

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-045

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 12, 2002, upon the receipt of the applicant's request for correction.

This final decision, dated October 31, 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 military record by canceling a six-month extension agreement that was dated April 25, 2001, and placed in his record by his former command but was not signed by the applicant. The applicant asked the Board to replace the six-month extension with a shorter one and to reenlist him for six years on his tenth active duty anniversary in order to receive a selective reenlistment bonus (SRB) under ALCOAST 198/01.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was initially unaware that his former command prepared a six-month extension agreement on April 25, 2001 for him to obligate service in acceptance of permanent change of station (PCS) transfer orders, and thereafter, incorporated the unsigned agreement into his military record. In support of his allegations, he submitted a copy of the extension agreement that indicated a new

expiration of enlistment (EOE) date as January 9, 2002, but was unsigned by the applicant.

He alleged that he became aware of the extension agreement shortly after reporting to his new unit in May 2001, but could not attempt to resolve the matter until after a three-month drydock period following the events of September 11, 2001. He also alleged that during this time, he was away from his servicing personnel reporting unit (PERSRU) and did not receive counseling about his eligibility to reenlist for an SRB on September 17, 2001, his tenth anniversary on active duty. The applicant alleged that, had he been counseled, he would have reenlisted for six years in order to obtain a Zone B SRB under ALCOAST 198/01.

SUMMARY OF THE APPLICANT'S RECORD

The applicant enlisted for four years in the Coast Guard on September 17, 1991, through September 16, 1995. On April 10, 1995, he reenlisted for an additional four years, through April 9, 1999. On March 4, 1996, he extended his enlistment for three months in order to accept PCS transfer orders. As a result of this extension, his new EOE became July 9, 1999. On June 21, 1999, the applicant extended his contract for two years, through July 9, 2001.

On March 25, 2001, the applicant's former command prepared a six-month extension agreement, presumably for the applicant's signature to consent to obligating service to accept PCS transfer orders. Although a copy of the unsigned extension agreement could not be found in the applicant's record, the applicant submitted a copy of the unsigned agreement, which indicated a new EOE date as January 9, 2002. In May 2001, the applicant reported to his new cutter.

On April 30, 2001, the Commandant of the Coast Guard issued ALCOAST 198/01, which authorized short-term extensions for members whose enlistments ended and whose sixth and tenth active duty anniversaries fell between May 1 and October 1, 2001, so that those members could reenlist in October and receive an SRB as though their actual anniversaries had fallen in October 2001. ALCOAST 198/01 authorized a Zone B SRB calculated with a multiple of two for members in the XX rating. There is no page 7 in the applicant's record indicating that he was ever counseled about this opportunity for an SRB.

On January 8, 2002, the applicant signed an indefinite reenlistment contract. To date, he continues to serve on active duty.

VIEWS OF THE COAST GUARD

On June 28, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant's request.

The Chief Counsel conceded that the applicant's command improperly counseled him regarding his SRB entitlement, as provided in ALCOAST 198/01. He explained that the applicant's record supports his allegation of error. The Chief Counsel further stated that the requested relief should be granted as the applicant is "willing to offer a new multiyear reenlistment contract as consideration for the SRB he seeks." He recommended that, the Board correct the applicant's record to show that he reenlisted on October 1, 2001 for a term of six years to qualify for a Zone B SRB.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 1, 2002, the Chairman sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. He agreed with the Coast Guard's recommendation.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 4.B.6.a.2 of the Personnel Manual provides that "[p]ersonnel [serving in the grade of] E-4 and above with over six years of active duty [service] are considered to be in career status. Unless otherwise indicated, they are required to have one year of OBLISERV [obligated service] remaining upon reporting to the new unit."

SRB Manual Provisions

Article 3.d.(2) of Enclosure (1) to the Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that "[m]embers with exactly 10 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone B multiple in effect for their rating if they are otherwise eligible. If they have previously received a Zone B bonus or no Zone B bonus is designated, they are entitled to a Zone C bonus if one is in effect."

Article 3.d.(9) of the instruction provides that "[c]ommanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expiration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB respectively. ..."

On April 30, 2001, the Commandant issued ALCOAST 198/01, which provided the following:

Commanding officers may authorize a short term extension up to 5 months to expire [no later than] 31 October 2001 for members whose 6 or 10-year anniversary date and expiration of enlistment date both fall on or after 1 May 2001 but before 1 October 2001. Upon the expiration of their short term extension, members must reenlist for a minimum of three years to receive the SRB.

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. The applicant requested that the six-month extension agreement, dated April 25, 2001, be canceled because it was completed without his consent. However, in the absence of an extension agreement with legal effect, the applicant's records would erroneously reflect that he had a break in service from July 9, 2001, his prior EOE date, until January 8, 2002, the date he signed an indefinite reenlistment contract. To accept his PCS orders, the Coast Guard should have required the applicant to extend his enlistment for long enough to have at least one full year at his new duty station, from May 2001 to May 2002. Personnel Manual, Article 4.B.6.a.2. Instead, the Coast Guard created a six-month contract and never had it executed by him. Therefore, the Board finds that the Coast Guard committed an error in treating the unsigned extension agreement as formally binding the applicant, despite the Coast Guard's failure to obtain his written consent.

3. Under COMDTINST 7220.33, the applicant was entitled to counseling concerning his eligibility to receive a Zone B SRB under ALCOAST 198/01 on September 17, 2001, his tenth active duty anniversary. *See* Articles 3.d.(2) and 3.d.(9) of Enclosure (1) to COMDTINST 7220.33. ALCOAST 198/01 further expanded the provisions of ALCOAST 127/01 by providing for short-term extension waivers for SRB eligibility based on a member's tenth active duty anniversary date. A Zone B SRB with a multiple of two was available under ALCOAST 198/01 for the applicant's rating because both his ten-year anniversary date (July 9, 2001) and his EOE date (September 17, 2001) fell between May 1, 2001 and October 1, 2001. There is no page 7 entry in the applicant's military record showing that he was counseled about his eligibility for a Zone B SRB on his tenth-year active duty anniversary. Because the applicant was

eligible for this SRB, the applicant has shown by a preponderance of the evidence that the Coast Guard committed error by not counseling him about it.

4. Furthermore, the applicant asserted that had he been properly counseled, he would have requested a short-term extension, then reenlisted in October of 2001 for a term of six years in order to obtain a Zone B SRB under ALCOAST 198/01. In light of the fact that the applicant was eligible to receive the Zone B SRB, the Board finds that, if he had been properly counseled, he would have been granted a short-term extension, then reenlisted for six years in October 2001, rather than executing an indefinite reenlistment on January 8, 2002.

5. Accordingly, the applicant's request for a short-term extension, followed by a six-year reenlistment as provided under ALCOAST 198/01 should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXX XXXXXX X. XXXXXX, XXX XX XXXX, USCG, is granted as follows:

The six-month extension agreement, dated April 25, 2001 but unsigned by the applicant, shall be void *ab initio*.

The indefinite reenlistment contract that he signed on January 8, 2002 shall be null and void.

His record shall reflect the reinstatement of his original expiration of enlistment date of July 9, 2001, from his June 21, 1999 extension.

It shall further reflect that he extended his enlistment again for three months, through October 8, 2001, and then reenlisted on October 9, 2001 for six years. The Coast Guard shall pay him the Zone B SRB he would be due under ALCOASTs 198/01 and 127/01.

Murray A. Bloom

Nancy Lynn Friedman

Robert A. Monniere

