

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-015

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 xxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that on January 24, 1996, he was discharged and reenlisted for two years (instead of the six-year contract he actually signed). The correction would allow the applicant to receive a maximum Selective Reenlistment Bonus (SRB) for the six-year reenlistment contract he signed on April 5, 1998, two days before his six-year active duty anniversary date.

The applicant also requested that the Board grant him "a waiver of the full tour service obligation requirement for individuals with less than six years of service upon reporting aboard to their new PCS unit." The waiver would allow the applicant to receive an SRB for all six years of the reenlistment contract he signed on April 5, 1998, rather than to have deducted from those six years the three years of obligated service he was required to have when he reported to a new unit on February 27, 1998.

APPLICANT'S ALLEGATIONS

The applicant alleged that at the end of his first, four-year enlistment, he reenlisted for six years because he wanted to pursue a career in the Coast Guard. He alleged that, pursuant to Coast Guard regulations, he should have been counseled at the end of his first enlistment regarding the effects of his new enlistment on his eligibility for a Zone A SRB. The applicant alleged that if he had been properly counseled, he would have reenlisted for the minimum, two years, rather than the maximum, six years, to preserve his eligibility to receive a maximum Zone A SRB on the sixth anniversary of his active duty date. He alleged that because he was not properly counseled, on his sixth anniversary, he had almost four years of obligated service left to serve. Therefore, he could receive an SRB for only two years of additional service under ALDIST 046/98, instead of for all six years of his new enlistment. The applicant alleged that this was unfair because the Coast Guard was required to counsel him properly, but did not.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 7, 199x, for a term of four years. On January 24, 1996, he was discharged and reenlisted for a term of six years, obligating himself to serve through January 23, 2002. There is no form in the applicant's record indicating that he was counseled concerning SRBs and the effects of his enlistment on his future eligibility for an SRB.

On February 27, 1998, the applicant accepted orders to the Coast Guard cutter xxxxxx. If the applicant had not already obligated himself to serve through January 23, 2002, he would have been required to obligate himself for three years before reporting to the xxxxx.

On April 5, 199x, two days before the sixth anniversary of his original enlistment, the applicant was discharged and reenlisted for another term of six years and thereby obligated himself to serve through April 4, 2004.

On March 29, 1998, the Commandant of the Coast Guard issued ALDIST 046/98, which allowed members to receive an SRB if they reenlisted or extended their current enlistments between April 1, 1998 and September 30, 1998. ALDIST 046/98 provided that members in the xx rating who extended their enlistments or reenlisted would receive an SRB calculated with a multiple of one-half. There was no SRB in effect for members in the xx rating in the months prior to April 1, 1998.

Under ALDIST 046/98, the applicant's reenlistment on April 5, 1998, made him eligible for an SRB for any additional service to which he obligated himself. Because the applicant had already obligated himself to serve through January 23, 2002, his six-year enlistment on April 5, 1998, qualified him to receive an SRB for only 26 additional months of obligated service, from January 23, 2002, to April 4, 2004.

VIEWS OF THE COAST GUARD

On July 19, 1999, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant's request subject to an amendment.

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. Applicant's record also demonstrates that he is a good performer"

However, the Chief Counsel noted that, if the applicant had extended his original enlistment contract for two years on January 24, 1996, he would have had to execute another, 38-month extension on January 23, 1998, in order "to meet his PCS OBLISERV for accepting orders to the CGC xxxxxx." Therefore, the Chief Counsel argued, "the Board's Order should state that the Applicant had prior obligated service through 22 March 2001 before executing his six year reenlistment on his service anniversary date."

APPLICABLE REGULATIONS

Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration), Section 2 states that "[a]ll personnel with 14 years or less active service who reenlist or extend for any period, however, brief, shall be counseled on the SRB program. They shall sign a page 7 service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement."

Section 3.d.(1) of Enclosure (1) states that "[m]embers with exactly 6 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone A multiple in effect for their rating if they are otherwise eligible."

Section 3.d.(5) of Enclosure (1) states that "a member who must extend for some other reason (i.e., transfer, training, advancement, or tuition assistance) may extend for a period greater than the minimum required for the purpose of gaining entitlement to an SRB."

Section 3.d.(9) of Enclosure (1) 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 expiration 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 the end of an enlistment, each member must be counseled concerning his or her eligibility for an SRB, have his or her questions concerning SRBs answered, and be provided with a copy of Enclosure (5), which is entitled "SRB Questions and Answers." The counseling must be memorialized in the member's record with a Form CG-3307 signed by the member.

ALDIST 046/98, issued on March 29, 1998, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments between April 1, 1998, and September 30, 1998. The multiple to be used for calculating SRBs for members in the xx rating was one-half.

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 SRBs and the effect of his enlistment on his eligibility for a Zone A SRB prior to his reenlistment on January 24, 1996. He alleged that, had he been properly counseled, he would have reenlisted for only two years so that on his sixth anniversary, April 7, 1998, he would have had no remaining obligated service and therefore been eligible to receive the maximum possible SRB for his rating.

3. Under Section 2 of Enclosure (1) and Enclosure (3) to Commandant Instruction 7220.33, the applicant had a right to be counseled concerning SRBs prior to his enlistment on January 24, 1996. There is no evidence that the Coast Guard counseled the applicant concerning his eligibility for an SRB prior to his enlistment. Had he been so counseled, a Form CG-3307 should appear in his record, but there is none.

4. Under Sections 3.d.(1) and 3.d.(9) of Enclosure (1) to the instruction, the applicant was eligible to be discharged on January 23, 1998, within three months of the sixth anniversary of his enlistment, in order to reenlist. However, on January 23, 1998, ALDIST 046/98 was not yet effective. The ALDIST did not become effective until after the applicant reported to the cutter xxxxx on February 27, 1998. To accept orders to serve on the xxxxx, the applicant would have been required to extend his enlistment through February 27, 2001.

5. The Chief Counsel recommended that the Board grant the applicant's relief in part by correcting his record to show that on January 24, 1996, he extended his enlistment for two years, through January 23, 1998. The Chief Counsel further recommended that the Board correct the applicant's record to show that on January 23, 1998, he extended his enlistment for 38 months to obligate himself through the three years required for service aboard the cutter xxxxxxx.

6. The Coast Guard erred by not properly counseling the applicant concerning SRBs prior to his reenlistment on January 24, 1996. Had he been properly counseled, the Board is convinced that he would not have reenlisted for six years, through January 23, 2002. However, prior to accepting orders on the cutter xxxxxxx on February 27, 1998, the applicant would have been required to obligate himself to serve beyond that date for at least three years. Although the applicant asked for a waiver of this requirement, he did not prove by a preponderance of the evidence that implementation of the regulation requiring obligated service upon accepting orders to a new unit was unfair or in error in his case.

7. Therefore, the applicant's request should be granted subject to the amendment recommended by the Chief Counsel.

[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]

ORDER

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

His record shall be corrected to show that on January 24, 1996, he extended his enlistment for two years. The applicant's record shall further be corrected to show that on January 23, 1998, he extended his enlistment again for 38 months to accept orders on the Coast Guard cutter xxxxx. His six-year reenlistment contract dated January 24, 1996, 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