

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-062

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 docketed on February 16, 1999, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated December 9, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, an xxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record by canceling a two-year extension contract he signed on October 20, 1998, and reenlisting him for three years to receive a Selective Reenlistment Bonus (SRB) under ALDIST 290/98 with no reduction for prior obligated service.

APPLICANT'S ALLEGATIONS

The applicant stated that on November 24, 1998, the Coast Guard issued ALDIST 290/98, which changed which ratings were authorized to receive SRBs as of the next day, November 25, 1998. He alleged that under the SRB Instruction, COMDTINST 7220.33, the Coast Guard is required to issue such ALDISTs at least 30 days before they become effective and that previous SRB ALDISTs had been issued at least 30 days before they became effective.

The applicant alleged that, had the ALDIST been properly issued at least one month before its effective date, he would have canceled the extension he signed on

October 20, 1998, and extended his contract for just a month in order to remain eligible to receive an SRB under ALDIST 290/98 for three full years of service. He alleged that such an action would have been authorized under ALDIST 245/98. The applicant concluded that, because the Coast Guard failed to issue ALDIST 290/98 at least 30 days prior to its effective date, he did not cancel his extension prior to its effective date and was unable to take advantage of the SRB opportunity.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 31, 199x, for a term of four years, through October 30, 199x.

On October 20, 199x, ten days before his enlistment was to end, the applicant voluntarily extended his enlistment for two years.

On November 24, 1998, the Coast Guard issued ALDIST 290/98. Under the ALDIST, members in the xx rating in Zone A¹ who reenlisted or extended their enlistments on or after November 25, 1998, received an SRB with a multiple of one.

On February 2, 1999, the applicant's commanding officer wrote a letter to the BCMR "strongly endor[s] his request that this matter be addressed by the Board." He stated that if the Coast Guard had promulgated ALDIST 290/98 by October 25, 1998, "I am certain that [the applicant] would have taken the steps to extend his enlistment for a short period of time in order to qualify for a Zone "A" reenlistment bonus."

APPLICABLE REGULATIONS

Section 2.b. of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that "[c]hanges to SRB multiples will be announced via ALDIST at least 30 days in advance of the effective date of the amendment."

Section 3.d.6. of the SRB 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]. [Emphasis added.]

Article 1.G.19 of the Personnel Manual states the following:

¹ SRBs vary according to the length of each member's active duty service, the number of months of service newly obligated by the reenlistment or extension of enlistment, and the need of the Coast Guard for personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's skill/rating. Coast Guard members who have more than 21 months but less than 6 years of active duty service are in "Zone A." Members may not receive more than one bonus per zone.

1. An extension of enlistment may not be canceled after it begins to run, either for the convenience of the Government or the person concerned.

2. An appropriate authority may cancel an Agreement to Extend Enlistment at any time before the extension begins to run if any of these situations applies.

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b. The commanding officer may cancel an Agreement to Extend Enlistment on the effective extension date when the individual concerned has reenlisted or extended on that date for any authorized enlistment longer than the original extension agreement. ... Extensions of two years or less for a member to receive PCS orders, attend training, or obligate for advancement may be canceled before their operative date for immediate reenlistment or longer extension without any loss of Selective Reenlistment Bonus eligibility. [Emphasis added.]

ALDIST 290/98, issued on November 24, 1998, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments on or after November 25, 1998. The multiple to be used for calculating SRBs for members in the xx rating in Zone A was one. The ALDIST stated that data gathered over the previous three months showed continuing workforce shortages and lower reenlistment rates. In addition, the fiscal year 1999 budget created new billets that needed to be filled immediately. The new multiples were issued "to preserve our intellectual capital and keep the workforce filled with trained and skilled personnel to mitigate the immediate gaps these new billets create."

ALDIST 245/98, issued on October 8, 1998, stated that the Coast Guard Personnel Command was authorized to approve requests for extensions of reenlistments of less than two years' duration "in response to personnel shortages and in an attempt to alleviate short-term gaps in billets."

VIEWES OF THE COAST GUARD

On November 12, 1999, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel stated that the applicant was required to reenlist or extend his enlistment by October 30, 1998, if he wished to remain on active duty. There was no SRB authorized for xx in October 1998.

The Chief Counsel argued that the language in Section 2.b. of the SRB Instruction, COMDTINST 7220.33, "did not create the entitlement to notice that Applicant alleges." The Section is part of the Instruction's introductory "Discussion" as a statement of general intent and did not establish a binding duty on the part of the Coast Guard. The Chief Counsel alleged that only the "Action" and "Procedures" sections of Coast Guard instructions create a mandatory duty, and such duties are identifiable by the use of the word "shall." Section 2.b. uses the word "will."

The Chief Counsel further argued that, “[a]ssuming *arguendo* that Applicant could prove that the Coast Guard had a general duty to provide notice of an impending SRB multiple change, ALDIST 290/98 was an exception to that duty.” He argued that evidence that the ALDIST is a special exception is contained in the ALDIST itself, which states that “this ALDIST announces the results of a special SRB Review Panel convened to address continuing workforce shortages. SRB Review Panels are normally convened approximately every 6 months.” Therefore, “ALDIST 290/98 was an exception to the normal promulgation of semiannual SRB multiple announcements and its expedited implementation was not an arbitrary and capricious action,” but a necessary, reasoned action to preserve its workforce, which was at risk.

The Chief Counsel also stated that the results of the special SRB Review Panel were not even approved until November 18, 1998. Therefore, they could not have been made known to the applicant prior to the effective date of his extension, October 31, 1998. The Chief Counsel further argued that, even if the results had been approved and issued on October 25, 1998, the applicant has not proved that he could have canceled the extension he signed on October 20, 1998, in order to sign a shorter extension that would keep him on active duty until ALDIST 290/98 went into effect. The Chief Counsel argued that ALDIST 245/98 is inapplicable to the applicant’s situation because “the plain language of the policy clearly addresses the Service’s need to fill gaps in a unit’s authorized billet strength and not to bridge short periods of time so members might qualify for an SRB.”

Finally, the Chief Counsel argued, “this entire discussion is moot based on the fact that Applicant signed his extension agreement on 20 October 1998, five (5) days before the date he alleges the Coast Guard should have promulgated the SRB information. Notwithstanding all of the matters discussed above, Applicant has failed to explain how this alleged future announcement on 25 October 1998 would have changed his decision to extend on 20 October 1998.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 1999, the BCMR sent the applicant a copy of the Chief Counsel’s advisory opinion and invited him to respond within 15 days. The applicant did not respond.

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 requested an oral hearing before the Board. The Chairman, acting pursuant to 33 C.F.R. § 52.31, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. Section 2.b. of the SRB Instruction, COMDTINST 7220.33, states that SRB announcements will be promulgated at least 30 days prior to the day they become effective. The Coast Guard did not comply with this provision when it issued ALDIST 290/98.

4. Even if the Coast Guard had acted in accordance with Section 2.b. of the SRB Instruction, however, the applicant has not proved that the Coast Guard would have or could have issued the ALDIST prior to the end of his enlistment on October 30, 1998. More likely, since the results of the special SRB Review Panel were approved on November 18, 1998, the ALDIST's effective date would have been set one month later, in December. Therefore, even if the Coast Guard had complied with the terms of Section 2.b., the 30-day delay between the promulgation of the ALDIST and its effective date would not have aided the applicant.

5. The applicant has failed to prove that, if ALDIST 290/98 had been promulgated 30 days in advance, on October 25, 1998, he could have canceled the extension he signed on October 20, 1998. Section 3.d.6. of the SRB Instruction and Article 1.G.19. of the Personnel Manual permit cancellation of such extensions only if the member immediately signs a longer extension or reenlistment contract. The one-month extension the applicant claimed he would have signed to bridge the gap between the end of his enlistment and the effective date of ALDIST 290/98 would not have justified canceling the applicant's two-year extension.

6. The applicant also failed to prove that, if he had been permitted to cancel his extension, the Coast Guard Personnel Command would have approved a short-term extension contract under the provisions ALDIST 245/98. As the Chief Counsel stated, that ALDIST authorized the Personnel Command to approve short-term extensions if needed to alleviate personnel shortages and short-term gaps in billets, not to permit members to manipulate the termination dates of their enlistments in order to qualify for SRBs.

7. Therefore, the applicant has failed to prove that the Coast Guard erred or committed an injustice by failing to pay him an SRB under ALDIST 290/98 or by holding him to the terms of the two-year extension contract he signed on October 20, 1998.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Mark A. Holmstrup

Pamela M. Pelcovits

David M. Wiegand