

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-145



FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on June 6, 2019, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 28, 2023, 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 Machinery Technician, Second Class (MK2/E-5) on active duty asked the Board to correct his record to show that he is entitled to his Blended Retirement System (BRS) continuation pay. The applicant explained that he mistakenly ignored an email from the Coast Guard Pay and Personnel Center (PPC) believing it was part of his overseas orders. The applicant stated that another reason for this mistake was that he did not expect an email regarding BRS to come so soon. According to the applicant, he assumed a notification would have come closer to his 12th anniversary on active duty, which was April 2, 2019, because his enlistment contract did not expire for another 4 years. The applicant stated that the retirement system is a new program the Coast Guard has implemented and requirements regarding receiving the BRS continuation bonus, in all of its uncertainty, was unclear to himself and his command. He asked that his continuation pay be reconsidered.

The applicant claimed that when the new BRS was introduced, the new retirement plan offered no valuable information for interested members regarding continuation pay. Despite all of the required online training, the applicant alleged that no one knew how the pay would be computed nor how the member would receive payment. According to the applicant, the only information given to members was a general statement saying that they would receive some kind of payment by their 12th anniversary on active duty. The applicant alleged that just before his 12th anniversary date, he approached his administration office to discuss how he could receive his continuation pay and was informed that PPC would contact him with the necessary forms to be filled out. The applicant claimed that he informed the Yeoman that he did not receive the

notification from PPC, but PPC responded and informed him that he was sent an email on October 2, 2018, with the attached Continuation Pay Election form. Again, the applicant stated that he never saw the email and was therefore unaware of the deadline. The applicant stated that he thinks only receiving one email, six months before the deadline and with no further notifications is unreasonable and unfair. The applicant alleged that his administration office was not involved in this process, which would have allowed for a more coherent flow of communication between himself and PPC.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 2, 2007, and trained as a Machinery Technician.

On October 31, 2017, the Coast Guard issued ALCOAST 120/17 wherein it provided guidance on BRS, including what members could expect moving forward. Specifically, and relevant to the applicant's case, the ALCOAST stated:

6. Approximately 180 days prior to a member's completion of 12 YOS [years of service], PPC will notify the member and unit admin of the member's eligibility to receive CP. The member *must* return the signed CP election form, witnessed by their Commanding Officer or command designee 30 days prior to their CP date. A member's CP date is defined as that date 12 YOS from the members PEBD, as established by the Coast Guard, and deemed to be the point at which a member has met all eligibility requirements for CP. For example, additional obligated service would commence on the 12th anniversary of the members PEBD regardless of when the member's election to receive CP is completed. A member may reverse their decision to receive CP, and their obligation to complete four additional years of service, provided such a reversal occurs 30 days before the member's CP date. A member failing to return the CP election form prior to exceeding 12 YOS will no longer be eligible for CP. No waivers will be accepted for failing to make the CP election prior to 12 YOS.

On December 13, 2017, the Coast Guard issued ALCOAST 357/17 wherein it informed members of the BRS opt-in period and applicable deadlines. In relevant part, the ALCOAST stated:

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). Members exceeding 12 YOS are not entitled to receive CP. To receive CP, members must also agree to perform four additional years of service. While BRS eligible members who reach their 12th YOS by PEBD during 2018 have all calendar year 2018 to opt in to the BRS, they will only have until the anniversary date of their 12th YOS by PEBD to opt into BRS and elect to receive CP (e.g. a member whose PEBD is 6 Feb 2006 who reaches their 12th YOS on 5 February 2018 will only have from 1 January 2018 to 5 February 2018 to elect to receive CP, but will have until 31 December 2018 to opt into the BRS).

On October 2, 2018, PPC notified the applicant in an email of his upcoming 12th anniversary and the need to complete his Continuation Pay Election form, which was attached to PPC's email, before his 12th anniversary on April 2, 2019.

The applicant signed his Continuation Pay Election form on May 7, 2019, just over a month past his 12th anniversary.

On May 10, 2019, the applicant's Yeoman received an email from PPC that stated the applicant needed to have his BRS Continuation Pay Election form completed prior to April 2, 2019, and that because the applicant completed his form after his April 2, 2019, deadline, PPC no longer had the authority to process the applicant's BRS Continuation Pay request.

VIEWS OF THE COAST GUARD

On November 6, 2019, a judge advocate (JAG) of the Coast Guard recommended that the Board deny relief in this case and adopted the findings and analysis in a memorandum submitted by the Commander, Personnel Service Center (PSC). PSC explained that the applicant and his administration was notified on October 2, 2018, that the applicant's BRS Continuation Pay Election form was attached needed to be completed prior to April 2, 2019, and that PPC did not have the authority to process the form if it was submitted after his 12th anniversary. PSC further explained that the applicant did not sign his Continuation Pay Election form until May 7, 2019, almost a month following his 12th anniversary. Finally, PSC explained that the Coast Guard has published significant information about the Blended Retirement System and the Continuation Pay option. PSC argued that the 12th anniversary limitation is contained in numerous publications and on-line resources. PSC stated that while it is unfortunate that the applicant missed the email communication with his election form and deadline, the Coast Guard is unable to initiate payment of the BRS Continuation Pay after his 12th anniversary.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 8, 2019, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within thirty days. The Chair received the applicant's response to the Coast Guard's advisory opinion on December 20, 2019.

The applicant stated that he respectfully disagrees with PSC's recommendation to deny relief because he had met the Continuation Pay requirements as he believed and understood them to be, based on the training he had received. The applicant further stated that the ALCOASTs relied upon by PSC as a basis for denying relief mandated that he receive specific communications because they contain major policy changes and are not stipulated in the current training manual. The applicant alleged that although all members were required to partake in certain training and the Coast Guard published material on the BRS program, the training on Continuation Pay was inadequate and unclear. For example, the applicant explained that only two paragraphs with the 65-page Navy BRS training manual mention Continuation Pay and none of that information specifies that there is a deadline once already enrolled in BRS. The applicant explained that he approached his administration on April 2, 2019, to begin the Continuation Pay process, however, despite their willingness to help, the applicant claimed their knowledge on Continuation Pay and its process to be very limited. According to the applicant, inquiries were made on his behalf and almost a month later he was informed that he had been sent an email on October 2, 2018, with instructions on how to submit the Continuation Pay Election form.

The applicant stated that because it was not mentioned in the training he received, he did not expect an email from PPC prior to his 12 year anniversary date of April 2, 2019, because, as he understood it, he wasn't eligible until for the Continuation Pay bonus until his anniversary

date. The applicant claimed that with something as important as a Continuation Pay bonus, requiring a “read” receipt would have been beneficial. The applicant explained that even after he submitted his form on May 7, 2019, his PPC contact, did not consider his late submission to be a problem even though his submission was submitted after his 12th anniversary. Specifically, his contact stated, “you are eligible so just waiting on it to be signed and sent back... You are good. I will process it ASAP once I receive it back.” The applicant argued that this statement points out that information regarding the collection of Continuation Pay was unclear, not only for him and his administration, but also for the PPC staff. After his submission, the applicant alleged that his administration was informed that he would be denied his Continuation Pay bonus based on the ALCOAST messages containing the updated policy.

The applicant claimed that because ALCOAST messages are randomly posted, there is no guarantee that operational members like himself would be able to see every message effectively. In one of the ALCOAST messages, the applicant alleged that Continuation Pay is referred to as a BRS “retirement entitlement” and there is no clear mention of a Continuation Pay deadline other than referring to those who opt into BRS after the anniversary date. In another ALCOAST, the applicant claimed the messages provided that PPC would “notify the member and unit admin of the member’s eligibility to receive CP.” However, the applicant alleged that PPC did not involve his administration as required by the ALCOAST. The applicant stated that when he discussed the ALCOAST message stating that his administration would be notified with his administration officer, CWO S, CWO S stated that he did not know why the ALCOAST message would say that his administration would be notified, because his administration was not aware of it beforehand. The applicant argued that involving his administration would have facilitated a better exchange of information for everyone involved, especially when dealing with time sensitive information.

The applicant explained that according to ALCOAST 278/17, the Coast Guard guidelines for Continuation Pay stipulate that BRS members receive this mid-career bonus at 12 years of service and again mentions no clear deadline for members enrolled in BRS before their 12th anniversary. In addition, the applicant argued that pursuant to Title 37 of the U.S.C., “The Secretary Concerned shall pay continuation pay under subsection (a) to a full TSP member when the member completes 12 years of service and commits additional years. The applicant argued that this section insinuates that after completing 12 years of service, the Continuation Pay process would be initiated. The applicant claimed that the most recent ALCOAST message states, “commands shall ensure all BRS opt-in eligible members receive this ALCOAST message as well as REFs (e) and (f).” The applicant explained that the ALCOAST continues with the Vice Commandant stating this is a “significant change in military compensation and the duty of all leaders at all levels to educate members.” However, the applicant alleged that posting these messages was not sufficient, because he never saw them. In addition, the applicant claimed that the latest ALCOAST stated, “this policy will be included in the forthcoming retirement manual,” suggesting that the prior manual was missing key information.” The applicant argued that since these messages contained major policy changes, the Coast Guard should have required these important ALCOAST messages, as they had mandated, which would have facilitated a better understanding of the Continuation Pay process for all members at the unit.

The applicant concluded by stating that his arguments and allegations are not an attack on his command or any individual, but are made to show that imperfection, inconsistency, and poor

transfer of information from the Coast Guard and PPC to units and their members following the newly implemented retirement system.

To support his response, the applicant submitted a letter from his supervisor, CWO F, who stated that he was the applicant's supervisor at the time the applicant should have received his Continuation Pay bonus. CWO F claimed that he personally worked with the applicant and their administrative staff and after a month of correspondence and no real answers, the applicant submitted his Continuation Pay Election form on May 7, 2019. During this process, CWO F claimed that he reviewed 37 U.S.C. § 356—Pay and Allowances of the Uniformed Services, which states the member is eligible for continuation pay once they complete 12 years of service and enter into an agreement for an additional 4 years of service. CWO F argued that 37 U.S.C. § 356 implies that a member shall complete the 12th year prior to being eligible. CWO F stated that there was not a lot of communication or visibility on the Continuation Pay process and that the entire communication process should not have been entrusted to an email system that is routinely plagued by system outages and communication problems. CWO F argued that the Continuation Pay process should require personal contact with all members at or approaching 12 years of service.

APPLICABLE LAW AND POLICY

37 U.S.C. § 356—Continuation pay: full TSP members with 8 to 12 years of service—states,

a. Continuation Pay. The Secretary concerned shall make a payment of continuation pay to each full TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who –

1. has completed not less than 8 and not more than 12 years of service in a uniformed service; and
2. enters into an agreement with the Secretary to serve for not less than 3 additional years of obligated service.

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) to the extent that the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board does not have jurisdiction over any claim based on alleged error or injustice in a VA record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application is timely because it was filed within three years of the applicant's discovery of the alleged error or injustice in the record, as required by 10 U.S.C. § 1552(b).

3. The applicant alleged that it was erroneous for the Coast Guard to deny him his Continuation Pay bonus because they failed to provide him with adequate notice. When considering allegations of error and injustice, the Board begins its analysis by presuming that the disputed information in the applicant's military record is correct as it appears in the military record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹ 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."²

4. The Board's review of the applicant's records shows that on October 2, 2018, PPC notified the applicant that his 12-year anniversary date was approaching and that in order for him to receive the Continuation Pay bonus, he would need to fill out the attached election form before his 12th anniversary on April 2, 2019. The applicant himself admitted in his application that when PPC's email come through he ignored it because he thought it was regarding his pending orders to deploy overseas. The applicant further stated that he "assumed" that any communication regarding the Continuation Pay bonus would come closer to his 12th anniversary. Therefore, the preponderance of the evidence shows that the applicant received the necessary notification informing him of the need to submit the Continuation Pay Election form before his April 2, 2019, anniversary date but ignored it. In addition, multiple ALCOASTs were published on the process of electing the Continuation Pay bonus. Specifically, ALCOAST 120/17 issued on October 31, 2017, stated:

6. Approximately 180 days prior to a member's completion of 12 YOS [years of service], PPC will notify the member and unit admin of the member's eligibility to receive CP. The member *must* return the signed CP election form, witnessed by their Commanding Officer or command designee 30 days prior to their CP date. A members CP date is defined as that date 12 YOS from the members PEBD, as established by the Coast Guard, and deemed to be the point at which a member has met all eligibility requirements for CP. For example, additional obligated service would commence on the 12th anniversary of the members PEBD regardless of when the member's election to receive CP is completed.

In addition, ALCOAST 357/17 published on December 13, 2017, stated, "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). ***Members exceeding 12 YOS are not entitled to receive CP.***" Accordingly, the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard failed to provide him with adequate notice of his need to fill out and submit the Continuation Pay Election form prior to him attaining 12 years of service.

5. The record further shows that the applicant did not submit his Continuation Pay Election form until May 7, 2019, over a month after his 12th anniversary had passed. Title 37 § 356(a)(1) states, "The Secretary concerned shall make a payment of continuation pay to each full

¹ 33 C.F.R. § 52.24(b).

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

TSP member (as defined in section 8440e(a) of title 5) of the uniformed services under the jurisdiction of the Secretary who has completed not less than 8 and not more than 12 years of service in a uniformed service.” Here, the record is undisputed that the applicant submitted his form after he had completed more than 12 years of service and was therefore ineligible to receive the Continuation Pay bonus. The Board recognizes the hardship and disappointment this situation has caused for the applicant, but it was the member’s responsibility to review the communications sent and timely file the necessary paperwork, in this case the Continuation Pay Election form. Despite the email notification received by the applicant and multiple ALCOASTs published on the Continuation Pay bonus, the applicant failed to timely submit his election form. Therefore, the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice when it denied him the Continuation Pay bonus.

6. The applicant argued that this error could have been prevented had the Coast Guard exercised due diligence and provided better communication. According to the applicant, one email and a few ALCOASTs in not a sufficient means of communicating something so important. However, as outlined in finding 4, the preponderance of the evidence shows that the applicant received multiple notices regarding the Continuation Pay bonus filing deadline. It was the applicant, not the Coast Guard, who was responsible for ensuring he read the applicable notices and email, outlining the deadline for applying for the Continuation Pay bonus. Therefore, the Board finds that the applicant has failed to prove, by a preponderance of the evidence, that the Coast Guard committed an error or injustice in its communications regarding the applicant’s Continuation Pay bonus.

7. Therefore, the applicant has not met his burden, as required by 33 C.F.R. § 52.24(b), to overcome the presumption of regularity afforded the Coast Guard that its administrators acted correctly, lawfully, and in good faith.³ He has not proven, by a preponderance of the evidence, that the denial of his Continuation Pay bonus was erroneous or unjust. Accordingly, the applicant’s request should be denied.

(ORDER AND SIGNATURES ON NEXT PAGE)

³ *Muse v. United States*, 21 Cl. Ct. 592, 600 (1990) (internal citations omitted).

