

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2001-074

FINAL DECISION

ANDREWS, Deputy Chair:

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 16, 2001, after the Board received the applicant's completed application.

This final decision, dated February 14, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a damage controlman first class (DC1; pay grade E-6) on active duty in the Coast Guard, asked the Board to correct his military record to show that he extended his enlistment for six years on March 5, 1998, instead of just two years and three months. The correction would result in his receiving a selective reenlistment bonus (SRB) under the provisions of ALDIST 046/98.

The applicant alleged that in early March 1998, he was told that he had to extend his enlistment to accept transfer orders. However, he was never counseled about the SRB that was authorized for his rating under ALDIST 046/98. Therefore, he extended his enlistment for two years and three months. He alleged that if he had been counseled about ALDIST 046/98, he would have extended his enlistment for six years to receive the SRB.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 26, 1994, for four years. On December 16, 1996, he extended this contract for four months, from September 26, 1998, through January 25, 1999, in order to obligate sufficient service to be allowed to attend "A" School. The extension contract he signed includes language acknowledging SRB counseling, but

the SRB information is marked "NA," or not applicable, because there was none authorized for his rating at that time.

On _____, an alcohol incident was documented in the applicant's record because he had been arrested for "driving while intoxicated," having failed both a field sobriety test and breath analysis.

In _____, the applicant received transfer orders that required him to have at least three full years of obligated service upon reporting to the new unit. As his enlistment had already been extended through January 25, 1999, on March 2, 1998, he signed an extension contract obligating him to serve another two years and three months, through April 25, 2001, which would carry him through a full tour of duty at his new station. There is no form CG-3307 in his record formally documenting proper SRB counseling at the time he signed this extension contract. The contract itself contains language acknowledging SRB counseling, but the SRB information is marked "NA."

Also on March 2, 1998, at 13:22 Greenwich Mean Time, the Commandant of the Coast Guard issued ALDIST 046/98, which allowed members in the DC rating to receive an SRB if they reenlisted or extended their current enlistments between April 1, 1998 and September 30, 1998.

On March 27, 1998, the applicant signed a page 7 entry (Administrative Remarks) for his record, which advised him that, as a result of the Centralized First Term Reenlistment Review (CFTRR) panel, he was authorized either to reenlist or to extend his enlistment. If he had not already done so, he would have been required to sign a reenlistment or extension contract by September 24, 1998, obligating himself to serve at least an additional two years to avoid being discharged. However, because he had already extended his enlistment on March 2, 1998, no additional contract was necessary. The page 7 entry also stated that he had been given a "reenlistment interview" in accordance with Article 12.B.4. of the Personnel Manual.

On April 24, 2001, the applicant reenlisted for six years, through April 23, 2007.

VIEWS OF THE COAST GUARD

On September 25, 2001, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel argued that the applicant has not proved that his unit received ALDIST 046/98 prior to the time he signed his extension contract on March 2, 1998. He stated that "routine" ALDISTs such as ALDIST 046/98 are "normally not received until the day following the date indicated" on the ALDIST. Therefore, he alleged, "it is highly unlikely that the Applicant's unit had received ALDIST 046/98 at the time Applicant executed his extension agreement." The Chief Counsel stated that, if the applicant could prove that his unit received 046/98 before he signed the contract on March 2, 1998, and yet had failed to counsel him about the SRB, then the Coast Guard would agree that error and injustice had been committed.

The Chief Counsel argued that under the presumption of regularity accorded government employees, including Coast Guard members and officers, the Board must presume that if the applicant's unit had received ALDIST 046/98 before he signed the contract on March 2, 1998, it would have counseled him about the SRB. He further argued that, because the applicant's unit presumably did not receive ALDIST 046/98 until after he signed the contract, no error or injustice was committed because the Coast Guard had no duty to counsel the applicant about a "potential future SRB." He argued that the SRB Instruction, COMDTINST 7220.33, "does not mandate a discussion of the effect of either an extension or reenlistment on future SRB eligibility."

The Chief Counsel further argued that when the applicant had a reenlistment interview on March 27, 1998, in accordance with Article 12.B.4. of the Personnel Manual, he received SRB counseling.

The Chief Counsel stated that the application "involves a significant issue of Coast Guard policy." Therefore, a recommended grant of relief by the Board would be subject to review by the delegate of the Secretary. 33 C.F.R. § 52.64(b).

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 26, 2001, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. No response has been received.

APPLICABLE REGULATIONS

Article 4.B.6.a. of the Personnel Manual provides that members with fewer than six years of active duty may not be transferred "unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit." Article 4.A.5.b. specifies that a full tour of duty at the station to which the applicant was transferred is three years.

Article 1.G.14.e. of the Personnel Manual provides that, without authorization by the CFTRR or Personnel Command, commanding officers may only extend the enlistments of first term personnel by the minimum period required by their transfer orders.

Paragraph 2 of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) states 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."

Article 1.G.19.2.a.(6) of the Personnel Manual provides that "an appropriate authority" may cancel an extension agreement before it begins to run if the member has not been selected for reenlistment by the CFTRR. However, "if Service needs dictate," the extension contract will not be canceled.

Article 12.B.4.b.3. of the Personnel Manual provides that “[d]uring the [reenlistment] interview, the petty officer must inform each potential reenlistee eligible for a Selective Reenlistment Bonus (SRB) of that eligibility and the SRB program’s monetary benefits.”

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 10 U.S.C. § 1552. The application was timely.

2. The applicant presented no evidence to indicate that his command knew of ALDIST 046/98, which was issued on March 2, 1998, before he signed the extension contract on that day. Absent strong evidence to the contrary, the Board must presume that Coast Guard officers have acted correctly, lawfully, and in good faith. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). Therefore, the Board presumes that if his command had known about ALDIST 046/98, it would have counseled him about the SRB before he signed the contract. Since his command apparently did not counsel him about the SRB under ALDIST 046/98, the Board finds that the applicant signed his extension contract before his command received ALDIST 046/98.

3. Although the applicant’s command apparently failed to have him complete a page 7 entry regarding SRB counseling on March 2, 1998, he has not proved that this administrative error caused him any harm. The applicant had to extend his enlistment to obligate sufficient service to complete a full three-year tour in order to accept his transfer orders. Personnel Manual, Articles 4.A.5.b. and 4.B.6.a. On March 2, 1998, his command was not authorized to extend his enlistment for longer than the minimum required to accept the transfer orders. Personnel Manual, Article 1.G.14.e. Moreover, since the SRB authorized under ALDIST 046/98 did not go into effect until April 1, 1998, signing a longer extension contract on March 2, 1998, would not have entitled the applicant to an SRB.

4. Although the applicant could theoretically have waited until April 1, 1998, to extend his enlistment, his command could not have known that such a delay would benefit him because it could not foresee the contents of ALDIST 046/98 or the results of the CFTRR. Therefore, his command committed no error or injustice in asking him to commit to the transfer by signing the extension contract on March 2, 1998. The Board agrees with the Chief Counsel in this case that unless the applicant’s command knew of the SRB authorized under ALDIST 046/98, it had no duty to advise him to wait until the last moment to commit himself to the transfer just in case an SRB would be authorized for his rating.

5. The Board also notes that the applicant’s selection for reenlistment by the CFTRR was not guaranteed, particularly in light of the alcohol incident in his record. If he had not been selected by the CFTRR and had not already extended his enlistment, he would have been discharged. His extension and acceptance of the transfer orders could have resulted in his retention despite a negative CFTRR result. Personnel Manual, Article 1.G.19.

6. After he was selected for retention by the CFTRR in late March 1998, the applicant's command could have reenlisted him for six years on April 1, 1998, to receive an SRB under ALDIST 046/98. The SRB would have been reduced by the more than three years of service remaining on his enlistment. However, the applicant signed a page 7 entry on March 27, 1998, acknowledging that he had been counseled in accordance with Article 12.B.4. of the Personnel Manual. Article 12.B.4. requires SRB counseling. Therefore, under the presumption of regularity, the Board must presume that when his command counseled him about his opportunity to reenlist as a result of the CFTRR, it also counseled him about his eligibility for an SRB under ALDIST 046/98. Nevertheless, as indicated on the page 7 entry, the applicant chose not to reenlist.

7. The applicant has not overcome the presumption of regularity or proved by a preponderance of the evidence that his command committed any error or injustice that deprived him of an SRB under ALDIST 046/98.

8. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of _____, USCG, for correction of his military record is denied.

Coleman R. Sachs

Jacqueline L. Sullivan

Nilza F. Velázquez