

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240000838

APPLICANT REQUESTS:

- records correction to show payment of Blended Retirement System (BRS) Continuation Pay (CP)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Request for BRS CP, 7 December 2023
- Memorandum, Subject: BRS CP Calendar Year (CY) 2019

FACTS:

1. The applicant states:

a. He elected to enter the BRS in CY 2018, however he was unable to submit a request for CP under the BRS. He says he would not have elected to switch to the BRS without the prospect of CP and the switch is considered irrevocable. He would like to update his records to include a request for CP as of CY 2019 when he would have been eligible, with a service obligation extending through CY 2023. He would like this correction to be forwarded to the Defense Finance and Accounting Service (DFAS) so he can receive the incentive pay to which he would have been entitled.

b. He believes that his military records are in error because as one of the older cohorts that opted into the program, the infrastructure and knowledge was not in place to disseminate knowledge of BRS CP to the lowest level. He was assigned to the U.S. Army Student Detachment in 2018, and regularly checked his email and participated in BRS related training, but the method for electing receipt of CP was not specified in the training he received. During CY 2019, he was assigned as an instructor in the Department of Social Sciences at West Point and if given the appropriate knowledge, he would have requested CP. He does not recall receiving any emails, letters, memoranda, or in-person training with instructions for requesting CP. There would have

been no reason for him to hesitate, given that the additional service obligation for CP and for graduate school would have run concurrently. In other words, there was no purpose to evade obligation in 2019, and no personal benefit resulted due to this oversight.

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

a. On 26 May 2007, the applicant was appointed as a Regular Army commissioned officer and executed an oath of office.

b. The applicant's officer record brief shows his Pay Entry Basic Date (PEBD) as 26 May 2007.

c. On 7 February 2018, Orders Number 038-032 issued by the U.S. Army Human Resources Command, promoted the applicant to the rank/grade of major (MAJ/O-4) with the Date of Rank (DOR) of 1 March 2018.

d. The applicant completed 12 years of service on 26 May 2019

e. On 29 February 2024, Orders Number 0007409799 issued by the Department of the Army, promoted the applicant to the rank/grade of lieutenant colonel (LTC/O-5) with the DOR of 1 March 2024

3. The applicant provides:

a. Request for CP BRS, signed in December 2023 showing the applicant requested CP BRS at 2.5x his monthly basic pay in return for an additional obligated service of 4 years to be paid in one single, lump sum payment. The form shows he understood that he must complete the BRS opt-in procedures prior to completion of his 12th year of service, based on his PEBD, in order to be eligible to receive CP. The form is endorsed by the certifying official and the approval authority on 7 December 2023.

b. Memorandum, Subject: BRS CP CY 2019 showing the eligibility amounts and additional service obligation for receipt of the BRS CP.

4. On 9 July 2024, the Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Division, provided an advisory opinion which stated:

a. After careful review of the information provided, we recommend this case be approved in the interest of fairness and equity. The applicant claims to not have been provided with timely and accurate guidance regarding this application of CP prior to his 12th year of service, and otherwise would have submitted this request within the published timeframe. The applicant had a commitment to the additional service

obligation, which, would not have prevented submission of the CP application prior to the end point of 26 May 2019.

b. The applicant's request for payment of CP should be made based on the date he would have been otherwise qualified for in accordance with reference 1.c. The Control number on the application should CP1905XX.

c. If the Board grants administrative relief, the payment would be based on the pay grade of O-4 with 12 years for pay purposes from the 2019 pay scale ($\$7,596.30 \times 2.5 = \$18,990.75$, gross entitlement, less applicable federal and state taxes).

5. On 11 July 2024, the applicant was provided with a copy of the advisory opinion for comment or rebuttal.

6. On 23 July 2024, by email, the applicant responded to the advisory opinion notice. He thanked ARBA for providing him the advisory opinion and queried the representative about a time period for appeals. He also stated that he is happy with the decision and asked if he needed to take further action to result in the distribution of associated funds.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 applicant contends that he was not provided with timely and accurate guidance regarding this application of CP prior to his 12th year of service, and otherwise would have submitted this request within the published timeframe. His PEBD is May 2007, and he reached his 12th year in May 2019. He was promoted to major/O-4 on 1 March 2018 and to lieutenant colonel/O-5 on 1 March 2024. There is no evidence in the record and the applicant provides no evidence of his enrollment in BRS. Thus, the Board found no error. The applicant submitted his CP BRS in December 2023, some 4 years after reaching his 12th years of service, requesting CP BRS at 2.5x his monthly basic pay in return for an additional obligated service of 4 years to be paid in one single, lump sum payment. The Board reviewed the advisory official's determination and agreed that the applicant had a commitment to the additional service obligation, which, would not have prevented submission of the CP application prior to the end point of his 12th year (26 May 2019). The Board accepted the applicant's argument that he was not provided with timely and accurate guidance and agreed with the advisory official that an injustice occurred. Therefore, the Board determined that 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 records of the individual concerned be corrected by:

- showing the applicant submitted an exception to policy to the Army G-1 for BRS enrollment to include a retroactive start date to his 12th year of service mark (26 May 2019)
- showing his exception to policy was timely received and approved by the Army G-1 and assigned Control number CP1905XX
- payment of Continuation Pay based on the pay grade of O-4 with 12 years for pay purposes from the 2019 pay scale less applicable federal and state taxes).

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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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

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 an active duty member, 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.

//NOTHING FOLLOWS//