

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20240001337

APPLICANT REQUESTS: correction of his record to show he is eligible to be paid Continuation Pay (CP) Blended Retirement System (BRS).

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters (HQs), Third Infantry Division and Fort Stewart Orders Number ST-340-0582
- National Guard Bureau (NGB) Orders Number 004-03
- Georgia Army National Guard (GAARNG) Orders Number 4049425.02
- Leave and Earnings Statement (LES) for period of 1 through 28 February 2023
- LES for period of 1 through 31 March 2023
- Email from GAARNG Retirement Service Office
- CP BRS Pay Rates for 2019

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 he opted into the BRS on 7 December 2018; however, the military pay system did not process the enrollment at that time. Due to this system error, he was not able to submit his application for CP BRS which he should have been eligible for. In March 2023, the military pay system automatically enrolled him from the legacy retirement system to the BRS which he requested on 7 December 2018. Due to this error, he was not afforded the opportunity to request his CP BRS. He requests the correction of his record to reflect his eligibility to receive CP BRS with 11-years of service at the rank/grade of captain (CPT)/O-3 pay rate as of 7 January 2019.

3. A review of the applicant's service records show:

- a. With prior enlisted ARNG service, the applicant executed his oath of office on

30 April 2011 and was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1.

b. The applicant's Officer Record Brief and Personnel Qualification Record shows his basic active service date as 5 January 2014 and his Pay Entry Base Date (PEBD) as 4 May 2007.

c. On 30 April 2011, the applicant executed his oath of office and was appoint in the GAARNG in the rank of 2LT and was extended a temporary Federal recognition.

d. On 27 May 2011, Orders Number C-05-107906, issued by the U.S. Army Human Resources Command (AHRC), the applicant was assigned to the GAARNG, effective 29 April 2011. The additional instructions show his PEBD as 4 May 2007.

e. On 3 June 2011, Orders Number A-06-111665, issued by AHRC, the applicant was ordered to Active Duty for Operation Support (ADOS), effective 6 June 2011, and remained on ADOS orders on multiple occasions.

f. On 10 January 2012, Special Orders Number 11, issued by the NGB, the applicant extended Federal recognition, effective 30 April 2011.

g. On 29 March 2016, Special Orders Number 57, issued by the NGB, the applicant was promoted to the rank/grade of captain (CPT)/O-3, effective 17 March 2016.

h. On 25 July 2016, the applicant executed his oath of office and was appointed in the TXARNG in the rank of CPT.

i. On 30 September 2016, the applicant was honorably released from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 2 years and 11 months.

j. On 9 November 2016, Special Orders Number 233, issued by the NGB, the applicant was transferred from the GAARNG to the TXARNG, effective 25 July 2016 and was extended Federal recognition.

k. On 8 June 2017, the applicant executed his oath of office and was appointed in the GAARNG, effective 8 June 2017, and was extended temporary Federal recognition.

l. On 15 September 2017, Special Orders Number 189, issued by the NGB, the applicant was transferred from the TXARNG to the GAARNG, effective 8 June 2017, and was extended Federal recognition.

m. On 13 September 2018, Orders Number 11-256-0264, issued by the State of Georgia Department of Defense, Military Division Office of the Adjutant General, the applicant was ordered to active duty in support of Operation Freedom's Sentinel, effective 26 November 2018.

n. On 4 May 2019, the applicant reached his 12-years of service based on his PEBD.

o. On 16 October 2019, Orders Number 289-199, issued by the State of Georgia Department of Defense, Military Division Office of the Adjutant General, the applicant was ordered to full time National Guard duty in an Active Guard/Reserve (AGR) status, effective 29 October 2019.

p. On 28 October 2019, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 11 months and 3 days of active service. He immediately returned to active duty on 29 October 2019.

q. On 13 November 2020, Special Orders Number 338, issued by the NGB, the applicant changed his first name from Jonathan to Johnathan, effective 21 September 2020.

r. On 28 September 2022, Orders Number 271-0011, issued by the State of Georgia Department of Defense, Military Division Office of the Adjutant General, the applicant was ordered to active duty in an AGR status, effective 29 October 2022.

s. On 31 January 2023, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 3 years, 3 months, and 2 days of active service.

t. On 19 April 2023, Special Orders Number 143, issued by the NGB, the applicant was promoted to the rank/grade of major/O-4, effective on with a date of rank of 8 July 2022.

4. The applicant provides:

a. HQs, Third Infantry Division and Fort Stewart Orders Number ST-340-0582 which shows the applicant was deployed to Afghanistan on or about 28 December 2018.

b. NGB Orders Number 004-03, which shows the applicant was ordered to active duty in an AGR status, effective 1 February 2023.

c. GAARNG Orders Number 4049425.02 which shows he was assigned to an infantry position, effective 29 October 2019, for an AGR tour to be terminated, effective 31 January 2023.

d. LES for the period of 1 through 28 February 2023 which shows in the block for Retirement Plan – "Choice."

e. LES for the period of 1 through 31 March 2023 which shows in the block for Retirement Plan – "Blended."

f. Email from the GAARNG Retirement Service Office which shows on 31 July 2023, the applicant stated he recently transitioned from Title 32 AGR to Title 10 AGR. When he was assessed onto active duty, he was automatically enrolled in the BRS due to assessing after 2018 and he needed to speak with someone regarding this transition. He received a response from the GAARNG Retirement Services Office which stated it was confirmed the applicant enrolled in the BRS with an opt in date of 7 December 2018. It also states that opting into BRS is irrevocable.

g. CP BRS pay rates for 2019 which shows the multiplier for Reserve component Soldiers is four times pay at 11-years of service with a 4-year additional service obligation.

5. On 21 May 2024, in the processing of this case, the NGB, provided an advisory opinion regarding the applicant's request for the correction of his record to show he was eligible to be paid CP BRS. The advisory official recommended approval of the applicant's request. The applicant opted into BRS in 2018 before his 12-year anniversary; however, the system did not properly process his opt in until 2023, which was after his 12-year anniversary. Therefore, he could not submit a request for CP BRS. His record shows his PEBD is 7 May 2007, and he reached his 12 years of service on 7 May 2019.

6. On 3 June 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. On 2 July 2024, the applicant responded via email stating he was grateful the NGB and the GAARNG concurred with his request.

7. On 11 September 2024, the applicant provided a completed CP BRS request form showing his rank/grade at the time was CPT. He opted for 4x his monthly base pay for four additional years of obligated service based on the calendar year 2019 CP BRS guidance to be paid in a lump sum.

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 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 and available military records, the Board reviewed and concurred with the National Guard Bureau, Chief, Special Actions Branch advisory opinion finding the applicant opted into the Blended Retirement System in 2018 prior to his 12th year anniversary; however, did not properly process his opt-in until 2023, which was after his 12th year anniversary, so he could not submit for continuation pay. The Board concluded the applicant met the criteria and executed his intent in good faith and therefore should receive the back for his continuation pay.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records and Army National Guard records of the individual concerned be corrected by:

- showing the applicant was in receipt of a completed continuation pay (CP) request prior to the completion of 12 years of service as computed from the PEBD
- DFAS paying his entitlement to CP utilizing the Military Pay Account and not the ABCMR funds payable through Debts and Claims

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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:

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.

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 4 December 2018, Subject: Blended Retirement (BRS) Continuation Pay (CP) – Calendar Year 2019 (CY19) states the guidance was effective immediately and expired on 31 December 2019 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 has not previously received BRS CP; and
- will complete 12-years of service during the CY19 as computed from the Soldier's PEBD
- eligible to enter into an agreement to 4-year service the obligation period

For eligibility for Army Reserve Soldiers:

- covered under the BRS and has not previously received BRS CP; and
- will complete 11-years of service but not more than 12-years of service during the CY19 as computed from the Soldier's PEBD
- member of the Selected Reserve or otherwise a member of the Ready Reserve and eligible to receive basic pay or inactive duty pay; and
- eligible to enter into an agreement to 4-year service the obligation period

For eligibility for Army National Guard Soldiers:

- covered under the BRS and has not previously received BRS CP; and
- will complete 12-years of service during the CY19 as computed from the Soldier's PEBD
- member of the Selected Reserve or otherwise a member of the Ready Reserve and eligible to receive basic pay or inactive duty pay; and
- eligible to enter into an agreement to 4-year service the obligation period

//NOTHING FOLLOWS//