

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240004091

APPLICANT REQUESTS: reconsideration of his previous request for:

- entitlement to Continuation Pay (CP) Blended Retirement System (BRS)
- matching contributions from November 2018 – December 2022

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

- Memorandum, Subject: Request for Exception to Policy (ETP) for Chief Warrant Officer (CW2) [REDACTED] to receive entitlement for BRS CP, 12 February 2024
- Unit of Assignment Statement of Support, 12 February 2024
- Thrift Savings Plan (TSP) - Account Activity Summary, 1 January 2023 - 29 September 2023
- Documents of Support – Army Board for Correction of Military Records (ABCMR) Record of Proceedings (ROP) AR20190015350, 3 September 2020 (6 pages)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20230003241 on 12 December 2023.

2. The applicant states:

a. He requests reconsideration of his case for CP, this issue was outside of his control, and he has spent over 3 years trying to correct all pay issues. Along with his ETP memorandum, he has submitted a statement of his TSP account that show late contributions he was paid back over the past year for all his matching contributions that were not paid out when his account was deactivated. Defense Finance Accounting System (DFAS) paid him back-pay indicating he was indeed eligible for the BRS; he also enclosed a memorandum from the State Incentive Manager through the State Deputy Chief of Staff for Personnel, stating he never had the opportunity to apply for the CP due to errors outside of his control. And he submitted a finding from this Board for [REDACTED] Guardsman that he feels closely resembles his case and he hopes the Board finds the same favor in his case.

b. He understands this is his last opportunity to receive this entitlement, and he never denied that he missed the time in service mark to apply. He wants to make it painfully clear that he was never afforded the opportunity to apply due to being dropped from the program all together. He was counting on this CP as part of the decision to switch over retirement programs when it was first rolled out. There was no way he could have ever imagined he would have incurred so many pay problems and issues during the on-board process with the Army National Guard (ARNG); these issues have been captured by the State Inspector General (IG) and Retention Offices and has affected future on-board processes.

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

a. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) on 24 February 2005 and was honorably released from the [REDACTED] ARNG on 11 July 2006 for acceptance in the Reserve Officers' Training Corps (ROTC).

b. Orders Number 340-1 dated 11 December 2010 and issued by the U.S. Army Cadet Command, the University of Alabama, Crimson Tide Battalion, discharged him from the ROTC program to accept a commission in the U.S. Armed Forces, effective 11 December 2010.

c. On 11 December 2010, the applicant was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1 and executed an oath of office.

d. Orders Number 265-003 dated 21 September 2012, issued by Headquarters, U.S. Army Human Resources Command (AHRC), promoted the applicant to the rank/grade of first lieutenant (1LT)/O-2 with a date of rank of 25 October 2012.

e. Orders Number 069-037 dated 10 March 2015, issued by AHRC, promoted him to the rank/grade of captain (CPT)/O-3 with the date of rank of 1 April 2015.

f. Orders Number 113-0006 dated 23 April 2018, issued by Headquarters, U.S. Army Garrison, Fort Riley, released him from active duty and reassigned him to the U.S. Army Reserve Control Group (Reinforcement) with a release from active duty date of 14 November 2018.

g. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was honorably released from the active duty on 3 November 2018 for completion of his required active service.

h. On 4 November 2018, the applicant was appointed as a Reserve commissioned officer of the Army Under Title 10 and executed an oath of office for the [REDACTED] ARNG.

i. On 29 May 2019, the NGB issued Special Orders Number 142 which announced Federal recognition of the applicant's transfer into the [REDACTED] ARNG, effective 4 November 2018.

j. On 1 September 2020, the applicant executed an oath of office indicating he was appointed as a Reserve warrant officer in the rank of CW2 and on 1 September 2020, was extended Temporary Federal recognition of the applicant's transfer into the [REDACTED] ARNG.

k. On 14 September 2020, the [REDACTED] ARNG issued Orders Number 655902 voluntarily separating the applicant from the ARNG, effective 31 August 2020, as a commissioned officer at the rank/grade of CPT/O-3.

l. On 16 September 2020, the [REDACTED] ARNG issued Orders Number 661363 rehiring the applicant in the [REDACTED] ARNG at the rank of CW2, effective 1 September 2020.

m. The applicant's Officer Record Brief (ORB) shows his Pay Entry Basic Date (PEBD) as 12 June 2009.

n. The applicant completed 12 years of service on 12 June 2021.

o. The applicant remains in the [REDACTED] ARNG.

4. The applicant provides:

a. A statement of support from the G1/Deputy Chief of Staff for Personnel from his assigned unit [REDACTED] ARNG Element, Joint Forces Headquarters dated 12 February 2024, that indicates that the unit supports the applicants request for CP. The G1/Deputy Chief of Staff for Personnel states they support the request due to a clerical error while inprocessing the applicant into the [REDACTED] ARNG. The applicant elected the BRS while on Active Duty and he was not appropriately registered into the BRS and was not notified that he was not listed in the eligibility statement. The applicant submitted a rebuttal that he was having TSP taken out of his pay; however, upon further inspection it was realized that his TSP was not being matched as it was supposed to be. He submitted a pay inquiry and eventually was found to be eligible for BRS and TSP matching contributions were repaid. By the time this was corrected, the applicant was outside of his pay window. Due to the applicant's situation the [REDACTED] ARNG has since changed their processes for Soldiers requesting BRS-CP. He is an outstanding Soldier and aviator with the [REDACTED] ARNG and has served faithfully and is a credit to his uniform and rank. After further review, failure to provide him with this entitlement for which he was never given the opportunity to request would be contrary to the equity, good conscience, and against the best interest of the Army.

b. An account activity summary of his TSP dated 1 January 2023 to 29 September 2023, that shows his opening balance, late contributions, and late contributions earnings.

c. Document of Support (six pages), titled ABCMR ROP dated 3 September 2020 that the applicant provided from the reading room/internet showing in which the applicant believes is a similar case to his request. The findings from ABCMR 20190015350 for ██████████ Guardsman granted approval for CP.

5. On 12 December 2023, in ABCMR Docket Number AR20230003241, the Board found that relief was not warranted. The applicant's ORB shows his PEBD as 12 June 2009. Based on his PEBD, the applicant completed 12 years of service on 12 June 2021. The Board reviewed and agreed with the G-1 advisory official's finding that the applicant had not submitted a CP application prior to reaching his 12th year of service based on his PEBD.

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 concluded the applicant was eligible for CP BRS and has not earned matching TSP contributions. Therefore, the Board determined an injustice occurred and agreed his request should be approved.

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 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 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



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.

REFERENCE:

Title 37 United States Code, section 356 (CP) states:

a. The Secretary concerned shall pay CP under subsection (a) to a full Thrift Savings Plan (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 AGR 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. The multiple for a full TSP member who is a member of a Reserve Component not performing AGR 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—

- 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
- in the case of a member of a Reserve Component—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

//NOTHING FOLLOWS//