

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 October 2024

DOCKET NUMBER: AR20240001124

APPLICANT REQUESTS: exception to policy for payment of Continuation Pay under the Blended Retirement System (BRS).

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

- Online DD Form 149 (Application for Correction of Military Record)
- Officer Record Brief
- October 2023 Leave and Earnings Statement
- Request for Continuation Pay (Blended Retirement System), 14 November 2023

FACTS:

1. The applicant states she is an active duty officer who enrolled in the Blended Retirement System(BRS) in 2018 but did not receive entitled continuation pay for service even though she was eligible. The HR/S-1 department at the soldier's unit did not have an efficient communication process to notify the soldier of the timeframe to apply and the process to apply for the available Continuation Pay. Upon requesting to apply for continuation pay in FY22, the soldier was denied.

2. The applicant was appointed a Reserve commissioned officer and executed an oath of office on 16 March 2007. She was promoted to captain/O-3 in the U.S. Army Reserve on 29 September 2009.

a. She entered active duty on 28 August 2010 and executed an oath of office as a Regular Army commissioned officer on 29 August 2010. She completed the AMEDD Officer Basic Course and the AMEDD Captains Career Course and was promoted to major/O-4 on 1 November 2016.

b. The applicant reached her 12th year of service on 28 August 2022. Her Pay Entry Basic Date is 28 August 2010.

3. The applicant provides a Request for Continuation Pay (Blended Retirement System) signed by the applicant and certifying/reviewing officials on 14 November 2023. The applicant accepted the CY22 BRS-CP Policy ASA (M&RA) dated 27-January-2022

and agreed to an Additional Obligated Service of 4 years commencing from the date the applicant signed in block 8 (block 7 if digitally signed). She requested 2.5 her monthly times the monthly basic pay for her current pay grade to be paid on one lump sum.

4. The Office of the Deputy Chief of Staff, G-1 provided an advisory opinion on 5 August 2024 in the processing of this case.

a. The advisory official referenced Title 37, United States Code, Section 356; Office of the Secretary of Defense, memorandum (Implementation of the Blended Retirement System), 27 January 2017; and c. Assistant Secretary of the Army (Manpower and Reserve Affairs), memorandum (Blended Retirement System (BRS) Continuation Pay (CP) - Calendar Year 2022 (CY22)), 27 January 2022

b. After careful review of the information provided, we recommend this case be approved in the interest of fairness and equity. The applicant states she was not provided with timely and accurate guidance regarding this application of CP prior to her 12th year of service, and otherwise would have submitted this request within the published timeframe. The applicant did submit a completed request for CP signed effective 14 November 2023; however, the end point prior to 12 years of service for pay was 28 August 2022. The applicant's request for payment of CP should be made based on the date she would have been otherwise qualified for in accordance with reference 1.c, specifically, in the pay grade of O-4 with 12 years of service for pay on 28 August 2022. If the board grants administrative relief, the payment would be based on the pay grade of O-4 with 12 years for pay purpose from the 2022 pay scale ($\$8,284.50 \times 2.5 = \$20,711.25$ gross entitlement, less applicable federal withholding tax).

5. The applicant was provided with and responded to the advisory opinion via email documenting her response. She agreed with the advisory opinion and opined that there is not an adequate system in place within HR and Finance to provide guidance to Soldiers on the appropriate timeframe of eligibility to submit Continuation Pay requests. This gap in systems and processes will negatively impact many eligible Soldiers.

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 applicant contends she was enrolled in the Blended Retirement System (BRS) in 2018 but did not receive entitled continuation pay (CP) for service even though she was eligible. The applicant's PEBD is 28 August 2010, and she reached her 12th year of service on 28 August 2022. There is no evidence in the record, and she provides none to show she was enrolled in BRS in 2018 as she contends. She provides a Request for CP (BRS), signed by the applicant and certifying/reviewing officials on 14 November

REFERENCES:

1. Title 37 U.S. Code § 356 - Continuation pay: full TSP members with 8 to 12 years of service,

a. Continuation Pay.—The Secretary concerned shall make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who—

(1) has completed not less than 8 and not more than 12 years of service in a uniformed service; and

(2) enters into an agreement with the Secretary to serve for not less than 3 additional years of obligated service.

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 regular component or a reserve component, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10), shall not be less than 2.5 times the member's monthly basic pay. The multiple for a full TSP member who is a member of a reserve component not performing active Guard or Reserve duty (as so defined) shall not be less than 0.5 times the monthly basic pay to which the member would be entitled if the member were a member of a regular component. The maximum amount the Secretary concerned may pay a member under this section is—

(1) in the case of a member of a regular component— (A) the monthly basic pay of the member at 12 years of service multiplied by 2.5; plus (B) 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); and

(2) in the case of a member of a reserve component— (A) the amount of monthly basic pay to which the member would be entitled at 12 years of service if the member were a member of a regular component multiplied by 0.5; plus (B) at the discretion of the Secretary concerned, the amount of monthly basic pay described in subparagraph (A) multiplied by such number of months (not to exceed 6 months) as the Secretary concerned shall specify in the agreement of the member under subsection (a).

c. Additional Discretionary Authority.— In addition to the continuation pay required under subsection (a), the Secretary concerned may provide continuation pay under this subsection to a full TSP member described in subsection (a), and subject to the service

agreement referred to in paragraph (2) of such subsection, in an amount determined by the Secretary concerned.

d. Timing of Payment.— The Secretary concerned shall pay continuation pay 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.

e. Lump Sum or Installments.— A full TSP member may elect to receive continuation pay provided under subsection (a) or (c) in a lump sum or in a series of not more than four payments.

f. Relationship to Other Pay and Allowances.— Continuation pay under this section is in addition to any other pay or allowance to which the full TSP member is entitled.

g. Repayment.— A full TSP member who receives continuation pay under this section (a) [1] and fails to complete the obligated service required under such subsection shall be subject to the repayment provisions of section 373 of this title.

2. Deputy Secretary of Defense Memorandum, Implementation of the Blended Retirement System dated 27 January 2017 states that the BRS goes into effect 1 January 2018. 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. Those currently serving members who are eligible to opt into BRS will have an entire year to make their opt-in decision. The opt-in or election period for BRS begins 1 January 2018, and concludes on 31 December 2018. The decision to opt-in is irrevocable.

3. On 1 January 2018 eligible Soldiers were given access to the BRS link on myPay to enroll in the BRS. The system process required Soldiers to follow 5 separate screens to include providing their current address and date of birth. Screen two required the Soldier to acknowledge that he/she understands that the decision to opt-in is irrevocable once they complete the election. On screen three and four, Soldiers had to check a box and answer a question respectively that stated, "I fully understand that I am opting into the BRS." Screen five allowed the Soldier to save and print the confirmation and again informed the Soldier that they were opting into the BRS. Prior to the beginning of the BRS enrollment, the Defense Finance and Accounting Service (DFAS) moved the Leave and Earning Statement (LES) link on myPay and replaced it with the BRS opt-in link. Service members immediately began to contact their respective Services of their "erroneous" enrollment while trying to acquire a LES and surprisingly received

notification that they had opted into the BRS. After several complaints, the Department in coordination with DFAS, moved the LES link back its customary first position on myPay and relocate the BRS link effective 26 January 2018.

4. All Army Activity Message Number 050/2019 (Implementation Guidance for Exception to Policy (ETP) to Retroactively Enroll Certain Eligible Soldiers in the Blended Retirement System and Hardship Extension of the Enrollment Period) provides that Soldiers who would like to request an ETP to the BRS Calendar Year (CY) 2018 Opt-In enrollment will acknowledge the irrevocability of the Opt-In decision. Soldiers who were notified of their eligibility for BRS and did not have access to the BRS link on myPay, must notify the Deputy Chief of Staff G-1 of the discrepancy. These extensions do not create the authority to enroll a Soldier who had the opportunity to elect to enroll in the BRS during the CY2018 but who chose not to do so, nor does it allow for retroactive Thrift Savings Plan (TSP) contributions.

5. All Army Activities (ALARACT) 067-2020 subject: Implementation Guidance for Exception to Policy (ETP) to Retroactively Enroll Certain Eligible Soldiers in the Blended Retirement System (BRS) and Hardship Extension of the Enrollment Period, 31 July 2020 provided procedural guidance for automatic and hardship extensions of the enrollment period outline provides additional administrative procedures necessary for certain Soldiers to request an exception to policy to allow for retroactive enrollment in the BRS for specific reasons outlined in reference b [Delegation of Authority: BRS enrollment period extension and enrollment dated adjustment]. It also provides procedural guidance for automatic and hardship extensions of the enrollment period outlined in reference c [BRS enrollment period extension for newly commissioned officers].

//NOTHING FOLLOWS//