

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-065

XXXXXXXXXX
XXX XX XXXX XX

FINAL DECISION

AUTHOR: Hale, D.

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 5, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated October 28, 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 was entitled to a selective reenlistment bonus (SRB) calculated with a multiple of 2 for signing a six-year reenlistment contract on April 29, 2003.¹

The applicant alleged that in April 2003, when he had less than 30 days remaining on his enlistment, he was still a BM3 (boatswain's mate, third class) but was on the advancement list and expected to be advanced to BM2 on May 1, 2003. Because

¹ SRBs allow the Coast Guard to offer a reenlistment incentive to members who possess highly desired skills at certain points during their career. 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. and 3.C.4.a.

he knew that an SRB with a higher multiple was authorized for BM2s (but not for BM3s) under ALCOAST 329/02, he requested a 30-day extension of his enlistment so he could reenlist after his advancement to BM2 to receive the SRB. The applicant noted that he had already been allowed to extend his enlistment for two months in February 2003, and if he had been properly counseled regarding the possibility of advancement to BM2 and the subsequent SRB, he would have requested a 6-month extension of his enlistment to advance to BM2 and receive the higher SRB.

In support of his claim that he was entitled to an SRB multiple of 2 as a BM2, the applicant provided copies of e-mail messages from various administrative personnel. These messages, sent to the Personnel Command on May 1, 2003, urged approval of the applicant's request for a 30-day extension so that he could be advanced to BM2 and maximize his SRB. However, the Personnel Command denied the applicant's request for an extension pursuant to COMDINST 7220.33.²

The applicant also alleged that if evidence of his successful completion of the Navigation Rules examination (NAVRULS) had been placed in his military record prior to his reenlistment, then he would have been eligible for an SRB multiple of 2 under ALCOAST 182/03.³

In support of his allegation that he was entitled to an SRB by virtue of his NAVRULS qualification, the applicant submitted several documents. The first document is an electronic message from Coast Guard Station Ft. Lauderdale dated December 5, 2000, which suggests that the applicant completed the NAVRULS examination on October 10, 2000. In addition, the applicant submitted a letter from the First Lieutenant of the cutter on which he served in 2000 to the Commanding Officer, USCG Station Ft. Lauderdale. In this letter, the First Lieutenant asserts that the applicant successfully completed the NAVRULS examination between June 2000 and January 2001, while he and the applicant were serving on the cutter.

SUMMARY OF THE RECORD

On August 31, 1999, the applicant enlisted in the Coast Guard for a period of two years, through August 30, 2001. On January 18, 2001, he extended his enlistment for

² COMDINST 7220.33 was superseded by the Coast Guard Personnel Manual, Chapter 3.C. in October 2002.

³ ALCOAST 182/03 was not in effect on the applicant's reenlistment date. However, ALCOAST 329/02, issued on July 3, 2002, *was* in effect, and 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, BM2s were eligible for a Zone A SRB calculated with a multiple of 2. BM3s with the proper NAVRULS qualification were eligible for a Zone A SRB with a multiple of 1. BM3s with certain surfman qualification codes were entitled to a multiple of 1.5.

eighteen months, through February 28, 2003, to obligate sufficient service to accept transfer orders. On February 19, 2003, the applicant was allowed to extend his enlistment for two months, through April 28, 2003. He requested a one or two month extension because he intended to leave the Coast Guard and was job hunting.

On April 20, 2003, the applicant submitted a request to extend his enlistment an additional 30 days. The applicant requested this extension because he was waiting to be advanced to BM2 and if he advanced to BM2 prior to reenlisting, he would be entitled to an SRB multiple of 2 under ALCOAST 329/02. If the applicant reenlisted before his advancement to BM2, he would only receive an SRB multiple of 1 as a BM3 without any surfman qualification codes.

On May 1, 2003, after the expiration of the applicant's enlistment, his April 20, 2003, request for a 30-day extension was denied. The Coast Guard noted that short-term extensions for the specific purpose of maximizing an SRB benefit are not allowed. Thereafter, the applicant signed a six-year reenlistment contract backdated to April 29, 2003. The contract states that he would receive an SRB with a multiple of 1.5. Also, on May 1, 2003, the applicant was advanced to BM2.

VIEWS OF THE COAST GUARD

On April 19, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion in which he recommended denying the requested relief and granting alternative relief. He stated that the applicant was not entitled to a Zone A SRB multiple of 2 and was erroneously promised a multiple of 1.5 on his reenlistment contract. TJAG stated that the applicant was only eligible for an SRB with a multiple of 1 because he reenlisted as a BM3 and had successfully completed the NAVRULS examination.

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, the applicant could have his record corrected by voiding the reenlistment contract dated April 29, 2003, and extending his period of service only until he can be expeditiously discharged.

The second option would be to have the Board correct his extension contract to show the actual SRB multiple of 1 to which he was entitled in accordance with ALCOAST 329/02.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 23, 2004, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. No response was received.

APPLICABLE LAW

Coast Guard Personnel Manual

Article 1.G.15. of the Coast Guard Personnel Manual (Periods of Extensions of Enlistment) states, in pertinent part, that by voluntary written agreement subject to the commanding officer's approval, career personnel may extend or reextend their term of enlistment "for any number of full years not less than two nor greater than six, when requested by the member"; "for any number of full years and/or full months up to six years to ensure sufficient obligated service for these purposes..."; "or for one year or other such period as Commander (CGPC-epm) may authorize in specific cases."

Article 3.C.3. of the Coast Guard Personnel Manual (Written Agreements) states that "[a]ll personnel with 10 years or less of 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 3301 (page 7), service record entry outlining the effect that particular action has on their SRB entitlement."

Pertinent ALCOAST

ALCOAST 329/02 was issued by the Commandant on July 3, 2002, and was in effect from August 5, 2002, through June 30, 2003. It authorized SRBs for members who reenlisted or extended their current enlistments and established a multiple of 1 for BM3s who successfully completed the NAVRULS examination. It also provided an additional multiple of 0.5 for BMs who possessed certain qualifying surfman competency 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 submission, 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 if he had been properly counseled in February 2003, he would have extended his enlistment for six months. However, the record indicates that in February 2003, the applicant was intending to leave active duty and sought a one or two-month extension only to keep him employed during his job hunt.

Moreover, in February 2003, the applicant did not know that he would be advanced to BM2 within six months. The Board is not persuaded that the applicant was miscounseled in February 2003. The Board notes that in signing his two-month extension contract, the applicant acknowledged having been counseled regarding his eligibility for an SRB under ALCOAST 329/02.

3. The applicant alleged that his April 20, 2003, request for a one-month extension should have been granted so that he could get a higher SRB multiple as a BM2. Under Article 1.G.15.a. of the Coast Guard Personnel Manual, the minimum term of a voluntary extension is two years, unless otherwise authorized by the Coast Guard Personnel Command (CGPC). The record indicates that CGPC denied the applicant's request for a one-month extension. Although the SRB regulations do not expressly address this situation, the Board notes that Article 3.C.5.5. prohibits members from reenlisting more than 3 months before the end of their enlistment "for SRB purposes alone." This provision reflects CGPC's long-standing policy against the manipulation of enlistment and extension contracts to artificially establish eligibility for an SRB or higher SRB multiple. The applicant has not proved that the Coast Guard erred or committed an injustice by refusing to approve his request for a one-month extension contract.

4. The applicant has proved, however, that the Coast Guard responded to his request for a one-month extension after his reenlistment had already expired and that he was miscounseled about his SRB eligibility. His enlistment contract clearly shows that he was promised a multiple of 1.5 even though he apparently did not have the surfman qualification codes required under ALCOAST 329/02. Moreover, the Coast Guard failed to document SRB counseling on a page 7 when he reenlisted on April 29, 2003, as required by Article 3.C.11. of the Coast Guard Personnel Manual.⁴ When an applicant proves that he has received improper counseling, the Board's policy is to not 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.

5. The applicant alleged that he was denied any SRB because the Coast Guard did not properly document his completion of the NAVRULS examination on October 10, 2000. The Coast Guard has confirmed that his completion of the examination was not entered in the record until July 21, 2003, but has admitted in the advisory opinion that the applicant completed the examination earlier. The Board finds that the applicant has proved by a preponderance of the evidence that he successfully passed his NAVRULS examination on October 10, 2000.

⁴ Article 3.C.11. of the Coast Guard Personnel Manual requires that one of five administrative remarks (page 7s) regarding SRB eligibility be prepared whenever a Coast Guard member reenlists or extends an enlistment.

6. Therefore, if the applicant had been properly counseled, he would have been told that, in accordance with ALCOAST 329/02, he was only eligible for a Zone A SRB with a multiple of 1 because he did not possess the surfman qualification codes necessary to obtain the additional 0.5 multiple.

7. If the applicant had been told on April 29, 2003, that his request for a one-month extension was denied, he would have had the following options:

- a. Reenlist for 3, 4, 5, or 6 years for an SRB with a multiple of 1 under ALCOAST 329/02;
- b. Extend his enlistment voluntarily for two years, pursuant to Article 1.G.15.a.1. of the Personnel Manual; or
- c. Be discharged from the Coast Guard.

Therefore, the applicant should be properly counseled about each of these options, and he should be permitted, at his discretion, to (1) change the term of his enlistment contract to 3, 4, or 5 years; (2) void the enlistment contract and extend his prior enlistment for 2 years; or (3) be expeditiously discharged, in which case the enlistment contract shall be void and an extension contract shall be created to cover his service from April 29, 2003, until his date of discharge from the Coast Guard.

8. Accordingly, relief should be granted in accordance with the findings above.

ORDER

The application of BM2 XXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is granted, in part, as follows:

The date of his completion of the NAVRULS examination shall be corrected to October 10, 2000.

Following counseling about these options and their effect on his SRB eligibility, the applicant shall be given the opportunity to have the Coast Guard correct his record in one of the following ways:

(1) The term of his April 29, 2003, reenlistment contract may be corrected from 6 years to 3, 4, or 5 years, at his discretion.

(2) The April 29, 2003, reenlistment contract may be voided and replaced with a two-year extension contract.

(3) The applicant may be expeditiously discharged and the April 29, 2003, reenlistment contract may be voided and replaced with an extension contract covering his service from April 29, 2003, until the date of his discharge.

The Coast Guard shall pay the applicant any amount due under ALCOAST 329/02 as a result of any correction made to his record pursuant to this Order.

Quang D. Nguyen

Adrian Sevier

Dorothy J. Ulmer