

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

Application for Correction of
Coast Guard Record of:

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

BCMR Docket
No. 2004-014

FINAL DECISION

The applicant alleged that when he reenlisted on December 1, 1980, the Coast Guard improperly deducted 11 months from his Zone B selective reenlistment bonus (SRB) payment, claiming that the 11 months constituted prior obligated service. He asked the Board to correct his record so that he is entitled to payment for the 11-month period.

The applicant first enlisted in the Coast Guard on August 30, 1971. He served on active duty until his retirement on October 1, 1997. He reenlisted for six years on August 5, 1975, with an expiration date of August 4, 1981. During the 1975 enlistment he was selected for chief petty officer (pay grade E-7). In order to be advanced to chief petty officer, the applicant was required to obligate service for at least two years. Falling short of this mark under his then current enlistment, on June 26, 1980, the applicant extended his enlistment for 11 months through July 5, 1982. However, on December 1, 1980, and prior to the operative date of the extension, the applicant reenlisted for six years and received a Zone B SRB less the 11 months of obligated service under the contract extension.

The applicant stated that his SRB entitlement was reduced by 11 months because the SRB regulation (COMDTINST 7220.13E, dated May 4, 1979) in effect at the time provided: "When a member cancels an agreement before ten years and reenlists for the purpose of SRB Bonus Zone B, only the new additional obligated service above and beyond any obligations already entered into will be used for computation purposes." In contrast, he argued the current SRB regulation at Chapter 3 of the Personnel Manual provides an exception for extensions of two years or less that were executed for the purpose of school, transfer, training or advancement. The current provision states that extensions of two years or less may be canceled prior to their operative date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement. The current provision first became effective under COMDTINST 7220.13F on May 19, 1982, (subsequent to the applicant's reenlistment). The Personnel Manual was amended to include the SRB regulation on October 21, 2002. The applicant argued that he should benefit from the current regulation because it was the Commandant's intent to utilize the SRB incentive to retain quality performers, like himself.

VIEWS OF THE COAST GUARD

The Judge Advocate General (TJAG) of the Coast Guard recommended that the Board deny relief. He stated that the application is untimely because the applicant failed to file his application within three years of his October 1, 1997, retirement from the Coast Guard. (The

Board received the application on October 6, 2003.) He noted that the Board may waive the statute of limitations if it is in the interest of justice to do so. See 33 CFR § 52.22. The interest of justice is determined by the reasons for the delay, length of the delay, and the likelihood of success on the merits. TJAG argued that although the applicant claimed that he did not discover the alleged error until August 2003, he should have discovered it when he reenlisted in 1980 or shortly thereafter. TJAG further argued that the applicant is not likely to prevail on the merits of his claim because the current provision of the Manual, on which the applicant relies, was not in effect when the applicant reenlisted on December 1, 1980. According to TJAG, the SRB regulation that initially permitted extensions of two years or less to be canceled without SRB penalty became effective on May 19, 1982.

TJAG further stated that the Coast Guard's decision to change its policy two years after the applicant's 1980 reenlistment does not constitute an injustice. In this case the applicant made a bargain with the Coast Guard that provided him with a bonus for his reenlistment. He stated that the applicant should not receive a windfall because the Coast Guard decided to offer a better bonus to meet its need to retain members subsequent to Applicant's reenlistment.

APPLICANT'S REPLY TO THE VIEWS OF THE COAST GUARD

The applicant argued that the Commandant changed the policy in 1982 to correct an injustice suffered by those who were penalized under the old regulation. He stated that he was never informed of this change to the regulation and therefore never submitted a request to the BCMR. He stated that since it was never the intention of the Commandant to penalize outstanding members of the Coast Guard, the Commandant changed the policy removing the SRB penalty in 1982.

The applicant stated that during his career, he saved the Coast Guard well over a half million dollars through his diligence and ingenuity. He stated that the amount of money he is asking for is nothing compared to the amount of money he has saved the Coast Guard throughout his career. He noted that while on active duty, his excellent service as a chief warrant officer (CWO) served as a role model for others.

FINDINGS AND CONCLUSIONS

The applicant's application is not timely, having exceeded the statute of limitations by approximately three years. The statute of limitations in this case began on October 1, 1997, the date of the applicant's retirement from the Coast Guard. The Board may still consider the application on the merits, however, if it finds it is in the interest of justice to do so. The interest of justice is determined by taking into consideration the reasons for and the length of the delay and the likelihood of success on the merits of the claim. See Dickson v. Secretary of Defense, 68 F.3d 1396 (D.D.C. 1995).

The applicant stated that he did not file his application sooner because he did not become aware of the alleged error until August 2003. However, he could have discovered the alleged error sooner had he acted more diligently, particularly since the provision on which he relies for relief first became effective in 1982. The applicant's reason for the untimely filing of his application is not persuasive.

With respect to the merits, the Board finds that it is not likely that the applicant will prevail on his claim because the SRB provision in effect when he reenlisted did not permit for penalty-free cancellation of short-term extensions to reenlistment for a longer period to obtain an SRB. The current provision, which became effective in 1982, authorizes the cancellation of extensions of two years or less without SRB penalty to reenlist for a longer period to obtain an SRB. However, the current regulation does not contain any provision for retroactivity.

The applicant has failed to establish an error in his record. Nor has he established an injustice. He received the SRB payment authorized at the time he reenlisted.

Accordingly, it is not in the interest of justice to waive the statute of limitations in this case. The application should be denied for untimeliness.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

August 19, 2004
Date

Terry E. Bathen

Dorothy J. Ulmer

Molly McConville Weber