

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-034

XXXXXXXXXXXXXXXXXXXXX.

Xxx xx xxxx, EM1/E-6

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 December 1, 2004, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated August 11, 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 by canceling his five-year extension contract dated April 2, 1999, and replacing it with a seven-month extension followed by a six-year reenlistment to receive a Zone B selective reenlistment bonus (SRB)¹ calculated with a multiple of 2.0. The applicant alleged that he was counseled that he could cancel the five-year extension contract and reenlist for a larger SRB if the multiple for his rank and rate was increased. He further alleged that if he

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.

had been properly counseled, he would have extended for the seven months needed to accept the PCS orders and then canceled the extension and reenlisted for a larger SRB.

SUMMARY OF THE APPLICANT'S RECORD

The applicant enlisted in the Coast Guard on February 18, 1992, for a period of four years with an expiration of enlistment (EOE) of February 17, 1996. On November 14, 1995, the applicant reenlisted for three years, with an EOE of November 13, 1998. On November 12, 1998, he extended his enlistment for one year, with an EOE of November 13, 1999. On April 2, 1999, he extended his enlistment for five years to accept orders to an overseas assignment and became eligible for a Zone B SRB calculated with a multiple of 1.0. At the time of his extension he was only required to obligate seven months of additional service. There is no CG-3307 (Page 7)² in the record to indicate that he was counseled about the effect his extension would have on his SRB entitlement. The applicant's five-year extension contract states the following:

SRB ELIGIBILITY ACKNOWLEDGMENT

I have been provided with a copy [of] "SRB Questions and Answers" based on Commandant Instruction 7220.33 (series). I have been informed that: My current Selective Reenlistment Bonus (SRB) multiple under zone B is 01 and is listed in ALDIST 290/98, which has been made available for review. I further understand the eligibility requirements for Zone A, B, and C SRB's and that the maximum SRB paid to my current pay grade is \$ 35000. My SRB will be computed based on 60 months newly obligated service.

EFFECT OF EXTENSION/REEXTENSION ON SRB ENTITLEMENT

I fully understand the effect my extension/reextension will have upon my current and future SRB eligibility. ... I further acknowledge that I have been given the chance to review COMDTINST 7220.33 (series) concerning my eligibility for SRB and have had all my questions answered.

VIEWS OF THE COAST GUARD

On April 11, 2005, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny the applicant's request.

The JAG stated that the applicant extended his enlistment for five years to meet his obligated service requirement and to receive an SRB calculated with 60 months of obligated service. The JAG noted that the applicant was only required to extend his enlistment for seven months to obligate sufficient service for transfer, and that he elected to extend for five years to receive the maximum SRB. The JAG further argued that although the applicant claims that he would have only extended for seven months

² A CG-3307 (Administrative Remarks, or Page 7) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

to obligate sufficient service to transfer and reenlisted when the SRB was increased, the "Applicant would have had to obtain permission from Coast Guard Personnel Command (CGPC) to extend less than two years; approval of such an extension request is by no means certain and shouldn't be presumed by the BCMR, especially in light of applicant's assignment to a ship."

The JAG stated that the applicant's signed extension contract contains an acknowledgment that "he had all of his questions regarding his SRB eligibility answered and that he fully understood the effect that his extension had upon his current and future SRB entitlements." The JAG argued that there is "simply no evidence in the record to reflect that the applicant was misinformed about his extension and the effect it would have on his SRB." Finally, the JAG stated that the applicant has already received full payment for his SRB and that all the applicant has submitted is a "highly confusing series of scenarios about what 'coulda, woulda, shoulda, happened' some of which coincidentally provide him with additional money for no additional obligated service."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 13, 2005, 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 4.B.6.b. of the Coast Guard Personnel Manual states that all personnel ordered to duty stations outside of the continental United States shall obligate to complete the full tour.

Article 3.C.4.b. of the Personnel Manual states that to receive a Zone B SRB, the member must reenlist or extend his enlistment for a period of at least three years.

Article 3.C.3. of the Personnel Manual requires that all personnel with 10 years or less of active service who reenlist or extend for any period shall be counseled on the SRB program and shall sign a Page 7 outlining the effect that particular action has on their SRB entitlement. Article 3.C.11. of the Personnel Manual contains the text of the Page 7 members must sign following SRB counseling:

I have been provided with a copy of enclosure (5) to Commandant Instruction 7220.33 (series) entitled "SRB Questions and Answers." I have been informed that:

My current Selective Reenlistment Bonus (SRB) multiple is ____ and is listed in ALDIST _____, which has been made available for my review.

In accordance with article 12-B-4, CG Personnel Manual, I am eligible to reenlist/extend my enlistment for a maximum of ____ years.

My SRB will be computed based on ____ months newly obligated service.

The following SRB policies were unclear to me, but my SRB counselor provided me with the corresponding answers: (list specifics)

ALDIST 290/98 was issued on November 25, 1998, and was in effect from November 25, 1998, through June 14, 1999. Under ALDIST 290/98, EM2s were eligible for an SRB calculated with a multiple of 1.0.

ALDIST 184/99 was issued on May 13, 1999, and was in effect from June 15, 1999, through December 31, 1999. Under ALDIST 184/99, EM2s were eligible for an SRB calculated with a multiple of 1.0.

ALCOAST 184/99 was issued on November 22, 1999, and was in effect from January 1, 2000, through June 30, 2000. Under ALCOAST 184/99, EM2s were eligible for an SRB calculated with a multiple of 2.0.

Article 3.C.5.6. of the Personnel Manual states that extensions may be canceled prior to their operative dates for the purpose of extending or reenlisting for a longer term to earn an SRB. However, such extensions reduce the SRB by the number of months of previously obligated service unless the extension is for a period of two years or less, in which case the SRB is not diminished.

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. *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994).

2. The applicant alleged that he was improperly counseled. There is no Page 7 documenting SRB counseling in his military record, as required under Article 3.C.3. of the Personnel Manual. However, the applicant's 60-month extension contract indicates that he did receive accurate SRB counseling on April 2, 1999. The contract indicates that he was advised he was eligible to extend or reenlist for a Zone B SRB calculated with a multiple of 1.0 under ALDIST 290/98. Moreover, it contains almost identical language to that which appears on a Page 7 prepared in accordance with Article 3.C.3. Therefore, the lack of a Page 7 does not persuade the Board that the applicant was miscounseled.

3. The applicant also argued that it was his original goal to extend his enlistment for the minimum amount needed to accept his transfer orders with the

“intention of reenlisting when the new SRB message was released, because I heard that the EM multiple was going to increase.” The Board is reluctant to accept this allegation as fact. There was an SRB multiple of 1.0 in effect for his rating on April 2, 1999, which he could earn only by extending his enlistment for at least three years. There was no guarantee in April 1999 that there would be any SRB at all in effect for his rating at a later date. The Board notes that the multiple for EM2s remained 1 under the next authorization, ALCOAST 184/99. Therefore, the Board is not persuaded that the applicant would have forgone the SRB available to him under ALDIST 290/98 on the chance that there might be a better SRB available in the future. Finally, the applicant’s failure to seek correction of his record when the SRB multiple was increased in November 1999 suggests that he did not have a complaint at the time.

4. Accordingly, the applicant’s request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of EM3 XXXXXXXXXXXXXXXX, xxx xx xxxx,USCG, for correction of his military record is denied.

Joseph L. Brinkley

James G. Parks

Kenneth Walton