

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-172

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 August 25, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated June 30, 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 six-year reenlistment contract with an eight-month extension contract and a six-year reenlistment contract that would take effect at the end of the eight-month extension, to receive a Zone B Selective Reenlistment Bonus (SRB).¹ The applicant alleged that he was miscounseled about his eligibility for the SRB when he reenlisted for six years on October 22, 2003.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard for four years on August 4, 1998, with an expiration of enlistment (EOE) of August 3, 2002. On December 20, 2000, he reenlisted for three years for obligated service purposes and received a Zone A SRB. On October 22, 2003, he reenlisted for six years after being counseled that he would receive a Zone B SRB for reenlisting. The applicant's six-year anniversary date was August 4, 2004. Thus when he reenlisted on October 22, 2003, he did not have six years of active service, and was still in Zone A.

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.

VIEWS OF THE COAST GUARD

On November 4, 2004, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board grant the applicant's request. He stated that the applicant was miscounseled when he was told that he would receive a Zone B SRB for reenlisting on October 22, 2003. The JAG stated that the applicant was not entitled to a Zone B SRB because he had less than six years of service on the date of reenlistment, and members must have completed at least six years of active service to be eligible for a Zone B SRB. The JAG stated that if the applicant had been properly counseled, he likely would have signed an eight-month extension contract followed by a six-year reenlistment contract to qualify for a Zone B SRB. Accordingly, the JAG recommended that the applicant's record be corrected to show that he extended his enlistment for eight months on December 20, 2003, and reenlisted for six years on August 20, 2004.

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. The applicant responded on December 29, 2004, stating that he agreed with the Coast Guard's recommendation.

SUPPLEMENTAL ADVISORY OPINION

In the initial review of the record, the BCMR staff noted that the relief recommended by the JAG in his advisory opinion dated November 4, 2004, was inconsistent with previous Coast Guard policy and BCMR decisions. The JAG recommended that the applicant be allowed to extend his enlistment for eight months. However, under Article 1.G.15.a.1. of the Coast Guard Personnel Manual, the minimum term of a voluntary extension at the request of a member is two years. On April 5, 2005, the JAG issued a supplemental advisory opinion in this case, in which he withdrew his previous recommendation, noting that the "recommendation was contrary to long standing Coast Guard policy to only return applicants to the status quo ante, not to improve applicants' positions with respect to enlistment/extension timing and entitlement to ... SRBs."

The JAG recommended that the Board allow the applicant to choose between one of the following forms of relief:

- (a) Void the October 23, 2003, reenlistment and be immediately discharged with the intervening period between his previous EOE and the date of discharge being characterized as a BCMR ordered extension; or
- (b) Void the October 23, 2003, reenlistment and replace it with a two-year extension, so that the applicant would be allowed to reenlist at any point from his six-year anniversary date of August 4, 2004, to receive whatever Zone B SRB is available.

On April 6, 2005, the Chair sent a copy of the supplemental advisory opinion of the Coast Guard to the applicant and invited him to respond. A response was not received.

APPLICABLE LAW

Article 1.G.15.a.1. of the Coast Guard Personnel Manual provides that the minimum term of a voluntary extension at the request of a member is two years.

Article 3.C.11.2. of the 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 an SRB by reenlisting on their 6th and 10th anniversaries.

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.5.5. of the Personnel Manual states that under no circumstances will an individual be permitted to extend their enlistment more than three months early for SRB purposes alone. Article 12.B.7.b. states that commanding officers are authorized to separate members three or fewer months before the normal separation date.

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 306/04 was issued by the Commandant on June 21, 2004, and was effective August 1, 2004. Under ALCOAST 306/04, BM2s are eligible for a Zone B SRB calculated with a multiple of 2.

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.

2. Under Article 3.C. of the Personnel Manual, the applicant was entitled to proper counseling concerning his eligibility for a Zone B SRB when he signed a six-year reenlistment contract on October 22, 2003. The applicant’s record contains an Administrative Remarks form (Page 7) that indicates he was told that he would receive a Zone B SRB for reenlisting on October 22, 2003. This counseling was erroneous because under Article 3.C.4.b.3., members must have completed at least six but not more than ten years active service on the date of reenlistment to receive a Zone B SRB. The applicant’s six-year anniversary date was August 4, 2004, and thus he did not have

six years of active service when he reenlisted on October 22, 2003, and he was ineligible to receive an SRB.

3. The record indicates that the applicant was promised a Zone B SRB for reenlisting on October 22, 2003, and as noted in Finding No. 2, this counseling was erroneous. Therefore, the Board finds that the October 22, 2003, reenlistment contract should be removed from his record as null and void because the applicant has objected to the contract since he was erroneously promised an SRB.

4. The Board notes that if the applicant had been properly counseled in October 2003, he would have had the following options in lieu of reenlisting with no SRB:

- (a) continue serving in the Coast Guard until his enlistment expired on December 19, 2003, and be discharged; or
- (b) extend his enlistment for the minimum allowable, two years, to cover his service from December 20, 2003, through December 19, 2005, and reenlist either on his 6th anniversary, August 4, 2004, for a Zone B SRB, or within 90 days of the expiration of the extension in December 2005.

The Board finds that the applicant should be permitted to choose from these options. If the applicant chooses to extend his enlistment for two years and reenlist on his 6th anniversary, he would be eligible to receive a Zone B SRB calculated with a multiple of 2. Pursuant to Article 3.C.5.1. of the Personnel Manual, any previously obligated service would be deducted from his SRB computation.

5. Accordingly, relief should be granted in accordance with the findings above.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

The six-year reenlistment contract he signed on October 22, 2003, shall be null and void. He shall receive proper SRB counseling concerning his options under this order. He shall be given the option of being expeditiously discharged from the Coast Guard. If he elects this option, an extension contract shall be created to cover his service from December 20, 2003, to the date of discharge.

In the alternative, he may choose to have a two-year extension contract placed in his record to cover his service from December 20, 2003, through December 19, 2005. If he elects this option, he may also at his discretion be reenlisted for six years on his 6th anniversary, August 4, 2004, for a Zone B SRB under ALCOAST 306/04. The Coast Guard shall pay him any amount due as a result of these corrections.

Bruce D. Burkley

Raghav Kotval

Kevin M. Walker