

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-154

FINAL DECISION

ANDREWS, Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on June 29, 2000, upon receipt of the applicant's completed application.

This final decision, dated April 19, 2001, is 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 XXXXXX, asked the Board to release him from active duty or, in the alternative, to void an extension contract that he signed on March 14, 1997.

The applicant alleged that in 1997, when he completed a Striker training program¹ and advanced from seaman to xxx (pay grade E-4), he received transfer orders to a new unit. He alleged that when his command called USCG Group xxxxxxxx to get his new permanent change of station (PCS) orders, his command was told that to accept the orders, he had to obligate himself to serve another 24 months, in addition to the 26 months remaining on his initial enlistment, by

¹ The Striker program is an on-the-job training program that allows seamen to advance to pay grade E-4 in certain ratings, such as XXXX, without attending school. When a member completes the program, his commanding officer notifies the Coast Guard to put him on an eligibility list for advancement to E-4. Members on the list are advanced in order of precedence. See Article 5.E.1., Personnel Manual.

extending that enlistment. The applicant alleged that he asked what would happen if he decided not to extend his enlistment and was told that he “would be put anywhere at anytime.” When he asked how long he had to make the decision, the yeoman at Group xxxxx told his command he had to make the decision right at that moment while they were on the phone. Therefore, without any chance to consider his options carefully, he agreed to extend his enlistment.

The applicant alleged that the Coast Guard committed two errors and injustices: first, he was advised that he had to extend his enlistment by 24 months to accept the PCS orders when it was not actually required under Article 4.B.6.a.3. of the Personnel Manual; and second, he was given no time to make this significant decision but had to decide immediately. The applicant stated that he now has an opportunity to join a local police department and wants to pursue that career.

In support of his allegations, the applicant submitted a statement from his commanding officer, who wrote that he recommended that the Board grant the applicant’s request because he had “reviewed his records and agree[d] that inaccurate information was given regarding his enlistment and extension.” The applicant also submitted a copy of a letter congratulating him for being accepted by the police training academy and instructing him to report to the academy on September 21, 2000. Therefore, he asked the Board to correct his record to counteract the errors and injustices committed by the Coast Guard.

SUMMARY OF THE RECORD

On May 9, 1995, the applicant enlisted in the Coast Guard for a term of four years. After completing boot camp, he was assigned to Coast Guard XXXXX. While serving as a seaman at XXXXX, he completed a Striker program and was advanced to xxx on December 1, 1996. Thereafter, he received PCS orders for a transfer to XXXXXXX.

On March 14, 1997, the applicant signed a two-year contract extending his enlistment through May 8, 2001. The extension contract shows that the reason for the extension was to obligate sufficient service for the transfer to XXXXXXX. He reported to his new unit on March 24, 1997. The applicant’s record contains several highly laudatory administrative entries for his work at XXXXXXX. He was advanced to xxx on July 1, 1999.

APPLICABLE LAWS

Article 4.B.6.a.1. of the Personnel Manual states that “[s]ervice members ... E-4 and above with less than six years of active duty will not normally be trans-

ferred unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit.” Under Article 4.A.5.b., a full tour length at a shore unit in the continental United States, such as XXXXXXX, was four years.

Article 4.B.6.a.3. of the current Personnel Manual states that “[m]embers recommended for advancement under the striker program and on the striker eligibility list for advancement are required to have two years’ obligated service remaining upon reporting to the new unit, unless otherwise directed.” However, this provision did not exist in March 1997. The Personnel Manual in effect in March 1997 (Change 26) contained no specific requirement for “strikers” in receipt of transfer orders.

VIEWS OF THE COAST GUARD

On December 21, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant’s request.

The Chief Counsel alleged that the applicant’s argument that he was not required to sign the extension contract because of the provision in Article 4.B.6.a.3. is meritless. He alleged that under Article 4.B.6.a.1., the applicant was required “to have sufficient obligated service to complete a full tour of duty upon reporting to his new unit.” The Chief Counsel alleged that under that article, members in pay grade E-4 or higher with less than six years of active service cannot receive PCS orders unless they have obligated sufficient service to complete a full tour at their new unit. He alleged that a full tour at the “INCONUS” unit to which the applicant was transferred was four years. Therefore, depending upon when the applicant expected to be transferred, he had to obligate sufficient service to serve at his new unit for four full years.

The Chief Counsel argued that Article 4.B.6.a.3. did not apply to the applicant when he received the PCS orders because he was no longer on the striker eligibility list and had already been advanced to E-4. Therefore, the terms of Article 4.B.6.a.1. applied to his situation.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 21, 2000, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. On December 27, 2000, the applicant responded, stating that after doing some research on the matter, he had no objection to the Chief Counsel’s recommendation. He stated that his application had been based upon some misinformation he received.

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 section 1552 of title 10 of the United States Code. The application was timely.
2. In March 1997, when the applicant was offered transfer orders to XXXXX, he was no longer a "striker," having been promoted to xxx, pay grade E-4, on December 1, 1996. Therefore, under Article 4.B.6.a.1. of the Personnel Manual then in effect, he was required to obligate sufficient service to complete a full tour at the station. Under Article 4.A.5.b, a full tour at xxxxxxxx was four years. Therefore, to accept the orders, he had to have obligated at least 48 months of service prior to his arrival at the new station.
3. Article 4.B.6.a.3. of the current Personnel Manual does not apply to the applicant's case because it was not in existence in March 1997 and because he was not on the striker eligibility list at that time.
4. The applicant alleged that he was pressured into making the decision to extend. However, he did not prove that he was coerced into signing the extension contract. Moreover, his response to the Chief Counsel's advisory opinion indicates that he no longer contests the validity of the extension contract.
5. The applicant has not proved that the Coast Guard committed any error or injustice in requiring him to sign a two-year extension contract to accept his transfer orders to xxxxxxxxxx in March 1997.
6. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of XXXXXXXXXXX, USCG, for correction of his military record is denied.

Nancy Lynn Friedman

Robert A. Monniere

Blane A. Workie