

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-173

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 August 25, 2004, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated May 5, 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 to make him entitled to a selective reenlistment bonus (SRB) when he reenlisted in the Coast Guard on October 6, 2003. He had previously served on active duty from June 15, 1999, through June 14, 2003, when he was honorably released from active duty due to the completion of his required active service with an RE-1 reenlistment code (eligible to reenlist).

The applicant alleged that in late June 2003, he realized that he wanted to rejoin and contacted a recruiter in Hampton Roads, Virginia. During the next few weeks, he had many conversations with the recruiter, and "[o]ne of the sticking points was the conversation about an enlistment bonus." The recruiter told him that he would be entitled to one if he reenlisted within three months of his discharge.

The applicant alleged that in late July 2003 he gathered all of the information the recruiter had asked for and submitted it. The recruiter told him that he would process the application and "get back" to him. However, by the second week of September, the applicant had heard nothing, and he contacted the recruiter, who told him that an "alcohol incident" dated December 2000 had been found in the applicant's medical record, and the recruiter needed more information from him in order to get a waiver to

reenlist him. Therefore, the applicant wrote up a statement about the alcohol incident and submitted it. However, the three-month deadline for being eligible for an SRB upon reenlisting had passed so he was ineligible. The applicant alleged that the processing of his waiver and reenlistment was further delayed when Hurricane Isabel hit the region and delayed communications.¹ On September 26, 2003, he learned that although he had received the waiver, he would not be eligible for the SRB. He signed his reenlistment contract on October 6, 2003. The contract shows that he was not promised an SRB for his reenlistment.

In support of his request, the applicant submitted a copy of a letter dated September 23, 2003, from the Chief of Enlisted Recruiting to the Recruiter in Charge of the recruiting station he visited. The letter states that the Senior Medical Officer had granted a waiver to allow the applicant to reenlist within thirty days. The applicant also submitted a copy of his travel orders, which show that on September 25, 2003, he was issued orders to report to a particular cutter by October 31, 2003.

VIEWS OF THE COAST GUARD

On November 8, 2004, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request.

The JAG stated that under Article 3.C.4.a.1. of the Personnel Manual, members are only eligible for SRBs if they reenlist within ninety days of separation. Because the applicant did not reenlist within ninety days, he was not eligible for an SRB. The JAG noted that the applicant was advised of the fact that he was ineligible for an SRB and "voluntarily chose to reenlist anyway." The JAG stated that the applicant seems to argue that because he applied to reenlist within ninety days of his separation, he should be entitled to an SRB, but that is not an accurate statement of the regulation. Moreover, the JAG argued the "length of the delay in enlisting Applicant and the reasons for that delay, although arguably attributable to Applicant's own prior service conduct, are irrelevant. The only dates that matter are the dates of separation and reenlistment."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On November 8, 2004, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within thirty days. No response was received.

APPLICABLE REGULATIONS

Article 1.G.8.a. of the Personnel Manual states that to maintain a "continuous service status," members must reenlist within three months of their date of discharge. Article 1.G.8.a.1. provides that "[t]o receive a selective reenlistment bonus (SRB), a

¹ Hurricane Isabel made landfall in North Carolina on September 18, 2003.

member must reenlist within three months from date of discharge and meet the eligibility requirements”

Article 3.C.4.a.1. provides that, one of the criteria for SRB eligibility is that members must “[r]eenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple.”

From July 1, 2003, to July 31, 2004, ALCOAST 182/03 was in effect. It authorized a Zone A SRB for members in the OS rating.

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 alleged that although he applied to reenlist within three months, the Coast Guard delayed his reenlistment until he was no longer eligible for the SRB. Under Articles 1.G.8.a.1. and 3.C.4.a.1. of the Personnel Manual, members must reenlist (not just apply to reenlist) within three months of discharge or release to be eligible for any authorized SRB. The applicant has admitted that he was advised of the requirement to reenlist within three months of his release on June 14, 2003. He did not reenlist by September 14, 2003, and so was not entitled to an SRB when he reenlisted on October 6, 2003. The record indicates that on October 6, 2003, the applicant voluntarily reenlisted even though he knew that he was not entitled to an SRB.

3. The applicant alleged that his reenlistment was delayed by the need for a medical waiver because of his prior alcohol incident and by the communications disruptions caused by Hurricane Isabel. Hurricane Isabel first made landfall in North Carolina on September 18, 2003, and so any communications disruption she caused could not have prohibited the applicant from being reenlisted by September 14, 2003.

4. The applicant has submitted evidence that because of a prior alcohol incident, his recruiter had to seek a medical waiver to reenlist him and that the waiver was not received until September 23, 2003. However, absent evidence to the contrary, Coast Guard members, including the recruiter, are presumed to have acted correctly, lawfully, and in good faith in executing their duties. *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979). The applicant has not submitted anything to prove that his recruiter or the Coast Guard unreasonably or maliciously delayed processing his reenlistment paperwork.

5. Furthermore, the applicant has not proved that from late June 2003, when he allegedly decided to reenlist, he did everything he could to ensure reenlistment within three months. By his own admission, he waited until late July to submit the paperwork. Assuming *arguendo* that he submitted paperwork to reenlist in late July 2003, as he alleged, the Board knows of no law that required the Coast Guard to process his application and reenlist him within six or seven weeks, especially when a waiver was required due to his prior alcohol incident. The Board agrees with the JAG that the mere fact that the applicant applied to reenlist within three months of his release from active duty did not entitle him to an SRB and does not prove that his failure to receive an SRB constitutes an error or injustice.

6. Accordingly, the applicant's request should be denied.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

Quang D. Nguyen

Dorothy J. Ulmer

Eric J. Young