

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-165

████████████████████
██████████ 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 application upon receipt of the completed application and military records on June 20, 2018, and subsequently prepared the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 4, 2019, 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 enlisted in May 2003, received a Reserve commission after completing Officer Candidate School in 2005, and served on extended active duty for three years before being released to inactive duty in the Ready Reserve. Now a lieutenant commander in the Selected Reserve, she asked the Board to correct her record to show that she did not opt into the new Blended Retirement System (BRS) and remained in the “legacy plan.”¹ She stated the following:

¹ For reservists who retire based on having 20 “satisfactory” years of service (with more than 50 points earned each anniversary year as calculated under 10 U.S.C. § 12732), under the “legacy plan,” their retired pay is calculated by adding all of the points they have earned by performing drills, active duty, etc., pursuant to § 12732; dividing that number by 360 to determine the number of their years of creditable service toward retired pay; multiplying that number of years by 2.5%; and then multiplying that percentage by the “high 36-month average” of their base pay. 10 U.S.C. §§ 12733, 12739. But under the BRS, for reservists accessed after January 1, 2018, or reservists who make an election to opt into the BRS (and so receive matching contributions toward a Thrift Savings Plan (TSP) for up to 4% of their base pay), the multiplier is 2.0%, instead of 2.5%. 10 U.S.C. § 12739(f)(1)(A). Regarding such elections, 10 U.S.C. § 12739(f)(2)(A) states that “a person performing reserve component service on December 31, 2017, who has performed fewer than 12 years as of December 31, 2017 (as computed in accordance with section 12733 of this title), may elect, in exchange for the reduced multipliers described in paragraph (1) for purposes of calculating the retired pay of the person, to receive Thrift Savings Plan contributions pursuant to section 8440e(e) of title 5.”

On 2/28/2018 I received an email stating that I had successfully opt[ed] into the election for Blended Retirement (BRS). This election was made in error. I previously responded to the emails (see attached) that I received and refused to opt into the BRS. I then received an email stating I needed to complete the on-line training or I would be out of compliance. In an effort to stay in compliance, I completed the only on-line course that I could find that I had not yet completed. However, this course was an automatic opt in course after selecting yes on three questions. Granted, out of frustration to complete the additional training, I marked yes without reading the material.

I [had] previously responded to the emails throughout the year that I indeed received the training and did not want to opt in the BRS. I completed all the training, but still received harassing emails to respond and to complete more training. If read closely, it is understood that the three questions are clear that by selecting YES you will elect the BRS. However, it appears very calculated and conniving that hundreds of emails were sent to members to illicit BRS, and copious man hours have been spent trying to get everyone trained and educated, but three simple questions if not read properly could alter the course of a 20-year retirement. I was clear that I did not want to elect BRS. I made this clear by 1. not electing for BRS for the entirety of 2017[,] 2. By responding to the emails that I was in receipt of the notifications – and still did not elect BRS[,] 3. I completed the appropriate GMT and still did not elect BRS. It was not until I completed the three questions in error that the election was made.

To support these allegations, the applicant submitted the following:

- An email to the applicant dated August 10, 2017, to which she responded “received” on Sunday, August 13, 2017, states the following:

From: USCG Alert and Warning System ...
Sent: Thursday, August 10, 2017 9:20 AM
To: [Applicant]
Subject: This is an Official USCG BRS Email Notification - You Must Respond
Importance: High

Alert & Warning System: USCG BRS

This is an Official USCG BRS Email Notification - You Must Respond
Hello [APPLICANT],

You have been identified as potentially eligible to opt-in to the new Blended Retirement System (BRS) based on your years of service (YOS); less than 12 YOS for AC and less than 4,320 points² for RC. The opportunity to enroll in the BRS will begin 01JAN18 and continue thru 31DEC18. While you have a decision

² 4,320 equals 360 times 12 and, so, is the minimum number of points a member must have to be credited with 12 years of service for the purpose of calculating Reserve retired pay pursuant to 10 U.S.C. §§ 12733, 12739.

to make, it is important to understand that you will remain covered under your current retirement plan unless you choose to opt-in. You will not be automatically enrolled in the BRS. However, if you choose to enroll in the BRS, that election is irrevocable, meaning the decision can't be changed once made.

Before you make that choice, you will need to complete online training informing you of the benefits under your current retirement system compared to the benefits of the BRS. The BRS Opt-In Course (BRS-Opt-In/J3OP-US1332), is available on the Joint Knowledge Online (JKO). JKO does not communicate with the Coast Guard's learning Management System (LMS); you must login into LMS and register completion by enrolling in BRS Opt-In Course: 100149 and completing the self-certification module.

There are many services available to assist you and your family in making this significant financial decision. Service members should consider leveraging many resources at their disposal including their Command Financial Specialist, the CG SUP RT Personal Financial Wellness Program, the Coast Guard office of Work-life Personal Financial Wellness Management Program, and the BRS Calculator that will be released on 28FEB17. This is a decision you should make only after completing the mandatory JKO training, consulting financial education resources, and discussing the options with your family, The Blended Retirement System may not be right for everyone, so it's important to consider your unique situation prior to making the decision.

More information is available on the Coast Guard's BRS Website <https://www.dcms.uscg.mil/brs>.

Please respond with one of the following options:

1. Confirm receipt of official notification for BRS eligibility

[https://\[redacted\]](https://[redacted])

To respond, EITHER reply to this email and enter the response code in the email body, OR click on the link above (you must be connected to the network) and follow the instruction.

- An email dated November 20, 2017, to which the applicant responded on Friday, December 1, 2017, at 10:43 a.m., "I have responded several times. I have received this message," states the following:

From: USCG Alert and Warning System ...

Sent: Monday, November 20, 2017 3:38 PM

To: [Applicant]

Subject: Official USCG BRS Email Notification - You ARE mandated to reply 1 to provide confirmation

Importance: High

Alert & Warning System: USCG BRS

Official USCG BRS Email Notification - You ARE mandated to reply 1 to provide confirmation

Hello [APPLICANT],

INSTRUCTION: REPLY 1 SEND

You have been identified as potentially eligible to opt-in to the new Blended Retirement System (BRS) based on your years of service (YOS); less than 12 YOS for AC and less than 4,320 points for RC. The opportunity to enroll in the BRS will begin 01JAN18 and continue thru 31DEC18. While you have a decision to make, it is important to understand that you will remain covered under your current retirement plan unless you choose to opt-in. You will not be automatically enrolled in the BRS. However, if you choose to enroll in the BRS, that election is irrevocable, meaning the decision can't be changed once made.

Before you make that choice, you will need to complete on line training informing you of the benefits under your current retirement system compared to the benefits of the BRS. The BRS Opt-In Course (BRS-Opt-In/J3OP-US1332), is available on the Joint Knowledge Online (JKO). JKO does not communicate with the Coast Guard's Learning Management System (LMS); you must login into LMS and register completion by enrolling in BRS Opt-In Course: 100149 and completing the self-certification module.

There are many services available to assist you and your family in making this significant financial decision. Service members should consider leveraging many resources at their disposal including their Command Financial Specialist, the CG SUPRT Personal Financial Wellness Program, the Coast Guard office of Work-Life Personal Financial Wellness Management Program, and the BRS Calculator that will be released on 28FEB17. This is a decision you should make only after completing the mandatory JKO training, consulting financial education resources, and discussing the options with your family. The Blended Retirement System may not be right for everyone, so it's important to consider your unique situation prior to making the decision.

More information is available on the Coast Guard's BRS Website <https://www.dcms.uscg.mil/brs>.

Please respond with one of the following options:

1. Confirm receipt of official notification for BRS eligibility

[https://\[redacted\]](https://[redacted])

To respond, EITHER reply to this email and enter the response code in the email body, OR click on the link above (you must be connected to the network) and follow the instruction.

- In an email dated November 27, 2017, a MEC H, a chief petty officer at Headquarters, sent the following email regarding “BRS Training and Notifications” to the Command Master Chiefs:

Good Day, I am MEC [name redacted], an active duty Reservist assigned to CG-13 specifically for the implementation of the Blended Retirement System (BRS). At a recent Guidance Team Meeting, senior leaders proposed the idea to supply the Gold Badge network with training data for the members who have yet to complete the Joint Knowledge Online BRS Opt-in course. Implementation Guidance issued by the Deputy Secretary of Defense requires Services to notify and train all opt-in eligible members. The HQ BRS staff started tracking opt-in training data in February 2017, shortly after the release of the course. The JKO course is part of Mandated Training B; users must complete the course in JKO and then self-certify in LMS. Command training officers are to ensure completion and certification. In addition to the training course, HQ BRS Staff started the eligibility notification process February 2017 using the Alert Warning System (AWS). Eligible members receive an email to their official CG email account. To correctly acknowledge the notification members respond to the open email by clicking “reply” typing “1” and clicking “send.”

The Coast Guard opt in population exceeds 30K members. Currently 77% have completed the opt in training, and 67% have correctly responded to the AWS notification. We are seeking your assistance to ensure commands have visibility on the members that need to complete the training and/or notification. Attached are data files containing completion and response rates. Those members that need to complete training or respond to the notification. If members received the Opt-In Training in a group setting, then the Training Petty Officer (TPO) can certify completion in LMS (TMT). I included a Job Aid for TPO’s and members to assist them in certifying completion.

If you or any command should require further information or assistance, I am standing by to help.

- On November 29, 2017, the applicant’s department head forwarded MEC H’s email to her and said, “you are receiving this email because records show you have not completed the Blended Retirement System (BRS) training, which is required for everyone. Please get this completed at your earliest convenience.”
- On December 1, 2017, at 11:45 a.m., the applicant replied directly to MEC H, “I received the email below to complete the BRS training, but according to CGBI [Coast Guard Business Intelligence³] I completed the training in March.” The applicant attached a screenshot showing that she had taken the “BRS Opt-In Course” on March 11, 2017; that the due date for the course was December 31, 2017; and that the frequency of the training is “annual.”

³ CGBI draws information from other Coast Guard databases and presents it in condensed format.

- Note: The applicant's record shows that she performed drills in early January and late February, but she did not submit any emails from that period.
- On February 28, 2018, the applicant was sent an email from the Pay and Personnel Center (PPC) stating the following:

Congratulations on your recent Opt-in election for the Blended Retirement System (BRS). Your election request has been approved and you are now enrolled in the BRS. Members who have elected Opt-In election should refer to the BRS website [http://\[redacted\]](http://[redacted]) or your assigned Personnel and Administrative (P&A) Office for questions and concerns regarding contributions. Information regarding the BRS election process can also be found on the Direct Access Global Payroll Knowledge Base/Blended Retirement System.

IMPORTANT Your Thrift Savings Plan (TSP) election is not automatic. Follow this guide to complete your election once your BRS Opt-in request has been approved: Thrift Savings Plan.

- During the applicant's next drill period on April 1, 2018, she applicant replied to PPC, stating, "I did not want to opt into the election. I kept getting harassing emails to update Direct Access so I logged into DA to stop the emails. I thought I was acknowledging that I read the information and took GMT. I did not want to opt in. I only wanted the emails to stop."
- On April 2, 2018, PPC replied stating, "Unfortunately, when you answer all three questions and submit you are requesting to us to opt you in to BRS which is irreversible. At this point, this is out of our hands and you may need to submit a BCMR. We apologize for any inconvenience this may cause you."
- The applicant began active duty on May 6, 2018. On May 8, 2018, she replied to PPC as follows:

I was receiving tons of harassing emails regarding BRS and I continued to respond that I did not want to opt in. They sent a link with training I presumed I was required to complete to stop the emails. However, this training was to lock me into BRS. I did not want BRS, but [the email] below says I have to submit a BCMR to correct my own retirement selection? This does not seem like a viable or fair option after I repeatedly responded to the emails that I did not want the election. As simple as it was to take me out of my preferred retirement category, it should be just as easy to undo the status.

- PPC sent this reply the same day:

I believe it is very clear on the opt-in page, screen shot below. It states you must answer yes to all 3 questions and click submit to enroll into the BRS. It was set up this way to ensure members could not accidentally enroll in the BRS because the BRS election cannot be changed once submitted.

I wish it was as simple to correct, I would reverse it. We do not have the authority to reverse the opt-in. It is not just CG policy, the CG is following guidance from the Deputy Secretary of Defense from the Department of Defense. You will have to submit a BCMR to reverse this election. I can pass your request up the chain if you would like but I know that no one in my chain of command will change the election, our legal department has reviewed the election process and we cannot reverse the elections once it has been submitted. Please let me know if you have any questions. [A facsimile of the screenshot appears as follows:]

You must answer all the questions below with YES in order for the enrollment to proceed. Once you have answered all the questions and select SUBMIT to enter the Blended Retirement System you will receive an email confirmation that your request is under review to ensure eligibility. Once the review of your request is complete, you will receive an email notification stating you are enrolled in the BRS or ineligible for the BRS.

1. I have completed the Blended Retirement System opt-in training and/or have acquired the necessary financial knowledge to make an informed decision to opt-in to the Blended Retirement System.

I acknowledge that I am making an informed decision as it relates to my BRS election. [drop down menu]

2. I understand that once I make the election to opt in to the Blended Retirement System, this election cannot be changed and I will no longer be eligible for the legacy High Three Retirement System.

I acknowledge that I cannot change my election once submitted. [drop down menu]

3. I understand that this decision to Opt-in to the Blended Retirement System is effective on the date that I submit this election.

I acknowledge that my election will be effective as of the date below. [drop down menu]

BRS Entry Date: 05/08/2018

[Save]

[Submit]

- On May 9, 2018, the applicant sent an email to the administrator of the Personnel Records Review Board (PRRB) stating that she had been directed to file a BCMR application to fix her BRS election and asking if it was necessary. she wrote the following in pertinent part:

I repeatedly responded to the harassing emails that I did not want BRS option, however I still received numerous emails stating I had to complete the online training. In an effort to comply, I completed the training which resulted in the three questions below. Admittedly, I rushed through and in an aggravated state I clicked yes to get the training complete.

- The PRRB replied the same day, stating that the applicant had the option of applying to the BCMR for any matter related to pay and benefits.

VIEWS OF THE COAST GUARD

On December 11, 2018, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief in this case.

The JAG stated that the BRS was authorized under the 2016 National Defense Authorization Act and went into effect on January 1, 2018. She described it as follows:

BRS is a blend of the defined benefit retirement system (“legacy plan” – vested (20 years of service) members receive 2.5% per year of service x years served x retired pay base) that was in force for all members until December 31, 2017, and a defined contribution plan that allows service members to contribute to a portable Thrift Saving Plan (TSP) account. Under BRS, the defined annuity is reduced to 2.0% per year of service but the service contributes an automatic 1% of the member’s base pay into the member’s TSP account and provides matching TSP amounts up to 4%.

The JAG stated that as of January 1, 2018, all newly accessed members fall under the BRS, but active duty members with fewer than twelve years of service and Reserve members who, like the applicant, had fewer than 4,320 retirement points as of December 31, 2017, were eligible to opt into the BRS from January 1 through December 31, 2018. By Coast Guard policy and the policy of the other military services, the JAG stated, the election to opt into the BRS for these eligible members was completely voluntary and irrevocable.

The JAG noted that the Coast Guard first announced the upcoming implementation of the BRS on June 14, 2016, in ALCOAST 222/16, which stated that the decision to opt in is irrevocable. As part of that implementation, all members were required to complete the “BRS Opt-In Training Course” in 2017. ALCOAST 034/17 also warned members that elections to opt in would be irrevocable.

The JAG stated that to opt into the BRS, members “had to access the ‘My BRS Elections’ tab within Direct Access. Members are then directed to the My BRS Election screen wherein they had to answer three questions and hit ‘SUBMIT’, affirmatively acknowledging” the three statements shown in the screenshot that the PPC technician sent to the applicant on May 8, 2018. The JAG stated that because the applicant completed all these steps in Direct Access on February 24, 2018, her election was approved by PPC on February 28, 2018, and she was notified by email.

The JAG argued that the applicant had “failed to provide any evidence the Coast Guard committed an error in the processing of her election to ‘opt-in’ to the BRS.” The JAG stated that the applicant’s “claim that certification of completion of the course ‘was an automatic opt in course’ is false. The opt-in course was a Department of Defense (DoD) prepared training module available through the DoD Joint Knowledge Online (JKO) Learning Portal that ‘does not communicate with Coast Guard IT systems.’” Therefore, the JAG stated, after completing the training in JKO, members had to certify in the Coast Guard’s Learning Management System (LMS) that they had taken the course, and the LMS is “another IT program entirely separate from Direct Access”—the system in which the applicant elected to opt in to BRS. The JAG stated that Direct Access (DA) is “an independent, online personnel management software program that requires separate login credentials from JKO or LMS.” The JAG claimed that the “process for ‘opt-in’ was (1) in an entirely separate program from the required training and certification and (2) required at least three (3) affirmations by the member that they were knowingly and

voluntarily opting-in.” The JAG concluded that there is therefore no way that the applicant’s completion of the required training in JKO could have led her to the BRS opt-in form in Direct Access.

The JAG denied the applicant’s claim that the Coast Guard acted in a calculated and con-ning manner by sending “harassing emails.” She stated that ALCOAST 034/17 “clearly explained ‘[e]ligible service members will receive notification in the coming weeks by email, text and phone through the Coast Guard’s Alert Warning System confirming eligibility. The notifications will continue until members acknowledge receipt via email.’” Therefore, the JAG claimed, the applicant presumably continued to receive emails about the BRS either because she failed to acknowledge receipt of the notification via email or “failed to properly register completion of training. Either way, the Coast Guard had a valid interest in educating all service members about their retirement options and ensuring they made knowledgeable decisions about participation.”

The JAG stated that the “implementation of the BRS was specifically designed as a multi-step layered process that required the Service member to consciously opt-in with intent.” The implementation included notifying members of their eligibility; requiring eligible members to opt into the BRS; repeatedly informing members that opting in would be irrevocable; giving members a year to make their elections; and providing in-depth training on the BRS, the opt-in process, potential financial considerations, and access to a financial calculator that would project estimated retirement benefits.

The JAG noted that the applicant admitted in her application that she “marked yes without reading the material” and so her election to opt in “was the result of her own carelessness” and she “is entitled to no relief.”

The JAG also noted that “[a]ny relief granted by the BCMR must be carefully considered and include any necessary instructions to implement the ordered relief as this is a case of first impression with no existing policy guidance and a high likelihood of repetition.” As a result of her election to opt in, the applicant “has been receiving government contributions to her TSP account since February 2018.” The JAG stated that the decision was made to have members’ BRS elections be irrevocable “due to the numerous difficulties inherent in ‘unwinding’ the various components of a BRS retirement. Due to this existing irrevocable policy, there are no Coast Guard policies governing the procedures for reversing an election and/or criteria to be eligible for reversal.” The JAG stated that if the Board grants relief by reversing the applicant’s election and returning her to the legacy retirement system, any such order must also include a requirement that all government funds and any interest earned from those funds that were contributed to her account by the government be recouped.

The JAG also noted that although this applicant complained about her opt-in election shortly after receiving the email stating that it had been approved, “the Coast Guard envisions future cases where members who could have been participating for years” seek relief.

To support this opinion, the JAG submitted the following:

- **ALCOAST 222/16**, issued on June 14, 2016, concerns the “Implementation of the Blended Retirement System.” It states, “All those who are currently serving, as of 31 DEC 2017 will automatically be grandfathered under the current retirement system and those with less than 12-years of service (or 4,320 points for reservists) on that date will be eligible to opt into the BRS during calendar year 2018, if desired. The opt-in decision is irrevocable, so all members should carefully consider their own personal circumstances, time in service, career intentions, and financial situation.”

The ALCOAST also states that four types of training would be provided through the Department of Defense’s JKO website: (a) “Leader Training” was required for all military personnel in pay grades E-6 by December 31, 2016; (b) “BRS Personal Finance Counselors Training Course” was required for all financial counselors; (c) “BRS Opt-In Training Course” with a retirement calculator would be available as of January 1, 2017, to help eligible members make their decisions and provide ample time to make those decisions in calendar year 2018; and (d) “BRS New Accessions Training Course” would be developed for all new members as of January 1, 2018. The ALCOAST also describes the four components of the BRS as follows:

1. **Defined retirement pay benefit:** Defined retirement pay would be based on a 2% per year multiplier of basic pay, instead of the 2.5% multiplier of the “highest three months of basic pay” used under the legacy system. “This equates to 40 percent of basic pay at 20 years of service versus the current 50 percent.”
2. **Automatic and matching contributions:** The Coast Guard would “automatically contribute an amount equal to 1 percent of your basic pay to your Thrift Savings Plan (TSP) ... Matching contributions by the CG will start at three years of service with a maximum of 4 percent through the completion of 26 years of service. At the start of 3 years of service, this contribution is yours to keep regardless of whether you achieve a 20-year or longer retirement. This means if you separate from the CG before reaching retirement, you now leave with a portable retirement benefit (TSP), which is not part of the current defined retirement plan.”
3. **Continuation Pay:** “This is a payment similar to a bonus at the completion of 12-years of service available to those who agree to serve an additional 4 years. Active duty member payments will be a minimum of 2.5 times their monthly basic pay and Reserve Component member payments will be a minimum of 0.5 times the monthly active duty basic pay. These multipliers can be increased by the Coast Guard, with some limits, to meet service needs.”
4. **Lump Sum:** “There will now be a lump sum option that will allow members to take a 25 or 50 percent lump sum at the time of retirement that will reduce the monthly retired pay by a corresponding 25 or 50 percent until age 67. After age 67, your monthly retired pay will return to the full amount.”

- **ALCOAST 034/17**, issued on February 10, 2017, concerns the BRS Opt-In Training Course and states that the course is available on JKO and that members in pay grades E-6 and above were required to take it and the Leader Training course as well because “[a]ll leaders must be prepared to address the concerns of opt-in eligible members, and ensure these candidates have access to the tools and resources necessary to make an extremely personal, consequential, and permanent financial decision.” The ALCOAST noted that the JKO portal “does not communicate with Coast Guard IT systems” so after completing the courses, members had to

login to the Coast Guard’s Learning Management System (CG LMS) ... to register their completion. Registering completion via the CG LMS is done by enrolling in the respective course (BRS leader course: 100122/BRS Opt-In course: 100149) and then launching the course similar to any other CG LMS-based course. ... BRS opt-in eligible service members must complete the BRS Opt-In course by 31 DEC 2017. ... [R]eservists in the Selected Reserve with less than 4,320 points on 31 DEC 2017, are considered eligible to opt-in. Eligible service members will receive notification in the coming weeks by email, text and phone through the Coast Guard’s Alert Warning System confirming eligibility. The notifications will continue until members acknowledge receipt via email. Eligible service members will have the opportunity to opt-in to BRS from 01 JAN – 31 DEC 2018 via Direct Access. It is important to note that if you are eligible and elect to “opt-in,” your election is IRREVOCABLE; it CANNOT BE CHANGED once made. ... A retirement calculator will be released in late February allowing eligible members to compare benefits under the current legacy retirement system against the BRS.

- A print-out of the Coast Guard’s “Self Service Opt-In Guide for Blended Retirement System” has screen-by-screen instructions for members who want to opt in to BRS through Direct Access. The guide notes that members who do not want to opt in do not have to do anything. It also notes that the “Submit button will only become active if you answer YES to all three questions. You can click Save at any part of this process and return at a later time.” If you answer all three questions “Yes” and click on “Submit,” you see a screen stating, “You have SUBMITTED your election to Opt-In to the Blended Retirement System. This election will be processed once your eligibility has been validated by the Pay & Personnel Center. You will be notified once this is processed.” The guide states that you also receive an email stating that PPC will notify you when your enrollment is approved and that you should complete a TSP election once notified.
- A print-out of a “Tasks” screen in Direct Access shows numerous links in columns. The links include “PCS eResumes,” where reservists can submit information and apply for Reserve jobs; the “Annual Screening Questionnaire” for reservists to report their readiness to deploy; “Home and Mailing Address” and “My Email Addresses,” where reservists can update their contact information; “Direct Deposit,” for changing one’s direct deposit account; “Allotments,” for making changes to voluntary deductions; and “My BRS Elections[:] This contains my Blended Retirement System Elections.”
- A print-out of the screen that appears in Direct Access if one clicks on the “My BRS Elections” link on the “Tasks” screen, which appears as follows:

My BRS Elections

You must answer all the questions below with YES in order for the enrollment to proceed. Once you have answered all the questions and select SUBMIT to enter the Blended Retirement System you will receive an email confirmation that your request is under review to ensure eligibility. Once the review of your request is complete, you will receive an email notification stating you are enrolled in the BRS or ineligible for the BRS.

1. I have completed the Blended Retirement System opt-in training and/or have acquired the necessary financial knowledge to make an informed decision to opt-in to the Blended Retirement System.
 - a. I acknowledge that I am making an informed decision as it relates to my BRS election. [drop-down menu]
2. I understand that once I make the election to opt in to the Blended Retirement System, this election cannot be changed and I will no longer be eligible for the legacy High Three Retirement System.
 - a. I acknowledge that I cannot change my election once submitted. [drop-down menu]
3. I understand that this decision to Opt-in to the Blended Retirement System is effective on the date that I submit this election.

I acknowledge that my election will be effective as of the date below. [drop-down menu]

BRS Entry Date: 12/04/2018

[Save]

[Submit]

- A print-out shows that if you click on “Save” instead of “Submit” your answers are saved but not submitted. The message states, “The Save was successful. Your answers have been SAVED. You must answer all questions and SUBMIT to Opt-In to the Blended Retirement System.”
- A print-out from PPC’s database shows that that the applicant submitted a BRS enrollment request on February 24, 2018; her eligibility was certified by a technician at PPC on February 26, 2018; and her enrollment was approved on February 28, 2018.
- An email from PPC dated December 6, 2018, states that the applicant already had a TSP account established when she enrolled in the BRS, so the system automatically provided the matching contributions. The email states that the applicant was contributing 6% of her basic pay to her TSP account.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 21, 2018, the Chair mailed the applicant a copy of the advisory opinion and invited her to submit a written response within thirty days. No response was received. On September 30, 2019, in a response to an inquiry from the Chair, the applicant stated that she had received the advisory opinion but had not noticed the invitation to respond and that she still wanted the requested relief.

APPLICABLE LAW AND POLICY

Under 10 U.S.C. § 12731, a reservist may enter retired status after performing “at least 20 years of service computed under section 12732 of this title” and may begin receiving retired pay upon attaining a certain age:

(f)(1) Subject to paragraph (2), the eligibility age for purposes of subsection (a)(1) is 60 years of age.

(2)(A) In the case of a person who as a member of the Ready Reserve serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C), below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.

Title 10 U.S.C. § 12732(2) concerns the computation of years of service for the purpose of determining a reservist’s entitlement to retired pay based on 20 years of service after July 1, 1949:

Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of--

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

(C) Points at the rate of 15 a year for membership--

(i) in a reserve component of an armed force,

(ii) in the Army or the Air Force without component, or

(iii) in any other category covered by subsection (a)(1) except a regular component.

(D) Points credited for the year under section 2126(b) of this title.

(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.

Title 10 U.S.C. § 12733 concerns the computation of years of service for the purpose of computing a reservist’s retired pay:

For the purpose of computing the retired pay of a person under this chapter, the person’s years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

- (1) The person’s days of active service.
- (2) The person’s days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.
- (3) One day for each point credited to the person under clause (B), (C), or (D) of section 12732(a)(2) of this title [drill points, membership points, a training course points], but not more than --
 - (A) 60 days in any one year of service before the year of service that includes September 23, 1996;
 - (B) 75 days in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes October 30, 2000;
 - (C) 90 days in the year of service that includes October 30, 2000, and in any subsequent year of service before the year of service that includes October 30, 2007; and
 - (D) 130 days in the year of service that includes October 30, 2007, and in any subsequent year of service.
- (4) One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title [funeral honors].

Title 10 U.S.C. § 12739 concerns the computation of retired pay for members of a reserve component who are retiring based on their years of service:

- (a) The monthly retired pay of a person entitled to that pay under this chapter is the product of--
 - (1) the retired pay base for that person as computed under section 1406(b)(2) or 1407 of this title; and
 - (2) 2½ percent of the years of service credited to that person under section 12733 of this title.
- • •
- (f) Modernized retirement system.--
 - (1) Reduced multiplier for full TSP members.--Notwithstanding subsection (a) or (c), in the case of a person who first performs reserve component service on or after January 1, 2018, after not having performed regular or reserve component service on or before that date, or a person who makes the election described in paragraph (2) (referred to as a “full TSP member”)--
 - (A) subsection (a)(2) shall be applied by substituting “2 percent” for “2 ½ percent”;
 - • •
 - (2) Election to participate in modernized retirement system.--
 - (A) In general.--Pursuant to subparagraph (B), a person performing reserve component service on December 31, 2017, who has performed fewer than 12 years of service as of December 31, 2017 (as computed in accordance with section 12733 of this title), may elect, in exchange for the reduced multipliers described in paragraph (1) for purposes of calculating the retired pay of the person, to receive Thrift Savings Plan contributions pursuant to section 8440e(e) of title 5.

(B) Election period.--

(i) In general.--Except as provided in clauses (ii) and (iii), a person described in subparagraph (A) may make the election described in that subparagraph during the period that begins on January 1, 2018, and ends on December 31, 2018.

• • •

(C) No retroactive contributions pursuant to election.--Thrift Savings Plan contributions may not be made for a person making an election pursuant to subparagraph (A) for any pay period beginning before the date of the person's election under that subparagraph by reason of the person's election.

(3) Regulations.--The Secretary concerned shall prescribe regulations to implement this subsection.

ALCOAST 357/17, issued on December 13, 2017, states the following regarding the BRS in pertinent part:

- A. COMDT COGARD WASHINGTON DC 161451 DEC 16/ACN 445/16
- B. COMDT COGARD WASHINGTON DC 241050 JAN 17/ACN 013/17
- C. COMDT COGARD WASHINGTON DC 101400 FEB 17/ALCOAST 034/17
- D. COMDT COGARD WASHINGTON DC 090903 JUN 17/ALCOAST 188/17
- E. COMDT COGARD WASHINGTON DC 191547 SEP 17/ALCOAST 278/17
- F. COMDT COGARD WASHINGTON DC 311100 OCT 17/ACN 120/17
- G. Use of Non-Government Educational Material and Presenters, COMDTINST 1740.3 (series)

1. This ALCOAST announces the BRS opt-in period for Active Component (AC) service members who will have less than 12 years of service (YOS) on or before 31 December 2017, based on their Pay Entry Base Date (PEBD), or Reserve Component (RC) members with less than 4,320 retirement points on or before 31 December 2017. This ALCOAST also supplements guidance, required training, and financial education opportunities noted in REFs (A) thru (G).

2. Eligible members electing to enroll in the BRS shall use Direct Access (DA) which will be available on 1 January 2018. Members unable to access DA should consult their unit admin or the Pay and Personnel Center (PPC) for assistance in making their election using a paper form available in the CG's online forms library. Though a manual BRS enrollment request is an alternative, every effort should be made to use DA to make a BRS election. Members desiring to opt-in to BRS should login to DA and follow these steps to navigate to the "My BRS Elections" page: Self-service>Employee>Tasks. After answering three questions affirmatively and clicking "Submit," members will receive an email from PPC acknowledging their request to elect the BRS. The CG BRS website hosts several opt-in guides and a short video showing the opt-in process. Once PPC validates eligibility, the member will receive a confirmation email documenting their enrollment. Individuals who make the election, but are found to be ineligible will also receive an email from PPC.

3. Members who are considering opting in to the BRS should also take into account the following tips:

A. The decision to enroll in the BRS is irrevocable and cannot be changed once made. This cannot be overemphasized!

B. Members who are considering opting in to the BRS are encouraged to make this decision earlier rather than later. Opting into the BRS earlier in 2018 allows members to maximize the Government's automatic contribution (one percent) and matching contributions (up to an additional four percent) to their Thrift Savings Plan (TSP). ...

C. In order to receive Continuation Pay (CP), an eligible member must enroll in the BRS and elect to receive CP before surpassing 12 years of service (YOS). ...

D. Members do not need to take any action to remain in their current legacy “high-3” retirement system. No opt-in eligible member will be automatically enrolled into the BRS.

E. Regardless of a member’s retirement system decision, individuals eligible for retirement after 20 years of qualifying service will receive a defined benefit annuity. Specifically, this means a payment for the remainder of their life. The annuity rate under BRS is equal to 2 percent times the member’s years of creditable service. Under the legacy “high-3” system, the annuity multiplier is 2.5 percent.

F. Currently, if a member making voluntary TSP contributions separates prior to 20 years of service, under the legacy “high-3” retirement system, they will leave with contributions and earnings from their TSP, if applicable, but without any Government provided contributions or retirement savings. Under BRS, separating members leave with their voluntary and Government contributions and earnings. ...

• • •

6. For members opting in to the BRS, TSP automatic and matching contributions will begin the pay period after choosing to enroll in the BRS. Even though members typically receive pay twice each month, military pay periods are considered monthly and implementation rules state contributions will start the pay period following BRS enrollment. For example, if a member elects the BRS on 1 January 2018, the enrollee can expect to see Government automatic and matching contributions on their mid-month pay slip in February 2018, the next pay period.

7. The opening of the opt-in period in 2018 marks a significant milestone, but not the end of the implementation process. Eligible members have the entire year of 2018 to opt-in to the BRS so education efforts will continue through the year to assist members in making this significant financial decision. To prepare for the BRS transition, eligible members must complete the mandatory Joint Knowledge Online (JKO) opt-in course. Designated members of the CG Auxiliary are available to present the JKO course in a group setting. ...

8. Commands have a steadfast duty to ensure members complete the mandatory JKO opt-in training, to provide supplemental financial education, and to allow the opportunity to enroll into the BRS using DA. Commands shall ensure all BRS opt in eligible members receive this ALCOAST as well as REFs (E) and (F). ... For the latest information including the Vice Commandant’s video, visit the BRS website at <http://www.dcms.uscg.mil/brs>.

9. Questions regarding the BRS or related items should be directed to COMDT (CG-1331) at HQS-[email address redacted].

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely filed within three years of the applicant’s discovery of the alleged error or injustice requiring correction.⁴

2. The applicant alleged that her enrollment in the BRS is erroneous and unjust because she accidentally opted in when she thought she was just taking more BRS training. 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 her rec-

⁴ 10 U.S.C. § 1552(b); 33 C.F.R. § 52.22.

ord, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.⁵ 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.”⁶

3. The applicant has not proven by a preponderance of the evidence that the Coast Guard erred by enrolling her in the BRS. The evidence of record shows that the applicant completed a form in DA to opt into the BRS on February 24, 2018. She had taken the mandatory training and seen the ALCOASTs and so knew that such a decision was irrevocable.⁷ As the JAG explained, the training course was offered by the Department of Defense in the JKO, which did not interact with any Coast Guard software programs. Therefore, members had to certify that they had taken the BRS course in JKO by logging into LMS. And there is no direct link from either JKO or LMS to the “My BRS Elections” screen in DA. To opt into the BRS, an eligible Coast Guard member had to log into Direct Access, click on “Self Service,” “Employee,” and “Tasks”; click on the “My BRS Elections” link on the Tasks screen to reach a screen titled “My BRS Elections”; answer three questions specifically about BRS in the affirmative; and then click on “Submit.” Because the applicant completed these steps on February 24, 2018, the Board finds that the Coast Guard committed no legal error by enrolling her in the BRS.

4. The fact that the Coast Guard did not commit an error by enrolling the applicant in the BRS does not preclude granting relief in this case, however, because the Board may correct errors and injustices even if they are not caused by the Coast Guard.⁸ Although the Coast Guard and the other military services have reasonably made BRS elections irrevocable, making an “election” means intentionally exercising a choice.⁹ In this case, there is some evidence that the applicant accidentally—rather than intentionally—opted into the BRS on February 24, 2018, because she promptly objected to her enrollment and has consistently claimed that it was accidental. But the applicant has not submitted sufficient evidence to support her explanation of how she accidentally opted into the BRS, as explained below:

a. Evidence of prompt objection: The applicant did not explain why she did not respond upon receiving PPC’s automatic acknowledgement email of her election to enroll on February 24, 2018. She did, however, submit emails proving that when she attended drills on the weekend of April 1, 2018, and received PPC’s congratulatory email about her enrollment in the BRS dated February 28, 2018, she promptly objected to her enrollment and tried to have it corrected. She also applied to the BCMR in June 2018 shortly after a technician at PPC told her that it was her only recourse. (Any significant

⁵ 33 C.F.R. § 52.24(b).

⁶ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁷ ALCOAST 222/16; ALCOAST 034/17; ALCOAST 357/17.

⁸ 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.”).

⁹ BLACK’S LAW DICTIONARY (2019) (defining “election” first as “[t]he exercise of a choice; esp., the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies”).

delay in contesting enrollment in the BRS would constitute strong evidence that the member's election was intentional and only belatedly regretted.)

b. Consistent allegation of accidental election: The applicant has consistently averred since she received PPC's notification of her election of the BRS that the election was an accident—made unknowingly—rather than an intentional decision that she later regretted. There is no persuasive evidence showing that she changed her mind about which retirement plan was in her best interest after making an intentional election.

c. Lack of evidence supporting plausible explanation: The applicant, however, has not supported her explanation of how she accidentally opted into the BRS with substantial evidence. She claimed that she opted into the BRS on February 24, 2018, because she was receiving harassing emails telling her to take BRS training that she had already taken; she had already declined to opt into the BRS many times; she received an email with a link to BRS training that was actually a link to the "My BCMR Elections" form in DA; and, to avoid being out of compliance and out of frustration, she completed the form in DA thinking it was just training and did not read it or realize that it was the opt-in form. However, the applicant has not shown that she received numerous harassing emails telling her to take BRS training or allowing her to opt into or decline the BRS. She has shown that she received two "USCG Alert and Warning" emails that notified her that she was potentially eligible for the BRS and that required her to acknowledge receipt of that information by replying "1." But instead of replying "1," she replied with words and so continued to receive the BRS eligibility notification emails.

The applicant told the Board that she received an email stating she needed to complete the on-line training or she would be out of compliance, and so on February 24, 2018, "[i]n an effort to stay in compliance, I completed the only on-line course that I could find that I had not yet completed. However, this course was an automatic opt in course after selecting yes on three questions. Granted, out of frustration to complete the additional training, I marked yes without reading the material." The applicant submitted only one email, dated November 29, 2017, showing that she was ever erroneously told that she had not yet taken the training and needed to do so. In that email, her department head forwarded an email from MEC H at Coast Guard Headquarters and told the applicant and other recipients that they had not taken the BRS training. But what MEC H had actually said is that because only 77% of members had completed the BRS training and only 67% had correctly responded to the USCG Alert and Warning emails with a "1," he was forwarding lists with the names of those who either had not taken the training or had not replied with a "1." Because the applicant had taken the BRS training on March 11, 2017, her name was presumably only on the latter list—those who had not replied "1" to the USCG Alert and Warning emails. But she must have failed to read MEC H's email because, if she had, she would have known to reply "1" to the latest USCG Alert and Warning email. Instead, at 10:43 a.m. on December 1, 2017, the applicant again replied to a USCG Alert and Warning email with words instead of a "1." And then at 11:45 a.m., she forwarded her department head's email to MEC H with the CGBI screenshot proving that she had taken the training on March 11, 2017.

The applicant did not submit MEC H's reply email or any evidence that MEC H, her department head, or anyone else told her in December 2017 or January or February 2018 that she had not yet completed the required BRS training. Therefore, there is insufficient evidence to support her claim that on February 24, 2018, she was so frustrated by "harassing emails" about needing to take BRS training that she accidentally logged into Direct Access to try to find the BRS training (rather than the JKO or LMS), clicked on "Self Service," "Employee," and "Tasks"; clicked on the "My BRS Elections" link to open a screen titled "My BRS Elections"; and then without reading the screen, answered the three questions about BRS in the affirmative and clicked on "Submit."

The applicant claimed that in 2017 she had "responded to the emails throughout the year that I indeed received the training and did not want to opt in the BRS." But she did not submit any 2017 emails in which she stated that she did not want to opt in, and in any case, there was no opportunity to opt into the BRS in 2017. The opt-in period was calendar year 2018, and to decline the BRS, a member was not required to do anything.¹⁰

The applicant told PPC on May 8, 2018, that she had received an email with a link to BRS training that was actually a link to the "My BCMR Elections" form in DA. Therefore, on February 24, 2018, to avoid being out of compliance and out of frustration, she clicked on the link and completed the form in DA while thinking it was just training and did not read it or realize that it was the BRS opt-in form. The applicant did not submit any email with a link to the "My BCMR Elections" form in DA, however. The links in the emails she submitted go to the Coast Guard's general BRS information site (<https://www.dcms.uscg.mil/brs>).

5. Therefore, the applicant has not submitted sufficient evidence to persuade the Board that her explanation of how she accidentally enrolled in the BRS is plausible. She claimed to have received many harassing emails, but she submitted only three dated prior to her election of the BRS on February 24, 2018, and only one of the three erroneously states that she had not taken the training. She claimed that she was so frustrated by harassing emails about the BRS training on February 24, 2018, that she accidentally completed the BRS election form in DA without reading the screen, but the only email about BRS training that she provided is dated November 29, 2017. She claimed that she had replied to many emails in 2017 stating that she did not want to opt in, but she did not submit any such emails. She told PPC that she was following an emailed link to a training course when she accidentally opted into the BRS, but she did not provide a copy of this email. Without some such evidence, the Board cannot conclude that the applicant accidentally opted into the BRS on February 24, 2018, by logging into Direct Access, clicking on "Self Service," "Employee," and "Tasks"; clicking on the "My BRS Elections" link on the Tasks screen to reach a screen titled "My BRS Elections"; answering three questions specifically about BRS in the affirmative; and then clicking on "Submit." She has not explained why she failed to object when she received the automatic election-acknowledgement email from PPC on February 24, 2018, and she could easily have changed her mind about her election by April 1, 2018, when she began to object.

¹⁰ ALCOAST 357/17.

6. Because the applicant has not submitted sufficient evidence to overcome the presumption of regularity and prove by a preponderance of the evidence that her election of the BRS on February 24, 2018, was accidental, as explained above, and because the Coast Guard repeatedly reminded members that such an election would be irrevocable, the Board cannot conclude that her enrollment in the BRS by the Coast Guard was erroneous or unjust.¹¹ Accordingly, the applicant's request that the Board reverse her election of the BRS should be denied.

7. The applicant mentioned numerous emails in her application to the Board that she did not submit copies of. Her case will be reconsidered if she submits evidence (e.g., the missing emails) supporting her explanation of how she accidentally opted into the BRS.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹¹ *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (finding that for the BCMRs, "injustice" is sometimes defined as "treatment by the military authorities that shocks the sense of justice but is not technically illegal.").

ORDER

The application of LCDR [REDACTED], USCGR, for correction of her military record is denied.

October 4, 2019

