

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-009

XXXXXX, XXXXXX X.
XXX XX XXXX, XXX

FINAL DECISION

GARMON, 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 February 4, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated September 12, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his record by either ordering the Coast Guard to pay a Zone A selective reenlistment bonus (SRB), which was promised to him on August 18, 2001 for a six-year reenlistment under ALCOAST 127/01, or canceling the six-year reenlistment contract.

APPLICANT'S ALLEGATIONS

The applicant alleged that on August 18, 2001, he was erroneously advised that he could receive a Zone A SRB pursuant to ALCOAST 127/01 for his six-year reenlistment. In support, he submitted a copy of his enlistment contract, which states that he was "entitled to [an] SRB Zone A [with a] multiple of 2 per ALCOAST 127/01." He alleged that had he been properly counseled, he would have waited to reenlist until after he was advanced to paygrade E-5. The applicant stated that, if he is not entitled to

receive the Zone A SRB, he requests that his eight-month extension contract be extended for three additional months, through July 18, 2002.

SUMMARY OF THE APPLICANT'S RECORD

The applicant enlisted in the Coast Guard on August 18, 1997, for a term of four years. He had previously served three years and eight months in the Air Force. On December 15, 1999, he signed a contract to extend his enlistment for eight months, effective beginning on August 18, 2001. On July 24, 2001, a page 7 was entered in the applicant's record showing that he was counseled on his SRB eligibility under ALCOAST 127/01.

On August 18, 2001, the applicant canceled the eight-month extension and reenlisted for six years, through August 17, 2007, to receive a Zone A SRB. His reenlistment contract states that he was eligible for a Zone A SRB, calculated with a multiple of two, as authorized for his rating under ALCOAST 127/01. The applicant did not receive the Zone A SRB because at the time of his reenlistment, he had served for 7 years and 8 months on active duty, and was in Zone B rather than Zone A. He did not receive a Zone B SRB either because he was still an E-4 in August 2001.

On May 1, 2002, the applicant was advanced to an E-5 paygrade. To date, he continues to serve on active duty.

VIEWS OF THE COAST GUARD

On March 7, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant alternative relief in the applicant's case.

The Chief Counsel admitted that the applicant's command improperly counseled him that he was eligible to receive a Zone A SRB. He stated that because the applicant had served more than six years on active duty service on the date of his reenlistment, he was ineligible to receive a Zone A SRB. He further stated that because the applicant was serving in an E-4 paygrade on the date of his reenlistment, he was ineligible to receive a Zone B SRB, as well.

The Chief Counsel stated that notwithstanding the Coast Guard's error of promising an SRB to which the applicant was not entitled, there is no legal authority to pay the applicant the Zone A SRB. He explained that, in the instant case,

[t]he Government is not estopped from repudiating the SRB payment [promise] Applicant received in his reenlistment contract dated 18 August 2001. Even assuming *arguendo* that Applicant had detrimentally relied on this promise of a SRB, the doctrine of estoppel does not apply, because, as a matter of law, Applicant was ineligible to receive an SRB.

Utah Power & Light v. United States, 243 U.S. 389, 409 (1971); Montilla v. United States, 457 F.2d 978, 198 Ct. Cl. 48 (1972); Goldberg v. Weinberger, 546 F.2d 477 (2d Cir. 1976), *cert. denied sub nom*, Goldberg v. Califano, 431 U.S. 937, (1977).

The Chief Counsel stated that the applicant's reenlistment contract is voidable because of the failure of a material term to that contract, but that voiding the applicant's reenlistment contract will cause his previously canceled extension contract to become operational. He stated that a new contract or other action must be established prior to the termination date of the applicant's extension, through April 17, 2002, because he would be left without a current service obligation thereafter.

The Chief Counsel, therefore, recommended that the Board grant alternative relief by soliciting from the applicant his reenlistment or extension intentions for the period after April 17, 2002.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 11, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. The applicant stated he wished to extend his contract for three additional months, through July 18, 2002. He further stated that he anticipates being advanced to an E-5 paygrade prior to the end of the requested extension, and thereby qualify for a Zone B SRB.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 1.G.15.a.1 of the Personnel Manual, entitled "Extension of Term Enlistment," provides that members may voluntarily extend or reextend their term of enlistment "[f]or any number of full years not less than two nor greater than six years, when requested by member[s]."

SRB Manual Provisions

Article 2 of Enclosure (1) to the Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides 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 3.a.(3) of the instruction states that in order for members to receive a Zone A SRB, they must have completed not more than six years of active service on the date of reenlistment.

Article 3.b.(4) of the instruction provides that in order for members to receive a Zone B SRB, they must be serving in a paygrade of E-5 or higher.

ALCOAST 127/01, issued by the Commandant on March 27, 2001, authorized SRBs for members who reenlisted or extended their current enlistments between May 1, 2001 and January 31, 2002. An SRB with a multiple of two was authorized for members in the xx rating in Zone A (having no more than six years of active duty service).

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

2. Under Section 2 of Enclosure (1) to the Commandant Instruction 7220.33, the applicant was entitled to proper counseling concerning his eligibility for an SRB under ALCOAST 127/01 when he reenlisted on August 18, 2001.

3. To qualify for a Zone A SRB, a member must have no more than six years of active duty service completed on the date of his reenlistment. COMDTINST 7220.33, Article 3.a.(3). Although the applicant had seven years and eight months of active duty service on the date of his reenlistment, the Coast Guard promised him a Zone A SRB. The applicant has proved by a preponderance of the evidence that he was improperly counseled by his command about his Zone A SRB eligibility under ALCOAST 127/01.

4. If the applicant had not reenlisted on August 18, 2001, then on April 17, 2002, the expiration date of the applicant's original enlistment, as extended, he would have been allowed to extend his enlistment for two, three, four, or five years or reenlist for three, four, five, or six years. However, in choosing either an extension or reenlistment on April 18, 2002, the applicant would not have been eligible to receive a

Zone B SRB because he was not then serving in a paygrade of E-5 or higher. COMDTINST 7220.33, Article 3.b.(4).

5. Furthermore, although the applicant expressed to the Board a desire to extend his enlistment for three months, through July 17, 2002, for the purpose of awaiting his advancement to an E-5 paygrade, under Personnel Manual regulations, members cannot voluntarily extend an enlistment for less than two years. Personnel Manual, Article 1.G.15.a.1.

6. Accordingly, the Board should deny the applicant's request for a three-month extension and grant relief by voiding the applicant's six-year reenlistment contract dated August 18, 2001.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXX XXXXXX X. XXXXXX, XXX XX XXXX, USCG, for the correction of his military record is granted in part as follows:

His record shall be corrected to show that the three-year reenlistment contract that the applicant signed on August 18, 2001 shall be null and void.

He shall be allowed to extend for two, three, four, or five years, or reenlist for a term of three, four, five, or six years, as of April 18, 2002, at his discretion.

If he chooses neither to extend nor to reenlist, the Coast Guard shall discharge him expeditiously.

Michael K. Nolan

Sherri L. Pappas

Dorothy J. Ulmer