

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240002183

APPLICANT REQUESTS: payment of Continuation Pay under the Blended Retirement System of the Army National Guard.

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

- DD Form 149 (Application for Correction of Military Record)
- Request for Continuation Pay – Blended Retirement System, 13 February 2024
- Permanent Order 321-001, 17 December 2021, order to Active Guard Reserve
- January 2024 Leave and Earnings Statement
- Army National Guard (ARNG) Current Annual Statement

FACTS:

1. The applicant states blended retirement system continuation pay (BRS-CP) was not received during the eligibility period. He was recently made aware about BRS-CP. He filled out the paperwork with his S-1 Noncommissioned Officer. Upon talking with his state incentives office, they informed his S1 that they would not process the request as his eligibility window closed on 31 January 2024. There is currently no office in the state tracking eligibility for BRSCP and information is sparse. We were made aware of my potential eligibility when his S1 received an email containing an eligibility list that was sent to select individuals back in April of 2023. He filled out the paperwork to request his BRSCP as soon as he was made aware of the benefit and eligibility. He is asking the Board for his BRS-CP.

2. The applicant enlisted in the Idaho Army National Guard (IDARNG) on 31 January 2012. His Pay Entry Basic Date (PEBD) was established as 31 January 2012.

a. He entered active duty for training from 3 July to 2 December 2013 and completed training for award of military occupational specialty 91E, Allied Trade Specialist.

b. He executed a 4-year extension in the ARNG on 31 January 2012 and followed that with a 6-year extension also in the ARNG on 6 March 2021.

c. The applicant was ordered to active duty in the Active Guard Reserve (AGR) on 1 January 2022 for a 3-year AGR tour.

d. The applicant reached his 12th year of service on 31 January 2024.

e. The applicant provides his January 2024 Leave and Earnings Statement. It lists his PEBD as 31 January 2024 and his rank/grade as staff sergeant (SSG)/E-6.

f. He also provides a BRS-CP Form, listing his grade as SSG/E-6, agreeing to accept CP in accordance with the ARNG BRS -CP Calendar Year 2023 Guidance, dated 29 March 2023, at the rate of 2.5 times the monthly basic pay for his current grade and years of service. He also agreed to serve 4 years commencing from the date he signed this form. He signed the BRS-CP Form on 13 February 2024 (after his 12th years of service date). His certifying and approving officials also signed it on 13 February 2024 (after the 12th years of service) date.

3. The National Guard Bureau (NGB) provided an advisory opinion on 12 November 2024 in the processing of this case. An NGB official re-stated the applicant's request for payment of Continuation Pay under the Blended Retirement System and recommended Approval. The NGB official stated:

a. The applicant claims he was not paid the Blended Retirement System Continuation Pay (BRS-CP) because he was not made of aware of the BRS-CP timeline and therefore miss the application date. The BRS went into effect on 1 January 2018. It effected all new service members who joined the service after 1 January 2018. All other members who were serving as of 31 December 2017 were grandfathered under the Army legacy system. The objective of BRS-CP is to offer midcareer service members a financial incentive to remain in their service in exchange for committing to at least four more years. Time of service is calculated from the service member's pay entry base date (PEBD). The current law does not allow for the acceptance of a CP contract beyond the 12th year of service for active-duty Soldiers, or any member of the Reserve Component of a Uniformed Service who has accumulated higher than 4320 retirement points.

b. Each state Retirement Service Officer verifies and certifies eligibility for BRS-CP. The applicant was eligible for to apply for the entitlement between 31 January 2023 and 30 January 2024. Through no fault of the Soldier, he did not receive notification of his eligibility to apply until the suspense had already passed. Due to lack of education on the process of BRS, and miscommunication timelines at the State level the Soldier was unaware the BRS-CP incentive timeline and miss the application date. No one in the applicant's higher headquarters was tracking his BRS-CP eligibility and therefore as per the Soldier's claim he was never made aware of when he became eligible to apply for the entitlement.

c. BRS-CP is an entitlement from the Department of the Army and is restricted to the criterion of Title 37, United States Code, Section 356, therefore the National Guard Bureau is unable to approve an exception to policy without adjudication by the ABCMR. This office recommends approval of the Soldier's request for payment of BRS-CP due to eligibility and circumstances beyond his control which prevented payment. The opinion was coordinated with the assistance of the Army National Guard Bureau transition office. The Idaho Army National Guard was asked to provide input, but none was given.

4. The applicant was provided with a copy of this advisory opinion to give him an opportunity to respond and/or submit comments.

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 reached his 12th year of service on 31 January 2024. He submitted a BRS-CP form on 13 February 2024, beyond his 12th year of service. Due to lack of education on the process of BRS, and miscommunication timelines at the State level the Soldier was unaware the BRS-CP incentive timeline and miss the application date. The Board noted that the applicant should not be penalized for lack of counseling or education at the State level. The Board agreed with the NGB advisory official's determination that no one in the applicant's higher headquarters was tracking his BRS-CP eligibility and therefore as per the applicant's claim, he was never made aware of when he became eligible to apply for the entitlement. The Board determined an injustice occurred and 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 and Army National Guard records of the individual concerned be corrected by:

- showing the applicant timely submitted his Request for Continuation Pay – Blended Retirement System (CP – BRS) on 30 January 2024 prior to reaching his 12th year of service
- showing the appropriate office timely received and processed his approved request for CP BRS
- paying the applicant based on the appropriate pay grade in January 2024 from the 2024 pay scale, less applicable federal and state taxes (DFAS determines the exact amount), provided all other criteria is met

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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 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.

//NOTHING FOLLOWS//