

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-145

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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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 June 30, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated January 27, 2005, 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 April 1, 2003, 3-year, 5-month extension contract. The applicant stated that this would allow him to receive a Zone A selective reenlistment bonus (SRB)¹ calculated with 48 months of obligated service for his 4-year reenlistment, which he signed on February 5, 2004. He alleged that when he signed the extension contract on April 1, 2003, to obligate sufficient service to accept his transfer orders, he was not properly counseled regarding any effect the extension and obligated service would have on future SRBs.

After signing the February 2004 reenlistment contract, the applicant learned that his SRB would be reduced by the number of months of service obligated by the April 2003 extension contract. He alleged that because his February 5, 2004, reenlistment contract was signed prior to the February 7, 2004, operative date of his April 2003

¹ 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.

extension, his extension should have been cancelled and his SRB calculated with the full 48 months of newly obligated service.

SUMMARY OF THE RECORD

On February 7, 2000, the applicant enlisted in the Coast Guard for a term of 4 years, through February 6, 2004. On April 1, 2003, the applicant signed a 3-year, 5-month extension contract to obligate service (OBLISERV) for transfer to the Coast Guard Marine Safety Office (MSO) Puget Sound.² The extension obligated him to serve through July 6, 2007. When he signed the extension contract, the applicant was an MK3 (Machinery Technician, Third Class) awaiting advancement to MK2. The extension contract included the following language:

EFFECT OF EXTENSION/REEXTENSION ON SRB ENTITLEMENT

I fully understand the effect my extension/reextension will have upon my current and future SRB eligibility. I understand that continued entitlement to unpaid installments may be terminated and a prorated portion of advance bonus payments recouped if I am considered not to be technically qualified or unable to perform the duties of the rating for which the bonus was paid, in accordance with the provisions of COMDTINST 7220.33 (series). I further acknowledge that I have been given the chance to review COMDTINST 7220.33 (series) concerning my eligibility for SRB and have had all my questions answered.

There is an administrative entry (Page 7) in his record, dated May 14, 2003, indicating that the applicant was counseled regarding SRB entitlement.

On July 1, 2003, the applicant reported to MSO Puget Sound, and he was advanced from MK3 to MK2 on December 1, 2003.

On February 5, 2004, the applicant reenlisted for 4 years and was counseled that he would receive a Zone A SRB for reenlisting. There is a page 7 in the record dated January 15, 2004, indicating that the applicant's SRB would be calculated with 48 months of newly obligated service. The applicant's reenlistment contract further indicates the applicant was "obligating 48 new months for SRB purposes." There is also a Career Intentions Worksheet in the record dated January 13, 2004, which contains a handwritten notation from the person administering the oath for the applicant's reenlistment, which states "cancel extension that is to begin 07 Feb 04, reenlisting for SRB purposes."

The record also contains a memorandum dated June 17, 2004, submitted by a yeoman first class from the applicant's current command in support of his application.

² Article 4.A.5.b. of the Personnel Manual provides that a full tour of duty for an MK in the grade of E4 stationed at MSO Puget Sound is 4 years.

In that memo, the yeoman states that the applicant was miscounseled on two separate occasions regarding his SRB and as a result he should receive the SRB that he was promised.

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 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.”

Article 3.C.11. of the Personnel Manual states that a page 7 entry shall be made for personnel within 3 months of the end of their enlistment and any time a member reenlists or extends their enlistment.

VIEWS OF THE COAST GUARD

On August 18, 2004, the Judge Advocate General of the Coast Guard (TJAG) recommended that the Board deny the applicant’s request. TJAG stated there was no

authority to cancel the applicant's April 2003 extension contract without the cancellation affecting the applicant's subsequent SRB. Under Article 3.C.5.6. of the Personnel Manual, TJAG stated, only extensions of two years or less may be cancelled prior to their operative date for the purpose of immediate reenlistment without any loss of SRB entitlement. TJAG asserted that because the applicant's extension was for more than two years, the SRB he received for his February 5, 2004, reenlistment must be reduced by the number of months previously obligated by the April 2003 extension contract.

TJAG recommended that the Board offer the applicant two options. First, the applicant could void the February 5, 2004, reenlistment and return to the Coast Guard any payments he may have received pursuant to his SRB. The second option is to correct the applicant's record to show that his SRB is calculated with 7 months of newly obligated service.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On August 24, 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 September 3, 2004. In his reply, the applicant asserted that he was miscounseled on two separate occasions regarding his SRB eligibility and that "faulty facts" provided his basis for deciding to extend his enlistment. He also alleged that he could have chosen not to extend or have been transferred *sans* extension with the approval of both commands.

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 for his new assignment was July 1, 2003, the applicant was required, by or before that date, to have obligated sufficient service to complete a 4-year tour at his new assignment pursuant to Article 4.B.6.a. of the Personnel Manual. Although the applicant argues that he could have chosen not to extend or have been transferred *sans* extension with the approval of both commands, there is no evidence that the Coast Guard Personnel Command or the respective commands would have granted such requests.
3. The Board finds that the preponderance of the evidence indicates that the applicant was properly counseled when he signed the 3-year, 5-month extension

contract to obligate service for transfer to Puget Sound. The record contains a copy of the applicant's extension contract dated April 1, 2003, and it 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. Moreover, there is a page 7 in his record dated May 14, 2003, documenting SRB counseling, and this indicates that the applicant received proper counseling when he signed the extension contract. The yeoman first class who alleged that the applicant was miscounseled when he signed the extension contract was not at the applicant's prior command when he did so.

4. Under Article 3.C.3. of the Personnel Manual, the applicant was entitled to proper counseling concerning his eligibility for an SRB when he reenlisted for 4 years on February 5, 2004. The applicant was given improper counseling when he was told that his SRB would be calculated based on 48 months of newly obligated service. 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 if he had been properly counseled. Therefore, if the applicant had been properly counseled in 2004, he would have been told that pursuant to Article 3.C.5.1., his SRB would be reduced by the number of months previously obligated by the April 2003 extension.

4. The Board agrees with TJAG's assessment that the applicant's command intended to cancel the April 2003 extension contract when the applicant signed the February 2004 reenlistment contract. This intent is relatively clear given the nature of the notation on the February 2004 Career Intentions Worksheet. However, as TJAG aptly noted, there was simply no authority to cancel the applicant's extension without the SRB being reduced by the number of months previously obligated by the April 2003 extension. Article 1.G.19.2.b.

5. Therefore, relief should be granted in part, by giving the applicant the discretion to void his February 5, 2004, reenlistment contract.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is denied. However, the applicant shall have the following options:

At the applicant's discretion, the February 5, 2004, reenlistment contract shall be removed from his record as null and void, in which case the Coast Guard may recoup any SRB payments he has received. In the alternative, his record shall be corrected to show that the SRB for his February 5, 2004, reenlistment is calculated with 7 months of newly obligated service.

Stephen H. Barber

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