

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-048

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 13, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated November 14, 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 following: a four-year reenlistment contract he signed on April 30, 1997; a one-month extension agreement dated April 30, 2001; and a six-year reenlistment contract he signed on April 25, 2001. He asked that his record instead show that, on September 21, 1997, he extended his enlistment for thirty-three months, then reenlisted for six years on September 21, 1999, his sixth active duty anniversary, for a Zone A selective reenlistment bonus (SRB) under ALDIST 184/99.

APPLICANT'S ALLEGATIONS

The applicant stated that he signed a four-year reenlistment agreement on April 30, 1997, in order to accept permanent change of station (PCS) orders to a new unit. He alleged that he was told that to accept the orders, he was required to have three years'

obligated service remaining in the Coast Guard upon arriving at his new unit in July 1997. The applicant alleged that the Coast Guard failed to counsel him concerning the effect of the four-year reenlistment on his future SRB entitlement. There is no page 7 entry in his record formally documenting SRB counseling prior to or on April 30, 1997, the date he reenlisted. He alleged that had he been properly counseled, he would have extended his enlistment, which was due to expire on September 20, 1997, for thirty-three months, the minimum time required to accept his PCS orders, rather than reenlisting for four years.

The applicant also contended that he was not properly counseled on his sixth active duty anniversary date. He alleged that when he received SRB counseling on June 7, 1999 and September 27, 1999¹, he was told that he could only reenlist within sixty days of the end of an enlistment. He argued that because his then current obligation was not due to expire until April 29, 2001, he signed the page 7s, indicating that he understood his SRB options, with the belief that he could not reenlist for an SRB on his sixth anniversary on active duty. He alleged that had he been properly counseled on his SRB eligibility, he would have reenlisted for the Zone A SRB available to him under ALDIST 184/99 on September 21, 1999, his sixth active duty anniversary.

In support of his allegations, the applicant submitted a statement from his commanding officer (CO) recommending favorable consideration of the applicant's request for relief. The CO stated that, as a result of the improper counseling the applicant received in 1997, he will be "denied an opportunity to receive a Zone 'A' SRB of approximately \$17,000 prior to taxes [to which] ... he should be entitled."

SUMMARY OF THE APPLICANT'S RECORD

On April 13, 1993, the applicant enlisted in the Coast Guard Reserve under the Delayed Entry/Enlistment Program (DEP) for eight years. On September 21, 1993, he was honorably discharged from the Reserve and enlisted in the regular component of the Coast Guard for four years, through September 20, 1997.

On April 30, 1997, the applicant executed a four-year reenlistment contract, through April 29, 2001, for the purpose of obligating service necessary to transfer to a new unit. Although there is no page 7 in the applicant's record formally documenting counseling about his obligated service requirement prior to accepting transfer orders, as required by Article 4.B.1.i.1.b. of the Personnel Manual, no Zone A SRB multiple existed for the applicant's rating at the time of his reenlistment. On July 22, 1997, the applicant reported to his new unit.

¹ Although the CG-3307 (page 7) is dated September 1, 1999, the date written by the applicant's signature appears to state September 27, 1999.

On June 7, 1999 and September 27, 1999, the applicant's command made page 7 entries in his record, for purposes of sixth active duty anniversary counseling. Each page 7 entry was signed by both the applicant and a petty officer first class, and contained the following language:

I hereby acknowledge that I have read and fully understand the contents and explanation of COMDTINST 7220.33 (series).

I further acknowledge that I have been advised of the effects on my SRB computation/payment if I enter into an agreement to extend my enlistment.

On September 21, 1999, the date of the applicant's sixth anniversary, ALDIST 184/99 was in effect, authorizing a Zone A SRB, calculated with a multiple of two for members in the FS rating if they reenlisted or extended their current enlistments between June 15, 1999 and December 31, 1999. The applicant's record shows that he did not reenlist or extend but continued to serve under his April 30, 1997 reenlistment and later executed a thirty-day extension, as authorized by the commander, through May 30, 2001.

On May 1, 2001, the applicant was promoted to his current paygrade of E-6. On May 25, 2001, he reenlisted for six years, through May 24, 2007, to receive a Zone B SRB calculated with a multiple of one under ALCOAST 127/01. 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 deny relief in the applicant's case.

The Chief Counsel argued that because the applicant's case is analogous to that in BCMR Docket No. 1999-014, the Board should similarly conclude that SRB regulations fail to "establish a duty to counsel members on all possible future effects a current reenlistment/extension may have on future SRB eligibility" and thereby, deny relief in the instant case. The Chief Counsel contended that the Board should find that the Coast Guard had no duty to counsel the applicant regarding the potential effect of his April 30, 1997 reenlistment on future SRB eligibility. He further argued that although the Coast Guard erred in failing to counsel the applicant concerning SRBs when he reenlisted in April 1997, the error was harmless because no SRB multiple was available for his rating at that time .

The Chief Counsel further alleged that the applicant failed to prove that the Coast Guard did not counsel him regarding his eligibility to reenlist for an SRB on his sixth active duty anniversary. He stated that the SRB regulation (COMDTINST 7220.33) provides that members may reenlist on or anytime during the three months immediately prior to their sixth or tenth active duty anniversary. He further stated that the applicant's record contains page 7 entries dated June 7, 1999 and September 1, 1999, indicating that he was counseled in accordance with the provisions of COMDTINST 7220.33. He contended that because the applicant acknowledged that he read and fully understood the contents and explanation of the SRB regulations, the applicant's record shows that he was properly counseled on his eligibility to reenlist for an SRB on his sixth anniversary. He asserted that the applicant's allegation of receiving improper counseling is wholly inconsistent with that which is documented in his record.

The Chief Counsel contended that although the applicant could have extended his enlistment for a lesser period of time to accept PCS orders, he chose to extend his enlistment for four years on April 30, 1997. He stated that once the applicant received his PCS orders, he was required to accept the orders and the associated obligation or reject them and serve the remainder of his obligated service. The Chief Counsel asserted that in the absence of fraud or duress, the Board should find that the applicant freely chose to accept the PCS orders and is bound by his agreement. He further stated that as a result of the foregoing, the applicant's agreement to reenlist is neither erroneous or unjust. The Chief Counsel stated that the applicant has failed to prove that he has suffered an injustice that "shocks the sense of justice" merely because of the less than optimal results of his voluntary decision to enter into a reenlistment agreement on April 30, 1997.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 1, 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 4.B.1.i.1.b. of the Personnel Manual provides that members who receive PCS orders must be counseled about obligated service requirements and sign a page 7 documenting that counseling.

Article 4.B.6.a.1. provides that members serving in a grade E-4 and above with fewer than six years of active duty service may not accept PCS order unless they reenlist

or extend to have enough obligated service for a full tour of duty upon reporting to a new unit.

ALDIST 184/99, issued May 13, 1999, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments between June 15, 1999, and December 31, 1999. The Zone A multiple to be used for calculating SRBs for members in the XX rating was two.

SRB Manual Provisions

Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration), Section 2 states 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.”

Enclosure (3) to the instruction requires that members sign a page 7 administrative entry indicating that they have received and read Enclosure (5), entitled “SRB Questions and Answers.” Enclosure (5) explains that previously obligated service reduces an applicant’s SRB. It further advises members, “[w]hen coming up on your end of enlistment, carefully consider the advantages/disadvantages of reenlisting vice extending.”

Enclosure (3) to the instruction states that during the three months prior to a member’s 6th, 10th, or 14th active duty anniversary date, the member must be counseled concerning his or her eligibility for an SRB, and the counseling must be memorialized in the member’s record with a page 7 signed by the member. The format for the required page 7 is reproduced below:

Date: I have been provided with a copy of enclosure (5) to Commandant Instruction 7220.00 (series) entitled “SRB Questions and Answers.” I have been informed that:	
My current Selective Reenlistment Bonus (SRB) multiple is ____ and is listed in ALDIST ____, which has been made available for my review.	
In accordance with article 12-B-4, CG Personnel Manual, I am eligible to reenlist/extend my enlistment for a maximum of ____ years.	
My SRB will be computed based on ____ months newly obligated service.	
I must reenlist on or 3 months prior to (____ date ____), which is my (6 th /10 th /14 th) active duty anniversary date, in order to receive a Zone (A, B, or C) SRB.	
The following SRB policies were unclear to me, but my SRB counselor provided me with the corresponding answers: (list specifics)	
_____ (Signature of Member/date)	_____ (Signature of Counselor)

Article 3.d.(1) of Enclosure (1) states that “[m]embers with exactly 6 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone A multiple in effect for their rating if they are otherwise eligible.”

Article 3.d.(9) of Enclosure (1) to the instruction states 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. In such cases, SRB payments will be reduced by any portion of unserved service obligation.”

BCMR DOCKET NO. 1999-014

In BCMR Docket No. 1999-014, the applicant asked the Board to change a four-year reenlistment dated March 1997 to a two-year extension in order to maximize an SRB he received for reenlisting for six years on his tenth anniversary in July 1998. There was no page 7 in the applicant’s record indicating that he had been counseled concerning SRBs prior to signing the four-year reenlistment contract. However, an extension contract signed by the applicant in March 1996 stated that he had been given the chance to review the SRB Instruction, including “SRB Questions and Answers,” and that he understood the effect of his extension on his current and future SRB eligibility.

The Board denied the applicant’s request, in accordance with the recommendation of the Coast Guard. The Board found that the Coast Guard had erred by failing to counsel the applicant when he reenlisted in 1997, but concluded that

the applicant’s present contention amounts to a retrospective review of his military record based on a later opportunity that the applicant could not have known about in 1997. ... [S]ince there was no SRB multiple for the applicant’s rate in 1997, and the applicant is not alleging this, any error that occurred at that time was harmless. ... The Board is not persuaded that if the applicant had received a page 7 entry in 1997, he would have extended for two years rather than reenlisting for four years. ... The applicant’s reenlistment history suggests that he would have reenlisted for four years in 1997 (as he did) because he had previously enlisted for four years both in 1988 and 1992. ... Additionally, the required page 7 counseling entry does not mandate a discussion of the effect of either an extension or reenlistment on a future SRB. The Board notes that just a year before his 1997 reenlistment, the applicant acknowledged on his 1996 extension agreement that he had been informed about is SRB eligibility (although one was not available for him) and that he understood the effect that the extension would have on his current and future SRB eligibility. Yet, he reenlisted in 1997 without asking any questions. The Board finds that even with the SRB counseling in 1997, the applicant would have probably reenlisted for four years. ... ‘The Board is only obligated to grant enough relief to correct what it sees as an injustice.’ Reale v. United States, 208 Ct. Cl.

1010, 1011 (1976). The Board does not find that any corrective action is necessary in this case. ... [T]he Board's job is not to perfect records but to correct harmful errors and remove injustices.

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 had a right to be properly counseled concerning his SRB eligibility when he reenlisted for four years on April 30, 1997. Proper counseling includes the receipt of "SRB Questions and Answers," which alerts members to the fact that previously obligated service diminishes any SRB for which a member might later become eligible. The right to proper SRB counseling, however, fails to "mandate a discussion of the effect of either an extension or reenlistment on a future SRB." BCMR Docket No. 1999-014. The record contains no evidence of any regulation that establishes such a duty on the part of the Coast Guard.²

3. In accordance with regulations, proper counseling must also be documented by a page 7 entry, signed prior to accepting PCS orders. Personnel Manual, Article 4.B.1.i.1.b. There is no evidence in the record indicating that prior to accepting PCS orders in April 1997, the applicant was ever counseled about SRBs. Nevertheless, although the applicant's command failed to counsel him in accordance with applicable regulations, there was no SRB multiple in effect for his rating in April of 1997. As a result, the applicant has not proved that he was prejudiced by the Coast Guard's error, and the Board finds that the error was harmless.

4. Moreover, the Board is not inclined to find that the applicant would have extended his enlistment for the minimum amount of time in order to accept his PCS orders. The applicant alleged that at the time he received his PCS orders, he was told that he needed to have three years' obligated service remaining in the Coast Guard upon reporting to his new unit. *See* Article 4.B.6.a.1. of the Personnel Manual. Instead of agreeing to the minimum required three-year obligation in April 1997, the applicant

² In providing the Board with interpretive guidance on SRB cases with similar issues, the Deputy General Counsel ruled that there is no duty to advise a member to reenlist or extend for the minimum amount of time in order to receive the maximum SRB at a future reenlistment or extension, in the absence of "a regulation, order or directive of the Coast Guard." BCMR Docket No. 1999-042.

executed a four-year service obligation. The Board finds that, in light of the lesser term offered to the applicant in order to meet obligated service requirements and the greater term chosen by the applicant to meet the same, the record fails to indicate that he would have chosen to extend his enlistment for just thirty-three months to accept his PCS orders if he had received SRB counseling.

5. The applicant had a right to be counseled about SRBs within three months of his sixth active duty anniversary date, in order to receive a Zone A SRB, if one was in effect for his rating. Enclosure (3) and Article 3.d.(1) of Enclosure (1) to COMDTINST 7220.33. In June 1999 (approximately three months before the applicant's sixth anniversary) and in September 1999 (the month of his sixth anniversary), page 7 entries were signed by the applicant and entered in his military record. The Chief Counsel argued that the page 7 entries prove that the applicant received proper SRB counseling in accordance with Coast Guard policy and regulations because the entries indicate that the applicant read and fully understood the contents and explanation of the SRB regulation. However, the Board finds that the page 7 entries do not meet the requirements of the Coast Guard's regulations in Commandant Instruction 7220.33, as neither page 7 satisfies the requirements of Enclosure (3) to the SRB Instruction.

6. In accordance with Enclosure (3) to the instruction, part of the counseling interview must include a discussion of SRBs that the member is eligible for at the time of counseling. On September 21, 1999, the date of the applicant's sixth anniversary, ALDIST 184/99 was in effect and authorized a Zone A SRB calculated with a multiple of two for the applicant's rating. There is no page 7 in the applicant's record documenting that he was informed about this SRB, as required by Enclosure (3) of COMDTINST 7220.33. The Board finds that if the applicant had received proper counseling, as urged by the Chief Counsel, the required page 7, discussing the multiple available, the maximum years of any reenlistment or extension, the number of months upon which the SRB would be based, and the reenlistment date would be memorialized in the applicant's record. Therefore, the applicant has proved by a preponderance of the evidence that he was not properly counseled by his command on his sixth active duty anniversary about his eligibility to reenlist and receive a Zone A SRB under ALCOAST 184/99.

7. Accordingly, the Board should deny the applicant's request for a thirty-three month extension and grant relief by replacing the applicant's six-year reenlistment contract dated May 25, 2001, with a six-year reenlistment contract dated September 21, 1999, his sixth anniversary.

[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 his six-year reenlistment contract, signed on May 25, 2001, shall be null and void.

His record shall be corrected to show that he was discharged and reenlisted for six years on September 21, 1999, his sixth active duty anniversary, to receive a Zone A SRB with a multiple of two under ALDIST 184/99.

The one-month extension contract that he signed on April 24, 2001, shall be null and void.

The Coast Guard shall pay the applicant the amount due him under ALDIST 184/99 as a result of this correction.

Edmund T. Sommer, Jr.

Dorothy J. Ulmer

Betsy L. Wolf