

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-113

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 11, 2000, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated January 4, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, an xxxxxxx asked the Board to correct his military record to make him eligible to receive a selective reenlistment bonus (SRB) that he was denied because he did not reenlist within three months of his discharge on July 14, 1999. Instead, he reenlisted on January 7, 2000.

APPLICANT'S ALLEGATIONS

The applicant alleged that soon after his discharge on July 14, 1999, he decided to reenlist and contacted his local recruiting office. He alleged that in August 1999, a recruiter told him that he could reenlist at the same rank at which he was discharged and that he if he came in to "sign the appropriate paperwork" within three months of his discharge he would be "locked in" to receive an SRB. He alleged that he was advised to contact an xx assignment officer regarding possible assignments and that he did so on August 19, 1999. On September 13, 1999, he went to the recruiting office in Boston and signed reenlistment paperwork, which he was told would "lock" him in for reenlistment as an xxx and for an SRB.

The applicant alleged that his paperwork was not promptly forwarded to the proper office, which he was told was the xx assignment officer. When he called his recruiter on September 20, 1999, she told him that she had forgotten to have him sign a certain form, but she faxed it to him, and he signed it and faxed it back. The applicant alleged that on September 27, 1999, the assignment officer told him that his paperwork still had not been forwarded. When he called his recruiter, she said she had not received his fax, so he faxed it again and called to verify its receipt.

The applicant alleged that on September 29, 1999, the assignment officer told him once again that his paperwork had not arrived from his recruiter. However, his recruiter was on leave, and he was told to call back on October 4, 1999. When he called on October 4th, he was told his paperwork would be sent the same day by FedEx to the proper office. The applicant alleged that at this point he believed he was already guaranteed an SRB because he had signed the paperwork and submitted it within three months of his discharge. Later, however, he discovered that his reenlistment was not completely processed until October 20, 1999. Moreover, he discovered that completion and submission of the paperwork did not by itself "lock in" an SRB: the regulation requires that a member be sworn in within three months of discharge to be eligible for an SRB.

The applicant alleged that the Coast Guard erred by failing to process his paperwork with sufficient speed to permit him to reenlist within three months. In addition, he alleged that the Coast Guard erred when it told him that signing and submitting the paperwork was all that was required to "lock in" the SRB. He argued that, if the Coast Guard had not committed these two errors, his reenlistment would have been processed and he would have been sworn in within three months of his discharge to qualify for the SRB. Instead, once his reenlistment was authorized on October 20, 1999, he waited until January 7, 2000, to begin active duty, not knowing that the Coast Guard had already delayed his paperwork too long to permit him to qualify for the SRB.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 17, 1990, and was discharged upon the expiration of his enlistment (as extended) on July 14, 1999.

In support of his allegations, the applicant submitted copies of his phone bills showing that he made 17 long-distance calls to the xx assignment officer at Coast Guard Headquarters in August, September, and October 1999. Four of the calls were made on October 13 and 14. He also submitted copies of paperwork regarding his reenlistment dated September 1999 and of the approval of his reenlistment, which is dated October 20, 1999.

The applicant's reenlistment contract (DD Form 4/1) is dated January 6, 2000. On that contract, he initialed a statement indicating that no promises or guarantees other than those indicated on the contract had been made to him and that no promises or guarantees other than those in the contract would be honored. The contract does not mention an SRB. Annex E to the contract indicates that he was guaranteed an assignment in Coast Guard District 5 (the Mid-Atlantic states).

VIEWS OF THE COAST GUARD

On September 29, 2000, the Chief Counsel of the Coast Guard recommended that the Board deny relief for lack of merit.

The Chief Counsel argued that relief should be denied because the applicant "failed to point to any regulation that requires a recruiter to submit and receive approval for a prior-service reenlistment package within any set time schedule. While it appears there were some unfortunate delays in the processing of Applicant's reenlistment package, the Coast Guard was under no duty to process paperwork within a certain number of days or weeks." The Chief Counsel also argued that the applicant failed to prove that his recruiter promised him the SRB in September 1999 or that the Coast Guard had a duty to counsel him about the 90-day requirement for SRBs.

The Chief Counsel further argued that the applicant "failed to prove that 'but for' the alleged delay in the handling of his reenlistment package, he would have reenlisted within 90 days of his discharge." He stated that the fact that the applicant did not reenlist until more than two months after his reenlistment was authorized is substantial proof that he would not have reenlisted by October 14, 2000, even if his reenlistment had been authorized earlier.

The Chief Counsel stated that he believes the Board's jurisdiction over this case is "questionable" because the applicant did not allege an error in his record. He argued that the applicant's complaint is purely monetary and should therefore be presented to the Comptroller General under 31 U.S.C. § 3702.¹ The Chief Counsel stated that, to make the applicant eligible for an SRB, the Board would have to correct his record to show that he began active duty in October 1999, which would entitle him to back pay and allowances for more than two months, as well as the SRB.

Finally, the Chief Counsel stated that the applicant involves a "significant issue of Coast Guard policy" because a decision to grant relief would "affect the efficient use

¹ The statute has been amended. Under 31 U.S.C. § 3702(a), the Secretary of Defense, rather than the Comptroller General, settles members' monetary claims against the Coast Guard that do not involve any alleged error or injustice in their military records.

of Coast Guard resources.” Therefore, a decision to grant relief would be subject to review by the delegate of the Secretary under 33 C.F.R. § 52.64.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 29, 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 184/99, issued on May 13, 1999, authorized members in the xx rating with more than six years of active service who reenlisted or extended their enlistments after June 15, 1999, to receive an SRB 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 of the 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. 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. Because the applicant did not reenlist within three months of his discharge on July 14, 1999 (by October 14, 1999), but waited until January 6, 2000, he was not eligible for an SRB.

4. The applicant alleged that the Coast Guard advised him he had "locked in" an SRB but then unfairly delayed his reenlistment until he was no longer eligible for the SRB. He stated that, after he was told his paperwork had been submitted on October 5, 1999, by FedEx, he believed he was "locked in" and so waited until January 7, 2000, to reenlist.² He alleged that if the Coast Guard had not misadvised him and delayed the processing of his paperwork, he would have reenlisted within three months of his date of discharge.

5. The applicant's phone records prove that he began communicating with the Coast Guard about reenlisting in mid August 1999. They show numerous calls made to the xx assignment officer. Four of the calls were made on October 13th and 14th, the last two days the applicant could have reenlisted and received an SRB if his paperwork had been processed earlier. He also signed paperwork regarding his reenlistment in September 1999.

6. The applicant has failed to prove by a preponderance of the evidence that the Coast Guard unreasonably or maliciously delayed processing his reenlistment paperwork. While he began communicating with the xx assignment officer in mid August, he apparently did not sign any paperwork until September 13, 1999, which left just one month for the Coast Guard to process it while the applicant was still eligible for an SRB. By choosing to be discharged instead of reenlisting in July 1999 and waiting two months after his discharge to sign the initial paperwork, the applicant risked losing his eligibility for an SRB. The Coast Guard had no duty to expedite the applicant's paperwork so that he could reenlist by October 14, 1999.

² The applicant is mistaken about the date of his reenlistment. He signed the contract on January 6, 2000.

7. The applicant has not proved by a preponderance of the evidence that the Coast Guard misadvised him about the requirement to reenlist within three months of discharge. Absent strong evidence to the contrary, Coast Guard officers are presumed to have acted correctly, lawfully, and in good faith in executing their duties. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). The applicant submitted no affidavits from the persons who allegedly told him the SRB was “locked in.” Moreover, his four telephone calls to the Coast Guard to check on the status of his paperwork on October 13th and 14th indicate some continuing anxiety about when it would be approved, which belies his claim that he believed the SRB to be “locked in” at this time.

8. Because the applicant has not proved that the Coast Guard misadvised him or committed any error or injustice when it failed to authorize his reenlistment prior to October 14, 1999, it is unnecessary for the Board to address the Chief Counsel’s remaining arguments.

9. Accordingly, the applicant’s request should be denied.

ORDER

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

Stephen H. Barber

Donna L. O'Berry

Karen L. Petronis