

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-062

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

ULMER, 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 26, 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 reenlisted for six years on October 1, 2001, and was promised a Zone B SRB with a multiple of 1.5 under ALCOAST 127/01. However, he was paid only a multiple of 1. He asked the Board to direct the Coast Guard to pay him the additional .5 multiple. In the alternative, he asked for "reenlistment in Zone B per ALCOAST 182/03."

ALCOAST 127/01 authorized a multiple of 1 for BM1s, plus an additional .5 for having at least one of the authorized surfman qualification codes. According to the Coast Guard, the applicant did not have any of the authorized surfman qualification codes when he enlisted on October 1, 2001.

In support of his allegation, the applicant submitted a copy of his reenlistment contract showing that he was promised a Zone B SRB with a multiple 1.5.

SUMMARY OF THE RECORD

On January 19, 1993, the applicant enlisted in the Coast Guard for a term of four years and he has served continuously since that time. On July 1, 1998, he reenlisted for three years; and on June 1, 2001, he extended his enlistment for three months through September 30, 2001. His most recent reenlistment occurred on October 1, 2001 for six years, wherein he was promised the Zone B SRB with a multiple of 1.5.

VIEWS OF THE COAST GUARD

On March 30, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion. He stated that although the applicant was erroneously promised a multiple of 1.5 on his reenlistment contract, he was only eligible for a multiple of 1. In this regard, TJAG stated that ALCOAST 127/01 authorized a Zone B multiple of 1 for BM1s, plus an additional .5 for those having at least one of the authorized surfman qualification codes. He stated that the applicant did not have any of the authorized surfman qualifications codes, and therefore, he was not entitled to the additional .5 multiple.

However, TJAG stated that in an effort to afford the applicant a result that most closely represents the bargain he claims, the Coast Guard recommends that the Board offer him two options:

First, Applicant could have his record corrected by voiding his reenlistment contract dated October 1, 2001 and subsequently extending his period of service until the BCMR final decision. Applicant could then be discharged if he so desires. Under this option the applicant would be liable to the Coast Guard for his unearned SRB payments. The second option would be to have the Board correct his record to show the actual SRB multiple of "1" to which he was entitled and the correct authority for that multiple.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On April 21, 2004, the applicant replied to the views of the Coast Guard. He stated that he had no objections to the Coast Guard's recommendation.

APPLICABLE REGULATIONS

Coast Guard Personnel Manual

Article 3.C.6. (Change in Multiple) state the following:

All Agreements to Extend Enlistments signed before the effective date of the change will be at the old multiple level. All agreements made on or

after the effective date of the change will be at the new level. Members desiring to extend their enlistments or reenlist early to take advantage of a higher bonus multiple may do so within the provisions of this chapter and or Articles 1.G.14 and 12.B.7 [of this instruction].

Pertinent ALCOASTS

ALCOAST 127/01 was issued on March 27, 2001 and was effective from October 1, 2001 through January 31, 2002. It established a multiple of 1 for BM1s plus an additional .5 multiple for having certain surfman qualification codes.

ALCOAST 182/03 was issued on April 24, 2003, and became effective on July 1, 2003. Under ALCOAST 182/03, BM1s were eligible for a Zone B SRB calculated with a multiple of two and were entitled to an additional .5 multiple for having certain qualification codes.

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. The applicant was erroneously promised a Zone B SRB with a multiple of 1.5 under ALCOAST 127/01. The ALCOAST announced a multiple of 1 for BM1s plus an additional .5 for having certain surfman qualification codes. The applicant did not have any of the authorized surfman qualification codes, and therefore he was only entitled to an SRB with a multiple of 1. He was not entitled to the additional .5 multiple.

3. Although the applicant received proper payment under ALCOAST 127/01, he has presented evidence showing that on October 1, 2001, he was improperly promised a Zone B SRB with a multiple of 1.5. When an applicant proves that he has received improper SRB counseling, the Board's policy is not to offend the regulation by fulfilling the erroneous promises, but to return the applicant to the position he would have been in had he been properly counseled.

4. Therefore, if the applicant had been properly counseled, he would have been told that, under ALCOAST 127/01 he was eligible only for a multiple of 1, because he did not have the necessary surfman qualification codes to obtain the additional .5 multiple. In addition, the applicant would have been further counseled that since his then current enlistment was due to expire on September 30, 2001, he was required to reenlist or extend on or before October 1, 2001, or he would have been discharged.

5. Even though it was necessary for the applicant to extend or reenlist by October 1, 2001 to avoid discharge, it is not clear from the applicant's statement whether he would have reenlisted for the maximum six years had he known that he would only receive an SRB multiple of 1. Therefore, the Board agrees with TJAG that since the Coast Guard provided the applicant with an erroneous promise, he should have the option of voiding the six-year reenlistment contract. The Board's policy is to make this option available to applicants where improper counseling or promises have occurred. The Board does not find any other relief to be warranted or necessary in this case.

6. The alternative relief requested by the applicant that would permit him to reenlist under ALCOST 182/03 is not a remedy in this case. First ALCOAST 182/03 was not in effect on October 1, 2001; it became effective on July 1, 2003. Article 3.C.6. of the Personnel Manual makes it clear that a member is only entitled to the SRB multiple in effect on the date of reenlistment or extension. Second, even if the applicant were able to reenlist on July 1, 2003, the effective date of ALOCAST 182/03, he would not have been eligible for an SRB under that ALCOAST because he would have had more than ten years of active duty on that date. His tenth active duty anniversary occurred on January 19, 2003. According to 3.C.4.b.3. of the Personnel Manual, a member can have no more than ten years of active duty to be eligible for a Zone B SRB.

7. Accordingly, the applicant is entitled to the limited relief discussed above.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxx USCG, for correction of his military record is granted, as follows: The applicant shall be given the option of having the October 1, 2001, reenlistment contract voided and of being discharged from the Coast Guard. If the applicant chooses to be discharged, his record shall show an extension of enlistment from October 1, 2001, until the date of his discharge.

Derek A. Capizzi

Jordan S. Fried

William R. Kraus