

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-108

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 June 30, 2003, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated March 25, 2004, 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 to show that he reenlisted on June 2, 2003, the day after he was advanced to MK2/E-5, so that he would be entitled to receive a Zone A selective reenlistment bonus (SRB) calculated with a multiple of 2,¹ as authorized under ALCOAST 329/02.²

The applicant alleged that in November 2002, when he had just one month to go on his enlistment, he was still an MK3/E-4 but was on the advancement list and expected to be advanced to MK2/E-5 on June 1, 2003. Because he knew that an SRB

¹ SRBs vary according to the length of each member's active duty service, the number of months of service newly obligated by the reenlistment or extension of enlistment contract, and the need of the Coast Guard for personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's skill/rating, which is published in an ALCOAST. Coast Guard members who have at least 21 months but no more than 6 years of active duty service are in "Zone A." Members may not receive more than one SRB per zone. Personnel Manual, Article 3.C.4.a.

² ALCOAST 329/02, issued on July 3, 2002, established SRB multiples for personnel in certain skill ratings who reenlisted or extended their enlistments on or after August 5, 2002, for at least three years. Under ALCOAST 329/02, MK2s were eligible for a Zone A SRB calculated with a multiple of 2. No SRB multiple was authorized for MK3s.

was authorized for MK2s (but not for MK3s) under ALCOAST 329/02, he requested a six-month extension of his enlistment so that he would be able to reenlist after his advancement to MK2 and receive the SRB. However, his Personnel Reporting Unit (PERSRU) informed his command that the minimum period he could be allowed to extend his enlistment was one year.³

The applicant alleged that when he learned that he would not be allowed to extend his enlistment for just six months, he asked if he would be able to reenlist for the SRB after his advancement if he signed a one-year extension contract and was advised that he would be able to do so. Therefore, he signed the one-year extension contract believing that he would be allowed to reenlist for an SRB in June 2003 after his advancement. He alleged that when he was given the contract to sign, his yeoman had highlighted only the top paragraph of the contract, not the paragraphs concerning SRBs. Therefore, he assumed that the other paragraphs did not pertain to him.

In May 2003, the applicant alleged, he was told that he could not reenlist until he was within three months of the end of his enlistment as extended,⁴ which meant that he could not reenlist until after September 15, 2003. By that time, ALCOAST 182/03 was in effect and the SRB multiple for MK2s in Zone A was just 1.5.⁵

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 one-year extension contract on November 18, 2002. He also submitted statements signed by members of his command in support of his application.

Statement by the Applicant's Supervisor

The supervisor stated that when he inquired about a short-term extension for the applicant, the PERSRU told him that the shortest possible extension that would be allowed was for one year and that it had to be approved by the Coast Guard Personnel Command (CGPC). The PERSRU also told him that "the extension could stop at any time the member wished as long as the member reenlisted."

³ Under Article 1.G.14.a.1. of the Personnel Manual, the minimum period of an extension of an enlistment is two years, unless the extension is required for the member to obligate sufficient service to attend school or accept transfer orders. However, under Article 1.G.14.a.4., the Commander of the Personnel Command may authorize extensions "[f]or one year or other such period as Commander (CGPC-epm) may authorize in specific cases."

⁴ Under Articles 3.C.5.9. and 12.B.7.b.4. of the Personnel Manual, a member who wants to be discharged and reenlisted to receive an SRB may only do so upon the expiration of his enlistment or during the three months prior to the expiration of his enlistment, unless he must obligate additional service for another purpose, such as attending school or transferring to another unit.

⁵ On April 24, 2003, the Commandant issued ALCOAST 182/03, canceling ALCOAST 329/02 as of June 30, 2003, and establishing new SRB multiples effective July 1, 2003, including a multiple of 1.5 for MK2s.

Statement by the Applicant's Commanding Officer

The commanding officer (CO) stated that although the applicant wanted to extend his enlistment for only six months, the PERSRU advised him that he could not extend his enlistment for less than one year but that he could stop the extension to reenlist for an SRB at any time.

SUMMARY OF THE RECORD

On November 16, 1998, the applicant enlisted in the Coast Guard for a term of four years, through November 15, 2002. On July 19, 2000, he was required to extend his enlistment for one month, through December 15, 2002, in order to have sufficient obligated service to attend MK "A" School and become a petty officer.

On November 12, 2002, CGPC authorized the applicant to extend his enlistment for one year. On November 18, 2002, the applicant extended his enlistment⁶ for one year, from December 16, 2002, to December 15, 2003. There is no page 7 in his record documenting SRB counseling when he signed the contract.⁷ However, the extension contract itself contains two paragraphs regarding the applicant's SRB eligibility (he was then ineligible). In 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; (3) had the opportunity to read the SRB regulations; and (4) had all his questions about his SRB entitlement answered.

On October 1, 2003, the applicant reenlisted for six years to receive a Zone A SRB calculated with a multiple of 1.5 in accordance with ALCOAST 182/03.

VIEWS OF THE COAST GUARD

On November 7, 2003, the Judge Advocate General of the Coast Guard submitted a recommendation that the Board deny the applicant's request.

The Judge Advocate General argued that the record "does not support Applicant's allegation of error." He pointed out that in signing the extension contract, the applicant acknowledged having received SRB counseling. He also pointed out that the applicant was not entitled to sign a six-month extension because CGPC authorized only a one-year extension. The Judge Advocate General also alleged that the applicant could have reenlisted in November 2002, instead of extending, and received an SRB calculated with a multiple of 1 under ALCOAST 329/02.⁸ Finally, he pointed out that the applicant was eligible to reenlist for an SRB with a multiple of 1.5 upon the expiration of his one-year extension.

⁶ On the photocopy of this contract received by the Board, there is no evidence of highlighting.

⁷ Article 3.C.3. of the Personnel Manual provides that all members who reenlist or extend their enlistments for any reason shall be counseled on the SRB program and shall sign a page 7 "outlining the effect that particular action has on their SRB entitlement."

⁸ Upon inquiry by the BCMR staff, a representative of the Judge Advocate General's office stated the advisory opinion was mistaken because under ALCOAST 329/02 the applicant was not entitled to an SRB in November 2002 because he was an MK3, and no SRB multiple was in effect for MK3s at the time.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On November 10, 2003, the BCMR sent the applicant a copy of the Judge Advocate General's advisory opinion and invited him to respond. On December 4, 2003, the applicant responded. He stated that prior to signing the extension contract, he "discussed at length the SRB requirements and various options" with a yeoman and chief warrant officer at his command, who were "the resident experts" on SRBs. The yeoman told him that if he extended his enlistment for one year, he could reenlist at any time. The applicant alleged that he did not receive a copy of the SRB regulations until May 2003.

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. Although the applicant signed his extension contract acknowledging SRB counseling and admits to having received some SRB counseling, the absence of a page 7 in his record suggests that that counseling was not as complete as it should have been. Moreover, the applicant's supervisor and CO have signed statements supporting his allegation that in November 2002 he was erroneously advised that, if he extended his enlistment for one year, he would be allowed to reenlist at any time after his advancement. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence that he was miscounseled in November 2002 that, if he extended his enlistment for one year from December 16, 2002, to December 15, 2003, he could be discharged and reenlisted at any time for an SRB if he became eligible for one under ALCOAST 329/02 by advancement to MK2.

3. The applicant alleged that if he had been properly counseled, he would have extended his enlistment for only six months. However, the record indicates that the applicant's request to extend his enlistment for six months was refused and that he was authorized to extend for a minimum of one year. The applicant has not submitted any evidence to prove that in November 2002 he could have or would have received permission from CGPC to extend his enlistment for less than a one-year period.

4. 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. If the applicant had been properly counseled in November 2002, he would have been told that (1) to stay on active duty, the minimum amount of

service he had to obligate was one additional year and (2) he would not be allowed to reenlist until after September 15, 2003, during the last three months of his extension.

5. With accurate advice in November 2002, the applicant would have had the choice of ending his Coast Guard career by allowing his enlistment to expire or obligating additional service by signing at least a one-year extension contract. The applicant has not stated that he would have quit the Coast Guard if he had received accurate advice. Moreover, even with the miscounseling he received, he knew when he signed the extension contract that he was not guaranteed an SRB with a multiple of 2 in June 2003 because a new ALCOAST canceling ALCOAST 329/02 and establishing different multiples could have been issued by the Commandant at any time. Yet even with this uncertainty, the applicant extended his enlistment for one year. Therefore, the Board finds that if the applicant had been properly counseled in November 2002, he still would have signed the one-year extension contract. Once that extension contract became operative on December 16, 2002, the applicant was not authorized to reenlist until after September 15, 2003.

6. On October 1, 2003, the applicant reenlisted for six years to receive an SRB calculated with a multiple of 1.5 under ALCOAST 182/03. The applicant's record therefore already reflects the most likely and favorable outcome that he could have arranged if he had received absolutely accurate counseling in November 2002.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Philip B. Busch

Marc J. Weinberger

George A. Weller