

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-100

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 April 28, 1998, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated January 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that he was eligible for a Selective Reenlistment Bonus (SRB) calculated with a multiple of one, rather than a multiple of one-half.

APPLICANT'S ALLEGATIONS

The applicant alleged that he is receiving an SRB based on a multiple of one-half, rather than a multiple of one, because of an administrative error on the part of the Coast Guard. He alleged that his sixth anniversary on active duty fell on November 12, 1997, when an SRB with a multiple of one was in effect for members in the xx rating in Zone A.¹ He alleged that the Coast Guard had a duty to counsel him regarding his eligibility

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 at least 21 months but no more than 6 years of active duty service are in "Zone A." Members who have completed at least 6 years but no more than 10 years of active duty service are in "Zone B." Members in the same rating may receive SRBs

for this Zone A SRB but failed to do so. Because of this failure, the applicant alleged, he did not reenlist until several months after his sixth anniversary, when he was in Zone B. The SRB multiple in effect for Zone B at the time was only one-half. Therefore, the applicant argued, the Coast Guard's failure to counsel him as required by the regulations unjustly caused him to receive a smaller SRB.

SUMMARY OF THE RECORD

The applicant first enlisted in the Coast Guard on November 12, 1991, for a term of four years. On July 21, 1995, he reenlisted for three years, through July 20, 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 Zone A SRB provided for xxs who extended their enlistments or reenlisted was calculated with a multiple of one. The Zone B SRB authorized for xxs was one-half.

The applicant's sixth anniversary on active duty was November 12, 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 March 2, 1998, the Commandant 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. The Zone A SRB provided for xxs who extended their enlistments or reenlisted was calculated with a multiple of two. The Zone B SRB authorized for xxs was one-half.

On July 17, 1998, the applicant reenlisted for a term of six years. He received a Zone B SRB with a multiple of one-half for this reenlistment under ALDIST 046/98.

VIEWS OF THE COAST GUARD

On November 17, 1999, the Chief Counsel of the Coast Guard recommended that the Board grant relief in this case by correcting his record to show that he reenlisted for six years on his sixth anniversary to receive a Zone A SRB with a multiple of one.

The Chief Counsel stated that the applicant should be granted relief because he was never counseled concerning his eligibility for a Zone A SRB on his sixth anniversary and because he "took proper action to rectify the alleged error after its discovery and is now willing to offer a new 6-year reenlistment as consideration for the SRB he requests."

calculated with different multiples depending on which zone they are in. Members may not receive more than one bonus per zone.

The Chief Counsel further stated that on his sixth anniversary, the applicant was eligible for either a Zone A or a Zone B SRB, and it is not clear whether he has already received a Zone A SRB. Therefore, he recommended that the Board draft its order so that either a Zone A or a Zone B SRB could be awarded.

The Chief Counsel also noted that, because the applicant had previously obligated himself to serve through July 20, 1998, the applicant's new SRB would be based on five years and three months of newly obligated service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 22, 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 December 6, 1999, the applicant responded, stating that he agreed with the Chief Counsel's recommendation and wished to have his record corrected to show that he reenlisted for six years on his sixth anniversary for a Zone A SRB.

APPLICABLE REGULATIONS

Section 3.d.(1) of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) 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. If they have previously received a Zone A bonus or no Zone A bonus is designated, they are entitled to a Zone B bonus if one is in effect."

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 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. Xxs in Zone A 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 a Zone A SRB with a multiple of one.

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 active duty. 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 November 12, 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 July 20, 1998.

5. The Chief Counsel recommended that the Board grant the applicant's relief by correcting his record to show that on November 12, 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. The applicant did not object to this 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 an SRB, subject to reduction for the remaining obligated service under his July 21, 1995, reenlistment contract. The Coast Guard's error has apparently caused him to receive an SRB with a smaller multiple and to miss altogether the opportunity to receive a Zone A SRB.

7. Under Section 3.d.(1) of Enclosure (1) to the SRB instruction, the applicant will receive a Zone A SRB, rather than a Zone B SRB, under ALDIST 226/97 if the Board grants the requested relief and the applicant has not already received a Zone A SRB.

8. 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 XXXXXXXXXXXXX, USCG, is hereby granted as follows.

His record shall be corrected to show that on November 12, 1997, he was discharged and immediately reenlisted for a term of six years for the purpose of receiving an SRB in accordance with ALDIST 226/97 and Section 3.d.(1) of Enclosure (1) to COMDTINST 7220.33. His reenlistment contract dated July 17, 1998, shall be null and void.

The Coast Guard shall pay the applicant the amount due him as a result of this correction. In calculating the amount due, any SRB payments he has received as a result of the now void July 17, 1998, reenlistment contract shall be deducted.

John A. Kern

Michael K. Nolan

L. L. Sutter