

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240005230

APPLICANT REQUESTS: exception to policy to submit a Blended Retirement System Continuation Pay (BRS CP) contract after his 12-years of service to be paid BRS CP.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 12 November 2020
- Joint Force Headquarters (JFHQs) North Carolina (NC) National Guard (NG) Memorandum, Subject: Findings on Missing Continuation Pay Request for Lieutenant Colonel (LTC) W-, D- (the applicant)
- Defense Joint Military Pay System – Reserve Component (DJMS-RC) Thrift Saving Plan (TSP) Master for Army

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 in December of 2017, he opted into the BRS after completion of the required training, and he had just over 9-years of service. In Calendar Years (CY) 2018 and 2019, he was ineligible to request BRS CP because he was not in the window of eligibility. In early 2019, he began his pre-mobilization training and in August 2019 he deployed to Kuwait. He was aware he would not be eligible until the last month of that CY and had 21-days to apply for BRS CP. The Coronavirus Disease 2019 (COVID 19) pandemic occurred while he was deployed, and everything was on lock down. His unit was scheduled to redeploy in late 2020 and was informed that during the demobilization process they would be able to complete any personnel and administrative actions while at Fort Bliss, TX. However, when they arrived at Fort Bliss, all COVID 19 protocols were still in place which caused personnel and administrative actions/requests to not be processed because the full-time staff was completing the demobilization process as

well. This is when he believed his request for BRS CP would be processed and sent forward for approval. He does not believe he should be penalized for a mistake that was made in an honest error and during unprecedented times. He requests the Board to grant the State of NC the ability to recreate his missing BRS CP contract and allow his service during 2020 through 2024 to count as his 4-year additional service obligation. He has fulfilled his obligation and will continue to serve out his contractual obligations with the NCARNG. The incentive will greatly help him support his family.

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

a. On 10 December 2008, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank of second lieutenant (2LT). He was subsequently appointed in the NCARNG and extended temporary Federal recognition.

b. On 3 March 2009, Special Orders Number 47, issued by the National Guard Bureau (NGB), the applicant was appointed in the NCARNG in the rank of 2LT and was extended Federal recognition, effective 10 December 2008.

c. DD Form 214 shows the applicant was ordered to active duty for training, effective 13 September 2009, to attend the Basic Officers Leader Course. He was honorably released from active duty on 11 December 2009. It also shows he completed 2-months and 29-days of active service.

d. On 20 July 2010, the applicant executed his oath of office and was appointed in the NCARNG in the rank of first lieutenant (1LT) and was extended temporary Federal recognition.

e. On 30 July 2010, Orders Number 211-859, issued by the State of NC Department of Crime Control and Public Safety JFHQs, the applicant was honorably discharged from the ARNG, effective 19 July 2010.

f. On 13 December 2010, Special Orders Number 275, issued by the NGB, the applicant was appointed in the NCARNG in the rank of 1LT and was extended Federal recognition, effective 20 July 2010.

g. On 13 October 2011, Orders Number 286-300, issued by the State of NC Office of the Adjutant General, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 28 October 2011.

h. On 17 November 2012, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1-year and 20-days of active service.

i. On 26 June 2019, Orders Number 29-177-1067, issued by the State of NC Office of the Adjutant General, the applicant was ordered to active duty in support of Operation Enduring Freedom (Spartan Shield) to report to Fort Bliss, effective 18 August 2019.

j. On 9 December 2019, the applicant obtained 11-years of service based on his Pay Entry Base Date (PEBD).

k. On 12 November 2020, the applicant was honorably released from active duty at Fort Bliss. DD Form 214 shows he completed 1-year, 2-months, and 25-days of active service.

l. On 9 December 2020, the applicant obtained 12-years of active service based on his PEBD.

m. Soldier Management Services - WEB Portal (SMS WEB) screenshot shows the applicant's PEBD is 10 December 2008.

4. The applicant provides:

a. JFHQs NC NG Memorandum, Subject: Findings on Mission CP Request for LTC W-D- (the applicant), dated 23 April 2024, stated a review of his records found there was no documented proof he or his unit submitted an approved CY20 request to the G1 Incentives Office, there was no approved BRS CP contract in his Army Human Resources Record. During the time in question, BRS CP contracts were submitted to the NGB via an e-mail from the State Incentives Manager, the personnel in the state and NGB incentives office have since left their positions which made tracking down any email traffic impossible. There was no proof the request was submitted to the State or the NGB for the applicant to receive BRS CP. The NC NG G1 Incentives Office determined the applicant should be eligible to retain his BRS CP but since there was no contract the NC NG does not have the authority to recreate a contract from CY20. The applicant is also not eligible to submit an exception to policy to the NGB because his request cannot be located and he has since gone over 12-years of service. The NGB no longer has the authority to approve the request to recreate the contract and backdate it for CY20. The Army Board for Corrections of Military Records is the only recourse the applicant has to be allowed to resubmit his lost request from CY20.

b. DJMS-RC TSP Master for Army shows the applicant is contributing to TSP and is matched at four percent by the government and is enrolled in the BRS.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board

carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to grant relief based on the applicant's intent, enrollment in BRS, and the extraordinary circumstances of the COVID-19 pandemic. However, upon review of the applicant's petition and available military records, the Board majority determined there is insufficient evidence to support the applicant's contentions for an exception to policy to allow submission of a Blended Retirement System Continuation Pay (BRS CP) contract after surpassing the 12-year service threshold.

2. The Board acknowledged the applicant's service history, including his deployment in support of Operation Spartan Shield and his continued contributions under the BRS. The applicant's narrative demonstrates a clear intent to apply for BRS CP and a belief that the demobilization process would facilitate submission of the required documentation. However, a review of the applicant's record and supporting documentation confirms that no BRS CP contract was submitted or approved during the CY20 eligibility window. Additionally, the NC National Guard G1 Incentives Office verified that no documentation exists to support that a request was submitted to the State or National Guard Bureau (NGB), and that the NGB no longer has the authority to approve retroactive contracts beyond the 12-year service mark.

3. The Board recognized the assertions of the applicant that he opted into the BRS in December 2017, was contributing to the Thrift Savings Plan (TSP), and intended to apply for BRS CP during his eligibility window in Calendar Year (CY) 2020. The Board noted, without a valid contract or documented submission, there is no legal or administrative basis to grant retroactive payment or recreate a contract outside the established policy framework. Therefore, the Board denied relief, finding the criteria for an exception to policy was not met.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	XXX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

//SIGNED//
X _____

CHAIRPERSON

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 18 December 2019, 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//