

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-168

XXXXXXXXXXXXXXXXXXXXX.
XXXXXXXXXXXXXXXXXXXXX

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 August 11, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated April 21, 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 record by replacing his October 1, 2002, six-year extension contract with a reenlistment contract to receive a selective reenlistment bonus (SRB)¹ in accordance with ALCOAST 329/02. The applicant 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 October 1, 2002, in lieu of extending, to receive a 10th anniversary SRB.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard for four years on October 5, 1992, with an expiration of enlistment (EOE) of October 4, 1996. On March 4, 1994, he extended his enlistment for seven months for obligated service purposes. On July 15, 1996, he extended for another two years and five months, through October 4, 1999. On May 1, 1998, the applicant reenlisted for six years with an EOE of April 30, 2004, and received a Zone A SRB. On October 1, 2002, he signed a six-year extension contract, and 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.

counseled that he would receive a Zone B SRB computed with 72 months of newly obligated service. The operative date of the extension was May 1, 2004. The applicant's 10th anniversary date was October 5, 2002.

The record contains statements from two yeoman who apparently had personal knowledge of the alleged miscounseling. Both statements assert that the applicant was miscounseled that he could sign an extension contract prior to his 10th anniversary to "lock-in" the SRB, which he would receive when the extension became effective. Both yeoman asserted that this counseling was incorrect.

VIEWS OF THE COAST GUARD

On October 26, 2004, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant the applicant's request. The JAG stated that the applicant had been improperly counseled that he would receive a Zone B SRB calculated with 72 months of newly obligated service. The JAG recommended that the Board replace the October 1, 2002, six-year extension contract with a six-year reenlistment contract, thus qualifying the applicant for a Zone B SRB computed with 53 months of newly obligated service.²

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 4, 2004, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 30 days. A response was not received.

APPLICABLE LAW

Article 3.C.11.2. of the Coast Guard Personnel Manual provides that a CG-3307 (page 7) entry shall be made for personnel within three months prior to their 6th and 10th active duty anniversary dates to document counseling concerning their eligibility for a SRB by reenlisting on their anniversary.

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.4.b.3. of the Personnel Manual states that to receive a Zone B SRB, the member must have completed at least six but not more than ten years active service on the date of reenlistment or the operative date of the extension.

ALCOAST 329/02 was issued by the Commandant on July 3, 2002, and was in effect from August 5, 2002, through June 30, 2003. Under ALCOAST 329/02, FS1s were eligible for a Zone B SRB calculated with a multiple of 1.

² The JAG noted that the applicant's SRB for his six-year reenlistment would be calculated with 53 months of newly obligated service, because on October 1, 2002, the applicant still had 19 months of remaining obligated service (72 months minus 19 months equals 53 months).

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.11.2. of the Personnel Manual, the applicant was entitled to proper counseling concerning his eligibility for a 10th anniversary SRB within three months prior to reaching his 10-year service mark of October 5, 2002. There is no page 7 in the record to document this counseling. However, the applicant's October 1, 2002, extension contract does contain a statement informing the applicant that he was entitled to a Zone B SRB, calculated with 72 months of newly obligated service, in accordance with ALCOAST 329/02.

3. The Board finds that the applicant was erroneously counseled when he was told he would receive a Zone B SRB calculated with 72 months of newly obligated service for signing a six-year extension contract on October 1, 2002. The counseling was erroneous because the operative date of that extension was May 1, 2004, which was beyond his 10th anniversary of October 5, 2002. Pursuant to Article 3.C.4.b.3. of the Personnel Manual, Zone B SRBs are not authorized for members who have more than 10 years of active service. If the applicant had been properly counseled, he would have been advised to sign a reenlistment contract instead of an extension contract, because this would permit him to receive a Zone B SRB for reenlisting on his 10th anniversary. In addition, the applicant should have been counseled that his SRB would be reduced by the 19 months remaining on his previous enlistment, in accordance with Article 3.C.5.1. of the Personnel Manual.

4. Accordingly, relief should be granted.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The military record of XXXXXXXXXXXXXXXXXXXXX, USCG, shall be corrected to show that he reenlisted for six years on October 1, 2002, 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.

Nancy L. Friedman

Adrian Sevier

Thomas H. Van Horn