

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 August 2024

DOCKET NUMBER: AR20230014764

APPLICANT REQUESTS: an Exception to Policy (ETP) resulting in entitlement to Continuation Pay (CP) under the Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- Request for Continuation Pay (CP) (Blended Retirement System (BRS)), 19 October 2023
- Leave and Earnings Statement
- Memorandum – Subject: BRS CP – Calendar Year 2021 (CY21)

FACTS:

1. The applicant states in pertinent part that he was not adequately informed nor reminded of the eligibility requirements associated with the BRS CP wherein it requires the submission of the request prior to the beginning of his 12th year of service. The applicant now has completed 14 years of service with every intention of continuing his military service for at least 20 years. In 2016, the applicant elected to opt-in to the BRS, and had he been properly counseled on BRS CP at that time, he would have submitted his request within a timely manner. Unfortunately, he was only made aware of the eligibility requirements through self-education with his financial advisor. As such, he would like an ETP in the spirit of fairness and justice that would permit his entitlement to BRS CP based on the CY21 policy guidance.

2. A review of the applicant's available service records reflects the following:

a. On 7 January 2009, the applicant enlisted in the U.S. Army Reserve (USAR) for 8 years.

b. On 9 September 2013, Headquarters U.S. Army Maneuver Center of Excellence issued Orders Number 252-31211 discharging the applicant from the USAR effective 18 September 2013, for the purpose of accepting a commission.

c. On 11 September 2013, Headquarters U.S. Army Maneuver Center of Excellence issued Orders Number 254-31 ordering the applicant to active-duty effective 19 October 2013.

d. On 19 September 2013, the applicant was appointed a Regular Army commission as an Infantry Corps Officer.

3. The applicant provides the following a:

a. Request for Continuation Pay (CP) (Blended Retirement System (BRS)), 19 October 2023, reflective of the applicant's submitted request to receive CP at a rate of 2.5 times his monthly basic pay to be paid in a lump sum. The applicant agreed to serve an Additional Obligated Service (AOS) of 4-years in accordance with Blended Retirement System (BRS) Continuation Pay (CP) - Calendar Year 2021 (CY21). The form is endorsed by the applicant, certifying official and the approval authority. Item 5 (Pay Entry Base Date (PEBD)) reflects 7 July 2009.

b. Leave and Earnings Statement, reflective of the applicant's pay and entitlements for the month of October 2023. Upon review you will note the applicant's PEBD of 7 January 2009 and 14 years of service.

c. Memorandum – Subject: BRS CP – Calendar Year 2021 (CY21), reflective of the established eligibility, amounts, and additional service obligation for CP in CY21. Paragraph 4 (Eligibility) provides that to be eligible to request BRS CP, Regular Army personnel will have completed 11 years of service but not more than 12 years of service during CY21, as computed from the Soldier's PEBD.

4. A review of the applicant's Officer Record Brief, 23 November 2022 reflects a PEBD of 7 January 2009.

5. On 28 May 2024, the Department of the Army, Deputy Chief of Staff G-1, Financial Management Specialist, Compensation and Entitlements Division, provided an advisory opinion in the processing of this case.

a. References: (a) Army Regulation 637-1 (Army Compensation and Entitlements Policy) and (b) Department of Defense Financial Management Regulation, Volume 7A, Chapter 66

b. After a thorough review, it is recommended the board return the CP ETP request for the applicant. In accordance with reference (IAW) reference (b) above, the applicant must complete not less than 8 and not more than 12 years of service as computed from the member's Pay Entry Base Date (PEBD). Additionally in reference (a) above, the

applicant must have an approved application no later than the anniversary date of the established application year point as determined from PEBD.

c. The Army G-1 recommends the applicant contact his finance office or S1 for assistance with the CP application and validation if qualified to receive CP IAW references a and b above .a and 1.b.

6. On 29 May 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 6 August 2024, the applicant has not responded.

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. The evidence shows the applicant's PEBD is 7 January 2009. His window to apply would have been between 8 and 12 years. He reached 12 years of service in January 2021. He did not submit his CP BRS until 2023, some 2 years after his window has closed. The Board found no error or injustice. However, the Board did also note that the applicant was deployed part of the 2021 year and likely was neither adequately informed nor properly self-focused to catch this narrow window. Notwithstanding the unfavorable G-1 advisory opinion, the Board determined relief is warranted as a matter of equity.

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 records of the individual concerned be corrected by:

- showing the applicant submitted an exception to policy for BRS enrollment to include a retroactive start date to his 12th year of service mark
- showing his exception to policy was timely received and approved

X [REDACTED]

CHAIRPERSON

[REDACTED]

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, Implementation of the Blended Retirement System, dated 27 January 2017, advised the Blended Retirement System (BRS) was go to into effect 1 January 2018. BRS offers service members portable government retirement savings, provides the Department of Defense (DoD) greater force management flexibility and is a key step in modernizing DoD's ability to recruit, retain and maintain the talent required for military readiness, while reducing the direct cost to the American taxpayer.

a. Eligibility: Service members who enter the military on or after 1 January 2018, will automatically be enrolled in BRS. Service members who enter service on or before 31 December 2017 are grandfathered into the legacy high-3 retirement system. However, service members in the active component as of 31 December 2017, who have served fewer than 12 years, or service members in the Reserve component who have accrued less than 4,320 retirement points as of 31 December 2017 and are in a paid status, will have the option of electing BRS or to remain in the legacy retirement system.

b. Those currently serving members who were eligible to opt into BRS would have an entire year to make their opt-in decision. The opt-in or election period for BRS began 1 January 2018, and concluded on 31 December 2018. The decision to opt-in is irrevocable.

2. Title 37 United States Code (USC), section 356 (Continuation Pay) provides:

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 four 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 the Regular Army shall be the amount equal to 2.5 times the member's monthly basic pay, plus at the discretion of the Secretary of the Army, 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 of the Army shall specify in the agreement of the member.

c. In exchange for the CP, Soldiers must agree to serve for four 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.

3. Army Regulation 15-185 (ABCMR) paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

//NOTHING FOLLOWS//