human Resources Command (AHRC), the applicant was appointed and assigned in a U.S.

Army Reserve Troop Program Unit, effective 9 March 2010. The additional instructions shows the applicant's PEBD as 9 March 2010 which would be adjusted.

c. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty for training effective 6 February 2011. The applicant was honorably released from active duty on 17 June 2011. It also shows he completed 4 months and 12 days of active service.

d. The applicant's DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom effective 9 July 2012. He was honorably released from active duty on 30 January 2013 after the completion of 6 months and 22 days of active service.

e. On 22 December 2016, Orders Number HR-6357-00061, issued by the U.S. Army Human Resources Command (HRC), the applicant was ordered to Active Duty for Operational Support (ADOS) effective 6 January 2017. The additional instruction shows the applicant PEBD as 10 October 2008.

f. On 30 September 2017, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 8 months and 25 days of active service.

g. On 10 October 2018, the applicant reached 10 years of service based on his PEBD.

h. On 23 January 2020, Orders Number 021716, issued by the 99th Readiness Division, the applicant was ordered to ADOS – Reserve Component (RC), effective 1 February 2020. The additional instruction shows the applicant's PEBD as 10 October 2008.

i. On 29 September 2020, Orders Number 000455, issued by the 99th Readiness Division, continued the applicant in an ADOS – RC status, effective 1 October 2020. The additional instruction shows the applicant's PEBD as 10 October 2008.

j. On 10 October 2020, the applicant reached 12 years of service based on his PEBD.

k. On 29 December 2020, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 10 months and 29 days of active service.

l. The applicant's DA Form 5016 (Retirement Accounting Statement) and the screenshot of Soldier Management Services - WEB Portal shows the applicant's PEBD as 10 October 2008.

4. The applicant provides:

a. The e-mail communication which began on 6 July 2021 which shows the applicant requested to receive CP BRS. He informed his commander he missed the deadline while he was on active duty because he was not notified by HRC of the timeframe for applying.

b. Memorandum, Subject: Request for CP and ETP, PEBD 10 October 2008 wherein the applicant requested an ETP to receive CP BRS and asks for a retention bonus to be offered if CP could not be paid. There was no evidence provided whether his request was approved or disapproved. With this memorandum he provided his officer evaluation reports, DA Form 5016, and officer record brief. However, it is void of a CP BRS Request Form.

5. On 3 July 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 to be paid CP BRS. The advisory official after review of the applicant's documents, his request could not be supported. He did not provide proof of a completed, certified and approved calendar year 2020 application of CP BRS prior to reaching 12-years of service for pay based on his PEBD of 10 October 2008.

6. On 22 July 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On 27 July 2024, the applicant responded via e-mail where he stated the advisory opinion was circular in its logic and discounted the core problem by restating the main problem as the reason for the denial. He contacted HRC to see if he would be allowed to apply for CP BRS and was told that he could not because he had not completed the form. The advisory opinion did not consider the Army guidance which imposed HRC to assist Soldiers in completing the CP BRS contract and acquiring the appropriate approval prior the Soldier's 12-years of service. He respectfully requests the Board to reject the advisory opinion and direct the Department of the Army to allow him to receive CP BRS.

BOARD DISCUSSION:

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 Program Analyst for the Compensation and Entitlements Division of the Office of the Deputy Chief of Staff G-1, the Board concurred with the advising official finding the applicant's

request did not present proof of a completed, certified, and approved Calendar Year 2020 application prior to reaching his 12-year point for pay as computed from the pay date of 10 October 2008. The Board concluded there was no error or injustice and denied relief.

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. 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. 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.

3. Title 37, USC, section 356 (CP) states 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.

a. 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.

b. 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.

4. 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.

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.

6. 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.

//NOTHING FOLLOWS//