

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-105

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 May 3, 1999, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated February 10, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, an xxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that he was discharged on his 6-year active duty anniversary date, April 1, 1999, and immediately reenlisted for a term of 6 years. The correction would entitle him to receive a Selective Reenlistment Bonus (SRB) pursuant to ALDIST 290/98.

APPLICANT'S ALLEGATIONS

The applicant stated that on April 1, 1999, he was eligible for an SRB and that, pursuant to Coast Guard regulations, he should have been counseled prior to that date concerning his eligibility for the SRB. The applicant alleged that he was not properly counseled and did not learn about the SRB opportunity until after his sixth anniversary had passed, on April 9, 1999. The applicant alleged that, if he had been properly counseled, he would have been discharged and immediately reenlisted on his sixth anniversary for a term of 6 years in order to receive the maximum allowable SRB for his rating under ALDIST 290/98.

In support of his allegations, the applicant submitted a computer printout from the Personnel Command indicating that his active duty base date is April 1, 1993. He also submitted a letter from his commanding officer, who stated that the applicant had not been properly counseled concerning his eligibility for an SRB prior to his sixth anniversary on active duty. The commanding officer also characterized the applicant as an "outstanding performer" and "model Coast Guardsman" and recommended that the Board grant his request.

SUMMARY OF THE RECORD

The applicant enlisted in the Army on October 24, 1985, and was honorably discharged on August 27, 1988, having served 2 years, 10 months, and 4 days on active duty.

On January 30, 1996, the applicant enlisted in the Coast Guard for a term of 6 years, obligating himself to serve through January 29, 2002.

On March 26, 1999, the applicant had served 3 years, 1 month, and 26 days in the Coast Guard and completed 6 full years of active duty service in the Armed Forces. Therefore, the applicant's sixth anniversary on active duty was March 27, 1999. This date is confirmed by his enlistment documents, which show that his pay and active duty are to be calculated as if he had first enlisted and served continuously since March 27, 1993.

There is no form CG-3307 in the applicant's record showing that he was counseled concerning his eligibility for an SRB prior to his sixth anniversary on active duty.

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 after November 25, 1998, received an SRB with a multiple of 3. ALDIST 290/98 remained in effect until June 14, 1999.

VIEWS OF THE COAST GUARD

On November 19, 1999, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant's request.

The Chief Counsel stated that the applicant should be granted relief because he took prompt and appropriate action to rectify the error after he discovered his

¹ SRBs vary according to the length of each member's active duty service, the length of the period of reenlistment or extension of enlistment, and the need of the Coast Guard for personnel with the member's particular skills. Coast Guard members who have served between 21 months and 6 years on active duty are in "Zone A."

eligibility under ALDIST 290/98. The Chief Counsel also argued that the correction is warranted because the applicant is an "excellent performer" and is willing to commit himself to a 6-year reenlistment in consideration for the SRB.

The Chief Counsel noted that under the regulations, previously obligated service diminishes an SRB. Therefore, if the Board grants relief, the applicant's SRB will be reduced by the amount of time remaining on his 6-year enlistment dated January 30, 1996.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 29, 1999, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. On December 29, 1999, the applicant responded, indicating that he agreed with the Chief Counsel's recommendation.

APPLICABLE REGULATIONS

Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration), Section 3.d.(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.(9) of the instruction 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."

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.

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 for an SRB prior to his sixth anniversary on active duty. He alleged that, had he been properly counseled, he would have been discharged on his sixth anniversary and immediately reenlisted for a term of 6 years to receive the maximum possible SRB for his rating.
3. Under Sections 3.d.(1) and 3.d.(9) of Enclosure (1) to Commandant Instruction 7220.33, the applicant was eligible to be discharged on his sixth anniversary on active duty in order to reenlist and receive an SRB under ALDIST 290/98. Under

Enclosure (3) to the instruction, the applicant had a right to be counseled concerning his eligibility.

4. There is no evidence that the Coast Guard counseled the applicant concerning his eligibility for an SRB prior to his sixth anniversary on active duty. Had he been so counseled, a Form CG-3307 should appear in his record, but there is none. Moreover, the applicant's commanding officer submitted a letter supporting his application and indicating that he had not been timely counseled concerning SRBs.

5. Upon discovering the error a few days after his sixth anniversary, the applicant quickly applied to this Board for relief. Therefore, the Board concludes that, if the applicant had been timely counseled, he would have been discharged and reenlisted for a term of 6 years to receive an SRB.

6. The applicant submitted evidence indicating that his active duty base date is April 1, 1993, which would make his sixth anniversary April 1, 1999. However, based on the applicant's DD 214 from the Army and dates shown on his enlistment contract, the Board believes that the applicant's actual sixth anniversary on active duty was March 27, 1999. Although the Chief Counsel recommended that the applicant's request be granted, he did not indicate the date of his sixth anniversary.

7. Therefore, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

The applicant's record shall be corrected to show that he was discharged and reenlisted on his sixth anniversary on active duty, which the Coast Guard shall calculate to include his prior 2 years, 10 months, and 4 days of active duty service in the Army in accordance with Section 3.d.(9) of COMDTINST 7220.33, for a term of 6 years for the purpose of receiving a Zone A SRB with a multiple of 3 under ALDIST 290/98.

The Coast Guard shall pay the applicant the amount due him as a result of this correction, taking into account the applicant's remaining previously obligated service.

Barbara Betsock

Terence W. Carlson

Charles Medalen