DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-053

[redacted]

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on December 29, 2016, and prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated November 9, 2017, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, who was separated from active duty on July 31, 2009, and placed on the Coast Guard retired list as of August 1, 2009, asked the Board to correct his record to show that he transferred his benefits under the Post-9/11 Veterans' Educational Assistance Act of 2008 ("Post-9/11 GI Bill")[1] to his dependents before he retired. The applicant stated that he did not discover the alleged error in his record until 2016 because the Coast Guard's announcements released before he retired, particularly ALCOAST 447/08 and ALCOAST 044/09, indicated that he would have to serve four more years on active duty to be eligible to transfer his benefits, which was incorrect.

The applicant stated that the regulations issued on June 22, 2009, to implement the Post-9/11 GI Bill, Directive Type Memorandum (DTM) 09-003, required members to receive pre-separation counseling about the new rules allowing members to transfer their education benefits to their dependents, and he did not receive the required counseling. The applicant alleged that if he had received this counseling, he "would have amended [his] voluntary retirement plans to include service on 1 Aug 2009 so [he] could have transferred [his] educational benefits to [his]

[1] Pub. L. No. 110-252, §§ 5003, 122 Stat. 2323 (June 30, 2008) (authorizing the Secretary of Defense in coordination with the Secretary of Veterans' Affairs to prescribe regulations so that members serving in the Armed Forces may transfer a portion of their entitlement to educational assistance under the Montgomery GI Bill program to their eligible dependents as of August 1, 2009, if the members have at least six years of service and agree to serve four more years or the amount of time prescribed by the regulations).

dependents." The applicant noted that his terminal leave began in early April 2009 and so he did not have access to internal Coast Guard notifications thereafter.

SUMMARY OF THE RECORD

The applicant received his commission on May 24, 1989, served in the Coast Guard for more than twenty years, and retired on August 1, 2009. He did not transfer his Post-9/11 GI Bill educational benefits to his dependents before he retired, and his record does not contain documentation indicating that he was counseled about the Post-9/11 GI Bill before his retirement.

APPLICABLE LAW AND POLICY

Post-9/11 GI Bill

Section 5003 of Public Law No. 110-252, § 5001, 122 Stat. 2323, enacted on June 30, 2008, authorized a new educational assistance program that members could elect to participate in. Subsection 5003(d) states, "EFFECTIVE DATE—This section and the amendments made by this section shall take effect on August 1, 2009." Subsection 5003(a) adds a new chapter 33 to Title 38 U.S.C., and § 3319 of chapter 33 authorizes the transfer of education benefits as follows:

> § 3319. Authority to transfer unused education benefits to family members
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> (a) IN GENERAL.—Subject to the provisions of this section, the Secretary of Defense may authorize the Secretary concerned, to promote recruitment and retention of members of the Armed Forces, to permit an individual described in subsection (b) who is entitled to educational assistance under this chapter to elect to transfer to one or more of the dependents specified in subsection (c) a portion of such individual's entitlement to such assistance, subject to the limitation under subsection (d).
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> (b) ELIGIBLE INDIVIDUALS.—An individual referred to in subsection (a) is any member of the Armed Forces who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, has completed at least—
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> (1) six years of service in the armed forces and enters into an agreement to serve at least four more years as a member of the Armed Forces; or
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> (2) the years of service as determined in regulations pursuant to section (j).
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> • • •
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> (f) TIME FOR TRANSFER; REVOCATION AND MODIFICATION.—
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> (1) TIME FOR TRANSFER.—Subject to the time limitation for use of entitlement under section 3321 an individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement only while serving as a member of the armed forces when the transfer is executed.
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> (j) REGULATIONS.—(1) The Secretary of Defense, in coordination with the Secretary of Veterans Affairs, shall prescribe regulations for purposes of this section.

(2) Such regulations shall specify—

(A) the manner of authorizing the transfer of entitlements under this section;

(B) the eligibility criteria in accordance with subsection (b); and

(C) the manner and effect of an election to modify or revoke a transfer of entitlement under subsection (f)(2).

• • •

§ 3323. Administration …

• • •

(b) INFORMATION ON BENEFITS.—

(1) TIMING FOR PROVIDING.—The Secretary [of Veterans Affairs] shall provide the information described in paragraph (2) to each member of the Armed Forces at such times as the Secretary and the Secretary of Defense shall jointly prescribe in regulations. …

(2) UNIFORMITY.—Any regulations prescribed by the Secretary of Defense for purposes of this chapter shall apply uniformly across the Armed Forces.

Coast Guard ALCOASTs

Following the passage of the Post-9/11 GI Bill on June 30, 2008, the Coast Guard issued a series of ALCOASTs regarding the new law:

- ALCOAST 447/08, released on September 18, 2008, includes a brief introduction of the Post-9/11 Veterans Education Act of 2008 (Post-9/11 GI Bill). Paragraph 1. States that the law will go into effect on August 1, 2009. Paragraph 3.G. lists the following as one of the "basic entitlements" under the law: "Transferability: a member may have the opportunity to transfer benefits to their spouse or dependent children. Members must be on active duty at the time of this election, must have served six years since 9/11, and must agree to serve an additional four years of service." Paragraph 5 advises members "not to make significant unalterable career choices … until more detailed guidance can be formulated and promulgated" and that detailed guidance would be released ahead of the August 2009 implementation date.
- ALCOAST 044/09, issued on January 16, 2009, likewise notes that the law would go into effect on August 1, 2009, and advises members in paragraph 6 not to make "significant, unalterable career choices" before more detailed guidance is issued. Paragraph 4 states the following: "Transferability: The basic requirements to be eligible to transfer this entitlement to a dependent (spouse or child) are that a member must be on active duty on 1 August 2009; must have a minimum of six years active service since 11 September 2001; and must agree to serve an additional four years of active service effective on the date they elect to transfer."
- ALCOAST 250/09, issued on April 28, 2009, states the following in paragraph 5.b.: "The Office of the Secretary of Defense has not yet released the final policy on transferability." Section B of paragraph 5 states, "The Office of the Secretary of Defense (OSD) has not yet released the final policy on transferability, specifically as it relates to required additional obligated service. There were several features and elements to this policy that,

while delaying its release, are needed to address members who are retirement eligible between 2009 and 2012."

- ALCOAST 377/09, issued on June 26, 2009, acknowledged DTM 09-003 as Coast Guard policy and states in paragraph 6, "Generally, to be eligible to transfer unused education benefits, an individual must be a member of the armed forces (active duty or SELRES) on or after 1 Aug 2009 and obligate required service as outlined in [DTM 09-003]." Paragraph 8 states the following:

> 8. 1 AUG 2009 RETIREMENTS: PER [DTM 09-003 and the Post-9/11 GI Bill], the effective date of the Post-9/11 GI Bill is 1 AUG 2009. As outlined in chapter 12 of [the Personnel Manual], a members last date in the Armed Forces is the day preceding their effective retirement date. Therefore, a member with a l AUG 2009 retirement date is not a member of the Armed Forces on 1 AUG 2009 and will not be eligible to transfer unused benefits to family members. Members with a retirement date of 1 AUG 2009 may submit a request to PSC to extend their retirement date. Each case will be reviewed on a case-by-case basis in accordance with Chapter 12 of [the Personnel Manual]. Requests must clearly articulate a service need.

- ALCOAST 443/09, issued on July 31, 2009, encouraged members to review DTM 09-003 and to seek guidance.

Directive Type Memorandum (DTM) 09-003

On June 22, 2009, the Department of Defense set forth the policies and procedures for the Post-9/11 GI Bill in DTM 09-003. The memorandum part of the DTM states that the "[p]olicies and procedures under this DTM are effective immediately. The effective date of the Post 9/11 GI Bill is August 1, 2009."[2] It also states that the DTM is applicable to the military services, including the Coast Guard by agreement with the Department of Homeland Security.

Paragraph 3.a. of Attachment 1 (Responsibilities) to the DTM states that the Service Secretaries shall provide regulations, policy implementation guidance, and instructions consistent with the DTM. Paragraph 3.b. of Attachment 1 states that they shall "[e]nsure that all eligible active duty members … are aware that they are automatically eligible for educational assistance under the Post-9/11 GI Bill program upon serving the required active duty time." Paragraph 3.g. states that they shall "[p]rovide active duty participants and members of the Reserve Components with qualifying active duty service individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly."

Paragraph 1.e.(1) of Attachment 2 (Procedures) to the DTM states that a member who has participated in a different veterans' education program under another chapter of Title 38 or no education program and meets other requirements "may elect to receive educational assistance under chapter 33 of [Title 38 U.S.C.]"—the Post-9/11 GI Bill. Paragraph 1.e.(2) states that the

[2] The Coast Guard submitted a revised version of DTM 09-003, issued on September 10, 2010, which did not include this statement, which conflicts with the effective date provided in paragraph 4 of Attachment 2 of the DTM.

Department of Veterans Affairs would determine the procedure for making the election. Paragraph 1.e.(3) states that the election is irrevocable.

Paragraph 3.a. of Attachment 2 to the DTM states, "Any member of the Armed Forces on or after August 1, 2009, who, at the time of the approval of the individual's request to transfer entitlement to educational assistance under this section, is eligible for the Post-9/11 GI Bill, and … (3) Is or becomes retirement eligible during the period from August 1, 2009, through August 1, 2013, and agrees to serve the additional period, if any, specified in paragraphs 3.a.(3)(a) through 3.a.(3)(e) of this attachment. … (a) For those individuals eligible for retirement on August 1, 2009, no additional service is required." The DTM's Glossary defines "member of the Armed Forces" as a member "serving on active duty or in the Selected Reserve" and expressly excludes retired members.

Paragraph 3.g.(1) of Attachment 2 to the DTM states that "[a]n individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's family member only while serving as a member of the Armed Forces."

Paragraph 4 of Attachment 2 states, "EFFECTIVE DATE. Policies and procedures under this issuance become effective on August 1, 2009, the effective date of the Post-9/11 GI Bill."

VIEWS OF THE COAST GUARD

On June 26, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG admitted that in DTM 09-003, Attachment 1 assigns responsibilities under the law and does not create a specific policy obligation. The JAG noted that pre-separation counseling for "active duty participants" in one of those responsibilities but that the DTM is silent on "when such counseling becomes required and how it is to be implemented is not specified." The JAG argued that because the Post-9/11 GI Bill was not in effect before August 1, 2009, no member could be considered a "participant" under the program before that date. Therefore, the JAG argued, the responsibility to counsel members did not go into effect until after the applicant had retired on July 31, 2009. "Since the applicant was never a participant of the Post-9/11 GI Bill, there was no responsibility to provide him with pre-separation counseling." The JAG also argued that it would be unreasonable for the Board "to place the burden on the Coast Guard to provide counseling to a member on terminal leave on a policy that is not set to come into effect until after the member has separated."

The JAG also noted that because the applicant waited to contest this matter until December 2016, the Coast Guard's ability to produce evidence has been prejudiced.

The JAG also adopted the findings and analysis provided in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC argued that the application is untimely and should not be considered by the Board because the applicant was separated in 2009 but did not submit his application until 2017. PSC noted that the Coast Guard released five ALCOASTs concerning the benefits transfer program beginning on September 18, 2008, and they noted that

the program would not go into effect until August 1, 2009. In addition, ALCOAST 250/09, issued on April 28, 2009, specifically stated that the policies for members who were retirement eligible were not yet determined, and ALCOAST 377/09, issued on June 26, 2009, noted that a member retiring before the effective date could submit a request to have their retirement date postponed but that the requests would be reviewed on a case-by-case basis and decided based on "service need." PSC stated that there is no guarantee that the Coast Guard would have approved the applicant's request to change his retirement date if he had submitted one.

PSC stated that under DTM 09-003, the Coast Guard was required to provide counseling to active duty participants in the program. PSC noted that the applicant claimed he did not receive counseling and agreed that it can find no record that he received counseling about the program. PSC noted that the Coast Guard released information about the program in ALCOASTs in 2008 and 2009, and although the Board has previously found that the ALCOASTs do not constitute "individual" counseling, given that the applicant began terminal leave in April 2009 and had an approved retirement date of July 31, 2009, it would be unreasonable to find that the Coast Guard was obligated to individually counsel the applicant, especially because the program became effective on August 1, 2009, after he left active duty.

PSC noted that Congress did not make the benefit transfer program retroactive. PSC concluded that the applicant has not proven that his ineligibility to transfer his education benefits is an error or injustice because he was not on active duty when the program went into effect on August 1, 2009. Therefore, PSC recommended that the Board deny relief.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 29, 2017, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. After being granted an extension, the applicant submitted his final, revised response on October 17, 2017.

Regarding the Coast Guard's claim that his application was not timely filed, the applicant stated that he was misled to think that he would have to reenlist for four years to transfer his benefits by the ALCOASTs that were issued before he began terminal leave on April 4, 2009, and during a TAPS retirement seminar. He noted that he submitted his retirement request on October 24, 2008, before the ALCOASTs indicated that members who were retiring might be eligible. The applicant stated that when he attended his TAPS retirement seminar in February 2009, very little was stated about the Post-9/11 GI Bill except what was available in the ALCOASTs at the time. The applicant alleged that the ALCOASTs "made clear that [he] should not change any of [his] retirement plans and that if [he] wanted to transfer benefits to [his] spouse or dependents, [he] would need to agree to an additional four years of active duty service." The applicant repeated his allegations that he did not have access to the ALCOASTs released after he began terminal leave.[3] Because of the ALCOASTs issued before he began terminal leave, the applicant stated, he did not explore the matter further until November 2016, when he became aware of the policies adopted after he began terminal leave.

[3] The ALCOASTs were published online on the Coast Guard's public website, where the BCMR regularly accessed ALCOASTs.

The applicant argued that DTM 09-003 clearly obligated the Coast Guard to counsel him about the program because the DTM applied to the Coast Guard; because the original DTM states that it became effective immediately, on June 22, 2009; because as an active duty member with qualifying service on that date, he was an "active duty participant" in the program; and because the DTM requires the Service Secretaries to ensure that members "are aware that they are automatically eligible for educational assistance under the Post-9/11 GI Bill program upon serving the required active duty time" and to "[p]rovide active duty participants … with individual pre-separation or release from active duty counseling on the benefits under the Post-9/11 GI Bill and document accordingly." The applicant argued that the counseling requirement existed regardless of his eligibility to transfer his education benefits. He argued that because he had served the required amount of time to transfer his benefits and because the DTM became effective on June 22, 2009, he should be considered an "active duty participant" in the bill.

The applicant argued that because paragraph 3.a.(3) of Attachment 2 to DTM 09-003 specifically mentions members who are retirement eligible on August 1, 2009, and he was retired on that date, the Board should find that he was eligible to transfer his benefits. He argued that the claim in ALCOAST 377/09, issued on June 26, 2009, should be considered superseded by the DTM.

The applicant noted that under ALCOAST 377/09, he could have requested to have his retirement date extended so that he could transfer his education benefits to his dependents. However, because he did not receive the required pre-separation counseling, he did not learn of this opportunity. He argued that the Coast Guard should have made more of an effort to contact and advise members on terminal leave about this opportunity. He noted that the Coast Guard had his address and phone number while he was on terminal leave and could have notified him about the opportunity to request a postponement of his retirement.

The applicant noted that in *Thompson v. United States*, 119 F. Supp. 3d 462 (E.D. Va. 2015), the court overturned the decision of the Army BCMR denying relief to a plaintiff who had retired on April 1, 2010, without transferring his education benefits. Although the Army had failed to properly counsel the plaintiff about the program, the Army argued that he should have known the rules because of the amount of publicly available information about the transfer program requirements. The Army BCMR denied relief after finding that although the plaintiff may not have received complete counseling, he should not be granted relief based on unawareness of the law. But the court granted summary judgment for the plaintiff as follows:

> Here, the Court's decision does not turn on whether LTG Thompson was in possession of the DOD authored document before or after his retirement. Instead, the Court's decision is based on the law, justice, and fairness. LTG Thompson admirably served his country for over 35 years. Through his service he became entitled to certain benefits, including those conferred in the Post 9/11 GI Bill. Through no fault of his own, LTG Thompson was never afforded the benefit of individual counseling concerning his rights under the 9/11 GI Bill. The military's own directives require that the military departments provide eligible active-duty service members with "individual pre-separation ... from active duty counseling on the benefits under the Post 9/11 GI Bill and document accordingly." DTM09–003. It

> seems that Defendants seek to avoid their responsibilities under the bill, but yet force LTG Thompson to abide by his. The Court does not agree.
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> The Court understands that the DOD authored document does provide that "[a]n individual approved to transfer entitlement to education assistance under this section may transfer such entitlement to the individual's family member only while serving as a member of the Armed Forces," however, the Court is more persuaded by LTG Thompson's submission of the document and argument that the Information Paper "contained NO wording of the requirement to transfer the benefit while still on active duty." The court is convinced that though the DOD authored document describes the requirement, the twenty-seven page document was clearly not understood by LTG Thompson and likely would similarly be misunderstood by a reasonable layperson. However, were LTG Thompson to have been counseled by someone more familiar with the document, or similar documents, he would have likely been properly advised of the requirement that he transfer his benefits while on active duty.[4]

The applicant argued that based on this decision, the Board should grant relief because like the plaintiff, he was denied proper individual counseling, and what information was provided to him in the ALCOASTs before he began terminal leave was incomplete and misleading.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552.

2. An application to the Board must be filed within three years after the applicant discovers the alleged error or injustice in his record.[5] The record shows that the applicant knew that he was not being allowed to transfer his education benefits at the time of his retirement in 2009, and this is the alleged error and injustice that he wants corrected. He states that he did not realize that his inability to transfer his benefits in 2009 was erroneous or unjust until November 2016. That is when he read DTM 09-003, the final policy about transferring education benefits, and decided that he should have been able to transfer his benefits in 2009. The fact that the final policy was not yet established and would be before August 1, 2009, however, was mentioned in the ALCOASTs that the applicant saw before he went on terminal leave. Moreover, the date that the applicant decided to investigate the policy that prevented him from attaining a benefit seven years earlier is not the date of his discovery of the alleged error or injustice because the error or injustice that he wants corrected is not the policy (over which the Board has no jurisdiction) but his inability to transfer his benefits in 2009. Because the applicant knew in 2009 that he was not being allowed to transfer his benefits to his dependents—the alleged error and injustice in his record—the Board finds that his application is untimely.

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[4] *Thompson v. United States*, 119 F. Supp. 3d 462, 470 (E.D. Va. 2015).

[5] 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.[6] In *Allen v. Card*, the court stated that the Board should not deny an application for untimeliness without "analyz[ing] both the reasons for the delay and the potential merits of the claim based on a cursory review"[7] to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that "the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review."[8]

4. The applicant explained that he did not apply to the Board sooner because he was misled by the ALCOASTs issued before he went on terminal leave and so did not learn about the applicable policy until 2016. ALCOASTs are messages issued by the Commandant to be read by all Coast Guard members, and the ALCOASTs about the Post-9/11 GI Bill that were issued before the applicant went on terminal leave expressly advised members that the final guidance was not yet established and would be forthcoming. In addition, all of the ALCOASTs about the Post-9/11 GI Bill were published online on the Coast Guard's public-facing website, where the applicant could have read them even though he was on terminal leave. The Board finds that the applicant's explanation for his seven-year delay is not compelling because he failed to show that anything prevented him from seeking correction of the alleged error and injustice in his record more promptly.

5. The Board's cursory review of the merits of this case shows that the applicant's claims cannot prevail for the following reasons:

a. The timing of the law defeats the applicant's claim. Although the statute was enacted on June 30, 2008, Congress did not authorize the transfer of education benefits until August 1, 2009, by which date the applicant was no longer on serving on active duty. Congress authorized the benefit only for individuals "serving in the military,"[9] which does not include retired members, who are no longer serving.

b. DTM 09-003 excludes retired members from eligibility. Under DTM 09-003, a member must have served on active duty or in the Selected Reserve on or after August 1, 2009, to be eligible to transfer his benefits. In fact, the Glossary of DTM 09-003 expressly states that retired members are not "members of the Armed Forces" for the purposes of the DTM, and under paragraph 3.a. of Attachment 2 to the DTM, only "member[s] of the Armed Forces on or after August 1, 2009," are eligible to transfer their benefits. The applicant pointed out that sub-paragraph 3.a.(3) includes "member[s] of the Armed Forces on or after August 1, 2009," who are or become "retirement eligible during the period from August 1, 2009, through August 1, 2013." But this language does not make the applicant eligible because, as defined in the Glossary, he was not a "member of the Armed Forces" on August 1, 2009, for the purposes of the DTM.

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[6] 10 U.S.C. § 1552(b).

[7] *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

[8] *Id*. at 164, 165; *see also Dickson v. Secretary of Defense*, 68 F.3d 1396, 1405 n14, 1407 n19 (D.C. Cir. 1995).

[9] Pub. L. No. 110-252, §§ 5001 et seq., 122 Stat. 2323 (June 30, 2008).

c. Counseling requirement not applicable. DTM 09-003, as issued on June 22, 2009, states in paragraph 3.b. that the Secretaries "shall … ensure that all eligible active duty members … are aware that they are automatically eligible for educational assistance under the Post-9/11 GI Bill program upon serving the required active duty time." No deadline is specified, but on June 26, 2009, the Coast Guard issued ALCOAST 337/09 to inform its members about DTM 09-003. ALCOAST 337/09 was made public on the Coast Guard's website. The DTM also states in paragraph 3.g. that the Secretaries shall provide documented, individual counseling to "active duty participants" in the program—not all active duty members with qualifying service, as the applicant argued. The benefit-transfer program did not go into effect until August 1, 2009—as the JAG argued and as stated in the statute and in paragraph 4 of Attachment 2 to the DTM.[10] So before August 1, 2009, there were no "active duty participants" in the program entitled to individual counseling. The fact that the DTM memorandum states that the policies would take effect immediately does not mean that the benefit-transfer program took effect immediately—in violation of the statute—and so it does not prove that there were any "active duty participants" in the program before August 1, 2009. And paragraph 3.a. of Attachment 1 states that the Service Secretaries "shall provide regulations, policy implementation guidance, and instructions," which shows that the DTM contemplated the development of guidance for future implementation of the policies in the DTM when the program went into effect on August 1, 2009—policies including the documented counseling requirement for "active duty participants" in the program. Based on the statute and the various provisions of DTM 09-003, the Board cannot conclude that all active duty members with qualifying service were entitled to documented, individual counseling about the program before August 1, 2009. The court decision cited by the applicant, *Thompson v. United States*, 119 F. Supp. 3d 462, 470 (E.D. Va. 2015), does not contradict this finding because the plaintiff in that case retired in 2010, well after the program went into effect. The Board notes in this regard that in prior decisions, the Board has consistently granted relief to members who were not counseled about the program if they retired after August 1, 2009, but has always denied relief to those who did not serve on active duty or in the Selected Reserve on or after August 1, 2009.[11]

d. Not entitled to delay of retirement. The applicant argued that relief should be granted because he relied to his detriment on the advice in ALCOASTs 447/08 and 044/09. He alleged that he opted to retire on August 1, 2009, because he thought he would have to perform four more years of active duty to be eligible to transfer his benefits because of the information in those ALCOASTs. However, the ALCOASTs expressly advised members not to make such significant career choices based on the information therein because more guidance would be forthcoming. These ALCOASTs also state that the law would go into effect on August 1, 2009, and that members would have to be on active duty to elect to transfer their benefits when the program went into effect. But the applicant submitted a request to retire on August 1, 2009, with an active duty separation date of July 31, 2009, effectively negating any possibility that the law might apply to him under the forthcoming guidance.

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[10] DTM 09-003, Attachment 2, para. 4 ("EFFECTIVE DATE. Policies and procedures under this issuance become effective on August 1, 2009, the effective date of the Post-9/11 GI Bill.").

[11] *See, e.g.*, BCMR Docket Nos. 2012-054 (Decision of the Delegate of the Secretary), 2013-101, 2014-208, 2014-111, 2014-200, 2014-215, 2015-035, 2016-008, 2016-011, 2016-167.

The applicant also alleged that under ALCOAST 377/09, he could have arranged to have his retirement postponed, but as PSC argued, ALCOAST 377/09 states that members could *request* to postpone their retirements, but that a request would only be approved based on a "clearly articulate[d] service need"—i.e., not on a member's desire to transfer his education benefits to his dependents. This policy is in line with Article 12.C.9.c.1. of the Personnel Manual then in effect, which states that "[t]he decision to submit a retirement letter is a serious one because the projected separation triggers transfer and promotion actions" and that requests to delay or cancel an approved retirement may only be approved based on "Service needs" or "hardship"—and "hardship" is defined as excluding personal convenience or financial reasons.[12] Regular retirements are required by law to occur on the first day of the month,[13] and there is no evidence showing that the Coast Guard lacked lieutenant commanders ready to be promoted to commander on August 1, 2009, or lacked officers ready to fill the applicant's prior billet.

6. Accordingly, the Board will not excuse the untimeliness of the application or waive the statute of limitations. The applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

[12] Personnel Manual, Articles 12.C.9.c.1. and 12.D.1.

[13] 5 U.S.C. § 8301.

ORDER

The application of [redacted] USCG (Retired), for correction of his military record is denied.

November 9, 2017

[redacted]