

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-011

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 November 29, 2001, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated July 18, 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 asked the Board to correct his military record to make him eligible to receive a selective reenlistment bonus (SRB) as a result of his reenlistment on October 4, xxxx, even though more than three months passed between his discharge on April 13, xxxx, and his reenlistment.¹

The applicant alleged that sometime before May 13, xxxx, he went to a recruiting office to help a relative enlist. He asked a recruiter at the office, XXX, about reenlisting himself, filled out an application, and submitted a copy of his discharge form. He alleged that XXX told him that she would check with the detailer to see if the Coast Guard had a billet for him and get back to him. However, he did not hear back from her and so called her on May 22nd. She said she would get back to him in a few days.

On Friday, May 26, xxxx, the applicant alleged, he told the recruiter that he wanted to reenlist for six years. She told him to call her on June 5, xxxx. When he did,

¹ Paragraph 3.a.(1) of Enclosure (1) to Commandant Instruction 7220.33 provides that a person with prior military service must reenlist within three months of being separated to be eligible to receive an SRB.

she said she had not heard from the detailer and asked him to check in once a week. He alleged that for several weeks, he continued to check in, but nothing happened.

The applicant alleged that on July 28, xxxx, he contacted the recruiter's supervisor, XXXX, who stated that he knew nothing about the applicant's situation but could probably reenlist him as an airman (AN; pay grade E-3). The applicant alleged that he told XXXX that he would get back to him about that and called his old chief at his former air station, Master Chief X. Master Chief X advised him that, because AMT was listed as a critical rate, the applicant should be able to reenlist as an E-4.

On July 31, xxxx, the applicant alleged, he visited the recruiting office. The recruiter told him that she had never heard from the detailer and could not find the paperwork he had submitted back in May. She also told him that he would have to retake a professional qualification test and get a physical examination. He alleged that he resubmitted his paperwork and called another recruiter he knew, Chief X, in a different region. Chief X told him that he should not have to retake the test or get a physical examination since he had just been discharged in April. Chief X told him that he would contact the applicant's recruiter, XXX, about the matter.

On August 2, xxxx, the applicant alleged, he was called to the recruiting office and counseled by XXXX about involving others in the process. XXXX told him that the office was following proper guidelines. He also told him to provide a list of work references for the detailer to contact, which the applicant did. The applicant alleged that on August 8, xxxx, Master Chief X and Chief X both spoke to the detailer on his behalf. He alleged that they told him that he would be sworn in within a few days.

On September 1, xxxx, the applicant alleged, Master Chief X called him to see if he had been reenlisted yet. When the applicant said he had not yet been reenlisted, Master Chief X called the recruiter, XXX, who told him that she had not yet received the applicant's enlisted rate determination. Therefore, Master Chief X called headquarters. The applicant alleged that on September 5, xxxx, Master Chief X called him and said that XXX had filled out the wrong paperwork and that, as a result, the applicant's file was in the admission office of the Officer Candidate School. Master Chief X told him that the problem was straightened out and that he had received an email from the detailer indicating that the applicant would be stationed in Xxxxxx. The applicant alleged that Master Chief X told him that he had forwarded a copy of the email to XXX, but that the recruiter said she never received it.

On September 11, xxxx, the applicant alleged, Master Chief X called his recruiter and was told that she was still waiting for something from the detailer. Therefore, Master Chief X called him and suggested that he fly up to the training center in Cape May to reenlist since the process was taking so long at his local recruiting office.

The applicant alleged that on October 4, xxxx, he went to his local recruiting office to reenlist. They had prepared a four-year contract instead of the six-year contract he wanted, and he was also told that he would receive no SRB.

Aside from his own statement, the applicant did not submit any evidence to support his allegations.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on November 14, 1994, and was released into the Reserve on April 13, xxxx. His record indicates that on January 11, xxxx, prior to his release, he received reenlistment counseling in accordance with Article 12.B.4. of the Personnel Manual,² but declared that he would not reenlist.

On October 4, xxxx, the applicant reenlisted for four years as an E-4. The contract indicates that he was not promised a bonus or anything else for reenlisting.

VIEWS OF THE COAST GUARD

On April 29, 2002, the Chief Counsel of the Coast Guard recommended that the Chair dismiss the case without prejudice under 33 C.F.R. § 52.21(b) or deny relief for lack of proof.

The Chief Counsel argued that the Chair should dismiss the case without prejudice because the applicant failed to state what "record correction [he] desired and the grounds for alleging error or injustice with particularity." He alleged that without a more specific request for correction, "neither the Coast Guard nor the Board can effectively address the issues of the merits of the instant case." He alleged that a request for an SRB is not a request for a "cognizable record correction." Moreover, even if it were, he argued, the applicant failed to allege a specific error or injustice committed by the Coast Guard. The Chief Counsel argued that, "while great strictness is not generally required in equity pleadings, it is an elementary rule of the most extensive influence that an applicant should state his right or claim with accuracy and clearness." He further argued that, absent a specific request for correction, the application amounts to a purely monetary claim, over which the Board does not have jurisdiction.³

If the Chair does not dismiss the case, the Chief Counsel argued, the Board should deny relief for lack of proof. He stated that the applicant failed to submit any evidence to corroborate his allegations and that a review of the records of the recruiting

² Article 12.B.4. of the Personnel Manual provides that, as part of the reenlistment interview, the member must be advised about his SRB eligibility.

³ The Chief Counsel alleged that the Comptroller General has jurisdiction over members' monetary claims under 31 U.S.C. § 3702. However, in 1997, that statute was amended to give the Secretary of Defense jurisdiction over members' purely monetary claims.

office in question found that the applicant first contacted the recruiting office about reenlisting on August 7, xxxx, and applied for reenlistment on August 9, xxxx, after the three-month SRB eligibility period provided under paragraph 3.a.(1) of COMDTINST 7220.33 ended on July 13, xxxx. He stated that the only documentary evidence of his contact with the recruiting office begins on August 7, xxxx. Furthermore, he pointed out that the applicant reenlisted on October 4, xxxx, after having been told that he would not receive an SRB and, therefore, is not owed one even under contract law.

The Chief Counsel stated that on May 29, xxxx, the applicant's brother visited a recruiting office to apply for enlistment. However, he stated, the brother listed the applicant's spouse, who was serving on active duty, as the person who referred him, and there is no evidence that the applicant visited the recruiting office with his brother. Moreover, the Chief Counsel argued, the applicant has not proved that, if he did seek to reenlist within three months of his release, the Coast Guard had any duty to reenlist him within the three months. The Chief Counsel stated that there is no regulation requiring recruiters to effect the reenlistment of veterans within any set time schedule.

The Chief Counsel stated that this case involves a significant issue of Coast Guard policy, so that any final action contrary to his recommendation must be reviewed by the delegate of the Secretary, in accordance with 33 C.F.R. § 52.64(b).

In support of his advisory opinion, the Chief Counsel submitted copies of the following records found in the recruiting office:

- The applicant's brother's Prospect Data Card, completed on May 29, xxxx, which lists the applicant's wife as the person who referred him to the Coast Guard.
- A phone message log with a record dated August 7, xxxx, indicating that the applicant left a message stating that he wanted to reenlist. The log indicates that the message was not left specifically for XXX.
- The applicant's own Prospect Data Card and six other reenlistment forms, completed on August 9, xxxx.
- A phone message log with a record dated September 22, xxxx, indicating that someone based at an Air Station called for XXX regarding the applicant.
- An assignment reservation dated September 25, xxxx, that originally indicated that the applicant was entitled to a bonus but was later revised to show that no bonus was due.
- An email from XXX, dated September 29, xxxx, to the Aviation Detailer stating that the applicant had been told he would receive a bonus and inquiring about how he could get a bonus.

In addition, the Chief Counsel submitted an affidavit signed by XXX, in which she stated that she cannot remember having any contact with the applicant prior to August 7, xxxx. She stated that if he did have any contact with her or anyone else at the office prior to August xxxx, it must have been informal and insubstantial because she cannot recall it and there is no record of any prior contact. She further stated that she cannot recall who if anyone came to the recruiting office with the applicant's brother on May 29, xxxx. Because the brother failed to pass the entrance examination on June 5, xxxx, she had no more contact with him.

XXX stated that she had reenlisted veterans before and that it takes anywhere from one to three months, depending upon the actions of the recruit, the service's need for their skills, and the workload of the recruiting command and the detailer. She stated that sometime after the applicant completed the paperwork on August 9, xxxx, he told her that he had been told by someone he used to work with that he would be entitled to an SRB. She stated that she told him she did not believe he was entitled to an SRB but would check on it. Therefore, she contacted the recruiting command and requested an SRB for him but was told he was not eligible for the SRB. She also checked with the Aviation Detailer, who informed her while the applicant was sitting in the office with her that he was not eligible for an SRB.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 6, 2002, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond. 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 application was timely.
2. The Chief Counsel urged the Chair to dismiss this case under 33 C.F.R. § 52.21(b) because the applicant failed to identify the record correction he wanted to become eligible for an SRB and failed to specify the error or injustice committed by the Coast Guard. The Chair declined to exercise her authority to dismiss the case because the regulations regarding SRB eligibility are so complex that members are frequently unable to understand them or to articulate what exact record corrections would be necessary to make them eligible for the SRB to which they believe they are entitled. Moreover, the Chair found that the applicant's statements regarding his alleged treatment by the recruiter constitute a clear allegation of error and injustice. The Board concurs in the Chair's decision not to dismiss the case.

3. The Chief Counsel argued that the Board lacks jurisdiction over this case because applicant's claim is purely monetary since he failed to request a specific correction of his record. However, a member's eligibility for an SRB is a matter determined by his military record and as such falls within the jurisdiction of this Board pursuant to 10 U.S.C. § 1552.

4. Under 37 U.S.C. § 308, the Secretary may prescribe regulations governing members' eligibility for SRBs. Under Article 1.G.7.a.1. of the Personnel Manual and Article 3.a.(1) of Enclosure (1) to COMDTINST 7220.33, members must reenlist within three months of being released from active duty to be eligible for an SRB. Because the applicant was released from active duty more than three months before he reenlisted on October 4, xxxx, he was not eligible for an SRB. Moreover, the preponderance of the evidence in the record indicates that he signed the contract after having been told that he was not eligible for an SRB.

5. The applicant made many allegations about having tried to reenlist within three months of his release on April 13, xxxx. However, he submitted no evidence whatsoever to support his allegations, and the preponderance of the evidence in the record indicates that he first communicated his desire to reenlist when he called the recruiting office on August 7, xxxx, a few weeks after the three-month period following his separation had expired.

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

ORDER

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

John A. Kern

Astrid Lopez-Goldberg

Coleman R. Sachs