

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2000-013**

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**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 October 19, 1999, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated August 24, 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 xxxxxxxxxxxx, asked the Board to correct his military record to make him eligible to receive a selective reenlistment bonus (SRB) as a result of his reenlistment on April 21, 1999.

**APPLICANT'S ALLEGATIONS**

The applicant alleged that when he was released from active duty into the Reserves on October 3, 1998, he was never advised that he had to reenlist within three months in order to be eligible for an SRB. He alleged that the Coast Guard had a duty to counsel him properly. He alleged that if he had been properly counseled, he would have reenlisted within three months rather than waiting more than six months to reenlist. Therefore, he argued it is unjust for the Coast Guard to deny him an SRB solely on the basis of his break in service.

**SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on October 4, 1994, for a term of four years. At the end of this enlistment, on October 3, 1998, he was released from active duty into the Reserve. The paper copy of the applicant's file for this first enlistment is missing. However, the Coast Guard has an electronic personnel file for the applicant, which contains a copy of his 1994 enlistment contract (DD 4/1), Statement of Understanding, Montgomery G.I. Bill enrollment form (DD 2366), Record of Military Processing (DD 19966/1), six administrative entries signed when he first enlisted, an administrative entry made regarding his attendance at A School dated February 22, 1996, an administrative entry regarding superior performance dated March 30, 1998, and his discharge form (DD 214). There is no record of any pre-discharge interview or reenlistment counseling in the electronic file.

On April 21, 1999, the applicant reenlisted for four years at the rank of xxx. He was promoted to xxx on June 1, 1999. He received no SRB for this reenlistment.

### **VIEWS OF THE COAST GUARD**

On April 27, 2000, the Chief Counsel of the Coast Guard recommended that the Board dismiss the case without prejudice or deny relief for lack of proof.

The Chief Counsel argued that the Board should dismiss the case without prejudice because "all relevant documentation from his prior service period is missing and has yet to be merged with his new [headquarters] service record." The Chief Counsel stated that the only documents in hand from the applicant's first enlistment are "his enlistment contract and other *pro forma* first enlistment documentation." The Chief Counsel also suggested that the Board could delay the "decision due date" in this case on a day to day basis until the applicant's records are found.

The Chief Counsel stated that when the applicant's records are found, "we expect to find a record of counseling among Applicant's former service records documenting his pre-discharge interview conducted in accordance with Article 12.B.4." of the Personnel Manual. Pre-discharge interviews, he stated, cover all aspects of a member's SRB eligibility, including the requirement to reenlist within three months of separation. The Chief Counsel alleged that the applicant provided no evidence that he was not properly counseled. He argued that under the presumption of regularity, the Board must assume that this interview occurred unless the applicant provides convincing evidence that it did not. *Muse v. United States*, 21 Cl. Ct. 592, 601 (1990).

Furthermore, the Chief Counsel argued, the applicant is barred by statute and regulation from receiving an SRB because he reenlisted more than three months after his separation. COMDTINST 7220.33, Article 3.a.(1). Reentering active duty after more than three months, he alleged, is considered an "enlistment" rather than a "reenlistment." In addition, he stated, even if the Board were to assume the applicant was not

properly counseled, the applicant has failed to prove that “but for” the lack of counseling, he would have reenlisted within three months of separation. Therefore, the Board could, in the alternative, deny relief for lack of proof.

The Chief Counsel stated that this case involves a significant issue of Coast Guard policy, so that any final action contrary to his recommendation must be reviewed by the delegate of the Secretary, in accordance with 33 C.F.R. § 52.64(b).

## **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On April 28, 2000, 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.

### **APPLICABLE REGULATIONS**

Title 37 U.S.C. §§ 308 and 308a contain provisions for the payment of reenlistment and enlistment bonuses, respectively. Each authorizes the Secretary of each Uniformed Service to prescribe regulations governing payment of such bonuses. Neither contains any requirement that a member reenlist within three months of separation to receive an SRB.

Article 12-B-4.b. of the Personnel Manual provides that approximately six months prior to the end of an enlistment, each member must be counseled about reenlistment and the SRB program. If a member chooses not to reenlist, the "member must be fully informed of matters which are of interest to potential reenlistees." This interview must be documented with an administrative entry in the member's record. The administrative entry must state that the member must reenlist within three months of the date of discharge to maintain a "continuous service status."

Article 1.G.7.a. of the Personnel Manual states that to maintain a "continuous service status," members must reenlist within three months of their date of discharge. Article 1.G.7.a.1. provides that, "[t]o receive a selective reenlistment bonus (SRB), a member must reenlist within three months from date of discharge and meet the eligibility requirements contained in ... COMDTINST 7220.33 (series)."

Paragraph 3.a.(1) of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that, to be eligible for an SRB, members must "[r]eenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple."

ALDIST 290/98, issued on November 24, 1998, authorized members in the xx rating with no more than six years of active service who reenlisted or extended their enlistments after November 25, 1998, to receive an SRB with a multiple of two. ALDIST 290/98 remained in effect until June 14, 1999.

### **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 of the United States Code. The application was timely.

2. Under 37 U.S.C. § 308, the Secretary may prescribe regulations governing members' eligibility for SRBs. Under Article 1.G.7.a.1. of the Personnel Manual and Paragraph 3.a.(1) of Enclosure (1) to COMDTINST 7220.33, members must reenlist within three months of being released from active duty to be eligible for an SRB.<sup>1</sup> Because the applicant was released from active duty more than six months before he reenlisted on April 21, 1999, he was not eligible for an SRB under ALDIST 290/98.

3. There is no documentation of a pre-discharge interview in the applicant's paper or electronic personnel records provided by the Coast Guard. The Chief Counsel indicated that the paper record of the applicant's first enlistment is "missing" but he argued that under the presumption of regularity, the Board should conclude that the applicant received a proper pre-discharge interview. He argued that because only "*pro forma*" records of his first enlistment appear in the electronic file, the Board should not assume from the lack of pre-discharge interview documentation that the Coast Guard failed to counsel the applicant.

4. In the Board's experience, administrative entries documenting reenlistment and pre-discharge interviews are normally included in the electronic copy of a member's record. The applicant's electronic file contains not only his original enlistment documents but also administrative entries made during his enlistment, including one dated March 30, 1998, slightly more than six months before his discharge. If the applicant underwent a proper pre-discharge interview in accordance with Article 12-B-4.b., it would have occurred at approximately the same time and an administrative entry documenting the interview should appear in his electronic file. Therefore, because there is no documentation of a pre-discharge interview in the applicant's electronic file and because the Coast Guard is apparently unable to find a paper copy of any such documentation, the Board finds that the preponderance of the evidence indicates that the applicant did not receive a proper pre-discharge interview.

5. The applicant has proved by a preponderance of the available evidence that the Coast Guard erred by not properly counseling him concerning the requirement that he reenlist within three months to maintain eligibility for an SRB. However, he has presented no evidence in support of his allegation that, if he had received such counseling, he would have reenlisted within three months of the date of his release from active duty. Nor has he proved that between October 4, 1998, and January 3, 1999, he had any intention of ever rejoining the Coast Guard. Therefore, the Board is

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<sup>1</sup> The Chief Counsel stated that the Coast Guard was prohibited by statute from paying an SRB to a member who reenlists more than three months after being released from active duty. However, the Chief Counsel cited no statute in support of this allegation, and no such requirement appears in 37 U.S.C. §§ 308 or 308a.

unconvinced that the applicant would have reenlisted within three months of his release on October 3, 1998, if he had received a proper pre-discharge interview six months before his release.

6. Accordingly, the applicant's request should be denied with prejudice.

**ORDER**

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

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Gareth W. Rosenau

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Coleman R. Sachs

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Mark A. Tomicich