

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-134

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 24, 2000, following the BCMR's receipt of the applicant's completed application.

This final decision, dated April 12, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that on February 14, 1982, he extended his enlistment for six years so that he could receive a Zone A¹ selective reenlistment bonus (SRB) calculated with a multiple of four, pursuant to ALDISTs 340/81 and 004/82.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was never counseled about his eligibility to receive an SRB by extending his enlistment in February 1982. He alleged that, if he had been counseled, he would have extended his enlistment for six years to receive the maximum

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," while those who have more than 6 but less than 10 years of active duty service are in "Zone B." In February 1982, the applicant was in Zone A. Members may not receive more than one bonus per zone.

possible bonus. The applicant stated that he did not discover his eligibility for an SRB under the ALDISTs until April 18, 2000.

SUMMARY OF THE LAW AND RECORD

The applicant enlisted in the Coast Guard on August 4, 1980, for a term of four years, through August 3, 1984. Thereafter, he attended "A" School to become a xxxxxx and was advanced to xxx on December 31, 1981. In February 1982, his average evaluation marks were 3.35 for proficiency, 3.4 for leadership, and 4.0 for conduct. There is no evidence in his record that he was ever counseled about the SRB opportunity under ALDIST 004/82.

On August 4, 1984, the applicant reenlisted for four years. On that day, ALDIST 072/84 was in effect, authorizing a Zone A SRB with a multiple of one for members in the xx rating. On July 20, 1988, the applicant extended this enlistment for one year, through August 3, 1989. On August 4, 1989, he reenlisted for three years. He has continued to serve on active duty.

VIEWS OF THE COAST GUARD

On November 30, 2000, the Chief Counsel of the Coast Guard issued a one-paragraph advisory opinion recommending that the Board grant the applicant's request because "its fact pattern [is] analogous to the fact pattern in BCMR Docket No. 1999-022. Therefore, the Coast Guard recommends relief consistent with [the Board's] decision in that case."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 28, 2000, the Chairman sent the applicant a copy of the Chief Counsel's advisory opinion, along with a copy of the Board's final decision in BCMR Docket No. 1999-022, and invited him to respond within 15 days. The applicant did not respond.

APPLICABLE LAW AND PRECEDENT CASES

SRB Regulations

Commandant Instruction 7220.13E (Administration of the Reenlistment Bonus Program), issued on May 4, 1979, was in effect when ALDIST 340/81 and ALDIST 004/82 were in effect. Section 1.c.(4) of Enclosure (1) to the Instruction stated that "[e]ntitlement to an SRB vests only on the date the member reenlists or makes operative an extension of enlistment" Section 1.c.(6) of Enclosure (1) stated that early separation could only occur "within three months of [the end of] activated obligated service, in accordance with Article 12-B-7 [of the] Personnel Manual" Section 1.d.(1) of

Enclosure (1) provided the criteria for SRB eligibility in Zone A. It stated the following, in part:

(1) Zone A Eligibility. [To be eligible, a member must meet all of the following criteria:]

(a) Be serving on active duty in pay grade E-3 or higher in a military specialty designated [in the SRB announcement].

(b) Must have completed at least 21 months of continuous active duty, other than active duty for training, but not more than six years of total active duty, immediately preceding the date of reenlistment or operative date of extension of enlistment. . . .

(c) The extension of enlistment or reenlistment must be at least three years and, when combined with prior active duty, must yield a total of at least six years of active duty. [Emphasis in original]

(d) Has not previously received a Zone A SRB, nor previously enlisted, reenlisted, or extended (extensions that have become effective) beyond six years of active duty. . . .

Section 1.g. of Enclosure (1) stated that in order to “attain the objectives of the SRB program, each potential reenlistee who would be eligible for SRB must be informed of their eligibility and the monetary benefits of the SRB program. It is expected that the reenlistment interview, held approximately six months before expiration of enlistment, will provide the potential reenlistee with complete information on SRB.”

ALDIST 003/82

On January 8, 1982, the Commandant issued ALDIST 003/82, which changed the performance requirements for reenlistment and extension. To be allowed to reenlist or extend an enlistment for six years, members were required to have the following average evaluation marks (or higher): 3.6 for proficiency, 3.6 for leadership, and 3.9 for conduct. Members whose evaluation marks were at least 3.3 for proficiency, 3.3 for leadership, and 3.8 for conduct were allowed to reenlist or extend their enlistments for up to four years.

ALDISTs 004/82 and 340/81

On January 12, 1982, the Commandant of the Coast Guard issued ALDIST 004/82, temporarily extending the provisions of ALDIST 340/81, which authorized SRBs for members in certain skill ratings who were within 30 days of the end of their

enlistment periods and who reenlisted or extended their enlistments for at least three years. The Zone A SRBs authorized for members in the xx rating who extended their enlistments or reenlisted under ALDIST 340/81 were calculated with a multiple of four. ALDIST 004/82 also temporarily waived the requirement that members be within 30 days of the end of their enlistment periods in order to be eligible to receive the SRB for extending their enlistments. To take advantage of the waiver in ALDIST 004/82, members had to sign contracts extending their enlistments before February 15, 1982.

Decision in BCMR Docket No. 69-97

In BCMR Docket No. 69-97, the applicant had reenlisted on May 2, 1980, for a six-year term, after completing his first, four-year enlistment. Subsequently, the applicant extended his enlistment three times for periods of two years or less before reenlisting for three years on March 1, 1991, and for another six years on January 6, 1994. The applicant asked the BCMR to correct his record to show that he extended his enlistment for a period of six years on February 14, 1982, in order to receive a Zone B SRB. He stated that if he had been properly counseled, he "would have taken the necessary steps to secure [a] zone 'B' bonus." There was no documentation in the applicant's record to indicate that he was ever advised of the provisions of ALDIST 004/82 while it was in effect.

The Board recommended that the requested relief be granted. The recommendation was based in part on (1) the applicant's sworn statement that he had not been properly counseled about ALDIST 004/82 when it was in effect and had not learned of it until 1997; (2) the applicant's statement that he would have extended his enlistment to receive the SRB had he known of the opportunity; (3) the applicant's previous enlistments and subsequent years of service, which provided a reasonable basis to believe that he would have extended his service obligation had he been properly counseled about ALDIST 004/82; and (4) the Coast Guard's failure to reveal if and how information about ALDIST 004/82 had been disseminated to the members.

The Deputy General Counsel wrote a concurring decision that responded to several of the Coast Guard's arguments that were not mentioned in the Board's decision. She stated that the applicant's history of service and his statements concerning the lack of proper counseling were sufficient to nullify the presumption of regularity. She also found unpersuasive the argument that the applicant's short extensions showed that he was not, in fact, committed to a career in the Coast Guard and therefore was not likely to seek a maximum SRB. She concluded that the "Coast Guard erred in drafting COMDTINST 7220.13E when it failed to require mandatory counseling for potential extendees" BCMR Docket No. 69-97, Deputy General Counsel's Concurring Decision, at 3. Therefore, she found, potential extendees such as the applicant should have been fully advised of their SRB opportunities under ALDIST 004/82. She cited several "Comptroller General cases that authorize government agencies to correct errors of

wrongful advice or failure to advise when an employee otherwise meets the statutory criteria for obtaining a benefit.”² BCMR Docket No. 69-97, Deputy General Counsel’s Concurring Decision, at 11.

Decision in BCMR Docket No. 1999-022

In his advisory opinion recommending a grant of relief in this case, the Chief Counsel cited the Board’s decision in BCMR Docket No. 1999-022. In that case, the applicant was never counseled about ALDIST 004/82. At the end of his enlistment in 1983, he continued to serve on active duty through a series of short-term extensions. The Board granted relief, in accordance with the decision in BCMR Docket No. 69-97, finding that the applicant’s series of short-term extensions did not prove that he would not have extended his enlistment for four years in 1982 to receive the maximum possible Zone B SRB for which he was eligible.

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 over this matter pursuant to 10 U.S.C. § 1552.
2. The applicant stated that he discovered the alleged error that he has asked the Board to correct on April 18, 2000. The Coast Guard did not present any evidence indicating that the applicant knew or might have learned of his eligibility to receive an SRB under ALDIST 004/82 any earlier than the date of discovery alleged by the applicant. Therefore, the Board finds that the application was timely as it was filed within three years of the date of discovery of the alleged error.
3. The applicant asked the Board to correct his record to show that he extended his enlistment for six years on February 14, 1982, so that he might receive a Zone A SRB, calculated with a multiple of four, under ALDIST 004/82. He alleged that he was never told about ALDIST 004/82 and that, if he had been properly advised of the SRB opportunity, he would have extended his enlistment for six years.
4. The Deputy General Counsel has held that the “Coast Guard erred in drafting COMDTINST 7220.13E when it failed to require mandatory counseling for

² The Deputy General Counsel cited Matter of Hanley, B-202112, November 16, 1981; Matter of Anthony M. Ragunas, 68 Comp. Gen. 97 (1988); and Matter of Dale Ziegler and Joseph Rebo, B-199774, November 12, 1980.

potential extendees on an equal basis with potential reenlistees.” BCMR Docket No. 69-97, Deputy General Counsel’s Concurring Decision, at 3. Furthermore, the Deputy General Counsel has held that “Coast Guard regulations require that members be ‘fully advised’ of SRB opportunities.” BCMR Docket No. 121-93, Decision of the Deputy General Counsel, at 2. Therefore, the Board finds that the Coast Guard had a duty to counsel the applicant about his eligibility for an SRB by extending his enlistment under ALDIST 004/82.

5. There is no evidence in the record that the applicant was advised about the SRB opportunity under ALDIST 004/82. The Coast Guard has submitted no evidence to rebut the applicant’s claim that he was not informed of his eligibility for a Zone A SRB. With a credible, sworn statement by the applicant to the effect that he was not counseled, and with no contrary evidence presented by the Coast Guard, the Board finds that the preponderance of the evidence indicates that the applicant was not properly counseled about the SRB opportunity under ALDIST 004/82.

6. When ALDIST 004/82 waived the requirement that members be within 30 days of the end of their enlistments before extending their enlistments, the provisions of ALDIST 003/82 were in effect. Under those provisions, the applicant was not qualified to extend his enlistment for six years because his average marks for proficiency and leadership were not 3.6 or higher while ALDIST 004/82 was in effect. Therefore, the maximum number of years the applicant might have been allowed to extend his enlistment was four.

7. The applicant has proved by a preponderance of the evidence that the Coast Guard erred in 1982 by failing to counsel him about his eligibility to receive a Zone A SRB by extending his enlistment under ALDIST 004/82. The record indicates that, if he had been properly counseled, his enlistment contract would have been extended for four years.

8. The record indicates that the applicant may have received a Zone A SRB calculated with a multiple of one for his reenlistment on August 4, 1984, under ALDIST 072/84. Members may only receive one SRB per zone. If the applicant had extended his enlistment and received a Zone A SRB calculated with a multiple of four under ALDIST 004/82, he would not have received a Zone A SRB under ALDIST 072/84. Therefore, if the applicant received a Zone A SRB under ALDIST 072/84, regulations require that it be deducted from any Zone A SRB he receives under ALDIST 004/82.

9. Accordingly, the applicant’s request should be granted in part by correcting his record to show that on February 14, 1982, he extended his enlistment for four years, from August 4, 1984, through August 3, 1988. The reenlistment he signed on August 4, 1984, would be redundant and should be cancelled, but the one-year extension he signed on July 20, 1988, should remain in effect but be corrected to stand as the

second extension of his first enlistment rather than the first extension of his second enlistment.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

His record shall be corrected to show that on February 14, 1982, he extended his enlistment for four years, from August 4, 1984, through August 3, 1988.

The four-year reenlistment contract signed by the applicant on August 4, 1984, shall be null and void.

The one-year extension contract the applicant signed on July 20, 1988, shall be corrected to show that it is the second extension of his first enlistment, dated August 4, 1980, rather than the first extension of his reenlistment dated August 4, 1984.

The Coast Guard shall pay the applicant any Zone A SRB he may be due as a result of this correction under ALDISTs 340/81 and 004/82, taking into account any Zone A SRB he may have been paid for his reenlistment on August 4, 1984, under ALDIST 072/84.

James K. Augustine

Coleman R. Sachs

Edmund T. Sommer, Jr.

