

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-055

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 January 12, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated September 23, 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, a machinery technician second class (MK2), asked the Board to correct his military record to make him entitled to a selective reenlistment bonus (SRB) based on five years of newly obligated service rather than just two years.

In support of his request, the applicant submitted an unsigned statement from his current command, to which he transferred on January 19, 2003. The statement indicates that the transfer orders he received in the fall of 2002 required him to obligate sufficient service to complete a full tour of duty at the new unit before reporting to it on January 19, 2003.¹ Before signing a contract to obligate the service, the applicant was counseled about SRBs by a yeoman second class (YN2) at his prior command and was told that there was no multiple for MK3s but that there was a multiple for MK2s.² At

¹ Article 4.B.6. of the Personnel Manual provides that members with less than six years of active duty will not be transferred to a new unit unless they have already obligated sufficient service to complete a full tour of duty upon reporting to the new unit.

² 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 MK2s were eligible for a Zone A SRB calculated with a multiple of two. No SRB multiple was authorized for MK3s.

the time, the applicant was an MK3 and was on an advancement list and expected to be advanced to MK2 in a few months. However, he had to obligate the service before reporting to his new unit. The YN2 told him that he could extend his enlistment for three years and five months before reporting to his new unit and then reenlist after he was advanced to MK2. The YN2 allegedly never told him that the extension contract would count as previously obligated service and reduce his SRB.³ Therefore, the applicant extended his enlistment before reporting to his new unit on January 19, 2003, and then reenlisted for six years on June 9, 2003, after he was advanced to MK2. However, because he had signed the extension contract, he received an SRB based on only the 28 months of service newly obligated under the reenlistment contract.

The command's statement further alleged that the YN2 could have called the MK detailer at CGPC and had the applicant's orders changed to require only one year of obligated service. The command alleged that if the YN2 had told the applicant that his extension contract would reduce his SRB, the applicant "would have gone back to the detailer to find out if there was any way he could receive a one year extension."

SUMMARY OF THE RECORD

On September 7, 1999, the applicant enlisted in the Coast Guard for a term of four years, through September 6, 2003. In the fall of 2002, while still an MK3, the applicant received transfer orders to report to a new unit on January 19, 2003. Because the applicant had completed fewer than six years of active duty, the orders required him to obligate sufficient service to complete a full tour of duty at the new unit.⁴ Article 4.A.5.b. of the Personnel Manual provides that a full tour of duty at the applicant's new unit was four years. Therefore, to accept the orders and avoid discharge, the applicant had to obligate service through at least January 18, 2007.

On November 2, 2002, the applicant and the YN2 signed an Administrative Remarks (page 7) for his record to document SRB counseling.⁵ On the page 7, he acknowledged having "read and fully under[stood] the contents and explanation of COMDTINST 7220.33 (series)."⁶ I further acknowledge that I have been advised of the effects on my SRB computation/payment if I enter into an agreement to extend my enlistment." At the time, ALCOAST 329/02 was in effect, and it authorized an SRB multiple for MK2s but not for MK3s.

³ There is no statement in record from the YN2 about what she told the applicant during his SRB counseling. Under Articles 3.C.5.6. and 3.C.7. of the Personnel Manual, only the months of service that are newly obligated by an extension or reenlistment contract count in the calculation of SRB payments.

⁴ Personnel Manual, Article 4.B.6.

⁵ Article 3.C.3. of the Personnel Manual provides that "[a]ll personnel with 10 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign an Administrative Remarks, CG-3307 (page 7) service record entry outlining the effect that particular action has on their SRB entitlement."

⁶ In October 2003, the contents of COMDTINST 7220.33 were transferred to Article 3 of the Personnel Manual with only minor revisions that are not relevant to the issues in this case.

On December 4, 2002, the applicant signed a 41-month extension contract—obligating service from September 7, 2003, through February 6, 2007—to accept his transfer orders. 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 an opportunity to read the SRB Instruction; and (4) had all his questions about his SRB entitlement answered.⁷

On January 19, 2003, the applicant reported to his new unit. On June 1, 2003, the applicant was advanced to MK2. On June 13, 2003, the applicant reenlisted for six years, through June 8, 2009, to receive the SRB. Because he had already obligated service through February 6, 2007, under the extension contract, the applicant received an SRB under ALCOAST 329/02 based on 28 months of newly obligated service under the contract.⁸ The six-year reenlistment contract he signed states that he would receive an SRB based on 28 months of newly obligated service.

VIEWS OF THE COAST GUARD

On April 19, 2004, the Judge Advocate General (TJAG) of the Coast Guard recommended that the Board deny the applicant’s request.

TJAG stated that, contrary to the command’s statement, the record does not support the applicant’s allegations of error. TJAG pointed out that the applicant signed a page 7 acknowledging SRB counseling and “attesting that he read and fully understood the contents and explanation of COMDTINST 7220.33 and that he fully understood the effect that his extension had on his SRB entitlements.” TJAG stated that a “member of my staff spoke with [a CWO] of the Coast Guard Personnel Command ... [who] stated that in accordance with [Article 4.B.6.a.1. of the Personnel Manual], service members E-4 and above, with fewer than six years of active duty will normally not be transferred unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit.” TJAG alleged that there “is simply no evidence in the record to reflect that the Applicant was misinformed about his extension and the effect it would have on his SRB. Instead, it appears that after advancing in rank to MK2 on 1

⁷ The extension contract, which would have gone into effect on September 7, 2003, was canceled when the applicant reenlisted for a longer period on June 13, 2003. According to the Coast Guard, there is no remaining paper copy of the extension contract in the record. However, the quoted language about SRB counseling appears on every extension form.

⁸ 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 Articles 3.C.5.6. and 3.C.7., 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. Only months of service that are newly obligated under a reenlistment or extension contract count in the calculation of an SRB.

June 2003 and realizing that the SRB reflected in ALCOAST 329/02 was still in effect, the Applicant now claims he was miscounseled and requests that he be paid a Zone 'A' SRB as an E-5."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On April 23, 2004, the Chair sent the applicant a copy of TJAG's advisory opinion and invited him to respond. On May 18, 2004, the Board received the applicant's response.

The applicant stated that, although he signed the page 7 on November 2, 2002, he never received "Frequently Asked SRB Questions and Answers"⁹ as required under Article 3.C.11. of the Personnel Manual. He alleged that if he had seen this section he would have known that his 41-month extension would reduce his SRB.

The applicant alleged that in June 2003, after he learned that a six-year reenlistment would only entitle him to an SRB based on 28 months of newly obligated service, his Executive Petty Officer contacted the YN2 at his prior unit and that the YN2 "admitted that there was maybe a bit of 'left out' information." However, the applicant alleged, the YN2 refused to admit this in an email because he "didn't want any repercussions." The applicant alleged that in November 2002, the YN2 had "reassured [him] many times before [he] signed [the] extension to obligate service for transfer that since the extension was for a PCS transfer that it would have absolutely no effect on [his] SRB as long as [he] re-enlisted prior to the extension going into effect." He alleged that because of the YN2's misinformation, he "suffered a BIG loss on what I thought was going to be an SRB based on 72 months of newly obligated service."

In support of his allegations, the applicant submitted a statement from a YNC at his current command. The YNC stated that in June 2003, the applicant told him that a YN2 at his prior unit had told him that he would be able cancel his extension and reenlist after his advancement without having his SRB reduced by the months of service obligated under the extension contract. The YNC stated that if he had been involved with the case earlier, he "would have contacted the MK detailer to see if he would waive the full tour obligation for this member and allow the member to only have to obligate one to two years from the date he reported." The YNC alleged that he had another member contact the detailer to see if he would have considered such a request and the detailer said that "he might have considered it." The YNC stated that it "is hard to say if the MK detailer would have approved a shorter period of obligation[. However I have seen other members of all rates request this, and requests like this have been approved."

FINDINGS AND CONCLUSIONS

⁹ "Frequently Asked SRB Questions and Answers" was a part of COMDTINST 7220.33 and is now incorporated in Article 3.C.12. of the Personnel Manual.

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. The applicant alleged that he was erroneously counseled that if he extended his enlistment for 41 months and was advanced while there was still an SRB multiple for his rating and before the operative date of the extension, he could cancel the extension and reenlist for six years and receive an SRB undiminished by previously obligated service. However, in signing both the page 7 on November 2, 2002, and the extension contract on December 4, 2002, the applicant acknowledged having received SRB counseling, reviewed COMDTINST 7220.33 (which includes the "Frequently Asked SRB Questions and Answers"), and understanding the effect of the extension on his SRB eligibility. Although the applicant's current command may believe his allegation of miscounseling and supports him, the Board finds that the preponderance of the evidence in the record indicates that he received all of the counseling to which he was entitled. While it is true that in October 2002, the provisions of COMDTINST 7220.33 were transferred to Article 3.C. of the Personnel Manual, the revisions made to the SRB regulations at that time were quite minor and are not relevant to the matter at hand. Whether the applicant was provided COMDTINST 7220.33 or Article 3.C. during his SRB counseling does not effect the outcome of this case because both documents clearly state in at least three places that previously obligated service reduces an SRB (unless the prior contract that obligated the service was for two years or less).¹⁰

3. When the applicant received transfer orders in December 2002, he was required to obligate sufficient service to complete a full tour of duty (four years) at his new station before he could accept the orders.¹¹ Therefore, at a minimum, he had to extend his enlistment for 41 months. The applicant and a YNC at his current unit argued that, if he had known that a 41-month extension would count as previously obligated service and diminish his SRB, he would have asked for and might have received a waiver of the requirement under Article 4.B.6. However, the Personnel Command has confirmed that Article 4.B.6. is still in effect. The applicant has not proven that if had asked for a waiver of the requirement under Article 4.B.6., he would have been allowed to accept his transfer orders without obligating sufficient service to perform a full tour of duty at his next unit.

4. Even if the applicant was miscounseled in November 2002, he is not entitled to relief. When an applicant proves that he has received improper SRB counsel-

¹⁰ Compare, e.g., COMDTINST 7220.33, Encl. (1) paras. 1.c.(8) and 3.d.(6), and Encl. (5) Q & A #11 with Personnel Manual, Arts. 3.C.2.8., 3.C.5.6., and 3.C.12. Q & A #11.

¹¹ Personnel Manual, Article 4.B.6.

ing, the Board's policy is not to fulfill the erroneous promises made by the applicant's yeoman, but to return the applicant to the position he would have been in had he been properly counseled. Proper counseling in November 2002 would have informed the applicant (1) that he had to extend his enlistment for at least 41 months to accept his transfer orders and stay in the Coast Guard and (2) that if he later became eligible for an SRB, the 41-month extension would count as previously obligated service and reduce his SRB accordingly. This is exactly what has occurred.

5. The applicant's six-year reenlistment contract dated June 13, 2003, expressly states that he would receive an SRB based on 28 months of newly obligated service. He signed it knowing that it would not entitle him to a larger SRB. Therefore, there is no basis in the record for voiding this contract.

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

ORDER

The application of MK2 xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Derek A. Capizzi

Jordan S. Fried

William R. Kraus