

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-024

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 January 15, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated September 26, 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 canceling the six-year reenlistment contract he signed on October 9, 2001 and substituting a six-month extension agreement in its place. He stated that the short-term extension would make him eligible for the Zone B SRB that he was promised when he reenlisted for six years.

APPLICANT'S ALLEGATIONS

The applicant alleged that on October 9, 2001, he was erroneously counseled that he could receive a Zone B SRB for his six-year reenlistment. In support, he submitted a copy of his reenlistment contract, which states that he was "entitled to [an] SRB Zone 'B' [with a] multiple of xx based on 72 months." He stated that in November 2001, he was advised by his command that he was not eligible to receive the SRB promised in his reenlistment contract. He alleged that had he been properly counseled on his SRB eligibility, he would have extended his enlistment for six months on October 9, 2001,

and thereafter, reenlisted upon advancing to a grade E-5 and becoming eligible for a Zone B SRB.

SUMMARY OF THE APPLICANT'S RECORD

The applicant enlisted in the Coast Guard on June 9, 1992, for a term of four years, through June 8, 1996. On February 25, 1996, he signed a contract to extend his enlistment for four years for the purpose of complying with Centralized First Term Reenlistment Requirements (CFTRR); therefore, his new expiration of enlistment was June 8, 2000. Prior to the applicant's new expiration of enlistment date, he extended for thirty days, through July 8, 2000. On May 8, 2000, he extended his enlistment for one year, through July 8, 2001. On May 31, 2001, the applicant agreed to a fourth extension for three months, through October 8, 2001. The total duration of the applicant's four enlistment extensions equaled five years and one month.

On October 9, 2001, the applicant executed a six-year reenlistment contract, which specified that he was promised a Zone B SRB calculated with a multiple of xx. The applicant did not receive the Zone B SRB because at the time of his reenlistment, he held an E-4 paygrade and was therefore serving in a grade below that required to receive a Zone B SRB. To date, he continues to serve on active duty.

VIEWS OF THE COAST GUARD

On May 13, 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 B SRB. He stated that because the applicant had served more than six years on active duty service and was serving in an E-4 paygrade on the date of his reenlistment, he was ineligible to receive the Zone B SRB.

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 grant the applicant's request for a short-term extension agreement for six months. He explained that, in the instant case,

[t]he Government is not estopped from repudiating the SRB provision included in Applicant's 09 October 2001 reenlistment contract. Even assuming *arguendo* that Applicant had detrimentally relied on this

promise of a [sic] SRB, the doctrine of estoppel does not apply, because as a matter of law, Applicant was ineligible for 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 in light of the evidence supporting a finding of error. He stated that voiding the reenlistment contract would result, however, in the applicant being left without a current service obligation, as of October 9, 2001. He stated that the applicant must choose between a new contract or immediate separation prior to the voiding of his reenlistment contract.

The Chief Counsel, therefore, recommended that the Board grant alternative relief by soliciting from the applicant his reenlistment intentions to be effective after October 9, 2001.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 14, 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 Board received no response.

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]." Article 1.G.15.c. provides that "[t]he total of all extensions of an enlistment may not exceed six years."

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 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.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.

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 when he reenlisted on October 9, 2001.

3. To qualify for a Zone B SRB, a member must have been serving in a paygrade of E-5 or higher on the date of his reenlistment. COMDTINST 7220.33, Article 3.b.(4). Although the applicant was serving in an E-4 paygrade when he reenlisted, the Coast Guard promised him a Zone B SRB. The applicant has proved by a preponderance of the evidence that he was improperly counseled by his command about his Zone B SRB eligibility on October 9, 2001.

4. The applicant asserted that had he been properly counseled, he would not have reenlisted for six years but would have extended his enlistment for six months for the purpose of awaiting his advancement to an E-5 paygrade. Under Personnel Manual regulations, however, members cannot voluntarily extend an enlistment for less than two years. Personnel Manual, Article 1.G.15.a.1. Furthermore, the applicant could not extend for the minimum of two years because his original enlistment had already been extended for five years and one month. Personnel Manual, Article 1.G.15.c.

5. The Board finds that although the applicant would not have reenlisted for six years for an SRB he was not eligible for on October 9, 2001, he would have either been discharged or allowed to reenlist for three, four, five, or six years, notwithstanding his ineligibility to receive a Zone B SRB.

6. Moreover, the applicant's tenth active duty anniversary was June 9, 2002, and under COMDTINST7220.33, he was authorized to reenlist on that day for an SRB. If he had reenlisted for only three years on October 9, 2001, he could have subsequently

reenlisted for six years on June 9, 2002, to receive an Zone B SRB under ALCOAST 585/01.

7. Accordingly, the Board should deny the applicant's request for a six-month extension and grant relief by voiding the applicant's six-year reenlistment contract dated October 9, 2001, and offering him the opportunity to reenlist on that day for three to six years and to reenlist again on his tenth anniversary for an SRB.

[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 six-year reenlistment contract that the applicant signed on October 9, 2001 shall be null and void.

He shall be allowed to reenlist for a term of three, four, five or six years, as of October 9, 2001, at his discretion. He shall also be offered to reenlist again on June 9, 2002, his tenth active duty anniversary, for an SRB. If he chooses to reenlist as of June 9, 2002, the Coast Guard shall pay him the Zone B SRB he would be due under ALCOAST 585/01 as a result of this correction.

He shall be properly counseled concerning his options and the consequences of his possible actions.

If he chooses not to reenlist, the Coast Guard shall discharge him expeditiously.

L. L. Sutter

Nilza F. Velazquez

Blane A. Workie

