

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-156

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

FINAL DECISION

AUTHOR: Andrews, J.

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 July 29, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated March 31, 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, an operations specialist second class (OS2), asked the Board to correct his military record to make him entitled to a Zone A selective reenlistment bonus (SRB) calculated with a multiple of 2.¹ He alleged that, prior to being transferred to his current station on July 7, 2003, he was not properly counseled about his eligibility for an SRB when he signed a six-year extension contract on May 8, 2003, for an SRB calculated with a multiple of 1. He noted that his prior command never documented SRB counseling in his record with a form CG-3307 ("page 7"). He also noted that before reporting to his new station on July 7, 2003, he advanced to pay grade E-5 on July 1, 2003, and the multiple used to calculate SRBs for members of his rating in pay grade E-5 was 2, instead of 1.

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." Members may not receive more than one SRB per zone. Personnel Manual, Article 3.C.4.a.

SUMMARY OF THE RECORD

On December 7, 1999, the applicant enlisted in the Coast Guard for a term of four years, through December 6, 2003. In May 2003, while stationed aboard a cutter homeported in Alameda, California, and while still a telecommunications specialist third class (TC3/E-4), the applicant received orders to transfer to a shore unit in Seattle, Washington, on July 7, 2003. In accordance with Article 4.B.6.a. of the Personnel Manual, his orders stated that to accept the transfer orders, he was required to obligate sufficient service to complete a full tour of duty at the new unit. Under Article 4.A.5., a full tour of duty was four years. Therefore, to accept the transfer orders, the applicant was required to extend his service from December 7, 2003, through July 6, 2007 (43 months), before reporting to his new unit.

In May 2003, ALCOAST 329/02 was in effect, and it authorized an SRB multiple of 1 for members, such as the applicant, in rating/grade TC3/E-4 and a multiple of 2 for those who had already advanced to rating/grade TC2/E-5. On April 24, 2003, ALCOAST 182/03 was issued. It went into effect on July 1, 2003, and authorized an SRB multiple of 1 for members who were OS1/E-4 and a multiple of 2 for OS2/E-5. (As of July 1, 2003, the Coast Guard discontinued the TC rating, and the applicant and other TCs were transferred to the OS rating.)

On May 8, 2003, the applicant extended his enlistment for six years—from December 7, 2003, through December 6, 2009—to obligate sufficient service to accept his transfer orders and to receive an SRB calculated with a multiple of 1, which was then authorized under ALCOAST 329/02. The applicant's record does not contain a page 7 documenting SRB counseling at the time he signed the extension contract.² However, the extension contract itself shows that he was promised an SRB calculated with a multiple of 1 based on 72 months (6 years) of newly obligated service. Language in the contract also indicates that the applicant acknowledged having been counseled about the effect of his extension on his current and future SRB eligibility.

On July 1, 2003, the applicant advanced from pay grade E-4 (TC3) to E-5 (OS2). On July 7, 2003, he reported to his new unit.

The Coast Guard's database also shows that on December 1, 2003, the applicant was allowed to reenlist for six years, through November 30, 2009, with the goal of receiving the Zone A SRB calculated with a multiple of 2 under ALCOAST 182/03. Although no copy of this contract appears in the applicant's record, the record contains a print out of the Coast Guard's database showing this reenlistment, as well as an email conversation dated January 30, 2004, about why the applicant did not receive the SRB as

² Article 3.C.3. of the Personnel Manual provides that "[a]ll personnel with 10 years or less 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-3307 (page 7) service record entry outlining the effect that particular action has on their SRB entitlement."

a result of the reenlistment. The reenlistment contract violated Article 1.G.20.2.b. of the Personnel Manual, which provides that a member may only cancel an extension agreement by reenlisting if the reenlistment obligates more service than was obligated under the extension contract. Since the applicant's extension contract would run through December 6, 2009, he could not cancel it by reenlisting for six years on December 1, 2003. In addition, the reenlistment contract was erroneous under Article 3.C.4.a. because the member had already signed one contract for a Zone A bonus, and members may only receive one bonus per zone. However, the Coast Guard apparently did cancel the extension contract and enter the new reenlistment contract in his record. The Coast Guard did not, however, pay the member any SRB. Under the regulations, he was not entitled to an SRB as a result of the extension contract because it was canceled, and he was not entitled to an SRB as a result of the reenlistment contract because it did not create any newly obligated service, since the full six-year term of the reenlistment contract had already been obligated by the extension contract.³

VIEWS OF THE COAST GUARD

On November 4, 2004, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request but grant alternative relief.

The JAG argued that the terms of the applicant's May 8, 2003, extension contract prove that he was correctly counseled about his eligibility for a Zone A SRB when he signed it. Moreover, to accept his transfer orders, the applicant was required to obligate at least 43 more months of service, through July 6, 2007. Therefore, he had to sign an extension contract of more than two years' duration, and such extensions continue to count as previously obligated service even when they are canceled.

The JAG admitted, however, that the applicant was improperly advised on December 1, 2003, when he was apparently told that he could get an SRB with a multiple of 2 by reenlisting for six years. Instead, the reenlistment contract merely voided his SRB entitlement under the extension contract. Therefore, the JAG recommended that the Board grant alternative relief by voiding the December 1, 2003, reenlistment contract and reinstating the May 8, 2003, extension contract so that the applicant will receive the Zone A SRB he was originally promised.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

³ Under Articles 3.C.5.6. and 3.C.7. of the Personnel Manual, only the months of service that are newly obligated by an extension or reenlistment contract count in the calculation of SRB payments. Although extension contracts may be canceled prior to their operative dates if the member reenlists for a longer period, under Articles 3.C.5.6. and 3.C.7., the term of a canceled extension will continue to count as previously obligated service and diminish the size of any SRB the member might receive for the reenlistment, unless the extension was for a term of two years or less and was executed to fulfill an obligated service requirement for transfer or training.

On December 7, 2004, the Board received the applicant's response. He stated that he had no objection to the Coast Guard's views but asked whether the recommended correction would entitle him to an SRB based on the E-4 pay grade he held on May 8, 2003, or the E-5 pay grade, which he advanced to on July 1, 2003, before reporting to his new unit.

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. The applicant has proved by a preponderance of the evidence that he was erroneously counseled on December 1, 2003, when he was allowed to reenlist for six years. The reenlistment violated Article 1.G.20.2.b. because it purported to cancel the applicant's May 8, 2003, extension contract even though the extension contract obligated the applicant to a longer period of service than the reenlistment contract. The reenlistment contract was also erroneous and unjust in that it voided the applicant's entitlement to a SRB under the extension contract, pursuant to Articles 3.C.5.6. and 3.C.7. of the Personnel Manual. Therefore, the applicant is entitled to have this reenlistment contract removed from his record.

3. The applicant alleged that he was miscounseled when he signed the May 8, 2003, extension contract and pointed out that no page 7 was prepared when he signed it, as required by Article 3.C.3. of the Personnel Manual. However, the extension contract itself indicates that the applicant was properly counseled. He would have been entitled to a Zone A SRB with a multiple of 1 based on 72 months of newly obligated service under the contract. The applicant did not allege that the command of his cutter erroneously led him to believe that he could cancel the six-year extension without negative consequences for his SRB after he advanced to E-5, and there is no evidence in the record that such miscounseling was provided in May 2003 when he signed the extension contract.

4. The record indicates that in May 2003, the applicant was correctly informed that he had to obligate sufficient service to complete a full tour of duty to accept his transfer orders off the cutter to a shore unit. If the applicant could have waited until July 2, 2003, to obligate the service, he would have been entitled to an SRB calculated with a multiple of 2 as an E-5.⁴ Although the applicant did not have to report

⁴ Under Article 3.C.7.1. of the Personnel Manual, SRBs are calculated based on the member's basic pay rate the day before the contract is signed. Because the applicant was advanced to E-5 on July 1, 2003, he

to his new unit until July 7, 2003, he has not proved that both his command and the Coast Guard Personnel Command would have allowed him to wait until July 2, 2003—just 5 days before his report date—to commit to the transfer by fulfilling the obligated service requirement. In fact, the record shows that his command required him to obligate service on May 8, 2003—two months before the report date—though presumably the fact that he might be promoted before July 7, 2003, was known.

5. Accordingly, the alternative relief that was proposed by the JAG and that the applicant accepted should be granted. The applicant's December 1, 2003, reenlistment contract should be removed from his record. The May 8, 2003, extension contract should be reinstated, and he should receive the SRB calculated with a multiple of 1 that he was promised for that extension in accordance with ALCOAST 329/02. Under Article 3.C.7.1. of the Personnel Manual, the SRB will be calculated based on the applicant's basic pay rate (E-5) on December 6, 2003, which is the day before the extension is to be operative.

could not have earned a multiple of 2 as an OS2/E-5 unless he waited until July 2, 2003, to extend his enlistment.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

His December 1, 2003, six-year reenlistment contract shall be removed from his record as null and void. His May 8, 2003, six-year extension contract shall not be canceled but shall be reinstated and deemed to have become operative on December 7, 2003. The Coast Guard shall pay the applicant the amount due under ALCOAST 329/02 as a result of this correction.

Bruce D. Burkley

Jordan S. Fried

George J. Jordan