

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2001-081

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 May 4, 2001, after the Board received the applicant's completed application.

This final decision, dated April 11, 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, an xxxxxxxxxxxx, asked the Board to order the Coast Guard to pay him a selective reenlistment bonus (SRB) based on 72 months of newly obligated service rather than one based on just 67 months.

The applicant alleged that on February 21, 2001, he was told that he could reenlist for six years and receive an SRB under the provisions of ALCOAST 488/00. He alleged that he was told that the SRB would be based on all 72 months of service he would be obligating under the reenlistment contract. However, the SRB he actually received was based on just 67 months of newly obligated service because, when he signed the contract on February 26, 2001, he still had five months of previously obligated service remaining on his first enlistment.

The applicant alleged he reenlisted earlier than necessary because of the erroneous advice he received—implying that, if he had been properly counseled, he would have waited until his first enlistment terminated so that he could reenlist and receive an SRB based on a full 72 months of newly obligated service.

SUMMARY OF THE RECORD AND LAW

On September 24, 1996, the applicant enlisted in the Coast Guard for four years, through September 23, 2000. On January 22, 1999, he extended this enlistment for ten months, through July 23, 2001, to qualify for "A" school. As a nonrated xxxxx, he was not eligible for an SRB in January 1999.

In February 2001, approximately five months before the end of his first enlistment, as extended, the applicant received orders to attend xxxxx school in March 2001 and orders to transfer to a cutter thereafter. To accept the xxxxx school orders, he was required to have at least one full year of obligated service. To accept the transfer orders, he was required to have at least two full years of obligated service as of the date of transfer. Personnel Manual, Article 4.B.6.a.1.

In February 2001, ALCOAST 488/00 was in effect. It authorized an SRB for members in the xx rating with less than six years of active service if they extended their enlistments or reenlisted for at least three years. With less than six years of active service, the applicant was eligible for this SRB if he reenlisted or extended his enlistment when he obligated sufficient service to attend xxxxx school and accept the transfer orders.

Because in February 2001 the applicant had five more months remaining of previously obligated service on his first, extended enlistment, a six-year reenlistment would earn an SRB based on five years and seven months, or 67 months, of newly obligated service.¹ The SRB Instruction, COMDTINST 7220.33, provides that "[a]ll periods of unexecuted service obligation ... will be deducted from SRB computation." It further explains that "if you entered an agreement to extend your enlistment and did not serve out that extension prior to reenlisting, the unserved portion of that extension would also be deducted from your SRB computation."

On February 21, 2001, the applicant was counseled about his eligibility for an SRB under ALCOAST 488/00. He signed a record entry acknowledging that counseling, which stated the following:

I have been advised that my current Selective Reenlistment Bonus (SRB) multiple is Three and is listed in ALCOAST 488/00, which has been made available to me. I am eligible to reenlist/extend my enlistment up to a maximum of 6 years. My SRB will be computed based on 72 months of newly obligated service. I hereby acknowledge that I have read and fully

¹ In the alternative, the applicant could have extended his enlistment for five years and two months (under Article 1.G.14.c. of the Personnel Manual, members may extend an enlistment for no more than six years and the applicant had already extended his for ten months), but then he would have received an SRB based on only 62 months of newly obligated service.

understand the contents and explanation of COMDTINST 7220.33 (series).

On February 26, 2001, he reenlisted for six years and thereafter received an SRB based on his 67 months of newly obligated service.

VIEWS OF THE COAST GUARD

On September 18, 2001, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel admitted that the signed acknowledgement supports the applicant's allegation that he was promised a bonus by his PERSRU (Personnel Reporting Unit) based on 72 months of service even though his six-year reenlistment contract obligated him to only 67 new months of service. However, he argued, the applicant also acknowledged having read and understood the SRB Instruction, COMDTINST 7220.33, which clearly states that members are only paid for service newly obligated under the new contract and that months remaining on previous contracts are deducted in the computation of the SRB. He argued that paying the applicant for five months of service that he had already obligated to serve under his previous enlistment would violate COMDTINST 7220.33.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 19, 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 was received.

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, and the application was timely.

2. Although the applicant alleged that he reenlisted too early based on his PERSRU's bad advice, the record indicates that the applicant was required to extend or reenlist for at least two years to attend xxxxx school and accept his transfer orders. He could not have delayed making his decision because the school began in March 2001. If he had refused to reenlist or extend for at least two years, he would have been discharged at the end of his enlistment on July 23, 2001.

3. The applicant has proved that he received erroneous advice from his PERSRU about the size of his SRB in that he was told it would be based on 72 months of newly obligated service instead of 67 months. However, he also acknowledged reading and understanding the SRB Instruction, COMDTINST 7220.33, which contained clear information about how time remaining on an old enlistment extension would be deducted in the computation of an SRB for a new enlistment contract.

4. The government is not estopped from repudiating the inaccurate advice of the applicant's PERSRU even assuming the applicant detrimentally relied on the bad advice. *Utah Power & Light v. United States*, 243 U.S. 389, 409 (1917). For example, in *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972), the Court of Claims denied retirement to an Army veteran who had been erroneously counseled that he had completed 20 years of service and was eligible for retirement. In *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977), the court held that

[t]he government could scarcely function if it were bound by its employees unauthorized representations. Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress. Even detrimental reliance on misinformation obtained from a seemingly authorized government agency will not excuse a failure to qualify for the benefits under the relevant statutes and regulations. *Id.* at 481.

5. Under COMDTINST 7220.33, the applicant is not entitled to an SRB based on 72 months of service because of the five months that remained unserved on his previous enlistment, as extended, when he reenlisted on February 26, 2001. Although it is unfortunate that the PERSRU misled him regarding the size of bonus he would receive, he would not have been misled if he had read and understood the SRB Instruction as required. Therefore, the Board is not persuaded of the existence of any error or injustice in the applicant's record that requires correction.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Terence W. Carlson

Robert A. Monniere

Mark A. Tomicich