

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-174

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

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 show that he is entitled to a Zone A selective reenlistment bonus (SRB)¹ for reenlisting for four years on July 1, 2003. The applicant, who was a reservist serving on extended active duty (EAD)² at the time of his entry into the regular Coast Guard, alleged that he is entitled to the SRB because he meets the criteria to receive an SRB for his enlistment/reenlistment.

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 six years but no more than 10 years of active duty service are in "Zone B." COMDTINST 7220.33.

² Extended active duty is a program that allows the Coast Guard to fill "gaps" in billets with reservists possessing critical skill sets. The program is designed to fill rating pyramid gaps while not affecting advancements of active duty enlisted personnel.

SUMMARY OF THE APPLICANT'S RECORD

The applicant served on active duty with the Coast Guard from May 23, 1995, through September 22, 1999, and enlisted in the Coast Guard Reserve after he left active duty. On February 1, 2003, the applicant, as a reservist, was recalled to EAD. In May 2003, he requested a transfer into the regular Coast Guard. That request was approved by the Coast Guard Personnel Command (CGPC), and on June 9, 2003, CGPC issued orders granting the applicant's command authority to enlist the applicant in the regular Coast Guard, provided he met the physical standards.

On July 1, 2003, the applicant was discharged from the Reserve and he immediately enlisted/reenlisted³ in the regular Coast Guard for a term of four years, through June 30, 2007. The applicant received an enlisted lateral entry bonus⁴ pursuant to ALCOAST 132/02. There is no evidence in the record that he was counseled regarding an entitlement to an SRB for this enlistment/reenlistment.

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 deny the applicant's request. The JAG argued that the applicant is not entitled to relief because he did not meet the criteria to receive an SRB for his July 1, 2003, enlistment/reenlistment.

The JAG noted that the applicant requested to be discharged from the Coast Guard Reserve and be allowed to enlist in the regular Coast Guard. His request was granted and he was discharged from the Reserve and enlisted into the regular Coast Guard on July 1, 2003. The JAG stated that Article 1.G.1.a. of the Personnel Manual provides that the enlistment of Coast Guard Reserve personnel who are serving on EAD for twelve months or more shall be considered a reenlistment. The JAG alleged that the applicant's time on EAD was only 4 months and 21 days. Accordingly, the JAG alleged, the applicant was not eligible for an SRB because he did not serve on EAD for the requisite twelve months prior to his reentry into the regular Coast Guard, and thus his contract on July 1, 2003, should be characterized as an enlistment, *not* a reenlistment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

³ CGPC did not specify if the applicant was authorized to "enlist" or "reenlist". Whether the applicant's July 1, 2003, enlistment should be characterized as an "enlistment" or a "reenlistment" is the core issue in this case.

⁴ Under the lateral entry program, former Coast Guard members in critical ratings who have been separated in the past three years are offered the opportunity to reenlist in the Coast Guard and may receive a bonus. ALPERSRU 1/02.

On November 2, 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 Board received a copy of the applicant's response on November 17, 2004. In his response, the applicant did not object to the JAG's recommendation that relief be denied

APPLICABLE LAW

Article 1.G.1.a. of the Coast Guard Personnel Manual provides that "the enlistment of any person who has previously served in the Regular Coast Guard shall be considered a reenlistment. The enlistment of Coast Guard Reserve personnel who are serving on extended active duty and who have served on extended active duty for 12 months or more shall be considered a reenlistment."

ALCOAST 132/02 was issued in March 2002, and provides an expansion of the lateral entry of former Coast Guard members. It provides that members separated between January 31, 1999, and January 31, 2002, entering under the Lateral Entry Program, "may be entitled to receive [an SRB] provided they reenlist within 90 days from their active duty separation date. Other personnel may be entitled to an enlistment bonus provided they have not been serving on active duty within the last 91 days."

ALPERSU 1/02 clarifies the procedures for accessing former Coast Guard members under the lateral entry program. It states that as an enticement to come back on active duty, members reentering under the lateral entry program are eligible for:

- (a) A bonus – either an SRB or an enlistment bonus; and
- (b) Service credit for advancement purposes for reserve active and inactive duty served in rate.

ALCOAST 182/03 was issued on April 24, 2003, and was in effect from July 1, 2003, through July 31, 2004. Pursuant to ALCOAST 182/03, members with the applicant's rating and grade were eligible to receive an SRB with a multiple of three for reenlisting for at least three full years.

Article 3.C.4.a. of the Personnel Manual states that to be eligible for a Zone A SRB, the member must meet the following criteria:

1. Reenlist not later than three months after discharge or release from active duty in a rating authorized an SRB multiple.
2. Have completed 17 months continuous active duty (including extended active duty as a Reservist) at any point in their military career. The 17 months

continuous active duty need not have been completed immediately prior to the reenlistment or extension.

3. Have completed not more than six years active service on the date of reenlistment or the date on which the extension becomes operative.
4. Be serving in pay grade E-3 or higher on active duty in a rating that is designated as eligible for an SRB multiple.
5. Reenlist or extend enlistment in the Regular Coast Guard for a period of at least three full years.
6. Have not previously received a Zone A SRB.
7. Attain eligibility prior to the termination of a multiple for that particular rating.
8. Meet any additional eligibility criteria the Commandant may prescribe.

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. The JAG recommended that the Board deny relief because pursuant to Article 1.G.1.a. of the Personnel Manual, the applicant did not serve on EAD for the requisite twelve months, and thus his July 1, 2003, contract should be characterized as an enlistment. However, the JAG's assessment ignores the first sentence of Article 1.G.1.a, which states, "the enlistment of any member who previously served in the regular Coast Guard shall be considered a reenlistment." The Board finds that the JAG's reliance on the second sentence of Article 1.G.1.a. is erroneous, because the second sentence clearly applies to reservists who have never before enlisted in the regular Coast Guard and who are serving on EAD when they decide to enlist in the regular Coast Guard for the first time. Such is not the case here.
3. The Board finds that the applicant's July 1, 2003, contract should be characterized as a reenlistment. The first sentence of Article 1.G.1.a. of the Personnel Manual provides that "the enlistment of any person who has previously served in the Regular Coast Guard shall be considered a reenlistment." Given the plain meaning and

effect of the first sentence of the article, the second sentence – which states that a reservist serving on extended active duty for at least 12 months who joins the regular Coast Guard shall be considered to have reenlisted – clearly applies only to reservists who have never before served in the regular Coast Guard. The applicant’s record indicates that he served in the regular Coast Guard from May 23, 1995, to September 22, 1999. Thus, the Board finds that when the applicant signed the reenlistment contract on July 1, 2003, he had previously served over four years in the regular Coast Guard and hence his entry into the regular Coast Guard on July 1, 2003, was a reenlistment.

4. Although the applicant was discharged from EAD in the Reserve immediately before reenlisting on July 1, 2003, rather than from active duty in the regular Coast Guard, no provision of the Personnel Manual states or even suggests that being discharged from active duty as a reservist does not meet the criterion in Article 3.C.4.a. of the Personnel Manual.

5. The Board finds that because the applicant’s enlistment into the regular Coast Guard on July 1, 2003, was a reenlistment, he was eligible for a Zone A SRB in accordance with ALCOAST 182/03. The record indicates that when the applicant reenlisted on July 1, 2003, he met all of the eligibility criteria for a Zone A SRB under

Article 3.C.4.a. of the Personnel Manual and ALCOAST 182/03. In accordance with Article 3.C.4.a., on July 1, 2003, the applicant

- 1) reenlisted within three months (in fact, immediately) after having been discharged from active duty;
- 2) had previously completed more than twenty-one months (in fact, four years) of continuous active duty at some point in his military career;
- 3) had completed less than six years of active duty;
- 4) was serving as a ET2/E-5, which was a rating designated as eligible for an SRB multiple under ALCOAST 182/03;
- 5) reenlisted for at least three full years (he reenlisted for four years);
- 6) had not previously received a Zone A SRB; and
- 7) attained eligibility prior to the termination date of the multiple for his rating.
- 8) Furthermore, no other eligibility criteria for ET2s had been prescribed by the Commandant.

6. The applicant was also eligible for a lateral entry bonus for his July 1, 2003, reenlistment. Under ALPERSRU 1/02, a former Coast Guard member may come back on active duty under the lateral entry program and receive an enlistment bonus or a reenlistment bonus, *but not both*. Pursuant to ALCOAST 132/03, the applicant met the requirements for a lateral entry bonus, because he was discharged during the time frame encompassed by the ALCOAST and he served in a qualifying rate. However, pursuant to ALPERSRU 1/02, he was not entitled to receive both a lateral entry bonus *and* an SRB. The record indicates that the applicant already received a lateral entry bonus for his July 1, 2003, reenlistment. Accordingly, the applicant should be given the option of choosing either the lateral entry bonus or the Zone A SRB.

ORDER

The military record of XXXXXXXXXXXXXXXXXXXXXXXXXX, USCG, shall be corrected as follows. Subsequent to counseling about these options, he shall be given the opportunity to choose between the following:

(1) Receive a Zone A SRB for his July 1, 2003, reenlistment. If he chooses this option, the Coast Guard shall pay him any amounts due under ALCOAST 182/03. If he elects to receive the SRB, the Coast Guard may recoup any payments made to him in the form of the enlisted lateral entry bonus already paid.

(2) Retain his lateral entry bonus and not receive an SRB for his July 1, 2003, reenlistment.

Quang D. Nguyen

Dorothy J. Ulmer

Eric J. Young