

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2002-090**

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**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 April 30, 2002, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated February 4, 2003, 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 by canceling two short-term extension contracts and reenlisting him for four years as of January 20, 2002, to receive a Zone A selective reenlistment bonus (SRB)<sup>1</sup> under ALCOAST 127/01.

The applicant alleged that his original four-year enlistment was ending in January 2002 and that, although he had previously signed two short-term extension contracts, he was eligible to cancel them to reenlist for a longer period. He alleged that he was never counseled about his eligibility and that, if he had been, he would have cancelled the extensions and reenlisted for four years upon the termination of his original enlistment.

In support of his allegations, the applicant submitted a statement from his Personnel Reporting Unit (PERSRU), who stated that in February 2002, while he was

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<sup>1</sup> SRBs vary according to the length of each member's active duty service, the length of the reenlistment or extension of enlistment, and the need of the Coast Guard for personnel in the member's skill rating. Coast Guard members who have served between 21 months and 6 years on active duty are in "Zone A." Those with at least 6 years but fewer than 10 years of active service are in "Zone B." Members may not receive more than one bonus per zone.

reviewing unit records to determine who was eligible for an SRB, he noticed that the applicant had two short-term extensions in his record, both of which could have been cancelled so that he could receive an SRB. However, because one extension had already become operative on January 20, 2002, it could not be cancelled.

### **SUMMARY OF THE RECORD**

On January 20, 1998, the applicant enlisted in the Coast Guard for four years. On July 17, 1998, the applicant's commanding officer noted in his record that the applicant had been involved in an "alcohol situation" and was awarded non-judicial punishment (NJP) due to his arrest for criminal mischief, theft, and underage drinking by a local police department. However, because the police failed to perform a blood test or breath analysis, the underage drinking charge was dropped, though petty officers present at his arraignment reported that the smell of alcohol on the applicant's breath was strong. The commanding officer warned him that any further alcohol incidents would result in NJP and possibly in separation from the Coast Guard.

On January 3, 2000, the applicant signed a 13-month extension contract in order to have sufficient obligated service to attend "A" School and become a petty officer.<sup>2</sup> On June 17, 2001, a 24-month extension contract was entered in his record so that he would have sufficient obligated service to accept transfer orders. Although the contract contains language acknowledging SRB counseling, the specific information about the applicant's eligibility for an SRB is erroneous, and the Coast Guard was unable to provide a copy of the contract actually signed by the applicant.

On July 22, 2001, the applicant was detained by the local police for driving under the influence and behaved in a confrontational manner toward them. He was not charged but was turned over to his command. A test indicated that his blood alcohol level was 0.187%, well above the legal limit. He was provided treatment and counseling and taken to mast for NJP. In addition, on August 20, 2001, the Officer in Charge (OIC) of his station awarded him an unsatisfactory conduct mark, documented his first official "alcohol incident" in his record, and noted in his record that he was "not recommended" for advancement.

On January 20, 2002, the first extension contract signed by the applicant went into effect. There are no "page 7" administrative entries in his record to show that he ever received SRB counseling.

### **APPLICABLE REGULATIONS**

Article 2 of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that "[a]ll personnel with 14 years or less active service who

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<sup>2</sup> Although the applicant indicated in his application that he had signed two extension contracts, the second extension contract is not in the record before this board.

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) states that, as part of proper SRB counseling, a member must be allowed to review the instruction.

ALCOAST 127/01, issued on March 27, 2001, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments between October 1, 2001, and January 31, 2002. The multiple to be used for calculating SRBs for members in the BM rating in Zone A was one.

Paragraph 3.d.(13) of Enclosure (1) to the SRB Instruction states that when a member reenlists before finishing his previous contract term, "[a]ll periods of unexecuted service obligation ... will be deducted from SRB computation." However, paragraph 3.d.(6) states that an "exception to this rule is made for extensions of 2 years or less ... required of a member for transfer, training, advancement, or tuition assistance. These extensions may be canceled prior to their operative date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement."

Article 1.G.5.3. of the Personnel Manual states that "[e]ach member must receive from the officer effecting discharge a specific recommendation of whether or not he or she should be allowed to reenlist. In making such recommendation, the officer effecting discharge should consider the member's overall performance, potential for continued service, and conduct during the current enlistment. If a member has received an unsatisfactory conduct mark, court-martial conviction(s), or NJP [non-judicial punishment] punishment(s), the officer effecting discharge should also consider how the severity and nature of the offense(s) impact the member's overall record of service during the current enlistment."

Article 10.B.7.1. of the Personnel Manual provides that, in deciding whether to recommend a member for advancement, "the rating chain must consider past performance, it must also consider and base the recommendation on the member's potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership, and adherence to the Service's core values."

## **VIEWS OF THE COAST GUARD**

On October 4, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant "conditional relief."

The Chief Counsel stated that the record indicates that the applicant received no SRB counseling when he signed his first extension contract and that he was miscounseled about the SRB multiplier at the time of the second extension contract. He argued that, in light of this miscounseling, the Board should grant the applicant's request if the applicant can submit evidence indicating that in January 2002, his command would

have reenlisted him. The Chief Counsel stated that because of the applicant's alcohol incident in July 2001 and his loss of his command's recommendation for advancement, it is not clear that the applicant would have been allowed to reenlist in January 2002. Therefore, he argued, the Board should grant relief upon the condition that the applicant's command indicate that he would have been allowed to reenlist in January 2002.

#### **APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS**

On October 15, 2002, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. On January 16, 2003, the Board received a memorandum from the OIC of the applicant's station. The OIC stated that in January 2002, he would have allowed the applicant to reenlist despite the disciplinary actions that were taken against him in August 2001.

## 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 Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. Under Article 2 of the SRB Instruction, COMDTINST 7220.33, members are entitled to proper SRB counseling whenever they reenlist or extend their enlistments, and such counseling must be documented in their records. There is no evidence in the applicant's record that he ever received proper SRB counseling. Therefore, the Board agrees with the Chief Counsel that the Coast Guard erred by failing to counsel the applicant properly regarding his SRB eligibility.

3. Enclosure (3) to the SRB Instruction provides that proper SRB counseling includes an opportunity to read the regulations in the SRB Instruction, paragraph 3.d.(6) of which states that an "exception to this rule [about the effect of prior extensions on SRB calculations] is made for extensions of 2 years or less ... required of a member for transfer, training, advancement, or tuition assistance. These extensions may be canceled prior to their operative date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement." If the applicant had received proper SRB counseling, he would have learned that, upon the end of his original enlistment on January 19, 2002, he could cancel the two short-term extensions and reenlist for a longer period to receive an SRB undiminished by previously obligated service.

4. The applicant alleged that if he had been properly counseled, he would have canceled the extensions and reenlisted for four years on January 20, 2002. However, the main criterion each member must meet before reenlisting is the recommendation of the command. Personnel Manual, Article 1.G.5.3. The Chief Counsel argued that the applicant might not have received his command's recommendation because of the alcohol incident documented in his record in July 2001. In addition, the Board notes that after the alcohol incident, the applicant lost his command's recommendation for advancement.

5. In response to the Chief Counsel's advisory opinion, the applicant's OIC submitted a statement indicating that in January 2002, he would have allowed the applicant to reenlist despite the disciplinary actions that were taken against him in August 2001.

6. Although the applicant lost his command's recommendation for advancement because of the alcohol incident in July 2001, the factors that commands are sup-

posed to consider before making such a recommendation in accordance with Article 10.B.7.1. of the Personnel Manual are different from and more stringent than the factors to be considered for a recommendation for reenlistment under Article 1.G.5.3. Therefore, the Board finds that the fact that the applicant lost his command's recommendation for advancement because of the alcohol incident does not prove that he would not have been recommended for reenlistment in January 2002.

7. The Board finds that the preponderance of the evidence in the record indicates that the applicant's command would have allowed him to cancel his extensions and reenlist in January 2002 if he had requested it. In addition, the preponderance of the evidence indicates that, if he had been properly counseled, he would have asked to cancel the extensions and reenlist for four years.

8. Accordingly, the applicant's request should be granted.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows.

His record shall be corrected to show that, prior to their operative dates, he canceled the two extension contracts dated January 3, 2000, and June 17, 2001, and that he reenlisted for four years on January 20, 2002, to receive a Zone A SRB under ALCOAST 127/01.

The Coast Guard shall pay the applicant any sum he may be due as a result of this correction.

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Terence W. Carlson

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Charles Medalen

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Karen L. Petronis