

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-066

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 13, 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 record to show that he was entitled to a selective reenlistment bonus (SRB) calculated with a multiple of 1.5, instead of the multiple of 1 which he received for signing a four-year extension contract on April 25, 2003.

SUMMARY OF THE APPLICANT'S RECORD

On June 29, 1999, the applicant enlisted in the Coast Guard for a period of four years. While apparently considering an extension or reenlistment, the applicant signed a page 7 (CG-3307) on April 23, 2003, in which he acknowledged being advised that his SRB multiple was 1 in accordance with ALCOAST 329/02. The page 7 noted, in part, that "I [applicant] have been advised that my current Selective Reenlistment Bonus (SRB) multiple is ONE [emphasis in the original] and is listed in ALCOAST 329/02, which has been made available to me." The page 7 is signed and dated by the applicant and his counselor.

On April 25, 2003, the applicant signed an extension contract extending his enlistment for four years, through June 28, 2007. The extension contract includes a section titled SRB ELIGIBILITY ACKNOWLEDGMENT and states, in pertinent part, that “[m]y current Selective Reenlistment Bonus (SRB) multiple under Zone A is 1.5 and is listed in ALCOAST 182/03.” The extension contract is signed and dated by the applicant and the Officer in Charge.

VIEWS OF THE COAST GUARD

On April 21, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant alternative relief. 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.

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 extension contract dated April 25, 2003 and extending his period of service only until he was 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 182/03.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 26, 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 3.C.6. (Change in Multiple) states 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 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 plus an additional multiple of 0.5 for having certain surfman qualification codes.

ALCOAST 182/03 was issued by the Commandant on April 24, 2003, and was in effect from July 1, 2003, through July 31, 2004. Under ALCOAST 182/03, BM3s were eligible for a Zone A SRB calculated with a multiple of 1 and were entitled to an additional 0.5 multiple for having certain surfman 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 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's extension contract dated April 25, 2003, indicates that he was erroneously promised a Zone A SRB with a multiple of 1.5 under ALCOAST 182/03. However, this ALCOAST was not in effect on the day the applicant signed the extension contract. ALCOAST 329/02, which *was* in effect, announced a multiple of 1 for BM3s plus an additional 0.5 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 0.5 multiple. Article 3.C.6 of the Coast Guard Personnel Manual states, in part, that "agreements to Extend Enlistments signed before the effective date of the change will be at the old multiple level."

3. The applicant was erroneously counseled regarding his entitlement to an SRB multiple of 1.5. However, when an applicant proves, as applicant does here, that he has received improper counseling, the Board's policy 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. Therefore, if the applicant had been properly counseled, he would have been told that, in accordance with ALCOAST 329/02, he was eligible only for a multiple of 1 because he did not possess the surfman qualification codes necessary to obtain the additional 0.5 multiple.

4. Although it was necessary for the applicant to extend or reenlist by June 28, 2003, to avoid discharge, it is unclear from the applicant's statement whether he would have extended for the four years had he been cognizant of the fact he was only entitled to an SRB multiple of 1. Therefore, the Board agrees with TJAG that since the Coast Guard provided applicant with an erroneous promise, he should have the option of voiding his four-year extension 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.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted, as follows: The applicant shall be given the option of having the April 25, 2003, extension 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 April 25, 2003, until the date of his discharge.

Julia Andrews

Nancy L. Friedman

Kathryn Sinniger