

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-045

FINAL DECISION

ANDREWS, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's application on January 13, 1998.

This final decision, dated December 10, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that he had extended his enlistment for three years on October 1, 1997. The correction would entitle him to receive a Selective Reenlistment Bonus (SRB) pursuant to ALDIST 226/97.

APPLICANT'S ALLEGATIONS

The applicant signed a form to extend his enlistment on September 28, 1997. He alleged that, "when [he] signed the [extension form, he] was under the impression that [he] was extending [his] enlistment for 3 years and [he] would receive a SRB. [He] assumed the PERSU had prepared the correct paperwork to reflect [his] intentions and [he] signed it." On December 30, 1997, however, he discovered that the district Personnel Unit (PERSU) had incorrectly dated the form September 30, 1997, instead of October 1, 1997, as required by ALDIST 226/97. In addition, the PERSU incorrectly extended his enlistment for only two years instead of three.

The applicant stated that he had originally intended to extend his enlistment for two years. However, after having been counseled by his ship's chief yeoman about an upcoming SRB opportunity, he changed his mind. The applicant stated that he "believe[s] that the PERSU was working off an old Career Intentions Worksheet" He alleged that "[a]fter the SRB message was released, the ship's office and the PERSU sent emails discussing my extension [and] changing it from 2 to 3 [years]."¹

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 2, 199x, for a term of four years. His rating and pay grade at the time ALDIST 226/97 was issued were xxx and E-4. The termination date of his enlistment was November 1, 199x.

On April 15, 1997, the applicant signed a form acknowledging that he had read and fully understood the contents and explanation of COMDTINST 7220.33 (series). That instruction contains the Coast Guard's regulations concerning SRBs.

On September 28, 199x, the applicant signed and dated a one-page extension form CG-3301B. The form shows clearly in three different places that the term of the extension is two years and zero months. The effective date of the extension is shown as "9x SEP 30." The authorizing official signed a statement reflecting that the form had been "[s]ubscribed and sworn to before me this 30 day of SEP 9x" The date October 1, 199x, does not appear anywhere on the form. The new expiration date of the enlistment is shown as "9x NOV 1."

In addition, under the heading "Reason for Extension/Reextension of Enlistment," the form lists nine possible reasons for extending, as well as "Other (Specify)." Members are supposed to check one of the reasons. The reason marked on the applicant's extension form is "Request of Individual." The eighth listed reason, which is not checked, is "Obligated Service for SRB Bonus."

The form also contains four paragraphs, one of which states the following:

SRB ELIGIBILITY ACKNOWLEDGMENT

I have been provided with a copy [of] "SRB Questions and Answers" based on Commandant Instruction 7220.33 (series). I have been informed that: My current Selective Reenlistment Bonus (SRB) multiple under zone NA is NA and is listed in ALDIST NA, which has been made available for review. I further understand the eligibility requirements for Zone A, B, and C SRB's and that the maximum SRB paid to my current pay grade is \$ NA. My SRB will be computed based on NA months newly obligated service.

¹ The applicant did not submit a copy of the alleged e-mail message indicating that he wanted to extend his enlistment for three years.

On September 30, 1997, the Commandant of the Coast Guard issued ALDIST 226/97, which allowed members within 30 days of the end of their enlistment periods to receive an SRB if they reenlisted or extended their current enlistments between October 1, 1997, and March 31, 1998. The members had to reenlist or extend their enlistments for terms of at least three years. The SRB provided for xxxx who extended their enlistments or reenlisted was calculated with a multiple of one.

Affidavit of YN2 X. of the Applicant's PERSRU

The Coast Guard submitted an affidavit by a yeoman second-class (YN2 x.) of the Integrated Support Command, who stated the following:

On October 1, 199x at 10:15 a.m. I sent an email (see copy of email attached) to [YNC Y.] letting her know that a SRB message dated 302330Z Sep 9x, ALDIST 226/97 was out. I also stated in the email that it was very important that she call me regarding [the applicant]. To the best of my memory [YNC Y.] returned my call that day or day after. In our conversation I explained to [her] the contents of the SRB message and that member is eligible for a SRB. [She] told me that member did not want to extend or reenlist beyond 2 years and that the member said that it wasn't that much money due the SRB being only a multiple of 1. I told [her] that I needed to know member's career intentions due to the fact that his expiration of enlistment was 9xNOV01.

Affidavit of YNC Y., the Ship's Chief Yeoman

The Coast Guard also submitted an affidavit by the ship's chief yeoman (YNC Y.), who stated the following:

. . . [The] old ALDIST was to expire on 30 Sept[ember 199x,] which usually means a new one was coming out. This prompted me to talk with all personnel who were near to their DOS to see if come 1 Oct[ober] they wanted to reenlist, because there was a good chance that an SRB would be available. I'm stating this from 20 years of service and dealing with SRB's. I had a pretty good feeling that xx's were going to get an SRB because they were in demand. (i.e. xx bonus for completion of 'A' school)

I talked with [the applicant] about reenlisting and he agreed that if he got a bonus he would reenlist for 3 years. I then talked with him about bonuses and showed him the SRB instruction (7220.13). He did not want to read it and seemed to understand the bonus process. He then said to sign him up for 3 years and get him a bonus.

Upon receiving ALDIST 226/97 I contacted the PERSU via email and told them that [the applicant] wanted to reenlist for 3 years to receive a bonus. [YN2 x.] agreed that the paperwork would be done and sent to the ship.

The paperwork arrived and I did not review it for accuracy because [YN2 x.] had been a student of mine a YN "A" School and I had all the confidence in him that he completed it as I had asked. . . . I had many things on my mind and allowed [YN2 x.'s] work to go unchecked. This in no way is [the applicant's] fault. He conveyed to me and I conveyed to the PERSRU what his intentions were, which was to reenlist for 3 years after 1 Oct[ober] to take advantage of the bonus for xxx's.

When it came time to sign the paperwork, [the applicant] came to the office and I showed him where to sign. [ENS x.] was in the office at the time and he signed as verifying official. Both individuals assumed that I had reviewed the form and it was accurate.

I'm not sure what day this all took place, but I'm assuming it was on or around 1 Oct[ober]. . . .

The bottom line here is that [the applicant] reenlisted in the Coast Guard with the understanding that he was going to receive a bonus. I assisted him in that reenlistment never questioning the paperwork I received until several months later while underway, when [the applicant] asked me why he had not received his bonus yet.

This in no way was the member's fault and he reenlisted with the faith that he was to receive a bonus. I should never have allowed him to sign a document that was not correct.

VIEWS OF THE COAST GUARD

On November 12, 1998, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request for lack of proof. He alleged that the evidence shows that the applicant was properly counseled concerning his SRB rights and options and that he signed an extension contract on September 28, 199x, knowing that there was no SRB in effect for his rating on that date.

The Chief Counsel stated that prior to September 28, 199x, the applicant's ship's PERSRU had prepared the extension form based on information provided by his unit. On September 28, 199x, the applicant received additional SRB counseling and signed the form. Therefore, the Chief Counsel alleged that September 28, 199x, is the true effective date of the applicant's extension.

The Chief Counsel alleged that ALDIST 226/97 was released at 3:20 p.m. Pacific Time on September 30, 1997, and that no information about upcoming SRBs was released prior to that time.² On October 1, 1997, the applicant's PERSRU sent an e-mail

² The Chief Counsel submitted an affidavit from the officer who presided over the 1997 SRB Board, which convened on August 22, 1997. That officer stated that the board had a total of eight members,

to his ship's chief yeoman (YNC Y.) with the subject line "xxx [applicant's last name]." The message stated, "Please call me as soon as you can on member. It [is] very important and it's in regards to SRB. Message just came out [dated] 302330Z Sep 97."

The Chief Counsel alleged that between October 1, 1997 and November 1, 1997, the applicant was free to cancel his two-year extension and reenlist or extend his enlistment for three years to qualify for the SRB. He also alleged that the applicant was "clearly informed of this option given his previously documented counseling on the SRB program." Moreover, "the evidence indicates that Applicant did affirmatively reject reenlisting or extending during the period 1 October 1997 through 1 November 1997 for an SRB."

Furthermore, the Chief Counsel alleged, on November x, 199x, the PERSRU e-mailed the Coast Guard Pay and Personnel Center (PPC) asking for a special payment for the applicant and stating that the applicant "was beginning a 2-year extension in accordance with his CG-3301B and a Statement of Intent." The Chief Counsel submitted a copy of this message. The special payment was necessary because the PPC had terminated the applicant's pay at the end of his enlistment since it had not received any paperwork concerning his extension.

In regard to the affidavits, the Chief Counsel argued that YN2 X.'s affidavit shows that the applicant was informed of the SRB opportunity on or soon after October 1, 1997, but affirmatively rejected it. Most of YNC Y.'s statements, he alleged, are not credible. He said that YNC Y.'s claim to "pre-release knowledge of the contents of this closely held ALDIST" was "highly improbable." Moreover, prior to the actual announcement of the SRB, it is unlikely that she would have asked the PERSRU to prepare an extension form indicating that an SRB actually existed and that the applicant agreed to extend for three years. The Chief Counsel also dismissed her allegation that YN2 x. had incorrectly typed the applicant's extension contract. "[E]xtension contracts are not everyday occurrences in a yeoman's routine and, consequently, are subject to careful scrutiny."

The Chief Counsel also questioned the allegation that YNC Y., the applicant, and ENS x. all failed to notice the contents of the single-page extension form. He alleged that, as the authorizing official, ENS x. would have explained the form's contents to the applicant.

Furthermore, to accept the applicant's version of events, the Chief Counsel alleged, one must assume that YN2 x.'s characterization of his telephone call with YNC y. was untrue and that YNC y. never responded to YN2 x.'s e-mail message of October 1, 1997. He said it was very unlikely that YNC y. would not have responded to YN2 x.'s

including himself. Only the officer himself and his immediate supervisor knew the results of the board's vote on SRBs until the message was released on September 30, 1997.

e-mail. He said it was also very unlikely that for more than a month, no one involved would have discovered the "major error" on the applicant's extension form, which was not officially submitted until November x, 199x.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 1998, the Chairman forwarded a copy of the Chief Counsel's advisory opinion and invited him to respond. The applicant did not respond.

APPLICABLE REGULATIONS

Section 3.a. of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) lists as one criterion for an SRB that the member "[r]eenlist or extend enlistment in the Regular Coast Guard for a period of at least 3 full years."

Section 3.d.6. of the instruction states the following:

Extensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment in accordance with article 1-G-36 of [the Personnel Manual]. Members should be informed that their SRB entitlement will be based only on newly acquired obligated service. For example, a member cancels a 3-year extension to reenlist for 6 years, the member will only be paid SRB entitlement for the additional 3 years of service. An exception to this rule is made for extensions of 2 years or less, or multiple extensions (each of which is 2 years or less in length), required of a member for transfer, training, advancement, or tuition assistance. These extensions may be canceled prior to their operative date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement.

Section 3.d.11. of the instruction states the following:

Entitlement to SRB multiple and bonus ceiling is established on the actual date of reenlistment or the date the member executes an Agreement to Extend Enlistment by signing Form CG-3301B. . . .

ALDIST 226/97, issued on September 30, 1997, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments between October 1, 1997 and March 31, 1998. The multiple to be used for calculating SRBs for members in the xxx rating was one.

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, United States Code. The application was timely.

2. The applicant alleged that, prior to September 28, 1997, he intended to extend his enlistment for a term of two years. After being counseled by his ship's chief yeoman concerning the possibility that an SRB would be established for members with his rating, the applicant told her that he would extend for three years to earn the SRB. He alleged that on September 28, 1997, he signed an extension form believing that it would extend his enlistment for three years and earn him the SRB. He also alleged, however, that after ALDIST 226/97 was issued on October 1, 1997, his ship's office e-mailed the PERSRU that he wanted to change his extension from two years to three years. He further alleged that he did not discover the PERSRU's mistake until December 30, 1997.

3. The evidence indicates that on April 15, 199x, the applicant was properly counseled about the Coast Guard's SRB regulations. In addition, the evidence indicates that the applicant's chief yeoman further counseled him on a possible upcoming SRB opportunity sometime prior to October 1997. On September 28, 1997, the applicant signed a contract that extended his enlistment for two years and showed that the extension would not entitle the applicant to an SRB. The applicant had a duty to read the contract, the relevant terms of which were clear at a glance.

4. The chief yeoman of the applicant's ship stated that she had foreseen that an SRB would be announced for the applicant's rating. She stated that she did not check the extension form when it arrived because she assumed it would be correctly prepared. The Board does not doubt that experienced members might be able to predict fairly accurately which ratings will receive SRBs for extending or reenlisting in the near future. However, the Coast Guard's extension form requires the exact multiple of the SRB to be received to be typed on the form. In addition, the regulations state that entitlement to an SRB depends on the date the member executes an extension or reenlistment form. In light of these facts, the Board discredits the allegation that the applicant and the chief yeoman, who were or should have been reasonably familiar with the Coast Guard's SRB regulations, expected an extension form signed on September 28, 1997, to entitle the applicant to an SRB that had not yet been announced.

5. The chief yeoman also stated that, after ALDIST 226/97 was issued, she asked the PERSRU to prepare paperwork that would extend the applicant's enlistment for three years and entitle him to an extension. However, the evidence indicates that the applicant signed the extension form three days before the chief yeoman learned the terms of ALDIST 226/97. The applicant did not allege and there is no evidence that a second extension form was ever requested or executed.

6. The applicant may have, either before or after he signed the contract, intended to take advantage of any new SRB established for his rating. However, the applicant never canceled the contract he signed on September 28, 1997. Likewise, he never signed a new contract to take advantage of the SRB opportunity that began on October 1, 1997.

7. The PERSRU did not forward the extension form signed on September 28, 1997, to the PPC until November 6, 1997. There clearly was some confusion surrounding the applicant's intent to extend and the processing of the paperwork for the extension. The Board finds, however, that the applicant has not proved by a preponderance of the evidence that the Coast Guard committed any error or injustice that would entitle him to the relief requested.

8. Therefore, the applicant's request should be denied.

ORDER

The application for correction of the military record of XXXXXXXXXXXX, USCG, is hereby denied.

Robert C. Ashby

Walter K. Myers

Gareth W. Rosenau