

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-012

FINAL DECISION

ANDREWS, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced on October 26, 1998, upon the BCMR's receipt of the applicant's application for correction.

This final decision, dated August 5, 1999, 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 on October 22, 1997, the sixth anniversary of his enlistment, he was discharged and reenlisted for six years. The correction would allow the applicant to receive a Selective Reenlistment Bonus (SRB).

APPLICANT'S ALLEGATIONS

The applicant alleged that he was never counseled concerning his opportunity to receive an SRB by requesting discharge and reenlistment during the three months prior to his sixth anniversary on active duty. He alleged that, pursuant to Coast Guard regulations, he should have been counseled about his eligibility for the SRB provided for boatswain's mates under ALDIST 226/97. The applicant alleged that if he had been properly counseled, he would have reenlisted for six years to receive the maximum SRB possible.

SUMMARY OF THE RECORD

The applicant first enlisted in the Coast Guard on October 22, 1991, for a term of four years. On August 30, 1995, he was discharged and reenlisted for a term of three years, obligating himself to serve through August 29, 1998.

On September 30, 1997, the Commandant of the Coast Guard issued ALDIST 226/97, which allowed members to receive an SRB if they reenlisted or extended their current enlistments between October 1, 1997, and March 31, 1998. The SRB provided for xxx who extended their enlistments or reenlisted was calculated with a multiple of one.

The applicant's sixth anniversary on active duty fell on October 22, 1997. There is no form in the applicant's record indicating that he was counseled concerning his eligibility for an SRB during the three months prior to his sixth anniversary.

On August 28, 1998, the applicant reenlisted for another term of three years.

VIEWS OF THE COAST GUARD

On July 9, 1999, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant's request subject to a condition.

The Chief Counsel stated that the applicant should be granted relief because he "took appropriate action to rectify the alleged error after its discovery and is now willing to offer a new 6-year re-enlistment as consideration for the SRB he requests."

However, the Chief Counsel noted that, if the Board granted the applicant's request, his SRB would be reduced according to the amount of remaining time in Service to which the applicant had already obligated himself beyond his sixth anniversary in the reenlistment contract he signed on August 30, 1995.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 13, 1999, the Chairman sent a copy of the Chief Counsel's advisory opinion to the applicant and invited him to respond within 15 days. On July 23, 1999, the applicant responded, stating that he had no objections to the Chief Counsel's recommendation.

APPLICABLE REGULATIONS

Section 3.d.(9) of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) states that "[c]ommanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expira-

tion of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB respectively. In such cases, SRB payments will be reduced by any portion of unserved service obligation."

Enclosure (3) to the instruction states that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled concerning their eligibility for an SRB. The counseling must be memorialized in their records with a Form CG-3307 signed by the member.

ALDIST 226/97, issued on September 30, 1997, authorized members to be paid 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. XXXXXXXXXXXX were authorized to receive an SRB calculated with a multiple of 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 he was not properly counseled about his eligibility to receive an SRB by requesting discharge and reenlistment during the three months prior to his sixth anniversary on active duty. He alleged that, had he been properly counseled, he would have reenlisted for six years to receive the maximum possible SRB for his rating.

3. Under Enclosure (3) to Commandant Instruction 7220.33, the applicant had a right to be counseled concerning SRBs prior to his sixth anniversary on October 22, 1997. There is no evidence that the Coast Guard counseled the applicant concerning his eligibility for an SRB during the three months prior to that date. Had he been so counseled, a Form CG-3307 should appear in his record, but there is none.

4. Under Section 3.d.(9) of Enclosure (1) to the instruction, the applicant was eligible to be discharged on October 22, 1997, the sixth anniversary of his original enlistment, and immediately reenlisted to qualify for a Zone A SRB. However, at that time he had already obligated himself to serve through August 29, 1998.

5. The Chief Counsel recommended that the Board grant the applicant's relief by correcting his record to show that on October 22, 1997, he reenlisted for a term

of six years. However, the Chief Counsel noted that the applicant would not receive an SRB for the full six years but only for the additional time to which he was obligating himself beyond the end of his previous reenlistment, August 29, 1998. The applicant did not object to his provision.

6. The Coast Guard erred by not properly counseling the applicant concerning his eligibility for an SRB on the sixth anniversary of his entry into active duty. Had he been properly counseled, the Board is convinced that he would have reenlisted for a term of six years to receive the maximum possible SRB, subject to reduction for the remaining obligated service under his August 30, 1995, reenlistment contract.

7. Therefore, the applicant's request should be granted.

[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXX, USCG, is hereby granted as follows.

His record shall be corrected to show that on October 22, 1997, he was discharged and immediately reenlisted for a term of six years for the purpose of receiving a Zone A SRB. His three-year reenlistment contract dated August 28, 1998, shall be null and void.

The Coast Guard shall pay the applicant the amount due him as a result of this correction.

Terence W. Carlson

Mark A. Holmstrup

Gareth W. Rosenau