

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

Application for Correction of
Coast Guard Record of:

BCMR Docket No. 2001-082

FINAL DECISION

ULMER, Chair:

This proceeding was conducted according to 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, upon the Board's receipt of a complete application for correction of the applicant's military record.

This final decision, dated March 28, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Requested Relief

The applicant, a machinery technician second class (MK2; pay grade E-5), asked the Board to correct his record by substituting an extension for the three-year reenlistment he signed on January 26, 2001. He requested that his record be further corrected to show that he reenlisted on October 1, 2001, for six years so that he would be eligible for a Zone B selective reenlistment bonus (SRB) with a multiple of 2 under ALCOAST 127/01, which was published on March 27, 2001.

In January 2001, the applicant was due to receive transfer orders to an assignment outside the continental United States. In order to accept the orders, the applicant had to obligate service for a full tour of duty, in this case three years. On January 26, 2001, the applicant executed a three-year reenlistment to fulfill this requirement. (His original enlistment in the Coast Guard, which included a one-month extension, was due to expire on June 26, 2001.)

The applicant claimed that at the time he reenlisted he asked his yeoman about extending rather than reenlisting. He stated that the yeoman erroneously advised him that he could only extend for two years, not the three years necessary to accept the transfer orders. The applicant stated that he told the yeoman he wanted to extend so

that he could possibly qualify for a Zone B SRB in the future. He stated that he trusted his chain of command and reenlisted for three years.

The applicant stated that in March 2001, he read the ALCOAST 127/01 and discovered that a multiple of 2 would be available for the MK rating effective October 1, 2001. The applicant also alleged that there is no administrative remarks (page 7) entry in his record documenting SRB counseling. The applicant believes this is his last opportunity for an SRB, since he had approximately 8 years of service in January 2001. SRB multiples are rarely, if ever, authorized for service members with more than 10 years of service.

ALCOAST 127/01

This ALCOAST was issued on March 27, 2001, and explained that it was necessary for the Coast Guard to review SRB multiples earlier than planned, in light of its current budgetary climate. It announced that current SRB multiples would remain in effect through April 30, 2001, but new multiples would become effective on May 1, 2001 and on October 1, 2001. There was no SRB multiple available for the MK rating through April 30, 2001, effective May 1, 2001, a multiple of .5 was available for that rating, and effective October 1, 2001, a multiple of 2 was available for the MK rating.

The ALCOAST provided for the following:

In order to take advantage of the October 1 multiples, commanding officers may authorize short term extensions up to 6 months to expire NLT 31 October 2001 for members whose normal expiration of enlistment falls between the date of this ALCOAST and 30 September 2001, and have a October 1 SRB multiple . . . Upon the expiration of their short-term extension, members must reenlist or extend in October 2001 for a minimum of three years additional obligated service to receive the SRB.

Views of the Coast Guard

On September 18, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the Board grant alternative relief in this case. In this regard the Chief Counsel stated that

[T]he Coast Guard does not object to the Applicant being given the opportunity to substitute a 36 month or longer extension in place of the reenlistment. This extension would be effective on 27 May 2001, for a period of three years or more and would render Applicant eligible for a Zone B SRB multiple of .5 per ALCOAST 127/01.

The Chief Counsel stated that evidence exists in the record supporting the applicant's claim that his yeoman erroneously advised him that he could not extend for longer than two years. However, according to the Chief Counsel, the record also indicates that there was nothing the applicant could have done to qualify for the Zone B SRB multiple of 2 that became effective on October 1, 2001.

The Chief Counsel stated that in January 2001, the applicant received orders to Alaska and he reported to that unit on June 5, 2001. The applicant was required to execute either an extension agreement or a reenlistment to have the necessary service to qualify for the orders before actually transferring to the new unit. The Chief Counsel stated that the applicant had to have a minimum of three years of obligated service remaining in the Coast Guard upon reporting to his new unit. According to the Chief Counsel, unless the applicant had entered into an agreement to extend or reenlist prior to executing the orders, he would not have been permitted to transfer and would have been separated from the Coast Guard. The Chief Counsel stated there was no way for the applicant to satisfy the requirement to extend or reenlist for three years while at the same time preserving his opportunity for the Zone B SRB with a multiple of 2 that became effective on October 1, 2001. He stated that even though a counseling error was committed, the applicant cannot be granted the relief he requested.

Applicant Reply to the Views of the Coast Guard

On October 15, 2001, the Board received the applicant's reply to the views of the Coast Guard.

The applicant disagreed with the Coast Guard's opinion that there was nothing he could have done to qualify for the October 1, 2001, SRB with a multiple of 2. He offered the following explanation:

[I]f I was counseled correctly to begin with by my past command I would have been able to extend to meet my obligated service to PCS [permanent change of station] overseas. Which in turn would make me eligible to take advantage of the SRB message (ALCOAST 127/01) in March 2001 and October I could have canceled my extension and reenlisted for up to six years to take the maximum potential of this bonus. I honestly would have extended if I were counseled correctly, because I have eight years in the military and I consider myself a career man. . . . I reenlisted early to obligate my service to the Coast Guard and to accept my [assignment to an] overseas afloat unit. I could have delayed my reenlistment until my separation date, but to go to the [cutter to which assigned] . . . I had to reenlist early to except that duty. I hope this situation can be settled justly . . .

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 submission, and applicable law.

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant's original enlistment was due to expire on June 26, 2001. On January 26, 2001, he reenlisted for three years to have sufficient time remaining in the Coast Guard, as required, to complete a new tour of duty afloat outside to the continental United States. He was required to reenlist or extend for three years if he wanted to accept the orders to this new assignment. According to the Chief Counsel, the applicant reported for this assignment on June 5, 2001. At the time he executed the reenlistment contract, ALCOAST 127/01 had not been issued.

3. While the applicant's command might have erroneously advised him that he could not extend for more than two years, such improper advice did not affect the applicant's eligibility for the SRB multiple of 2 that became effective on October 1, 2001. The applicant was simply not eligible for this SRB because his original enlistment, inclusive of the one-month extension, expired on June 25, 2001. Therefore, he had to extend or reenlist by June 26, 2001, or he would have been separated from the Service.

4. The applicant's assertion that he could have canceled the extension, if one had existed, and reenlisted in October 2001, is incorrect. Enclosure (1) to COMDTINST 7220.33 states that "[e]xtensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment . . ." If the applicant had extended his enlistment on January 26, 2001, it would have become effective(operative) at the latest on June 26, 2001. Therefore pursuant to this regulation he could not have canceled the extension.

5. Moreover, the SRB regulation states "[e]ntitlement to SRB multiple and bonus ceiling is established on the actual date of reenlistment or the date the member executes an Agreement to Extend Enlistment by signing Form CG-3310B. Entitlement to any Zone of SRB is established only on the date the member reenlists or the extension becomes operative." (Emphasis in instruction.) The multiple of 2 was not available on June 26, 2001, the date the applicant's extension would have become operative. See Enclosure (1) to COMDTINST 7220.33 § 3.d.(11).

6. However, the applicant could have qualified for the .5 SRB multiple that was available from May 1 through September 30, 2001, if he had been properly advised. The applicant could have extended his enlistment for 36 months on January 26, 2001 (extensions my total no more than six years during a career). He would have needed to

cancel the one-month extension dated February 17, 1999, in order to have the full 36 months necessary to qualify for the SRB. (According to the SRB regulations only extensions/reenlistments of 36 months or longer of new service qualify for an SRB. However, the regulation permits the cancellation of extensions of two years or less without SRB penalty).

7. The alternative relief recommended by the Chief Counsel—permitting the applicant to substitute an extension of 36 months or longer, with a May 27, 2001, operative date by canceling the one-month extension -- is fair and the only avenue in which the applicant would receive a full 36 month SRB payment.

8. The applicant did not indicate in his response to the advisory opinion whether he accepted the Chief Counsel's recommendation for alternative relief. The Board will direct such relief, with the understanding that the applicant be given the option of accepting such relief before any correction is made to his record. To clarify, the applicant was not eligible for the SRB multiple of 2 that became effective on October 1, 2001.

9. Accordingly, the applicant should be granted relief as recommended by the Chief Counsel.

ORDER

The application of _____, USCG, for correction of his military record is granted. The applicant shall be offered the opportunity of having his record corrected to show that he extended his original enlistment for at least 36 months on May 27, 2001 for which he is entitled to receive a Zone B SRB with a multiple of .5. The one-month extension dated February 17, 1999, and the reenlistment contract dated January 26, 2001, are null and void. The Coast Guard shall pay the applicant the amount that he is due as a result of this correction.

All other requests for relief are denied.

Cynthia B. Walters

Mark A. Holmstrup

L. L. Sutter