

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-008

████████████████████
██████████ SN/E-3

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 October 17, 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, a seaman who enlisted on active duty in the Coast Guard on August 9, 2016, asked the Board to correct his record to show that he retained his “legacy retirement plan” and opted out of the new Blended Retirement System (BRS).¹ He stated the following (capitalization altered):

The BRS training taken online, training give in basic training, and training taught by Sector to our unit was misleading, was not transparent, and was not reflective of what the blended retirement system really is. Opting into the BRS is just opting into TSP while throwing away your legacy retirement plan. If I wanted to opt into TSP I could have done it before opting into the BRS; therefore, it was just a scam to get me off the legacy plan.

¹ For active component members accessed after September 7, 1980—i.e. the “legacy plan”—their retired pay is normally calculated by multiplying their “retired pay multiplier” by the “high 36-month average” of their base pay. 10 U.S.C. §§ 1401, 1407. The “retired pay multiplier” of members of an active component who retire based on their years of service is normally calculated by multiplying their years of creditable service by 2.5%. § 1409(b)(1). But under the BRS, members accessed after January 1, 2018, or members 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) have their “retired pay multiplier” calculated by multiplying their years of creditable service by 2.0%. § 1409(b)(4)(A). Regarding such elections, 10 U.S.C. § 1409(b)(4)(B) states that “a member of a uniformed service serving on December 31, 2017, who has served in the uniformed services for fewer than 12 years as of December 31, 2017, may elect, in exchange for the reduced multipliers described in subparagraph (A) for purposes of calculating the retired pay of a member, to receive Thrift Savings Plan contributions pursuant to section 8440e(e) of title 5.”

VIEWS OF THE COAST GUARD

On May 20, 2019, 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 noted that under the “Legacy” or “High Three” plan, a member must serve at least 20 years to receive any benefit, but under the BRS, TSP savings automatically “vest with the member.”

The JAG stated that as of January 1, 2018, all newly accessed members fall under the BRS, but active duty members who, like the applicant, have fewer than twelve years of service and reservists with fewer than 4,320 retirement points as of December 31, 2017, were eligible to opt-in to 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-in” to 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. ALCOAST 034/17, which announced training plans, also warned members that elections to opt in would be irrevocable. As part of the implementation, all members were required to complete the “BRS Opt-In Training Course” in 2017 and then certify that they had taken the course in a separated system. The JAG explained that the course was available through the DoD Joint Knowledge Online (JKO) Learning Portal, which “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. The Coast Guard published guidance on how to take the training and how to certify completion of the training, and all new members in training programs were also provided training, which was essentially the same training that eligible members received on the JKO website.

The JAG stated that to opt-in to BRS, members had to access the “My BRS Elections” tab in Direct Access (DA), a separate, Coast Guard IT program. Members had to answer three questions affirming that they had taken training, that the election was irrevocable, and that the election would be effective as of the day it was submitted and then click “Submit” to opt-in to the BRS. The applicant completed these opt-in procedures on September 21, 2018.

The JAG argued that the applicant had “failed to provide any evidence the Coast Guard committed an error in the processing of his election to ‘opt-in’ to the BRS.” His allegations that the training was misleading are “without merit.” The JAG stated that the BRS Opt-In Training Course provided by the Department of Defense through the JKO is a 90- to 120-minute training that was

vetted for errors or inconsistencies and designed to be informative, transparent, and a concise explanation of BRS and how it differs from Legacy. The advantages and disadvantages of both retirement options were explained in the trainings, though no advice was given as to which plan a service member should select because that decision was dependent upon different circumstances particular to each service member. All service members were instructed that they must decide for themselves what is the best tax and retirement planning for them.

Regarding the applicant’s complaint that he had been “scammed,” the JAG stated that the Coast Guard “has no vested interest in what a service member chooses to do as it relates to their tax and retirement planning. The Coast Guard, DoD, and United States Government wanted to ensure that service members were planning for their financial future, which is a purpose of the BRS.” The JAG pointed out that the applicant did not provide evidence of any “scamming,” did not show how he would be harmed by his election, and admitted that he had taken the training, which was the same training available to all personnel. He also had access to financial counselors, twelve months (all of calendar year 2018) in which to make his decision, and a retirement calculator that allowed members to compare benefits under the legacy retirement system and the 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 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-in to 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 alleged that the applicant’s election of the BRS was apparently “the result of his own carelessness or thoughtlessness” but it was not the result of a Coast Guard error or injustice.

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.” 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 opt-in and returning the applicant 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 his TSP account by the government be recouped.

The JAG stated that although this applicant complained about his opt-in election about two weeks after he was notified that his election had been approved, “the Coast Guard envisions future cases where members who could have been participating for years” seek relief. As a result of his election to opt-in, the applicant “has been receiving government contributions to his TSP account since September 2018 when he opted-in.”

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-in to 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 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.

- ALCOAST 188/17, issued on June 9, 2017, announced the “public launch” of the BRS comparison calculator that members should use to compare their benefits under the legacy system and the BRS.
- A print-out of Coast Guard BRS Opt-In & LMS Registration Guidance, published online by the Training Division of the Force Readiness Command, which explains how to take the BRS Opt-In Training course in JKO and how to verify one’s completion of the training in LMS.
- A “Coast Guard All Hands” article, written by a Coast Guard spouse and published on February 9, 2017, notes that the training program in JKO takes a couple of hours to complete, “but you can stop and go back later.” The article explains the four components of the BRS, tells the reader how to get financial counseling through the Coast Guard, and mentions the side-by-side comparison with the retirement calculator.
- A print-out from PPC’s database shows that that the applicant submitted a BRS enrollment request on September 21, 2018.

- 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.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 22, 2019, the Chair mailed the applicant a copy of the advisory opinion and invited him to submit a written response within thirty days. No response was received.

APPLICABLE LAW

Title 10 U.S.C. § 1409 concerns the “retired pay multiplier” for members of regular (non-reserve) components who are retiring based on their years of service:

- (a) Retired pay multiplier for regular-service nondisability retirement.--In computing--
 - (1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than--
 - (A) chapter 61 of this title (relating to retirement or separation for physical disability); or
 - (B) chapter 1223 of this title (relating to retirement for non-regular service); or
- • •
- (b) Percentage.--
 - (1) General rule.--Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of--
 - (A) 2 ½, and
 - (B) the member's years of creditable service (as defined in subsection (c)).
- • •
- (4) Modernized retirement system.--
 - (A) Reduced multiplier for full TSP members.--Notwithstanding paragraphs (1), (2), and (3), in the case of a member who first becomes a member of the uniformed services on or after January 1, 2018, or a member who makes the election described in subparagraph (B) (referred to as a “full TSP member”)--
 - (i) paragraph (1)(A) shall be applied by substituting “2” for “2½”;
 - (ii) clause (i) of paragraph (3)(B) shall be applied by substituting “60 percent” for “75 percent”; and
 - (iii) clause (ii)(I) of such paragraph shall be applied by substituting “2” for “2½”.
 - (B) Election to participate in modernized retirement system.--Pursuant to subparagraph (C), a member of a uniformed service serving on December 31, 2017, who has served in the

uniformed services for fewer than 12 years as of December 31, 2017, may elect, in exchange for the reduced multipliers described in subparagraph (A) for purposes of calculating the retired pay of the member, to receive Thrift Savings Plan contributions pursuant to section 8440e(e) of title 5.

(C) Election period.—

(i) In general.--Except as provided in clauses (ii), (iii), (iv), and (v), a member of a uniformed service described in subparagraph (B) may make the election authorized by that subparagraph only during the period that begins on January 1, 2018, and ends on December 31, 2018. ...

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

(E) Regulations.--The Secretary concerned shall prescribe regulations to implement this paragraph.

(c) Years of creditable service defined.--In this section, the term "years of creditable service" means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member).

Title 5 U.S.C. § 8440e provides the following TSP rules for members of the uniformed services:

(a) For purposes of this section--

- (1) the term "basic pay" means basic pay payable under section 204 of title 37;
- (2) the term "full TSP member" means a member described in subsection (e)(1);
- (3) the term "member" has the meaning given the term in section 211 of title 37; and
- (4) the term "Secretary concerned" has the meaning given the term in section 101 of title 37.

(b)(1) Any member eligible to participate in the Thrift Savings Plan by virtue of section 211(b) of title 37 may contribute to the Thrift Savings Fund....

• • •

(e) Modernized retirement system.--

(1) TSP contributions.--Notwithstanding any other provision of law, the Secretary concerned shall make contributions to the Thrift Savings Fund, in accordance with section 8432 (except to the extent the requirements under such section are modified by this subsection), for the benefit of a member--

(A) who first enters a uniformed service on or after January 1, 2018; or

(B) who--

(i) first entered a uniformed service before January 1, 2018;

(ii) has completed fewer than 12 years of service in the uniformed services as of December 31, 2017; and

(iii) makes the election described in section 1409(b)(4)(B) or 12729(f)(2) of title 10 to receive Thrift Savings Plan contributions under this subsection in exchange for the reduced multipliers described in section 1409(b)(4)(A) or 12739(f)(1) of title 10, as applicable, for purposes of calculating the retired pay of the member.

(2) Maximum amount.--The amount contributed under this subsection by the Secretary concerned for the benefit of a full TSP member for any pay period shall not be more than 5 percent of the member's basic pay for such pay period. Any such contribution under this

subsection, though in accordance with section 8432 as provided in paragraph (1), is instead of, and not in addition to, amounts contributable under section 8432 as provided in section 8432(c).

(3) Timing and duration of contributions.--

(A) Automatic contributions.--The Secretary concerned shall make a [1%] contribution described in section 8432(c)(1) under this subsection for the benefit of a member described in paragraph (1) for any pay period

(B) Matching contributions.--The Secretary concerned shall make a [up to 4%] contribution described in section 8432(c)(2) under this subsection for the benefit of a member described in paragraph (1) for any pay period

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. ...

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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 on the basis of 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.²

2. The applicant alleged that his enrollment in the BRS is erroneous and unjust and a result of a "scam to get [him] off the legacy plan." 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 his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³

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

³ 33 C.F.R. § 52.24(b).

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.”⁴

3. According to the applicant, he took the training on the BRS provided by the Department of Defense and the Coast Guard and intentionally opted into the BRS but then decided that the BRS was a “scam” and regrets his decision. The applicant has not shown that any of the BRS training he received was erroneous or misleading, however. He has not overcome the presumption of regularity or proven by a preponderance of the evidence that he was tricked or scammed into opting into the BRS. He alleged that the BRS is a scam because he could have enrolled in TSP under the legacy plan and retained entitlement to the 2.5% multiplier,⁵ but under the legacy plan, there are no “matching” TSP contributions from the government.⁶ And because more than 80% of all members of the military are discharged before they become eligible for a 20-year military retirement,⁷ under the legacy plan, more than 80% of active duty servicemembers receive neither a pension nor matching TSP contributions from the government. Under the BRS, a member gets a lower retired pay multiplier of 2.0% if he does manage to earn a 20-year retirement, but in the meantime, he can receive up to 4% more income annually in the form of matching TSP contributions from the government,⁸ which he gets to keep regardless of whether he serves 20 years. The applicant has not proven by a preponderance of the evidence that the BRS is a “scam,” and the Board notes that he did not respond to the Coast Guard’s advisory opinion explaining the BRS.

4. The applicant has not proven by a preponderance of the evidence that the Coast Guard erred in enrolling him in the BRS. As the Coast Guard noted, BRS training in the JKO was mandatory and to opt into the BRS, an eligible 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 “Submit.” And the ALCOASTs and training repeatedly noted that opting into the BRS in DA would be irrevocable.⁹ Therefore, the preponderance of the evidence shows that the applicant knew when he opted into the BRS on September 21, 2018, that he was making an irrevocable decision.

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ 10 U.S.C. § 1409(b).

⁶ 5 U.S.C. §§ 8432, 8440e.

⁷ Jowers, Karen, “Not Many Troops Are Opting into the New Retirement System,” MILITARY TIMES (Oct. 22, 2018) (“According to the Defense Department, currently 81 percent of service members in the legacy retirement system separate with no government retirement benefit.”), available at <https://www.militarytimes.com/pay-benefits/2018/10/22/not-many-troops-are-opting-into-the-new-retirement-system> (last viewed on Sept. 27, 2019); Military Times Staff, “Your 2019 Guide to Military Pay and Benefits,” MILITARY TIMES (June 9, 2019) (“Historically, only 19 percent of active duty service members and 14 percent of Guard and Reserve members serve long enough to get retirement benefits.”), available at <https://www.militarytimes.com/pay-benefits/2019/06/09/your-2019-guide-to-military-pay-and-benefits/#retirement> (last viewed on Sept. 27, 2019).

⁸ 5 U.S.C. § 8440e(e).

⁹ ALCOAST 222/16; ALCOAST 034/17; ALCOAST 357/17.

5. The fact that the Coast Guard did not commit an error by enrolling the applicant in the BRS does not preclude granting relief because the Board may correct errors and injustices even if they are not caused by the Coast Guard.¹⁰ Although the Coast Guard and the other military services have reasonably made BRS elections irrevocable, making an “election” means intentionally exercising a choice.¹¹ Therefore, if the applicant’s election of the BRS on September 21, 2018, was not intentional but accidental, it would be unjust. The preponderance of the evidence shows, however, that the applicant opted into the BRS intentionally on September 21, 2018. The fact that the Board received his application in October 2018 shows that he contested his enrollment in the BRS promptly, but the applicant’s statements show that he intentionally opted into the BRS on September 21, 2018, and only thereafter came to regret his decision when he decided that the BRS was a scam. Because the preponderance of the evidence shows that the applicant intentionally opted into the BRS on September 21, 2018, after taking the BRS training, the Board finds that his enrollment in the BRS does not constitute an injustice because it was not an accident.¹²

6. Accordingly, the applicant’s request should be denied because he has not overcome the presumption of regularity or proven by a preponderance of the evidence that his election of the BRS on September 21, 2018, was erroneous or unjust.

(ORDER AND SIGNATURES ON NEXT PAGE)

¹⁰ 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.”).

¹¹ 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”).

¹² *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 SN [REDACTED], USCG, for correction of his military record is denied.

October 4, 2019

