

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2004-112**

XXXXXXXXXXXXXXXXXXXXX.  
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**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 May 7, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated December 16, 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 by canceling his May 6, 2003, three-year extension contract, and replacing it with a six-year reenlistment contract dated after he was advanced to Machinery Technician, Second class (MK2). The applicant alleged that this would allow him to receive a Zone A selective reenlistment bonus (SRB)<sup>1</sup> based on his rating of MK2 because there was no SRB available for MK3s. He alleged that when he signed the extension contract on May 6, 2003, to obligate sufficient service to accept his transfer orders, he was advised that he could cancel the contract before it became operative on July 18, 2004, and reenlist to receive a maximum SRB. However, he subsequently learned that he could not cancel the extension contract and that the months of service he had obligated would count against any SRB he received for reenlisting.

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<sup>1</sup> 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." COMDTINST 7220.33.

## **SUMMARY OF THE RECORD**

On July 18, 2000, the applicant enlisted in the Coast Guard for a term of four years, through July 17, 2004. On December 30, 2002, the applicant received transfer orders to Coast Guard Station Harbor Beach, Michigan ("Harbor Beach"). On May 6, 2003, the applicant signed a three-year extension contract to obligate service for transfer to Harbor Beach. The extension obligated him to serve through July 17, 2007. When he signed the extension contract, the applicant was an MK3 awaiting advancement to MK2. The applicant did not receive an SRB because under ALCOAST 329/02 only MK2s were authorized the SRB. On June 27, 2003, the applicant reported to his new duty station. He was advanced from MK3 to MK2 on July 1, 2003.

## **APPLICABLE REGULATIONS**

Article 1.G.14.a.2. of the Personnel Manual provides that a member may extend his reenlistment "[f]or any number of full years and/or full months up to six years to ensure sufficient obligated service [OBLISERV] for these purposes: ... c. INCONUS and OUTCONUS assignments; [see] Article 4.B.6."

Article 4.B.6.a.1. of the Personnel Manual provides that members with less than six years of active duty will not normally be transferred "unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit." Article 4.B.6.b. provides that the transfer orders of a member who refuses to meet the OBLISERV requirement may be canceled, and the member will be reassigned for the remainder of his enlistment in accordance with the needs of the Coast Guard.

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

Article 1.G.19.2.b. of the Personnel Manual provides that extension contracts for terms of two years or less may be canceled prior to their operative dates to allow the member to sign a new, longer extension or reenlistment contract to receive an SRB. A canceled short extension contract executed to fulfill an OBLISERV requirement does not diminish the size of the SRB received under the new contract.

Article 3.C.5.1. of the Personnel Manual states that when a member reenlists before finishing his previous contract term, "[a]ll periods of unexecuted service obligation ... will be deducted from SRB computation."

ALCOAST 329/02 was issued on July 2, 2002, and was in effect from August 5, 2002, through June 30, 2003. It established SRB multiples for personnel in certain skill ratings who reenlisted or extended their enlistments for at least three years and up to six years. Under ALCOAST 329/02, members who were MK2s (but not MK3s) were eligible for a Zone A SRB calculated with a multiple of 2.

### **VIEWS OF THE COAST GUARD**

On June 29, 2004, the Judge Advocate General of the Coast Guard (TJAG) stated that because this case is analogous to the fact pattern in BCMR docket number 2003-001, he recommended denial consistent with our decision in that case.<sup>2</sup>

### **APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS**

On July 1, 2004, the BCMR sent the applicant a copy of TJAG's advisory opinion and invited him to respond. The BCMR received the applicant's response on July 30, 2004, in which he disagreed with TJAG's recommendation.

### **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. Since his reporting date to his new assignment was June 27, 2003, the applicant was required, by or before that date, to have obligated sufficient service to complete a four-year tour at his new assignment pursuant to Article 4.B.6.a. of the Personnel Manual. He was not advanced to MK2 prior to arriving at his new station in June 2003. Therefore, he had to sign the extension contract while still an MK3. Under ALCOAST 329/02, MK3s were not eligible for an SRB. Moreover, even if the applicant had requested a delay in his reporting date to his new assignment, there is no evidence that the Coast Guard Personnel Command would have granted him one.

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<sup>2</sup> In BCMR Docket Number 2003-001, the applicant asked the Board to correct his record to show that he was entitled to a Zone A SRB based on his pay grade of MK2, rather than a partial SRB reduced by previously obligated service. However, the Board denied relief, noting that granting the correction would ignore the OBLISERV requirement.

3. The record contains a copy of the applicant's extension contract dated May 6, 2003. The contract contains a paragraph that states the member has been counseled about SRBs, has had an opportunity to read the rules, and fully understands the effect his extension will have on his current and future SRB eligibility. The applicant signed his name in the space below the paragraph. However, there is no page 7 in his record documenting proper SRB counseling, as required by Article 3.C.11. of the Personnel Manual. The applicant has not proved that he was miscounseled. However, assuming *arguendo* that he was, when an applicant proves that he has received improper SRB counseling, the Board's policy is not to fulfill the erroneous promises made by the applicant's command, but to return the applicant to the position he would have been in had he been properly counseled.

4. If the applicant had been properly counseled in May 2003, he would have been told that because the extension contract he would have to sign to accept the tour at Harbor Beach was for more than two years' duration, he could not cancel it before it became operative to receive an SRB without having the SRB reduced by his previously obligated service.

5. In BCMR Docket Numbers 2002-116 and 2002-186, in which the Board granted relief, the applicants were promoted to their higher rating after they received their transfer orders but long before they had to report to their new duty stations. In the instant case, however, the applicant was required to report to his new duty station *prior* to being advanced to MK2. Thus, like the applicant in BCMR Docket Number 2003-001, the applicant in this case cannot avoid the OBLISERV requirements. There is no evidence in the record that the Coast Guard would have permitted him to avoid these requirements or to delay his reporting date until after he was advanced to MK2.

6. Although the Board cannot grant the requested relief, under Article 3.C.5.6. of the Personnel Manual, the applicant could have canceled his May 6, 2003, three-year extension contract by signing a six-year reenlistment contract on July 18, 2004, to obtain a Zone A SRB under ALCOAST 182/03. Canceling the extension contract will reduce the applicant's SRB because, under Article 3.C.5.1., when a member reenlists before finishing his previous contract term, "[a]ll periods of unexecuted service obligation ... will be deducted from SRB computation." However, the Board finds that the applicant might have forgone this opportunity for an SRB based on the belief that this Board would grant his requested correction. Therefore, the Board will grant the applicant the opportunity for an SRB that he missed on July 18, 2004. If the applicant chooses to cancel the May 2003 extension and reenlist for six years on July 18, 2004, his SRB will be calculated with 36 months of newly obligated service.

7. Accordingly, the applicant's request should be granted in part.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

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

At the applicant's discretion, his record shall be corrected to show that on July 18, 2003, he cancelled his three-year extension and reenlisted for six years to receive a Zone A SRB based on 36 months of newly obligated service under ALCOAST 182/03.

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Donald A. Pedersen

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J. Carter Robertson

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