

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-121

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 May 18, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated December 29, 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 is entitled to a Zone B selective reenlistment bonus (SRB) calculated with seventy-two months of newly obligated service.¹ He alleged that he was miscounseled about his eligibility for the SRB and that if he had been properly counseled, he would have reenlisted for six years on May 13, 2003, in lieu of extending, to receive the maximum SRB.

In support of his allegations of improper counseling, the applicant provided a detailed explanation of the events preceding his signing the May 13, 2003, six-year extension contract. The applicant noted that when he questioned his unit's yeoman regarding the Zone B SRB that he was told he would receive for signing the extension contract, the yeoman was unable to provide an answer so he (the yeoman) contacted Human Resources Services Information Center/Personnel Service Center (HRSIC/PSC) for additional guidance. The applicant alleged that HRSIC informed the yeoman that the applicant could indeed extend for seventy-two months in order to receive the maximum SRB. The applicant alleged that the yet unsigned extension paperwork was

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", while those who have more than 6 but less than 10 years of active duty service are in "Zone B". Members may not receive more than one SRB per zone. Personnel Manual, Article 3.C. and 3.C.4.a.

forwarded to another yeoman at another unit, who further reviewed the documents for correctness. Moreover, the applicant alleged, a Chief Warrant Officer at the Marine Safety Office (MSO) also reviewed the documents before signing them and having the applicant sign them.

The applicant alleged that on April 27, 2004, he contacted the personnel unit at his new duty station regarding payment for the Zone B SRB he was promised pursuant to his May 13, 2003, extension. He was told that an error had been made and that he was not entitled to the SRB because the operative date of the extension was beyond his 10th active duty anniversary of October 5, 2003.² The applicant also alleged that he was never counseled regarding the effect his January 4, 1999, six-year extension would have on the SRB he would receive for his May 13, 2003, six-year extension.

The applicant also alleged that he was not counseled regarding his entitlement to a 10th active duty anniversary SRB. He stated that if he had been counseled regarding the 10th anniversary SRB, then the problems with his May 13, 2003, extension would have been discovered and he could have cancelled the May 2003 extension and reenlisted or extended prior to his 10th active duty anniversary to receive a Zone B SRB.³

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard for four years on October 5, 1993, with an expiration of enlistment (EOE) of October 4, 1997. On July 25, 1995, he extended his enlistment for fifteen months for training requirements and extended for another seventeen months on April 9, 1998, for obligated service purposes. On January 4, 1999, the applicant reenlisted for six years with an EOE of January 3, 2005, and received a Zone A SRB. On May 13, 2003, he signed a six-year extension contract with an EOE of January 3, 2011, to obligate additional service for transfer overseas, and the operative date of the extension was January 4, 2005. The May 13, 2003, extension contract indicates that he was eligible to receive a Zone B SRB with a multiple of 3.5 and calculated with seventy-two months of newly obligated service. In signing the May 2003 extension contract, the applicant acknowledged that he fully understood the effect his extension would have on his current and future SRB eligibility.

VIEWS OF THE COAST GUARD

The Judge Advocate General of the Coast Guard (TJAG) denied the requested relief but recommended that alternative relief be granted. TJAG recommended that the Board replace the May 13, 2003, six-year extension contract with a six-year reenlistment contract, thus qualifying the applicant for a Zone B SRB calculated with fifty-two months of newly obligated service.

² Coast Guard members are entitled to a Zone B SRB if “they have completed at least 6 but not more than 10 years active service on the date of reenlistment or the operative date of the extension.” Article 3.C.4.b.3. of the Coast Guard Personnel Manual.

³ The applicant also asked the Board to mandate SRB and contract training for the two personnel units involved in the processing of his extension contract and SRB. However, under BCMR regulations, the applicant may only request changes to his own military record.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 30, 2004, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within thirty days. He responded on July 15, 2004, and again on August 19, 2004.

Although the applicant conceded that according to regulation his SRB should be calculated with fifty-two months of newly obligated service, he nonetheless requested that the Board direct the Coast Guard to calculate his Zone B SRB with seventy-two months of newly obligated service. He reasoned that he signed the extension contract in good faith and that he had no part in drawing up the extension contract and the administrative remarks because they were drawn up solely by Coast Guard personnel with expertise in matters of this nature. Moreover, the applicant feels that the "only part I had during the extension process was agree [sic] to sign the extension contract that I had lined up for my retirement from the Coast Guard."

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 filed.
2. Under Article 3.C.3. of the Personnel Manual, the applicant was entitled to proper counseling concerning his eligibility for an SRB when he signed a six-year extension contract on May 13, 2003, to obligate service for an overseas transfer. The Board finds that the applicant was erroneously counseled because he was told he would receive a Zone B SRB for his six-year extension. The counseling was erroneous because the applicant would not be eligible for the SRB if he signed an extension contract because the operative date of that extension would be beyond his 10th anniversary. However, when an applicant proves, as this applicant has, that he has received improper 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. Therefore, if the applicant had been properly counseled, he would have been advised to sign a reenlistment contract instead of an extension contract, because the operative date of the May 13, 2003, extension was January 4, 2005, approximately thirteen months *after* his 10th anniversary date of October 5, 2003, and SRBs are not authorized for members who have more than ten years of active service.
3. The applicant asked the Board not only to change his record to show that he is entitled to a Zone B SRB, but also to show that the SRB should be calculated with seventy-two months of newly obligated service. However, as TJAG aptly noted in its advisory opinion, the applicant's SRB cannot be calculated with seventy-two months of newly obligated service. The applicant's previous extension obligated service through January 3, 2005. Therefore, his six-year reenlistment through May 12, 2009, adds only fifty-two months of newly obligated service to his record.

4. The applicant further alleged that he was not counseled regarding his eligibility for a 10th anniversary SRB, and that if he had been properly counseled then the errors in his May 13, 2004, extension would have been detected and would have afforded him the opportunity to cancel the faulty extension and reenlist or extend for the 10th anniversary SRB. However, in light of the fact that the applicant had to obligate service in May 2003 to accept his transfer orders and the fact that the Board is granting relief with respect to the contract dated May 13, 2003, the issue of his 10th anniversary SRB counseling is moot.

5. Accordingly, relief should be granted.

ORDER

The military record of XXXXXXXXXXXXXXXXXXXXX, USCG, shall be corrected to show that he reenlisted for six years on May 13, 2003, to receive a Zone B SRB as provided under ALCOAST 329/02. The six-year extension contract he signed on that date shall be null and void. The Coast Guard shall pay him the amount due as a result of this correction.

Jordan S. Fried

Richard Walter

Suzanne L. Wilson