

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2020-105


LCDR

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on April 15, 2020, and assigned the case to the Deputy Chair to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated November 5, 2021, 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, a Lieutenant Commander (LCDR/O-4) on active duty, asked the Board to correct his record to show that the effective date of his Aviation Career Continuation Pay (ACCP) agreement was September 25, 2017. The applicant also asked the Board to correct his record to show that he received an Aviation Officer Bonus (AvB), effective September 26, 2020, which would entitle him to receive \$15,000 annually for five years.

The applicant argued that the Coast Guard committed an error in determining the effective date of his ACCP agreement. According to the ACCP agreement, the applicant agreed to remain on active duty for three years in exchange for receiving \$25,000 annually. The applicant's military record shows that the effective date of his ACCP agreement was January 1, 2018. However, the applicant argued that this is incorrect. The applicant argued that according to the language of the ACCP agreement, the effective date of the agreement should have been September 25, 2017, which is the date it was approved and signed by his Commanding Officer (CO).

The applicant also argued that the Coast Guard committed an error in determining that he was ineligible to receive an AvB in 2020. The applicant stated that his CO approved and signed his AvB agreement effective September 26, 2020. To be eligible to receive the AvB, the applicant had to have completed all eligibility requirements by September 30, 2020. However, the Coast Guard determined that the applicant was ineligible to receive the AvB because of his active-duty service commitment from the ACCP agreement. According to the applicant's military record, his

active-duty service commitment from the ACCP agreement expired on December 31, 2020. The applicant argued that had the effective date of his ACCP agreement been correctly determined as September 25, 2017, he would have completed his active-duty service commitment on September 26, 2020, and he would have been eligible to receive the AvB.

Finally, the applicant argued that the Coast Guard committed an injustice in refusing to honor the terms of the ACCP agreement. The applicant stated that he fulfilled his obligations in accordance with the ACCP agreement. Specifically, he stated that he served honorably and will continue to do so in accordance with the Coast Guard's Core Values. He argued that since he honored his obligations, he hopes that the Coast Guard will honor the effective date of his ACCP agreement as signed by his CO and allow him to receive the AvB.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on March 9, 2004. After attending recruit training, the applicant attended Avionics Electrical Technician "A" School.

Two years later, on March 23, 2006, the applicant enrolled in Officer Candidate School. Upon graduating from Officer Candidate School, the applicant attended primary flight school and became a Rotary Wing Aviator.

On September 25, 2017, the applicant's CO approved and signed an ACCP agreement for the applicant. The ACCP agreement was a two-page document, with the majority of the second page dedicated to signatures. The first line of the ACCP agreement stated, "This contract is being requested under the guidance outlined in ALCOAST ACN [ALCOAST Commandant Notice] 077/17." The first section of the contract stated that the applicant would receive \$25,000 annually to "remain on active duty for a period of 3 years upon approval of this agreement by my Commanding Officer." The second section of the contract discussed the conditions of the agreement. Section 2.a. stated that the applicant understood and agreed that "the effective date of this agreement will be the date my Commanding Officer approves this agreement, unless I have not completed all eligibility requirements by the required submission date." Section 2.c. stated that the applicant understood and agreed that "my active-duty service commitment (ADSC) under this agreement will be for 3 years from the date my Commanding Officer approves this ACCP agreement, or if not eligible by the required submission date, the day after I complete all eligibility requirements."

On March 6, 2019, the applicant received an email from YN2 M, a member of the Bonus Team at the Military Accounts Support Branch of the Pay and Personnel Center (PPC), regarding the second installment of his bonus payment in accordance with the ACCP agreement. YN2 M stated that PPC was unable to process the applicant's request for the second installment of his bonus payment at the time. YN2 M stated that for all members who signed ACCP agreements under ACN 077/17, only the first installment would be paid in advance. However, subsequent installments would be paid in arrears. YN2 M stated that since applicant's second installment reflected his service from January 1, 2019, to December 31, 2019, the associated installment would not be processed until January 2020.

The applicant responded to YN2 M and stated that according to the signed ACCP agreement, payments should be paid on an annual basis on the anniversary of the effective date of the agreement. He stated that the effective date of his ACCP agreement was September 25, 2017, which is the date it was signed by his CO.

Also on that day, Mr. M, a Bonus Team Supervisor, responded to the applicant. Mr. M acknowledged that the policy was not extremely clear. However, Mr. M stated that ACN 077/17 stated, "For officers that meet the eligibility requirements and who received command approval on or before 31 DEC 2017, then the effective date will be 1 JAN 2018." As such, he stated that the first installment covered January 1, 2018, to December 31, 2018, and the second installment covered January 1, 2019, to December 31, 2019. He stated that since the second installment is not paid in arrears, it would not be processed until January 1, 2020. He concluded by stating that this issue had been verified with the Officer Assignments Branch of the Pay and Personnel Center (PPC).

The applicant responded to Mr. M and expressed his concern that the language in ACN 077/17 and the ACCP agreement conflict. The applicant stated that he believed that the signed ACCP agreement would have a higher authority than the ACN.

Later that day, Mr. M responded to the applicant and acknowledged that ACN 077/17 and the ACCP agreement conflict. He informed the applicant that the Officer Assignments Branch of PPC was aware of the issue. However, Mr. M stated that the Officer Assignments Branch determined that January 1, 2018, would be the effective date for ACCP agreements similar to that of the applicant.

On September 26, 2019, the applicant's CO approved his AvB agreement. In accordance with ACN 101/19, the applicant agreed to obligate five years of active-duty service in exchange for receiving \$15,000 annually. The AvB agreement stated that the effective date was September 26, 2020.

On March 4, 2020, the applicant received an email from Ms. C, a member of the Bonus Team of the Military Pay Technician office. Ms. C stated that after reviewing the applicant's AvB agreement and his Member Information report, she determined that the applicant was ineligible for the AvB due to his active-duty service commitment. Specifically, she stated that the applicant had an active-duty service commitment from the ACCP agreement until December 31, 2020, which was beyond the September 30, 2020, cutoff date for the AvB that was established in ACN 101/19.

That same day, the applicant responded to Ms. C. He stated that his active-duty service commitment was for three years effective the date that his ACCP agreement was signed. The applicant stated that his ACCP agreement was signed by his CO on September 25, 2017. Therefore, he argued, his service commitment would be completed on September 26, 2020.

Later that day, Mr. M responded to the applicant's email. Mr. M informed the applicant that they had previously discussed the effective date of his ACCP agreement. He stated that in accordance with ACN 077/17, for officers who had met the eligibility requirements and had

received command approval on or before December 31, 2017, the effective date of their ACCP agreement would be January 1, 2018. Accordingly, Mr. M stated that the applicant's ACCP bonus term was from January 1, 2018, to December 31, 2020. He concluded by stating that if the Coast Guard offers an AvB for the following year, the applicant would likely be eligible to receive it.

On April 6, 2020, the applicant was notified by LCDR M, an Aviation Billets Manager in the Office of Aviation Forces, that he was not eligible for the AvB in 2020. LCDR M stated that the Office of Aviation Forces agreed with PPC that the applicant was not eligible for the AvB in 2020 given his prior active-duty service commitment under the ACCP agreement. LCDR M acknowledged that the language in the policy messages and contracts could be much improved, and that his office would work to strengthen the policy language in future AvB messages.

VIEWS OF THE COAST GUARD

On August 12, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant failed to show that the Coast Guard committed an error regarding the effective date of his ACCP agreement. The JAG acknowledged that there is some ambiguity regarding the effective date of the applicant's ACCP agreement. However, the JAG argued that the applicant was aware of the effective date of his ACCP agreement and that he understood how his three-year commitment would be applied for calendar years 2018, 2019, and 2020. First, the JAG argued that the intent of ACN 077/17 was to provide for aviation service needs in calendar years 2018 to 2020. Second, the JAG argued that the ACCP agreement should have been read in concert with ACN 077/17. To support this assertion, the JAG noted that the ACCP agreement specifically stated that the contract was requested under the guidance outlined in ACN 077/17. According to ACN 077/17, "For officers that meet eligibility requirements and who received command approval on or before 31 DEC 2017, then the effective date will be 1 JAN 2018." Finally, the JAG argued that even if the applicant was not aware of the effective date of his ACCP agreement when he signed it, he became aware of the correct date in March 2019. The JAG stated that in March 2019, the applicant received an email that notified him that the effective date of his ACCP agreement was January 1, 2018.

The JAG also argued that the applicant failed to show that the Coast Guard committed an error regarding his ineligibility to receive an AvB in 2020. The JAG stated that according to ACN 101/19, a member's eligibility for the AvB required that their current active-duty service commitment expire by September 30, 2020. The JAG stated that the applicant was ineligible to receive the AvB because his active-duty service commitment from the ACCP agreement did not expire until December 31, 2020.

Finally, the JAG argued that the Coast Guard did not commit an injustice. The JAG stated that the applicant has been fully paid in accordance with his ACCP agreement. Further, the JAG argued that the applicant is being treated the same as all other Coast Guard aviators who received command approval for their ACCP agreement before January 1, 2018. The JAG concluded by stating that the applicant could be eligible for a future aviation bonus.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 5, 2020, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. In his response, the applicant reiterated that the Coast Guard committed an error in determining the effective date of his ACCP agreement and his eligibility to receive an AvB in 2020. The applicant argued that when he signed the ACCP agreement, there was no confusion as to the dates and terms because the effective date was clearly expressed three separate times in the agreement.

The applicant also expanded on his argument that the Coast Guard committed an injustice. First, the applicant argued that the effective date of his ACCP agreement is unjust because as soon as he signed the agreement, the Coast Guard started to receive benefits. Specifically, the applicant stated that bonus agreements are workforce planning tools. He stated that as soon as he signed the ACCP agreement, the Coast Guard was able to make data-based decisions regarding staffing. Second, the applicant argued that it is very reasonable to assume that he was the only pilot who was ineligible for the AvB in 2020 based on his active-duty service commitment from the ACCP agreement. To support this allegation, he stated that the aviation community is small and that he is not aware of any other pilot in a similar situation. Third, the applicant argued that the Coast Guard committed an injustice because pilot bonuses are no longer offered due to the significant slow-down in commercial airline travel. Lastly, applicant argued that the Coast Guard committed an injustice because he was denied a total of \$75,000 over the course of five years.

Finally, the applicant addressed the delay in submitting his application. He stated that he would have submitted his application much earlier had he known about the BCMR process. The applicant stated that about eighteen months after signing his ACCP agreement, he was notified by PPC that the Coast Guard would not honor the effective date. When he did not agree with PPC's determination, he contacted an attorney at the Coast Guard Legal Services Command. He stated that at this point, he was not informed of the BCMR process. Instead, he stated that he was informed that his only option for relief would be to file a lawsuit against the government, but that the Coast Guard would not provide legal services to him. Rather than hiring an attorney at his own expense, the applicant continued to argue his case with PPC. Then, in March 2020, the applicant was notified by PPC that he was ineligible for the AvB due to his active-duty service commitment. He stated that shortly thereafter, he contacted a civilian attorney who finally advised him of the BCMR process.

APPLICABLE LAW AND POLICY

In July 2017, the Coast Guard released ALCOAST Commandant Notice (ACN) 077/17 to announce the implementation of the ACCP program for calendar year 2018. The ACN stated that in response to a recent increase in aviator attrition, the Coast Guard had implemented several workforce management tools to preserve operational readiness including reinstating the ACCP program. The ACN defined several terms including the effective date of ACCP agreement. According to the ACN, "The effective date of the ACCP agreement must be between 1 JAN 2018 and 31 DEC 2018 inclusive. Within that range, the effective date will be the date that the officer meets the eligibility requirements set forth in paragraph 6 below and receives approval from the

Commanding Officer, whichever is later. For officers that meet the eligibility requirements and who received command approval on or before 31 DEC 2017, then the effective date will be 1 JAN 2018.” The ACN also defined the ACCP agreement submission date by stating that ACCP agreements must be submitted no later than September 30, 2017.

In September 2019, the Coast Guard released ACN 101/19 to announce the implementation of the fiscal year (FY) 2020 AvB program. The ACN stated that the FY20 AvB program was an intervention necessary to support Coast Guard missions and maintain aviation workforce readiness. Regarding eligibility requirements, ACN 101/19 stated that pilots were eligible if their current obligated active-duty service commitment expired on or before September 30, 2020. Current obligated active service, as defined in ACN 101/19, includes all service obligations for initial entry into the Coast Guard, obligated service under an existing ACCP or AvB agreements, and obligated service for receipt of training and education.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552.
2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.¹
3. The application is timely because it was filed within three years of the applicant’s discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).
4. The applicant alleged that the effective date of his ACCP agreement and ineligibility to receive the AvB in 2020 are erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant’s military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³

5. The applicant argued that the Coast Guard committed an error in determining the effective date of his ACCP agreement as January 1, 2018. He argued that the effective date of his ACCP agreement should have been September 25, 2017. To support his allegation, the applicant relied on the language of the ACCP agreement. Read on its own, the ACCP agreement states that

¹ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

the effective date of the agreement is the date it is signed by the CO. However, the ACCP agreement is a two-page document, with the majority of the second page dedicated to signatures. Given the lack of terms and specifics in the ACCP agreement, the document was to be applied in accordance with ACN 077/17, which the agreement references. Specifically, the first line of the ACCP agreement states: “This contract is being requested under the guidance outlined in ALCOAST ACN 077/17.” In contrast to the ACCP agreement, ACN 077/177 is an eight-page document that details the specifics of the implementation of the ACCP program. Notably, Section 4.C. of the ACN defines the effective date of the ACCP agreement as follows: “The effective date of the ACCP agreement must be between 1 JAN 2018 and 31 DEC 2018 inclusive. Within that range, the effective date will be the date that the officer meets the eligibility requirements set forth in paragraph 6 below and receives approval from the Commanding Officer, whichever is later. For officers that meet the eligibility requirements and who received command approval on or before 31 DEC 2017, then the effective date will be 1 JAN 2018.” While the ACCP agreement stated that the effective date of the agreement was the date it was signed by the CO, the ACN explicitly stated that if an officer received command approval before December 31, 2017, the effective date would be January 1, 2018. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the Coast Guard committed an error in determining the effective date of his ACCP agreement as January 1, 2018.

6. The applicant argued that the Coast Guard committed an error in determining that he was ineligible to receive an AvB in 2020. The AvB was implemented in accordance with ACN 101/19. According to ACN 101/19, an officer had to meet all eligibility requirements by September 30, 2020, to be eligible for the AvB program. One of the eligibility requirements was that the officer’s active-duty service commitment expired on or before September 30, 2020. However, as discussed above, the applicant signed a three-year active-duty commitment effective January 1, 2018. As such, the applicant’s active-duty service commitment did not expire until December 31, 2020, which is two months after the cutoff date established in ACN 101/19. Therefore, the Board finds that the applicant has not proven by a preponderance of the evidence that the Coast Guard committed an error in determining that he was ineligible to receive an AvB in 2020.

7. Finally, the applicant argued that the Coast Guard committed an injustice. Under 10 U.S.C. § 1552, the Board is authorized not only to correct errors but to remove injustices from any Coast Guard military record. For the purposes of the BCMRs, “injustice” is sometimes defined as “treatment by the military authorities that shocks the sense of justice but is not technically illegal.”⁴ The Board has authority to determine whether an injustice exists on a “case-by-case basis.”⁵ Indeed, “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate,”⁶ and “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious.”⁷

⁴ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976); *but see* 41 Op. Att’y Gen. 94 (1952), 1952 WL 2907 (finding that “[t]he words ‘error’ and ‘injustice’ as used in this section do not have a limited or technical meaning and, to be made the basis for remedial action, the ‘error’ or ‘injustice’ need not have been caused by the service involved.”).

⁵ Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

⁶ *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975)).

⁷ *Boyer v. United States*, 81 Fed. Cl. 188, 194 (2008).

8. The applicant put forth several allegations in support of his argument that the Coast Guard committed an injustice. The applicant first argued that the effective date of his ACCP agreement is unjust because as soon as he signed the agreement on September 25, 2017, the Coast Guard immediately started to receive benefits. Specifically, the applicant alleged that as soon as he signed the ACCP agreement, the Coast Guard was able to make data-based decisions regarding staffing. However, the Board finds nothing unjust about the Coast Guard and the applicant entering a contract for future employment. The true value of the contract for the Coast Guard was receiving three new years of active-duty service from the applicant, which started on January 1, 2018, and ended on December 31, 2020. This is the same timeframe for which the applicant received a bonus for his service. The applicant also argued that the Coast Guard committed an injustice because he was the only pilot who was ineligible for the AvB in 2020 based on his active-duty service commitment under the ACCP agreement. However, the applicant did not provide any evidence to support his assertion. Additionally, the applicant argued that the Coast Guard committed an injustice in determining he was ineligible to receive the AvB in 2020 because the Coast Guard is no longer offering pilot bonuses. The applicant is correct that the Coast Guard has not offered pilot bonuses since issuing ACN 101/19 because such bonuses were not determined necessary to maintain aviation workforce readiness. However, pilot bonuses are not guaranteed. Further, there is nothing to suggest that pilot bonuses will not be offered in the future.

Finally, the applicant argued that the Coast Guard committed an injustice in determining that he was ineligible to receive the AvB in 2020 because he was denied a total of \$75,000 over the course of five years. The Board disagrees. First, as discussed above, the applicant was ineligible to receive the AvB in 2020 due to his active-duty service commitment in accordance with the ACCP agreement. Further, although the applicant was not notified by PPC that he was ineligible for the AvB until about six months after he submitted his agreement, the applicant cannot allege that he reasonably relied on the AvB agreement when it was approved and signed by his CO. The record shows that at the time the applicant submitted his agreement, he should have been aware that he was ineligible for the AvB program. In March 2019, the applicant received an email from a member of the Bonus Team at the Military Accounts Support Branch of PPC regarding the second installment of his bonus payment. At that time, the applicant was informed that his second installment would not be processed until January 1, 2020, because it reflected his service from January 1, 2019, to December 31, 2019. The applicant pushed back on this response and stated that the effective date of his ACCP agreement was September 25, 2017. At that point, a Military Pay Systems Specialist informed the applicant that in accordance with ACN 077/17, the effective date of his ACCP agreement was January 1, 2018. The applicant was also informed that the matter had been confirmed by the Officer Assignments Branch. Despite being aware that he was ineligible for the AvB program because his active-duty service commitment did not expire until December 31, 2020, the applicant submitted an AvB agreement for his CO's approval. Therefore, the Board finds that the applicant failed to prove by a preponderance of the evidence that the Coast Guard committed an injustice in denying him a bonus when he should have known he was ineligible for the program at the time he submitted the agreement.

9. Accordingly, the applicant's request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of LCDR [REDACTED] [REDACTED] USCG, for correction of his military record is denied.

November 5, 2021

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