

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2003-039**

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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 February 24, 2003, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated August 21, 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 a three-year extension of enlistment contract that he signed on May 1, 2002, in order to obligate sufficient service to accept his transfer orders. He alleged that he was advised that he could not accept the transfer orders without obligating sufficient service to complete a full tour of duty at his next station, so he signed the three-year extension contract. He alleged that he was advised that, if his rating became eligible for a selective reenlistment bonus (SRB) before the extension went into effect on November 2, 2002, he could cancel it and reenlist to receive an SRB.

The applicant alleged that, when his rating actually became eligible for an SRB before his extension went into effect, he reenlisted for six years on November 2, 2002. However, instead of receiving an SRB calculated on all six years of the contract, he received an SRB based on only three years, because the canceled extension contract constituted previously obligated service that counted against number of years of newly obligated service on which his SRB was based. The applicant asked the Board to void the three-year extension contract so that he would get an SRB based on all six years of service obligated under his reenlistment contract.

In support of his allegations, the applicant pointed out that his command failed to have him sign a CG-3307 ("page 7") to acknowledge receiving proper SRB counseling when he signed the extension contract on May 1, 2002.

### **SUMMARY OF THE RECORD**

On November 2, 1998, the applicant enlisted in the Coast Guard for a term of four years, through November 1, 2002. In January 2002, he received transfer orders to report to a new station in Alaska in July 2002. On May 1, 2002, to have sufficient obligated service to accept the transfer orders, the applicant signed a three-year extension contract, obligating service in the Coast Guard through November 1, 2005. There is no page 7 in his record documenting SRB counseling when he signed the contract. However, the extension contract itself contains two paragraphs regarding the applicant's SRB eligibility (he was then ineligible) and SRB entitlement. By signing this contract, the applicant acknowledged having (1) received a copy of "SRB Questions and Answers" based on the Commandant's SRB Instruction; (2) understood the effect of his extension on his future SRB eligibility; and (3) had the opportunity to read the SRB Instruction; and (4) had all his questions about his SRB entitlement answered.

On July 28, 2002, the applicant was transferred to a cutter based in Alaska.

On October 24, 2002, his new command counseled him about SRBs and had him sign a page 7, which erroneously indicated that if he reenlisted for six years, he would receive an SRB based on all six years of service.

On November 2, 2002, the applicant canceled his three-year extension contract and reenlisted for six years. However, the reenlistment contract properly and prominently states in bold, capitalized type that the applicant's SRB would be based on only 36 months of newly obligated service.

### **APPLICABLE REGULATIONS**

Article 1.G.14.a.2. of the Personnel Manual provides that a member may extend his reenlistment "[f]or any number of full years and/or full months up to six years to ensure sufficient obligated service [OBLISERV] for these purposes: ... c. INCONUS and OUTCONUS assignments; [see] Article 4.B.6."

Article 4.B.6. of the Personnel Manual provides that members will not be transferred to a unit based outside the continental United States unless they have already obligated sufficient service to complete a full tour of duty upon reporting to the new unit.

Article 4.A.5.b. of the Personnel Manual provides that the tour length for an enlisted member assigned to any cutter in Alaska is three years.

Article 2 of Commandant Instruction 7220.33 (the SRB Instruction) provides 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.” The page 7 that members must sign includes the multiple of the SRB for which they are eligible, the amount of newly obligated service upon which their SRBs will be based, and an acknowledgement that they have (1) received a copy of “SRB Questions and Answers”; and (2) had their questions about their SRB entitlement answered.

Article 1.G.19.2.b. of the Personnel Manual provides that extension contracts may be canceled prior to their operative dates if the member reenlists for a longer period. However, under paragraph 3.d.(6) of Enclosure (1) to the SRB Instruction, the term of a canceled extension will continue to count as previously obligated service and diminish the size of any SRB the member might receive for the longer reenlistment, unless the extension was for a term of two years or less and was executed to fulfill an obligated service requirement for transfer or training.

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.”

Paragraph 1.c.(8) of Enclosure (1) to the SRB Instruction explains that only months of service that are newly obligated under a reenlistment or extension contract count in the calculation of an SRB.

ALCOAST 329/02, issued on July 2, 2002, established SRB multiples for personnel in certain skill ratings who reenlisted or extended their enlistments between August 5, 2002, and June 30, 2003, for at least three years and up to six years. Under ALCOAST 329/02, members who were DC2s were eligible for a Zone A SRB calculated with a multiple of one.

## **VIEWS OF THE COAST GUARD**

On June 3, 2003, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant’s request.

The Chief Counsel argued that the record indicates that the applicant was properly counseled about SRBs on May 1, 2002, even though no page 7 was signed. He pointed out that the advice the applicant alleged that he was given at that time was true: He could cancel his three-year extension before it went into effect and reenlist to get an SRB. Moreover, the Chief Counsel pointed out, when the applicant signed the

extension contract, he acknowledged having had a chance to read the SRB Instruction, and having understood the effect of his extension on his future SRB eligibility.

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

On June 9, 2003, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond. No response was received.

### **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. When the applicant received transfer orders in January 2002, he was required to obligate sufficient service to complete a full tour of duty at his new station in Alaska before he could accept the orders. Personnel Manual, Article 4.B.6. Under Article 4.A.5.b. of the Personnel Manual, a tour length on a cutter based in Alaska is three years. The applicant's report date was July 28, 2002, and his original enlistment was due to end on November 1, 2002. Therefore, to comply with regulations, he was required to extend his contract for at least two years and nine months (33 months in all), from the end of his original enlistment through August 1, 2005, since extension contracts must be for periods of whole years or months. Personnel Manual, Article 1.G.14.a.2. However, his command apparently required him to extend his service for three full years, which was not required under the regulations.

3. As the Chief Counsel pointed out, the advice the applicant alleged he was given was absolutely true—in that (a) he had to sign an extension contract to accept the transfer orders and (b) he could later cancel it to reenlist for an SRB. However, the advice was also incomplete if it led him to believe that, by canceling the extension contract, the three years would not count as previously obligated service to diminish any SRB he might receive under a longer reenlistment contract. He should have been advised on May 1, 2002, that although he could cancel the three-year extension and reenlist for six years if he later became eligible for an SRB, only three years of the new enlistment would count as newly obligated service in the calculation of his SRB. *See* COMDTINST 7220.33, Encl. (1), para. 1.c.(8) and 3.d.(6). The three-year extension contract would in effect diminish his eligibility for an SRB by one-half. Although the applicant signed his extension contract, acknowledging SRB counseling, the absence of a page 7 in his record suggests that that counseling was not as complete as it should have been.

4. The applicant asked that the Board correct his record so as to entitle him to a full SRB based on all six years of service under his enlistment contract. The page 7 in his record indicates that he was erroneously advised on October 24, 2002, the week before he signed the reenlistment contract, that his SRB would not be diminished by any previously obligated service. However, when an applicant proves that he has received improper SRB counseling, the Board's policy is not to fulfill the erroneous promises made by the applicant's command, but to return the applicant to the position he would have been in had he been properly counseled. Moreover, any misunderstanding about the size of his SRB created by the erroneous page 7 on October 24th was cleared up by the time the applicant signed the reenlistment contract on November 2, 2002, as it prominently declared that the SRB would be based on only 36 months of newly obligated service.

5. If the applicant had been properly counseled on May 1, 2002, he would have been told that, under Article 4.B.6.a.2. of the Personnel Manual, before accepting his transfer orders and reporting to his new unit on July 28, 2002, he had to obligate sufficient service to complete a full three-year tour by extending his enlistment for at least 33 months. In addition, he would have been advised that because the extension contract he would have to sign to accept the tour in Alaska was for more than two years' duration, under paragraph 3.d.(6) of Enclosure (1) to the SRB Instruction and Article 1.G.19.2.b. of the Personnel Manual, he could not cancel it before it became operative to receive an SRB without having his SRB reduced in accordance with paragraph 3.d.(13) of Enclosure (1) to the SRB Instruction.

6. The applicant has neither alleged nor proved that on May 1, 2002, he would have rejected his transfer orders by refusing to sign an extension contract if he had known that the extension contract would diminish the size of a possible, future SRB.

7. Although the Chief Counsel recommended denying relief, the applicant has proved that his command erred on May 1, 2002, by requiring him to extend his contract for a full three years, when only a 33-month extension was necessary for him to accept his transfer orders. In signing the three-year contract, he unnecessarily obligated three additional months of service, and his SRB was therefore diminished by those three months of service.

8. Accordingly, the applicant's request should be granted in part by changing the term of his extension contract from three years to two years and nine months.

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

**ORDER**

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

The term of his extension contract dated May 1, 2002, shall be corrected to two years and nine months instead of three years.

The Coast Guard shall pay him the additional sum he is due under ALCOAST 329/02 as a result of this correction.

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Felisa C. Garmon

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Quang D. Nguyen

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G. Alex Weller