


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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2022-055


CDR (retired)

FINAL DECISION

This proceeding was conducted by the Board for Correction of Military Records of the Coast Guard (hereinafter “Board” or “BCMR”) under the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the application on July 20, 2022, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated July 17, 2025, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

INTRODUCTION

The applicant, a former Coast Guard Commander (CDR/O-5), initially applied to the Board in June 2022, while still a member of the Coast Guard. He requested that the Board direct the Coast Guard to credit a two-year period he served in the reserve component through the Temporary Separation Program (hereinafter “TEMPSEP”) toward a regular, 20-year active duty retirement.¹ While the case remained pending, the applicant engaged with congressional staff. As a result, the fiscal year 2023 National Defense Authorization Act (NDAA), passed in December 2022, included a provision crediting the applicant’s TEMPSEP service as active duty for retirement purposes. Based on the NDAA provision, the Coast Guard allowed the applicant to retire on June 1, 2023.

¹ Pursuant to 14 U.S.C. § 2152, a Coast Guard officer may voluntarily retire after 20 years of active duty service. This is often referred to as a “regular” retirement and entitles the member to immediate retirement pay. Eligibility for a “non-regular” or reserve retirement is detailed in 14 U.S.C. § 12731 and 12732. Generally, a non-regular retirement entails pension payments beginning at age 60, which are calculated based on the number of years served in the reserve component in which the member received 50 or more “points” based on performing active duty and/or certain kinds of training.

Previously, the applicant had agreed to be placed on an unpaid excess leave status from December 19, 2022, until his retirement. The Coast Guard, however, erroneously continued paying him during this period, resulting in an overpayment of approximately \$47,166.53. The Coast Guard began to recoup the overpayment by garnishing the applicant's retirement pay starting in July 2023.

In October 2024, the applicant acknowledged that his original requests for retirement credit for his TEMPSEP service, and an immediate retirement, were moot. Given the overpayment balance, however, the applicant amended his application to request that the Board: (1) place him in a paid excess leave status from January 1, 2023, to June 1, 2023 (thus eliminating his debt); and (2) direct the Coast Guard to re-process him through the Physical Disability Evaluation System (PDES).

In July 2025, the applicant withdrew his request for PDES re-processing, while reiterating the request for paid leave status between January and June 2023. He also contended that "at the very least," he was entitled to a backdated retirement date of January 1, 2023.

Based on the foregoing, the requests now pending before the Board are for placement in a paid leave status from January 1, 2023, to June 1, 2023, and/or an amended retirement date of January 1, 2023. For the reasons discussed in the Findings and Conclusions section below, the Board will deny the former request but grant the latter.

SUMMARY OF THE RECORD

The applicant attended the Coast Guard Academy between 1997 and 2001. He received a commission as an officer in the regular component of the Coast Guard on May 23, 2001.

In 2013, the applicant contemplated separating but opted to participate in TEMPSEP, a program intended to "allow high performing active duty personnel to return to active duty after a short break from active duty."² The applicant began in TEMPSEP on March 2, 2013.

Notably, the TEMPSEP policy at the time provided, in part (as it does in the current version), that TEMPSEP members "must receive all entitlements in accordance with [other Reserve service policies], including retirement credit service in the active component of the Coast Guard." In October 2014, while contemplating a return to active duty, the applicant inquired with the Coast Guard's Personnel Service Center (PSC) as to the nature of his TEMPSEP service with respect to retirement credit. He was directed to a staff member who answered as follows:

² See *Temporary Separations*, COMDTINST M1040.6A (October 2021).

Sir,

You are correct with the points, however, to earn a good year towards retirement, you need to accumulate at least 50 points in an anniversary year. This good year will count towards your total active service for retirement. Your anniversary date should be the reserve contract date, you mentioned March 2, 2013, below. If you have more than 50 points earned for IDT and ADT between March 2, 2013 and March 1, 2014, you earn that year towards retirement. On March 1, 2015, as long as you have met the 50 points for that anniversary year, you will earn that second year. So even though you have not served on active duty, you earn those two years towards retirement with your participation in the reserves. Does that help?"

According to the applicant, based on this guidance, and after weighing other personal factors, he made the decision to return to the regular component. His active duty service recommenced on April 24, 2015.

Fast-forwarding, on August 2, 2021, the applicant requested retirement effective January 1, 2022.³ In his written request, he referenced the e-mail guidance he received from PSC in October 2014 when deciding whether to return to active duty. He also stated that he was requesting retirement in order to pursue a specific private employment opportunity he had been offered.

In a September 2021 email, the applicant stated he had been advised that his retirement request would be denied, and he disagreed based on his belief that the October 2014 email clearly stated his TEMPSEP service counted toward retirement.

Around this time, according to the applicant, he was counseled that processing for a medical retirement – based on two longstanding conditions for which he had received medical waivers to remain in the Coast Guard in multiple prior years – would present an alternate route to a retirement date around the same time he had requested (summer 2022). A Medical Evaluation Board (MEB) – the first step in the PDES – was completed in November 2021, and the applicant was placed on indefinite light duty (no deployment and no boat or sea duty) based on his symptoms.⁴

On November 10, 2021, the applicant's August 2021 request for a regular retirement was formally denied. He was advised that he would become eligible for a regular retirement on August 1, 2023, based on his active duty service since May 2001, after subtraction of the two-year TEMPSEP period.

In March or April 2022, according to the applicant, he was advised that his medical retirement would likely not be completed until mid-2023. Also in April 2022, he received

³ He then amended the date to May 1, 2022, to accommodate his unit's staffing concerns.

⁴ For the reasons discussed in the Findings and Conclusions section below, the Board does not devote significant attention herein to describing the medical records and numerous arguments submitted by the applicant regarding deficiencies in his PDES processing.

new orders which would continue him in service beyond June 2022. Around this time, the applicant began to engage with congressional staff about his situation. Those staff members requested and received briefings from PSC leadership.

On May 5, 2022, the applicant requested reconsideration of his eligibility for a regular retirement, this time with an effective date of September 1, 2022.

In early June 2022, the applicant filed his initial application with the Board, in which he requested that his TEMPSEP service be credited, thus entitling him to an immediate regular retirement.

In an email to the applicant on June 21, 2022, the Coast Guard Deputy Judge Advocate General (JAG), evidently following up on previous discussion, referenced the possibility of the applicant being placed on unpaid excess leave until his eligibility for retirement on August 1, 2023, pursuant to 37 U.S.C. § 502(b) (detailed in the Applicable Law section below) and Coast Guard policy. The applicant was advised to meet with a different staff member to ensure his understanding of the excess leave option. The next day, the applicant responded that he had spoken with the staff member and wished to pursue the excess leave option.

On June 23, 2022, an Informal Physical Evaluation Board (IPEB) – the second phase of the PDES – found the applicant fit for duty. The IPEB stated that based on its review of the applicant’s medical records, his condition was being managed and treated with weekly medication injections and visits to clinical specialists. The IPEB stated that the applicant’s condition had remained stable over the prior 12 months and that he was able to perform the duties of his rank, rate, and grade.

In a July 6, 2022, memorandum, PSC-Officer Personnel Management (PSC-OPM) requested that the Assistant Commandant for Human Resources (CG-1) grant a one-time authorization for excess leave in conjunction with the applicant’s retirement. The memo advised CG-1 that while Coast Guard policies relating to excess leave did not apply to the applicant’s situation, CG-1 was authorized to grant an exception. The memo then referenced email correspondence from June 28 and June 29, 2022, in which the applicant was asked to confirm that he wished to amend his requested retirement date to August 1, 2023, and to be placed on excess leave (after exhaustion of his regular accrued leave) until that date. The applicant responded: “Yes, that is correct. Thank you. I appreciate it.” The memo also specified that CG-1’s approval would authorize outside employment, consistent with ethics advice, and that pursuant to 37 U.S.C. § 502(b), the applicant would not be entitled to pay during his excess leave.

CG-1 approved the memorandum, and on July 11, 2022, the applicant’s request for a regular retirement effective August 1, 2023, was approved. He was specifically advised

that following the exhaustion of his paid leave, he would enter a period of excess leave leading up to his retirement date which would be unpaid.

On August 22, 2022, the applicant's PDES legal counsel certified that he had reviewed the IPEB and counseled the applicant. On August 24, 2022, the applicant accepted the IPEB's findings and recommended disposition and waived his right to a formal hearing. On August 30, 2022, the Approving Authority approved the IPEB's findings and recommendations and found the processing of the applicant's case had complied with Coast Guard policy.

In an advisory opinion submitted to the Board on December 1, 2022, the Coast Guard recommended the Board deny the applicant's request for retirement credit for his TEMPSEP service and immediate retirement. The Coast Guard asserted that even if it were assumed that the applicant correctly interpreted the PSC staff member's October 2014 email guidance to state that the applicant's TEMPSEP service would be credited toward a regular retirement, that guidance was erroneous. The government, the Coast Guard contended, was not bound by erroneous representations of law or policy made by its employees.

Later in December 2022, Congress passed the 2023 National Defense Authorization Act (NDAA), which included a provision addressing the applicant's retirement. The relevant provision was codified at 14 U.S.C. § 2515, and provided as follows:

Any service described, including service described prior to the date of enactment of the Don Young Coast Guard Authorization Act of 2022, in writing, including by electronic communication, by a representative of the Coast Guard Personnel Service Center as service that counts toward total active service for regular retirement under section 2152 or section 2306 shall be considered by the President as active service for purposes of applying section 2152 or section 2306 with respect to the determination of the retirement qualification for any officer or enlisted member to whom a description was provided.

[The provision applied only] to officers of the Coast Guard that entered active service after January 1, 1997, temporarily separated for a period of time, and have retired from the Coast Guard before January 1, 2024....

According to screenshots submitted by the applicant, he attempted to schedule his required separation physical examination beginning in early January 2023.

In submissions to the Board in February and March 2023, the applicant noted the NDAA provision and requested the Board direct the Coast Guard to credit his TEMPSEP time and establish a retirement date upon completion of his separation physical examination and other out-processing requirements. The applicant also amended his requested relief by asking that the Board grant him a disability retirement or, alternatively, direct the Coast Guard to re-process him through the PDES. In support of this new request, the applicant asserted that the Coast Guard had "bungled" the PDES process. He explained

that in June 2022, he had understood the Coast Guard's suggestion of a medical retirement as an alternative to a regular retirement to be the result of a negotiation that would allow the Coast Guard to avoid reversing its position on TEMPSEP service credit toward retirement. The applicant stated that when he agreed to excess leave leading up to an August 1, 2023, retirement, he was advised that his PDES processing would continue unaffected. However, the IPEB found him fit for duty, ending his PDES processing, almost immediately after he agreed to the excess leave and August 1, 2023, retirement date. As such, the applicant described himself as being "pushed" or "nudged" into an unpaid excess leave status and deprived of a medical retirement. He also stated that "[e]xcess leave is usually paid leave," so the Coast Guard's proposal was "unusual." The applicant also argued that the June 2022 IPEB findings flew in the face of his documented medical history.

In a February 14, 2023, email, the applicant requested guidance from the Coast Guard about changing his retirement date. He requested a date as early as possible following completion of his retirement physical. He stated that he had scheduled his retirement physical for March 2023 after trying to unsuccessfully since December 2022 due to the clinic's workload. The applicant also stated he would be "traveling for work" beginning in mid-February.

March 2023 internal correspondence shows that Coast Guard staff members recognized that while the applicant's regular paid leave had been exhausted and his unpaid excess leave should have begun on December 19, 2022, he had continued to receive active duty pay. As a result, an overpayment of \$47,166.53 was calculated for basic pay, housing, and subsistence payments made from December 19, 2022, to March 30, 2023. Active duty pay was also stopped going forward.

In an April 3, 2023, email, a supervisor in the applicant's unit responded to his February 2023 request to move up his retirement date. The applicant was advised that OPM had consulted with legal and believed he was eligible for retirement starting on January 1, 2023 (the first available retirement date after passage of the NDAA). The applicant was advised that a written request for a new retirement date should be submitted. The email also stated that, "as previously discussed" with the applicant, the overpayment resulting from his receipt of pay during his excess leave would be acted upon after his retirement pay commenced.

The applicant's separation physical examination was completed between March 2023 (Part I) and April or May 2023 (Part II).

On May 1, 2023, the applicant submitted a request for a June 1, 2023, retirement date. The request was granted, and the applicant retired on June 1, 2023. His DD Form 214 (Certificate of Discharge or Release from Active Duty) (hereinafter "DD 214") reflected

approximately 22 years of active service, inclusive of his TEMPSEP service from 2013 to 2015.

In an updated advisory opinion submitted to the Board on June 12, 2023, the Coast Guard advised the Board that pursuant to the 2023 NDAA, it had included the applicant's TEMPSEP time as active duty and granted his request for retirement effective June 1, 2023. Therefore, the Coast Guard recommended, the Board should administratively close the case, as the relief sought had been granted.

In September 2023, the Coast Guard began to recoup the \$47,166.53 overpayment referenced above by garnishing \$748.00 per month from the applicant's retirement pay.

In an October 2, 2024, email, a Board staff attorney asked the applicant whether he wanted his case to be administratively closed, in light of his retirement, or wanted to amend his request for relief.

In an October 4, 2024, response, the applicant asserted that his request was not moot. He argued that the June 2022 IPEB's findings were not supported by the record. He also asserted that despite the NDAA provision, it had taken from January 2023 to May 2023 to schedule and complete his retirement physical, and the Coast Guard had not agreed to retire him until June 1, 2023, which resulted in a "loss of five months of pay" and garnishment of his retired pay. He further stated that he had "filed an appeal" of the garnishment decision in September 2023 but there had been no response to date. Based on these and other arguments, the applicant requested that the Board direct the Coast Guard to: (1) change his unpaid excess leave status from January 1, 2023, to May 31, 2023, to a paid leave status; and (2) re-process him through the PDES. Regarding the former request, the applicant argued he was entitled to paid leave during the relevant period under 37 U.S.C. § 502(a), which permitted paid leave for members awaiting delayed disability retirement processing.

Because the applicant amended his requested relief in his October 2024 submission, the Board sought a supplemental advisory opinion from the Coast Guard. The supplemental opinion was submitted on May 5, 2025. Therein, the Coast Guard argued that the applicant's PDES processing had followed relevant policies and procedures, and that he had failed to demonstrate the results were erroneous or that the process amounted to an injustice. The Coast Guard also explained that it had mistakenly continued to pay the applicant through March 2023 while he was on unpaid leave, and had recouped \$13,471.47 from the applicant's retirement payments beginning in July 2023, before pausing recoupment in March 2024. As such, according to the Coast Guard, the applicant's overpayment balance stood at \$33,695.06. The Coast Guard, however, recommended the Board grant partial relief. Specifically, that the Board correct the records calculating the applicant's overpayment to show that he had no further debt to the government. In this regard, the Coast Guard argued that the applicant had not been entitled to paid leave

between January and May 2023 under 37 U.S.C. § 502(a) because he was awaiting a regular, voluntary retirement, not disability processing, and had agreed to enter into an unpaid excess leave status as an accommodation to him. The Coast Guard asserted, however, that the failure to stop payments was an error by the government on which the applicant had detrimentally relied. The Coast Guard also acknowledged the applicant's assertions that he had delayed his private employment and spent thousands of dollars on legal fees in connection with his PDES processing. Under these circumstances, the Coast Guard stated, in order to achieve an equitable balance between the applicant's detrimental reliance and the fact that he was never entitled to the pay upon which he relied, the Board should exercise its powers in equity by correcting the applicant's records to show a total overpayment of \$13,471.47 – the amount already recouped by the Coast Guard – thus eliminating the outstanding debt of \$33,695.06.

In a response dated July 2, 2025, the applicant reasserted his request that he be placed in a paid leave status from December 19, 2022, to June 1, 2023, “to comply with the intent and plain words of 37 U.S.C. § 502(a).” He also requested the return of amounts garnished from his retirement pay from September 2023 to February 2025, and active duty pay for April and May 2023.⁵ He further stated: “At the very least, I was entitled to retirement pay plus VA benefits starting Jan[uary] 1, 2023, but I had not had my required separation exam.” Finally, he appeared to withdraw his request for PDES re-processing, stating: “I am no longer requesting a medical retirement unless needed to correct my pay record.” The applicant argued that if his IPEB had been completed accurately, he would have been offered paid leave while awaiting disability retirement. He also contended that he was “misinformed or duped” about the process. Finally, the applicant added that he had appealed the Coast Guard's decision to garnish his retirement pay in October 2023. He stated that this appeal was not answered, and his pay continued to be garnished for 18 months, until “Congress acted in February of 2025.”

APPLICABLE LAW AND POLICY

Board Proceedings

The Board may correct errors or remove injustices in a service member's records pursuant to 10 U.S.C. § 1552(a). “Error” means a mistake of a significant fact or law and includes a violation by the Coast Guard of its own regulations. See *Reale v. United States*, 208 Ct. Cl. 1010, 1011 (1976) (“‘Error’ means legal or factual error.”); *Ft. Stewart Schools v. Federal Labor Relations Authority*, 495 U.S. 641, 654 (1990) (“It is a familiar rule of administrative law that an agency must abide by its own regulations.”). Injustice, when not

⁵ As noted above, the Coast Guard stated in its May 2025 submission that recoupment had been paused in March 2024. This is contrary to the applicant's request for funds garnished up through February 2025. In any case, for clarity, the Board notes that the granting of the applicant's request for placement in a paid leave status from December 19, 2022, to June 1, 2023, would effectively result in the elimination of the overpayment balance and the return of any funds garnished in relation to the applicant's erroneous receipt of payments during that period.

also error, is treatment by the military authorities that “shocks the sense of justice.” *Sawyer v. United States*, 18 Cl. Ct. 860, 868 (1989) citing *Reale v. United States*, 208 Ct. Cl. 1010, 1011, cert. denied, 429 U.S. 854, 50 L. Ed. 2d 129, 97 S. Ct. 148 (1976). The Board has authority to determine whether an injustice exists on a “case-by-case basis.” Docket No. 2002-040 (DOT BCMR, Decision of the Deputy General Counsel, Dec. 4, 2002).

“It is the responsibility of the Applicant to procure and submit with his or her application such evidence, including official records, as the Applicant desires to present in support of his or her case.” 33 C.F.R. § 52.24 (a). “The Board begins its consideration of each case presuming administrative regularity on the part of the Coast Guard and other Government officials. The Applicant has the burden of proving the existence of an error or injustice by the preponderance of the evidence.” 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.” *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

Statutory Authority

Voluntary retirement after 20 years of active service is addressed by 14 U.S.C. § 2152, which states: “Any regular commissioned officer who has completed twenty years’ active service ... may, upon his own application, in the discretion of the President, be retired from active service.”

Leave for “[a]bsences due to sickness, wounds, and certain other causes” is addressed in 37 U.S.C. § 502, which provides:

- (a) A member of the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard, or National Oceanic and Atmospheric Administration, who is absent because of sickness or wounds, or who is directed by the Secretary concerned, or the Secretary’s designated representative, to be absent from duty to await orders pending disability retirement proceedings for a period that is longer than the [member’s accrued annual leave], is entitled to the pay and allowances to which the member would be entitled if the member were not so absent. A member who is absent with leave for any other reason for not longer than the leave authorized by that section is entitled to the same pay and allowances to which the member would be entitled if the member were not on leave, and to any additional allowances otherwise provided by law for members on leave.
- (b) Except as provided in subsection (a) and section 701(g) of title 10, a member who is authorized by the Secretary concerned, or the Secretary’s designated representative, to be absent for a period that is longer than the leave authorized by section 701 of title 10 is not entitled to pay or allowances during the part of the member’s absence that is more than the number of days’ leave authorized by that section. Nothing in this subsection may be construed to deprive a member, detailed or assigned by the Secretary concerned as a full-time student at a civilian institution to pursue a program of education that is substantially the same as a program of education offered to civilians, of pay or allowances to which such member is entitled.

Coast Guard Policy

In Chapter 2.A.2.d. of *Military Assignments and Authorized Absences*, COMDTINST M1000.8A (January 2019), excess leave is defined as “authorized leave over and beyond any earned or advance leave during which the member is not entitled to pay and/or allowances.”

Chapters 11 and 14 of the *Coast Guard Pay Manual*, COMDTINST M7220.29D (November 2019), contain the Coast Guard’s policies for collecting debts from members and former members resulting from overpayments. Read together, these chapters outline a process whereby the Coast Guard may waive recoupment of debts using statutory authority which has been delegated by the Secretary of the Department of Homeland Security to the Commandant. Such waiver may be sought by a Coast Guard member and are granted when such action is “in the best interest of the United States to do so.” The Coast Guard may waive debts of \$10,000 or less in the first instance. Waivers exceeding this amount for which the Coast Guard recommends approval are forwarded for final resolution to the Defense Office of Hearings and Appeals (DOHA).

FINDINGS AND CONCLUSIONS

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

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552, as the applicant is seeking a correction of his military records based on alleged error or injustice.
2. The application is timely pursuant to 10 U.S.C. § 1552(b), as it was filed within three years of the applicant’s discovery of the alleged error or injustice at issue. The applicant’s requested relief has changed since his initial filing in June 2022. The applicant’s retirement date was June 1, 2023, less than three years ago, and issues relating to the paid or unpaid status of his excess leave between December 19, 2022, and June 1, 2023, remain outstanding.
3. In his June 2022 application, the applicant requested an in-person hearing before the Board. He has not since amended that request. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the hearing request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.⁶

⁶ See *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).

4. 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.⁷ 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."⁸

5. As an initial matter, the Board notes that the applicant has essentially contended that the Coast Guard engaged in a coordinated effort to improperly deny, delay, or otherwise complicate his separation beginning after his initial retirement request in August 2021. The applicant's numerous allegations in this regard, however, fall largely outside the scope of the Board's decision and are not addressed in detail herein. This is because the applicant is no longer seeking an effective date for his retirement prior to January 1, 2023. Even if he were, granting such relief – for example, a January 1, 2022, regular retirement or a mid-2022 medical retirement – would likely result in the applicant owing an even larger debt to the government, and the Board's authority does not extend to record corrections that would further harm an applicant. As such, the Board does not explore the motives behind each of the Coast Guard's pre-2023 decisions in this case in detail. This omission should not be interpreted as a finding that the applicant's allegations are supported by the record, nor as an endorsement of the Coast Guard's actions. Instead, the Board has simply chosen to confine the bulk of its analysis to the potential avenues of relief before it. Namely, whether the applicant's records should be corrected to reflect a paid leave status beginning on January 1, 2023, or, if not, to reflect a regular retirement on that date.

Excess Leave Status

6. The applicant has requested that the Board correct his records to reflect that his excess leave from December 19, 2022, to June 1, 2023, was in a paid status. This correction would presumably result in cancellation of the applicant's \$33,695.06 overpayment balance and return of the \$13,471.47 garnished from his retirement pay by the Coast Guard to date.

7. The statute on which the applicant relies to argue that his period of excess leave should have been paid – 37 U.S.C. § 502 – is titled "Absences due to sickness,

⁷ 33 C.F.R. § 52.24(b).

⁸ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

wounds, and certain other causes.” Subsection (a) provides, in relevant part, that a member who is “directed ... to be absent from duty to await orders pending disability retirement proceedings for a period longer than the [member’s accrued regular leave], is entitled to pay and allowances....” Subsection (b) permits unpaid leave in circumstances other than those described in subsection (a).

8. In this case, the record shows that in an email on June 22, 2022, the applicant agreed to enter an excess leave status, which he was explicitly informed would be unpaid, following exhaustion of his other paid leave. The applicant argues that he should have been offered paid leave because, at the time, his IPEB had not concluded, and only released its findings two days later, on June 24, 2022. In the July 6, 2022, memorandum seeking special authorization for the applicant’s excess leave, however, email correspondence dated June 28-29, 2022, is referenced, in which the applicant confirmed his desire to accept the previously proposed plan involving excess leave. The July 6 memo also specifies that unpaid excess leave was being authorized on a one-time basis to allow the applicant to begin full-time paid private employment. In addition, the July 11, 2022, decision granting the applicant’s August 1, 2023, retirement date specified that the excess leave was to be unpaid.

9. Under these circumstances, the applicant was no longer awaiting his IPEB or further disability retirement proceedings at the time he agreed to be placed on excess leave. Thus, he was not entitled to paid leave under 37 U.S.C. § 502(a). To the extent the applicant has argued that he should have been offered paid leave because his PDES processing was still “open” until he accepted the IPEB results on August 24, 2022, the Board notes that the applicant’s excess leave did not begin until December 2022, at which time there is no question that he was no longer awaiting PDES processing.

10. In summary, the applicant was specifically informed that his excess leave would be unpaid. In fact, he has not argued that he was informed otherwise. When he began excess leave on December 19, 2022, he was not absent from his duties due to sickness, wounds, or orders to await disability retirement processing. Instead, he was absent pursuant to an agreement tailored specifically to accommodate his request to begin paid private employment before his regular retirement became effective on August 1, 2023. The Board also notes that aside from § 502, the applicant has not pointed to any statutory or other authority which could be used to place him on a paid leave status during the relevant period.

11. Under these circumstances, the Board finds the applicant has not met his burden to overcome the presumption of regularity or to establish by a preponderance of the evidence that the Coast Guard’s failure to place him on paid leave from December 19, 2022, to June 1, 2023, was an error or injustice.

January 1, 2023, Retirement Date

12. The applicant has asserted that “at the very least,” he is entitled to correction of his record to reflect a January 1, 2023, retirement date. This correction would presumably result in an offset of some portion of the applicant’s overpayment balance by entitling him to retroactive retirement pay throughout the period from January 1, 2023, to June 1, 2023.

13. The reasonableness of the applicant’s interpretation of the October 2014 PSC email guidance with respect to his retirement credit for TEMPSEP service is not before the Board. Regardless of the Coast Guard’s position prior to passage of the 2023 NDAA, the record shows the Coast Guard found the applicant was entitled to a retirement date as early as January 1, 2023, based on the relevant NDAA provision.

14. The record suggests that after passage of the NDAA in December 2022, the only obstacle standing between the applicant and a regular retirement was his separation physical. Statements from the applicant, in addition to screenshots of the Coast Guard clinic’s scheduling portal which he submitted, suggest that he began attempting to schedule the physical beginning in December 2022, or early January 2023. The applicant explains that he was not able to complete the physical until months later due to the clinic’s workload. The Coast Guard has not refuted the applicant’s account regarding the scheduling difficulty.

15. After careful consideration of the foregoing, and the entire record, the Board has determined that a correction of the applicant’s records to reflect a retirement date of January 1, 2023, is warranted. Again, there is no disagreement that the applicant was entitled to retire on this date following passage of the NDAA, nor that he would have been promptly retired had his separation physical been scheduled in a timely manner.

Coast Guard’s Recommendation of Debt Cancellation

16. In its May 2025 submission, the Coast Guard recommended that the Board use its equitable powers to correct the applicant’s overpayment balance to reflect no further debt to the government. In this regard, the Board notes that it has not been delegated any specific authority to waive debts to the government. The Board’s remit does not include the adjudication of monetary claims against the government, nor does it possess the authority to direct the Coast Guard to make payment(s) to an applicant when such payment(s) is not an incidental, downstream effect of the correction of a record in the applicant’s personnel file. The Coast Guard, however, has been delegated such authority

and has established a process for debt waivers as detailed in the *Coast Guard Pay Manual* (relevant sections summarized in the Applicable Law section above).

17. The record before the Board is somewhat unclear as to the status of the applicant's overpayment balance. The applicant has alluded to having formally challenged the Coast Guard's decision to garnish his retirement pay in the fall of 2023. The Coast Guard, in its May 2025 submission, stated that it had recouped \$13,471.47 from the applicant's retirement payments, but then paused recoupment in March 2024, leaving an overpayment balance of \$33,695.06. The Coast Guard did not explain whether the pause was temporary, or whether and/or when it contemplated restarting recoupment. In his July 2025 submission, the applicant stated that his "appeal" of the Coast Guard's garnishment decision was not answered until "Congress acted in February of 2025." The applicant, however, did not further detail the nature of the congressional action in question, or its consequences.

18. Under these circumstances, it appears to the Board that the Coast Guard possesses the delegated authority to adjudicate any waiver request or other challenge submitted by the applicant related to his overpayment balance. To the extent the Coast Guard's waiver process has not reached its terminus, the Board's granting of a debt waiver, even if within the Board's authority, is premature.⁹ Given the lack of clarity in the record, the Board will not consider whether to carry out the Coast Guard's recommendation for partial relief at this time.

Medical Retirement

19. In his February 2023, March 2023, October 2024, and July 2025 submissions, the applicant included numerous arguments about the inadequacy of the IPEB's findings and his overall processing in the PDES. In his July 2025 submission, however, he stated that he was "no longer requesting a medical retirement unless needed to correct my pay record." The applicant provided no further clarity as to the criteria under which he was requesting that the Board assess whether to direct a medical retirement or PDES re-processing.

20. The Board is not authorized to correct records in such a way that may adversely impact an applicant. The Board makes no finding with respect to the merits of the applicant's prior requests for a medical retirement. The Board does note, however, that it is unclear what the impact on the applicant's overpayment balance would be, should the Board direct the Coast Guard to grant a disability retirement or PDES re-processing, which

⁹ See 10 U.S.C. § 52.13(b) ("[n]o application shall be considered by the Board until the applicant has exhausted all effective administrative remedies afforded under existing law or regulations").

could later end in a disability retirement. The impact would likely depend on the effective date of that disability retirement, among other factors.

21. Under these circumstances, and in the absence of a clear and direct request for the Board to adjudicate these issues, the Board declines to do so. The applicant is welcome to reapply to the Board for any relief not addressed in this decision which he believes is warranted as a result of error or injustice.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] is granted in part and denied in part.

The Coast Guard will correct the applicant's records to reflect his regular retirement date as January 1, 2023.

The request for correction of the applicant's records to reflect a paid leave status between December 19, 2022, and June 1, 2023, is denied.

July 17, 2025

