

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-022

████████████████████
██████████ CDR

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 25, 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 Reserve commander on active duty, asked the Board to correct her record to show that she did not opt into the new Blended Retirement System (BRS) and remained on the “legacy plan.”¹ She stated the following:

Due to an error when entering information into Direct Access, I inadvertently enrolled into the Blended Retirement System (BRS) when it was not my intent to do so. I respectfully request to be dis-enrolled from BRS and to have my Legacy Retirement reinstated retroactively. If my retirement does not return to the Legacy Retirement, it will cause complete financial devastation for me

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.”

and my two children/family. When I was informed of this potential option over a year ago, I did not think I was eligible as I had 18 yrs in service. I was properly informed that this was never a good financial decision or option. The BRS is only beneficial to those members that have many more years to serve in which they can max out their Thrift Savings Plan (TSP) and have the government match that amount. Due to my already 18 years of service as an officer and a reservist, my chances of serving over 20 [more] years are very slim and [I] will be retiring in the next couple of years. As soon as I was notified of this error, on email dated 9/10/2018, I immediately contacted the originator to try to rectify the mistake. I exhausted all administrative remedies, corrective procedures and appeals provided in regulations that were provided to me, as documented in emails provided [with the application], before I was told to go through the BCMR process. I respectfully request for this error to be rectified via the BCMR process and my legacy retirement be retroactively reinstated. This BCMR process is my last hope in being able to rectify this mistake, so that I may be able to provide for my family via the proper legacy retirement that I have financially planned for, worked for and deserve.

While in Direct Access (DA), I inadvertently clicked on the BRS page while I was working on a number of very important issues & on the phone. I thought I was clicking my Annual Screening Questionnaire (ASQ) so I would be able to receive Long Term orders for new fiscal year. The ASQ is a very simple form which states that a member is available to be recalled for active duty. The ASQ on the DA site is right below the BRS page. I didn't see which page opened up when I clicked on ASQ link, and began clicking buttons, stating yes, while I was on a very important phone call. Once I realized that this was not the typical ASQ form, I re-click on the ASQ link right away and the proper ASQ form appeared. I honestly didn't even know what form the other one was, because if I did I would have contacted someone right away. Somehow DA submitted the form, without my knowledge. I never in my life thought I could have pressed on something that could be this detrimental to my retirement and family.

On a subsequent submission, the applicant stated that she would lose approximately \$424,383 in retirement pay under BRS, which would be an "extreme financial injustice." She also added the following comment:

I have had only one career in my lifetime, which has been the United States Coast Guard. I have spent 20 years going on and off active duty and did not hold another civilian long-term job. I do not have another retirement that I can lean on as well. I currently have a young family, and at age 46, soon to be retiring from the US Coast Guard Reserves, would cause extreme financial hardship. I am at the tail end of my CG officer career and will not have much more opportunities to serve my country in my Coast Guard capacity. In less than 2 years, I will be looked at every year to see if I will be continued to be able to serve over 20 years. I will not have the option to contribute to the TSP, and I only contributed a very small percent of my salary over the years to it as well. I highly have relied on my over 12 years of active duty service and my almost 7 years of reserve service to sustain me and my family in my retirement. I respectfully request that the Board of Military Corrections retroactively reinstate my retirement to the legacy retirement so that I may be able to provide for my family as I had financially planned for, worked for and deserve.

To support these allegations, the applicant submitted the following:

- On September 10, 2018, while the applicant was serving on extended active duty, a BRS auditor at PPC sent her an email stating,

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. Infor-

mation 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.

- Also on September 10, 2018, the applicant engaged in a lengthy exchange of instant messages with the auditor at PPC who had sent her the congratulatory email:

Applicant: “I need to speak with you. Please I have called you three times now. I was inadvertently opted in for the BRS. I never intended this.”

Applicant: “I hit it by mistake when I was trying to do my ASQ and once I realized I was not on the ASQ page I got off the page but somehow it submitted it for me. This is NOT ok. I need to get out of this BRS. I am 18 years in reserve and active service and was told I was not eligible for this anyway.”

Applicant: “PLEASE I NEED YOUR HELP. I will lose tons of money for my family if I stay in this. Can you please call me at [redacted].”

Auditor: “I’m currently teleworking now from home. I will present this to Advancement team. As long as we get this resolved before the end of the month, you can be disenrolled.”

Applicant: “PLEASE DISENROLL ME. THIS WOULD BE DETRIMENTAL.”

Auditor: “I understand your dilemma but I’m unable to [do] anything right at this point.”

Applicant: “Please then tell me what is the process in order for me to undo the BRS. My email is not working otherwise I would have emailed you.”

Auditor: “I just research[ed] your job data and you currently have 3904 points for reserve. In that case you were eligible to Opt-in. I’m trying to contact my supervisor right now but this may be a BCMR issue.”

Applicant: “YES, I did not know that I had that option so I didn’t even think I would have anything in my power to elect to this.”

Applicant: “I was trying to fill out my Annual Screening Questionnaire while working on two other items. This opened and I started clicking without reading bc I have filled out my ASQ for 18 years and had no idea what I was hitting until I realized it was not the familiar form. I tried to click out of it and it moved to the actual SQ and I thought nothing happened and I did not even realize what page I was one on. Please contact your supervisor and let me know. I hope there is a much simpler solution than BCMR.”

Applicant: “This form was way too simple to be confused by anyone, and with the way our computers have been, they have been so slow and not working properly, it was super simple to hot boxes without intending this CORRECTION; HIT BOXES.”

Auditor: "I'll contact you as soon as I talk to him."

Applicant: "Thank you very much."

Applicant: "If you listen to my message when you get back to your desk you will hear me saying that I have no idea what is the BRS, bc it was my understanding that I could never have opted for this. So I NEVER thought in my entire life that it would be on DA and right next to my ASQ. I honestly have FORGOTTEN about this retirement system bc I always thought I was NEVER eligible."

Auditor: "For reservist, 4320 points is the limit for eligibility."^[2]

Applicant: "Well, either way I never wanted this EVER."

Auditor: "I understand."

Applicant: "Thank you and I am sorry for my incessant IMing and phone calls, but when I realized what is the BRS and that I could have somehow inadvertently did something on Direct Access, I immediately started to call you and my email is still not working. Can you please start an email trail for this issue? Thank you again. Losing over \$300,00 [sic] in retirement money is way too much for a slight error."

Auditor: "No problem, I will CC you on all email traffic."

Applicant: "Thank you again. Can you please IM me as well, if you receive a response from your boss also. I cannot count on my email working."

Auditor: "I just received an IM from my supervisor and he says that because of how the 3 questions are set up in Direct Access, the decision to Opt-in is irrevocable when the submit button is pressed. A BCMR is required in order for us to dis-enroll you at this point. I will send this in an email with my supervisor's email attached."

- In the auditor's follow-up email, also dated September 10, 2018, he stated that he understood that opting in to the BRS was not her intention. But because she answered "yes" to the three questions and clicked "submit," for the problem to be rectified, she would have to ask the BCMR for a correction.
- On September 14, 2018, the applicant replied and thanked the auditor for his help. She asked if his boss had said whether the problem could be rectified without a BCMR.
- On September 17, 2018, the auditor's supervisor at PPC advised her that he had contacted the legal office and was awaiting a decision. "They are currently looking at a BCMR for another member at the same time they are reviewing your request and the law to see if

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 retired pay pursuant to 10 U.S.C. §§ 12733, 12739.

one person can reverse your election. My impression is that they would like to reverse yours without the BCMR. I hope to hear back this week.”

- The applicant replied the same day and noted that she had

never experienced something that is THIS important to be on DA in which I can change BUT not undo. I was working on a couple of very important things that day and was on the phone while supposedly clicking my ASQ so I can get Long Term orders done for the new fiscal year. The ASQ on DA site is right below the BRS page. I didn't see which page opened up when I thought I hit ASQ, and started clicking buttons while I was on a very important phone call. Once I realized that this was not the typical ASQ form, I re-clicked on the ASQ right away and the proper ASQ form appeared. I honestly didn't even know what form it was as, never even realized what that page was; but somehow it submitted it! I never in my life thought I could have pressed on something that could be this detrimental. I thank you and legal for continuing to work this process.
- In response, the auditor's supervisor promised to get back to her as soon as possible with the answer from the legal office.
- On September 19, 2018, the auditor's supervisor advised her that her election could not be changed by the Coast Guard but that the BCMR has the authority to direct the change. He provided the BCMR's contact information.
- The applicant replied the same day, stating that her mistake would be devastating for her family, that she had not slept well since she learned about it, and that she had not even known she was eligible, and that she had never even wanted to enroll because it would never have been a good option for someone who would retire within a couple of years. She stated that putting the BRS form in DA was not a "safeguard" because the other forms in DA are changeable and she had never encountered an irrevocable one in DA before. She also stated that putting the BRS link right beside the AQS link was not safe because she had clicked yes and submitted the BRS form before she had realized that it was not the AQS, and on the AQS form, it's easy to change your answers. The auditor replied on September 20, 2018, stating that although he wished he could reverse the decision, no one at PPC had the authority to correct her election and the legal office had determined that the only opinion was to ask the BCMR to change her election.
- The applicant also submitted an official PPC "trouble ticket" to document the issue and received a reply from PPC Customer Care on October 3, 2018, stating that the response she had received from the auditor's supervisor was the official answer, which could not be reversed.
- A print-out from the military retirement calculator shows that if the applicant remains in the BRS and has more than 20 years of service toward retired pay when she retires, beginning at age 55, her total retirement income through the BRS and TSP will be ten to fifteen thousand dollars less per year than her retirement income under the "legacy plan" would be; that the "present value" of her retirement under the BRS is more than \$200,000 less than under the legacy plan; and that if she lives to age 90, her total retirement income under the BRS will be \$424,383 less than under the legacy plan.

VIEWS OF THE COAST GUARD

On June 4, 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 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-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. 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-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 August 30, 2018, and received notification that her election had been approved by email on September 10, 2018, after which she tried to have her election reversed.

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 noted that the applicant stated that she had thought that she had opened the ASQ form and “started clicking without reading bc I have filled out my ASQ for 18 years and had no idea what I was hitting until I realized it was not the familiar form.” The JAG stated that the applicant’s “claim that location of the tabs or hyperlinks within DA to select either BRS or ASQ are near each other is correct,” but the two “forms are quite different from each other,” which “should have alerted Applicant that she was working in an area of DA she did not intend.”

The JAG stated that the applicant has not shown that the Coast Guard’s BRS policies constitute an injustice, and 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 JAG stated that 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. In addition, 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 claimed that under the BRS, the applicant will receive a retirement, but “it will be less than she anticipated. A hardship would be if she were no longer going to receive a retirement at all.”

The JAG noted that the applicant admitted in her application that she marked “yes” on the DA BRS form without reading the questions, and so her election to opt-in “was the result of her own negligence” and she “is entitled to no relief.” The JAG stated that she had to answer “yes” to three questions and click on “submit” to opt in, and “[t]here is nothing else the Coast Guard could have done to preclude a service member from accidentally opting in, nor has Applicant identified any deficiencies in the opt-in process.”

The JAG also stated 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.” Because of her election to opt in, the applicant “has been receiving government contributions to her TSP account since February [sic] 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 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 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-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 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. Service members on active duty who will have less than 12 years of service, or reservists 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 into BRS through Direct Access. It begins with the "Tasks" screen listing "My BRS Elections" as well as "Annual Screening Questionnaire," "PCS eResumes," "Home and Mailing Address," and "My Email Addresses," et cetera. The instructions for the "My BRS Elections" screen note that members who do not want to opt in do not have to do anything and 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." The BRS election screen 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 screenshot of the AQS shows that it begins with four short paragraphs followed by two yes/no questions: (1) " I understand and accept I do not understand or do not accept"; (2) " Yes – I consider myself to be a first responder No – I do not consider myself to be a first responder." These two questions are followed by a drop-down menu to show one's recall status and then options to "Save," "Next tab," or "Refresh."
- The applicant's Reserve Points Statement shows that as of March 20, 2019, she had accumulated 4,144 points and that she had been serving on active duty for over a year, earning one point per day and 15 membership points. Therefore, she had had approxi-

mately 3,884 points as of August 30, 2018, and was eligible to opt into BRS as a reservist because she had fewer than 4,320 points. The statement also shows that as of August 30, 2018, the applicant had earned at least 18 creditable years for the purpose of entitlement to retire in that she had earned at least 50 points in each of those years.

- A print-out from PPC's database shows that the applicant opted into BRS enrollment on August 30, 2018.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 5, 2019, the Chair mailed the applicant a copy of the advisory opinion and invited her to submit a written response within thirty days. The applicant was granted an extension of the time to respond and responded on September 3, 2019.

The applicant stated that she believes that the Coast Guard erred by not better protecting their members to ensure that no unintentional elections into the BRS were made since such elections were going to be irrevocable. She noted that the Coast Guard is much more careful when having members fill out life insurance forms, reenlistment forms, and career intentions worksheets, for which members receive advice, assistance, and/or witnesses' signatures. Yet even though they expected a certain number of erroneous or unintentional elections, they did not take the same precautions as with most other important forms. Moreover, except for the BRS election, every other type of entry in DA is fixable through submission of a "trouble ticket." The applicant also noted that if the Coast Guard had fixed her retirement election timely on September 10, 2018, there would have been no "unwinding" of TSP contributions and interest to do.

The applicant also stated that although DA was supposed to show a confirmation message and send members an immediate email acknowledging their BRS election, on August 30, 2018, when she accidentally submitted the election, those features were disabled because of the recent migration to Windows 10.1. Instead, the BRS page was "spinning," so when she clicked the ASQ link, she had no idea that her entries on the prior page had been saved and submitted.

The applicant stated that she did not knowingly opt into BRS and then change her mind; she accidentally opted in and was unaware of it until she received PPC's congratulatory email on September 10, 2018, at which point she began incessantly trying to get the mistake fixed. She explained that on August 30, 2018, she was multi-tasking. She had to complete her ASQ so that her long-term active duty orders could be finalized by August 31, 2018. Without the orders, her pay could not have been properly submitted before September 1st, which would have caused a break in pay between the fiscal years. She could not afford a break in pay because she was "living nearly pay check to pay check" and need to pay the rent and support her family. But she also received a tasking that she had to complete before leaving for the day and she needed to pick up her child from the daycare by 5:00 p.m.—in less than an hour. Moreover, because she had been in the Individual Ready Reserve in February 2017 (rather than on active duty or in the Selected Reserve), she had not received ALCOAST 034/17 and was unaware that the BRS opt-in process had been put in DA. She entered DA while she was on a phone call only to complete her ASQ and clicked "yes" on the questions on the screen so that she would be eligible for duty before she realized that it was not the ASQ screen. Once she realized she was on the wrong screen, she

clicked on the upper “back” arrow to go back to the Tasks screen, and she does not recall clicking on the “Submit” button.

The applicant stated that because, in 2018, she would be eligible to retire in less than two years, there would be no rational reason for her to opt into the BRS. As a Reserve commander at age 46, she expected to be forced to retire upon attaining eligibility in 2020. Therefore, by intentionally electing BRS she would have been giving up one-fifth of her retirement multiple (from 2.5% to 2.0%) and gaining only two years’ worth of matching TSP contributions. She knew this because she had taken the BRS training and used the online calculator and knew that opting into the BRS was definitely not in her interest. She stated that her accidental election will cause her severe financial hardship if not corrected by the BCMR. And because she will be relying on her Reserve retirement, the loss in retired pay will be a financial catastrophe for her. She explained that she had originally intended to spend her military career as a JAG on active duty, but during her final year of law school in 2000, her husband was killed in a car accident and she required multiple reconstructive surgeries. With PTSD and very limited use of her right arm, she was unable to pass the bar exam and was forced into reserve status, but she tried to do as much active duty as she could while also raising a family.

To support these allegations, the applicant resubmitted some documents and submitted the following new evidence:

- A print-out of the applicant’s ASQ in Direct Access shows that she last updated her ASQ at 4:31 p.m. on August 30, 2018.
- Copies of the applicant’s August and September 2018 Leave and Earnings Statements show that although she had already been contributing to TSP, matching government contributions began in September 2018.
- A yeoman first class/E-6 in the Reserve who has worked at PPC since 2004 stated that there “were many discussions with the implementation of BRS into Direct Access.” There were discussions about whether the election should be made on paper or in DA and about what would happen if someone made the election by mistake. Some at PPC believed even in 2018 that such a mistake could be corrected before it was “finalized.” The yeoman noted that at the time, many active duty members and reservists were confused about who would be eligible to opt into BRS. Many believed that anyone with more than 12 years of active duty would not be eligible because it was said that you would be “eligible with less than 12 years of service (or 4320 point).” The yeoman stated that given the applicant’s years of service, the law should have made her ineligible for BRS despite her points total.
- A Reserve lieutenant wrote that reservists do not have access to DA on a daily basis and so administering tasks in DA has never been easy. There are “constant changes, new formats, and new policies and procedures” effected without much guidance. ALCOASTs are available to reservists only through the CG Portal, for which you need a CAC card and a CG Workstation or VDI, so reservists can go months without seeing an ALCOAST even if CG Portal is working, and there are many outages. The lieutenant said that

because reservists often do not receive ALCOASTs in a timely manner, they may be unaware of important information.

- A captain/O-6 who an Area C4IT Division Chief stated that in 2018 the Coast Guard completed the migration to Windows 10.1 and prepared for the 10.3 update. Windows 10.1 allowed members to access the internet via Internet Explorer or Microsoft Edge, and the latter was the default so “users had to know to switch over to Internet Explorer to use .mil websites.” And if the applicant accessed DA through Microsoft Edge, that “may have led to her not receiving or seeing a window open or display” or she could have inadvertently clicked on BRS, instead of ASQ. The captain further stated that the DA maintenance window was every Thursday from 2100 to 2300 Eastern Standard Time, and maintenance was scheduled for Thursday, August 30, 2018.

The captain stated that the Coast Guard was also experiencing severe email issues in August and September 2018 and “it is highly plausible the member did not receive the email” that was supposed to notify her that she had opted into the BRS. Because of these problems, PPC discontinued trouble-ticket email receipts on September 4, 2018.

The captain noted she had not thought that the applicant was eligible for BRS because of her years of service and, even if she had been and had wanted to opt in, she would have done so on the first of the month—not the 30th—as instructed in ALCOAST 124/18. She stated that she does not believe that the applicant intentionally opted into the BRS. She believes that “her election was made erroneously and complicated with our antiquated network and systems.” The captain submitted the following documents to support her statements:

- An FAQ answer created on July 11, 2018, explains that members must use Internet Explorer when accessing .mil websites because Microsoft Edge is incompatible with legacy technologies, which may affect website functionality.
- An Area Cyberspace Domain Readiness Report dated August 30, 2018, states that an “Exchange database failure is impacting Outlook email” and that the “CG CYBER Network Operations & Security Center ... is currently migrating the affected databases to resolve the issue.”
- A CG Portal calendar shows that DA maintenance was scheduled for Thursday, August 30, from 9:00 to 11:00 p.m.
- A PPC report dated September 4, 2018, states that email receipts for trouble-tickets had been discontinued because “[r]ecent network changes do not allow the auto-generation of emails back to the submitter.”
- ALCOAST 124/18, issued on April 5, 2018, notes that if a member opts into BRS on any day other than the first of the month, the government’s automatic matching contributions would not begin until the next month.

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:

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 calculating 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 earn-

ings 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 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.³

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁴

3. The applicant alleged that her enrollment in the BRS is erroneous and unjust. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in her record, 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 pre-

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

⁴ *Armstrong v. United States*, 205 Ct. Cl. 754, 764 (1974) (stating that a hearing is not required because BCMR proceedings are non-adversarial and 10 U.S.C. § 1552 does not require them).

⁵ 33 C.F.R. § 52.24(b).

sumes that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”⁶

4. The record shows that the applicant thought she was not eligible to opt into BRS in 2018 because she had more than 18 years of satisfactory service toward retirement eligibility, pursuant to 10 U.S.C. § 12732. She was eligible under the BRS statute, 10 U.S.C. § 12739(f), however, because as of December 31, 2017, she did not yet have 12 years of creditable service toward the computation of her retired pay under 10 U.S.C. § 12733. To have 12 years of service for the purpose of computing the amount of one’s retired pay, a reservist must have at least 4,320 points because 4,320 divided by 360 is 12.⁷ The Board notes that the applicant appears to believe that her Reserve retired pay will be calculated based on her 20 years of satisfactory service under § 12732, because she entered 20 years, 1 month of service in the retired pay calculator, as shown on her print-out. But her retired pay will be calculated—whether she is retired under the legacy plan or under the BRS—based on her years of service as determined by her points total divided by 360, in accordance with 10 U.S.C. §§ 12733 and 12739. The Board recommends that the applicant seek financial advice on this point.

5. The applicant has not proven by a preponderance of the evidence that the Coast Guard erred in enrolling her in the BRS. The evidence of record shows that while distracted by other work, the applicant mistakenly opted into the BRS on August 30, 2018. The fact that the Coast Guard could have been more careful in how it allowed members to opt into the BRS (which is hypothetically true of anything done by any agency) does not make the means by which it allowed eligible members to opt into the BRS erroneous or unjust. As the Coast Guard noted, 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 on “Submit.” And because such elections are irrevocable once submitted,⁸ the fact that the confirmation message and automatic email system may not have been working on August 30, 2018, does not make the applicant’s enrollment erroneous because even if those systems had been working, she would not have been able to revoke her election.

6. 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.⁹ Although the Coast Guard and the other military services have reasonably made BRS elections irrevocable, making an “election” means intentionally exercising a choice.¹⁰ And in this case, the Board is persuaded that the applicant did not intentionally exercise a choice (elect) to opt into the BRS on August 30,

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 10 U.S.C. § 12733.

⁸ ALCOAST 222/16; ALCOAST 034/17.

⁹ 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.”).

¹⁰ 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”).

2018. Three factors, taken together, persuade the Board that the applicant's election of the BRS that day was a genuine accident:

a. Evidence of prompt objection: First, the applicant submitted texts and emails proving beyond any doubt that as soon as she was notified by PPC that she had been enrolled in the BRS, she quickly and persistently contested the transfer and tried to have it corrected. She also applied to the BCMR as soon as she was told that it was her only recourse. (Any significant 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: Second, the applicant has consistently averred since PPC notified her of her "election" of the BRS that the election was an accident—made unknowingly—rather than a 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. Evidence supporting a plausible explanation: Third, the applicant has provided a plausible explanation of how she accidentally opted into the BRS. She has submitted documentation showing that she was working in DA in a rush at the end of her workday to complete her ASQ so that she could pick up her child from daycare by 5:00 p.m. and so that her active duty orders could be finalized the next day and she would have no break in service. She also noted that she was simultaneously talking on the telephone about an important work matter that she needed to finish before leaving for the day and accidentally clicked on the BRS link, instead of the ASQ link, and answered the questions assuming that she was answering ASQ questions.

7. Many thousands of eligible members either elected or did not elect the BRS in 2018, and the JAG stated 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." But to date only two other members have applied to the Board and shown that they promptly contested their transfer to the BRS in 2018. To date, no members have claimed to the Board that they were erroneously *not* enrolled in the BRS in 2018, and given the great extent to which the Coast Guard publicized the BRS and mandated Service-wide training on the BRS in 2017 and 2018, anyone who was eligible to opt into the BRS cannot reasonably claim not to have known about the opportunity to do so in 2018.

8. The applicant has overcome the presumption of regularity and proven by a preponderance of the evidence that she submitted an election to opt into the BRS unintentionally and by accident on August 30, 2018. Therefore, the Board finds that her election and enrollment in the BRS constitute an injustice¹¹ that should be corrected in the interest of justice.

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.").

9. As the JAG noted, to “unwind” the applicant’s transfer to the BRS, the Coast Guard must not only transfer her back to the legacy plan in her military records but must also recoup from her TSP account all matching government contributions as well as all amounts earned on those matching government contributions and any continuation pay or lump sum she received as a result of her opting into the BRS. Accordingly, her record should be corrected to show that she did not elect or opt into the BRS on August 30, 2018, but remains in the “legacy” retirement plan, and the Coast Guard should recoup any payments made to her as a result of her participation in the BRS, including government contributions to her Thrift Savings Plan account and any added value thereon.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of CDR [REDACTED], USCGR, for correction of her military record is granted as follows:

The Coast Guard shall (1) correct her record to show that she did not elect or opt into the Blended Retirement System (BRS) on August 30, 2018, and that she remains in the “legacy” retirement plan and (2) recoup any payments made to her as a result of her participation in the BRS, including government contributions to her Thrift Savings Plan account and any added value thereon.

October 4, 2019

