

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-166

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The BCMR docketed the applicant's request for correction on September 9, 2002.

This final decision, dated March 26, 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 either to order the Coast Guard to pay him the selective reenlistment bonus (SRB) that he was promised on his last enlistment contract or to release him from the contract so that he would be discharged. The applicant alleged that, in October 2001, a yeoman and a lieutenant at his unit told him that he was eligible for a Zone B SRB with a multiple of one. Therefore, he decided to reenlist for 6 years for the SRB. However, he never received the SRB because he was not actually eligible for it since he had not yet advanced to pay grade E-5, which is one of the criteria for receiving a Zone B SRB. He alleged that he would not have reenlisted but for the promise of the SRB.

In support of his allegation, the applicant submitted a copy of a reenlistment contract dated October 2, 2001, which states in section 8.b. that "MBR IS ENTITLED TO SRB ZONE B MULTIPLE OF ONE." It also shows that he was a BM3 at the time. (In addition to that contract, the applicant's record contains a form CG-3307 documenting the fact that on October 1, 2001, he received SRB counseling and was told that he was eligible for an SRB with a multiple of one under ALCOAST 127/01.)

VIEWS OF THE COAST GUARD

On December 18, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant alternative relief. He stated that the record supports the applicant's contention that he was erroneously counseled. However, he argued, there is no authority to pay the applicant the SRB he was erroneously promised. Therefore, he recommended that the Board void the reenlistment contract and create an extension contract to cover the period from the end of his prior enlistment on October 31, 2001, to such time after the Board's final decision when the Coast Guard will discharge him, as he desires.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 23, 2002, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond. On January 24, 2003, the applicant responded, stating that he agreed with the Chief Counsel's recommendation and would like to be expeditiously discharged.

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 over this matter pursuant to the provisions of 10 U.S.C. § 1552. The application was timely.
2. The applicant has proved by a preponderance of the evidence that he was erroneously promised a Zone B SRB, for which he was not actually eligible, in exchange for his reenlistment on October 2, 2001. Section 3.b.(4) of Enclosure (1) to the SRB Instruction, COMDTINST 7220.33, states that, to be eligible for a Zone B SRB, members must "[b]e serving in pay grade E-5 or higher." The applicant was a BM3 in pay grade E-4 in October 2001.
3. The government is not bound by the erroneous promises of its agents. *Goldberg v. Weinberger*, 546 F.2d 477, 481 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977); *Montilla v. United States*, 457 F.2d 978, 987 (Ct. Cl. 1972). However, the BCMR has "an abiding moral sanction to determine insofar as possible, the true nature of an alleged injustice and to take steps to grant thorough and fitting relief." *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959). The Board agrees with the Chief Counsel that the reenlistment contract is voidable in light of the erroneous promise. The reenlistment contract should be voided and the applicant should be expeditiously discharged. An extension contract should be created to cover

his period of service from the end of his previous enlistment contract up to the date of his discharge.

4. Accordingly, relief should be granted.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

His reenlistment contract dated October 2, 2001, shall be null and void.

The Coast Guard shall expeditiously discharge him.

An extension contract shall be created to cover his service from November 1, 2001, until the day he is discharged.

Julia Andrews

Felisa C. Garmon

Dorothy J. Ulmer