

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-039

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 January 4, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated September 28, 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 by canceling a six-year reenlistment contract he signed on August 5, 1999.

APPLICANT'S ALLEGATIONS

The applicant alleged that when he reenlisted for six years on August 5, 1999, he was told that the reenlistment would entitle him to receive a Zone B SRB¹ calculated with a multiple of one under ALDIST 184/99. However, because he was still eeeeeeeee on August 5, 1999, the reenlistment did not entitle him to an SRB. He alleged that if he had known about the requirement that he be in pay grade E-5 to receive a Zone B SRB, he would not have reenlisted for six years but would have

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, which is reflected in the multiple used to calculate the bonus. Coast Guard members in pay grade E-5 and above who have served between 6 and 10 years on active duty are in "Zone B." Members may only receive one SRB per zone.

extended his previous enlistment so that he could reenlist after he was promoted to xxxx/E-5 and receive the SRB.

In support of his request, the applicant submitted a statement signed by his commanding officer (CO). The CO stated that the applicant was not properly counseled concerning his eligibility for an SRB due to an administrative oversight. He stated that the applicant entered into the reenlistment contract believing that he would be paid an SRB. The CO stated that, if the Board cancels the applicant's reenlistment contract, he would extend his previous enlistment for six months, during which time he will seek advancement to E-5 to become eligible for a Zone B SRB.

SUMMARY OF THE RECORD

On November 6, 1995, the applicant enlisted in the Coast Guard as a seaman (SN; pay grade E-3) for a term of four years, through November 5, 1999. Prior to this enlistment, the applicant had already served over four years on active duty in another service. Therefore, his active duty base date is October 24, 1991.

On February 28, 1997, the applicant entered the xx rating as an SN-xx (pay grade E-3) but was not advanced to xxx until August 27, 1997, due to disciplinary problems.

On May 13, 1999, the Commandant issued ALDIST 184/99, which established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments after June 15, 1999. The multiple to be used for calculating Zone B SRBs for members in the xx rating was one.

On August 5, 1999, while still at the rank of xxx and in pay grade E-4, the applicant reenlisted for six years. His reenlistment contract states that he is "entitled to [a] Zone B SRB with [a] multiple of 1." There is no entry in the applicant's record indicating that he was counseled concerning his SRB eligibility.

On May 1, 2000, the applicant was promoted to xxx and pay grade E-5.

VIEWS OF THE COAST GUARD

On June 29, 2000, the Chief Counsel of the Coast Guard recommended that the Board grant partial relief in this case.

The Chief Counsel admitted that the applicant was wrongly advised with respect to his SRB eligibility. However, he stated, "[t]he Government is not estopped from repudiating the inaccurate SRB counseling or the SRB provision included in Applicant's 05 August 1999 reenlistment contract. Even assuming arguendo that Applicant had detrimentally relied on this promise of a SRB, the doctrine of estoppel does not apply,

because, as a matter of law, Applicant was ineligible for an SRB.” *Utah Power & Light Co. v. United States*, 243 U.S. 389, 409 (1971); *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972); *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), *cert. denied sub nom Goldberg v. Califano*, 431 U.S. 937 (1977).

The Chief Counsel stated that the applicant’s reenlistment contract is voidable because of the erroneous advice, but that a new contract must be established prior to voiding the August 5, 1999, contract because the applicant would have no contract covering his service after the termination date of his original enlistment, November 5, 1999.

Therefore, the Chief Counsel recommended that the Board grant partial relief by voiding the applicant’s August 5, 1999, reenlistment contract and offering the applicant the minimum allowable two-year extension. In the alternative, he stated, the Board could terminate the applicant’s enlistment obligation so that he would be discharged.

APPLICANT’S RESPONSE TO THE COAST GUARD’S VIEWS

On June 30, 2000, the BCMR sent the applicant a copy of the Chief Counsel’s recommendation and invited him to respond to it within 15 days. He was granted an extension and his response was received on July 19, 2000.

The applicant stated that the Chief Counsel’s recommended relief would prevent him from ever receiving a Zone B SRB because the two-year extension would not end until November 5, 2001, at which time he will no longer be in Zone B. In addition, the applicant stated, even if he could reenlist before or on his tenth anniversary, there may be no SRB authorized for his rating at that time.

Therefore, the applicant asked the Board to void his August 5, 1999, reenlistment and correct his record to show that he extended his enlistment for six months, from November 6, 1999, through May 6, 2000, and then reenlisted for six years to earn a Zone B SRB. He alleged that extensions of less than two years were authorized under ALDIST 245/98.

The applicant stated that if the Board does not agree with his request, he would prefer to have his current contract terminated as soon as possible. He alleged that he would then be able to reenlist and receive a Zone B SRB because, under ALCOAST 084/99, xxxs may reenter the service as part of the “Open Rate List (ORL) program.” However, he indicated that this option could create hardship for his family because he would lose his billet and might be transferred upon reenlistment. He alleged that it would also be expensive for the Coast Guard, which would have to train and transfer someone else to fill his billet.

APPLICABLE REGULATIONS

Reenlistment and Extension Provisions

Article 12.B.7.b. of the Personnel Manual states that a member's commanding officer may discharge him for the purpose of immediate reenlistment during the three months prior to the end of his enlistment.

Article 1.G.2.a. of the Personnel Manual states that reenlistments must be of three, four, five, or six years' duration. Under Article 1.G.14.a.1., extensions of enlistments requested by members must be of at least two years' duration. Under Article 1.G.9.b., members reenlisting within 24 hours after discharge may be reenlisted at their unit, rather than at a recruiting office. Article 1.G.3.a. provides that members reenlisting the day after they are discharged shall be reenlisted in the rate held on the date of discharge.

ALDIST 245/98, issued on October 8, 1998, stated that during fiscal year 1999, commanding officers could ask the Personnel Command to approve extensions of enlistments for less than two years "to alleviate short-term gaps in billets." The ALDIST stated that approval by the Personnel Command was now required to "provide a better balance of member needs and short-term flexibility at the unit with the longer term assignment and workforce needs of the Coast Guard."

ALCOAST 084/99, issued on September 7, 1999, established a new Open Rate List, effective October 1, 1999. The ORL included members in rating xxx.

ALCOAST 302/00, issued on July 20, 2000, canceled ALCOAST 084/99 and established a new ORL as of October 1, 2000. The new ORL also included members in rating xxx.

SRB Provisions

Section 2 of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides 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." The page 7 members must sign states that they have been provided with a copy of the SRB instruction.

Section 3.b.(4) of Enclosure (1) states that, to be eligible for a Zone B SRB, members must "[b]e serving in pay grade E-5 or higher."

Section 3.d.(9) of Enclosure (1) states that "[c]ommanding officer 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 expi-

ration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB respectively.”

ALDIST 184/99, issued on May 13, 1999, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments after June 15, 1999. The multiple to be used for calculating Zone B SRBs for members in the xx rating was one.

ALCOAST 218/00, issued on May 19, 2000, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments after July 1, 2000. The multiple to be used for calculating Zone B SRBs for members in the x rating was 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 of the United States Code. The application was timely.

2. Under Section 2 of Enclosure (1) to Commandant Instruction 7220.33, the applicant was entitled to proper counseling concerning his eligibility for a Zone B SRB under ALDIST 184/99 when he reenlisted on August 5, 1999. Proper counseling would have provided him with a copy of the instruction, whose terms would have informed him that as an xxx/E-4, his reenlistment would not entitle him to an SRB. COMDTINST 7220.33, Enclosure (1), Section 3.b.(4).

3. The reenlistment contract the applicant signed on August 5, 1999, proves that he was wrongly counseled about his eligibility for an SRB and wrongly promised an SRB for which he was not eligible in consideration for his reenlistment. The Coast Guard erred and committed an injustice in inducing the applicant to reenlist for six years with this false promise.

4. The applicant alleged that if he had been properly counseled in August 1999, he would have chosen to and been permitted to extend his enlistment for a short period until some then-unknown future date when he would be advanced to ET2/E-5. Under Article 1.G.14.a.1. of the Personnel Manual, extensions of enlistments requested by members must be of at least two years' duration, but the applicant alleged that such a short-term would have been permitted under ALDIST 245/98. ALDIST 245/98 permitted short-term extensions “to alleviate short-term gaps in billets,” and such extensions had to be approved by the Personnel Command.

5. Although the applicant's CO indicated that he would grant him a six-month extension, the applicant has not proved that in August 1999, his command would have requested that his enlistment be extended for six months under ALDIST 245/98 because of any gap in billets. Nor has he proved that the Personnel Command would have approved any such request by his CO in August 1999. Moreover, the applicant could not have known for certain in August 1999 that he would be promoted to xxx on May 1, 2000. Therefore, the applicant has not proved that if he had been properly counseled in August 1999, he would have been advised to or allowed to extend his enlistment for six months.

6. Therefore, the minimum amount of service that the applicant would have been required to obligate upon the termination of his enlistment was two years. The Chief Counsel recommended that the Board correct the applicant's record to show that he extended his enlistment for two years, through November 4, 2001. However, the applicant stated that since the Chief Counsel admitted that his contract is voidable, he would prefer to be discharged and reenlisted as soon as possible, despite the hardship this might cause for his family, because a two-year extension might preclude him from ever receiving a Zone B SRB if none was authorized for his rating prior to his tenth active duty anniversary in the fall of 2001.

7. The Coast Guard's administrative error in advising the applicant does not entitle him to a short-term extension against regulations or to an immediate discharge. When the Coast Guard commits an error by misadvising a member about his SRB eligibility, the Board's practice is to correct the member's record to appear as it would have if the Coast Guard had properly advised the member. The applicant has not proved that, if he had been properly advised about his ineligibility for an SRB in August 1999, he would have left the Coast Guard upon the termination of his enlistment in November 1999. The record indicates that the applicant intended to continue his career in the Coast Guard and was required to obligate at least two additional years of service.

8. A two-year extension contract would not necessarily prevent the applicant from ever receiving a Zone B SRB, as he alleged, even though the term of the extension would end after his tenth active duty anniversary. For example, if the applicant must sign a new contract to obligate service to accept transfer orders before his tenth anniversary and an SRB remains authorized for his rating, he may receive the SRB. Likewise, if an SRB is authorized for his rating at any time during the three months before his tenth anniversary, October 24, 2001, his CO could discharge and reenlist him for the purpose of receiving an SRB under Section 3.d.(9) of Enclosure (1) of COMDTINST 7220.33.

9. Accordingly, the Board should grant relief by voiding the applicant's six-year reenlistment contract dated August 5, 1999, and replacing it with a two-year extension contract.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXX, USCG, for correction of his military record is hereby granted in part as follows:

His record shall be corrected to show that on August 5, 1999, he extended his enlistment for two years. The six-year reenlistment contract he signed on August 5, 1999, shall be null and void.

Barbara Betsock

George Kuehne, Jr.

Michael J. McMorrow