

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2005-069

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 February 25, 2005, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated November 17, 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 replacing his six-year reenlistment contract with a six-year extension contract so that he will receive a Zone A selective reenlistment bonus (SRB)¹ calculated with 72 months of newly obligated service instead of 52 months. The applicant stated that he was told to reenlist for six years to obligate sufficient service for transfer and that his SRB would be calculated with 52 months of newly obligated service. He alleged that if he had been properly counseled, he would have extended his enlistment for six years to accept the transfer

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.

orders because his SRB would have been calculated with 72 months of newly obligated service, and not 52 months. He further alleged that he was told that he could not extend his enlistment to obligate sufficient service, that he was not given proper SRB counseling, and did not sign a Page 7² documenting SRB counseling.

SUMMARY OF THE APPLICANT'S RECORD

The applicant enlisted in the Coast Guard on February 24, 1998, for a period of four years with an expiration of enlistment (EOE) of February 23, 2002. He completed radarman (RD) "A" school on April 16, 1999. On July 22, 2000, the applicant, in receipt of transfer orders to Texas, reenlisted for six years to obligate sufficient service and became eligible for a Zone A SRB with a multiple of 5.0. His SRB was calculated with 52 months of newly obligated service because it was reduced by the number of months remaining on his original four-year enlistment. At the time of his reenlistment, he was only required to obligate at least 20 months of additional service to accept his transfer orders. There is no Page 7 in the applicant's record to indicate that he was counseled about the effect his reenlistment would have on his SRB entitlement. The applicant's six-year reenlistment contract states the following:

MBR IS RE-ENLISTING FOR 06 YEARS AND IS ENTITLED TO ZONE A
MULT OF 5 IAW ALCOAST 218/00.

MBR ELIGIBLE FOR 52 MONTHS OF SRB BASED ON NEWLY OBLIGATED
SERVICE.

VIEWS OF THE COAST GUARD

On June 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 record does not support the applicant's allegation of error and that there is no evidence in the record that the applicant was misinformed about his reenlistment and the effect it would have on his SRB. He argued that the applicant should be estopped from claiming that the Coast Guard committed error by failing to document SRB counseling with a Page 7 entry because proper counseling was provided on the applicant's July 22, 2000, reenlistment contract. Citing the Board's decision in BCMR Docket No. 1999-031, the JAG argued that the Board has previously held that a "signed acknowledgement of SRB counseling on an enlistment contract ... is adequate legal notice to a member of his SRB eligibility and entitlements." Moreover,

² A Page 7 (CG-3307, Administrative Remarks) entry documents any counseling that is provided to a service member during their military career.

the JAG argued, the applicant was of majority age and responsible for his actions when he signed the reenlistment contract, and absent any fraud or duress the applicant should be bound by his acceptance of the contract.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 10, 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.a. of the Coast Guard Personnel Manual states that personnel ordered to duty stations inside of the continental United States shall obligate sufficient service to complete the full tour. Article 4.A.5.b. of the Manual provides that a full tour of duty ashore in the continental United States is three years for an E-5 in the RD rate.

Enclosure (1) to COMDTINST 7220.33 states that to receive a Zone A SRB, the member must reenlist or extend his enlistment for a period of at least three years.

Enclosure (1) to COMDTINST 7220.33 provides that all personnel with 14 years or less of active service who reenlist or extend for any period shall be counseled on the SRB program and shall sign an Page 7 outlining the effect that particular action has on their SRB entitlement. Enclosure (3) to COMDTINST 7220.33 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)

ALCOAST 218/00 was issued on May 19, 2000, and was in effect from July 1, 2000, through January 31, 2001. Under ALCOAST 218/00, RD2s were eligible for an SRB calculated with a multiple of 5.0.

Article 1.G.14.e. of the Personnel Manual states that the term of enlistment for first term personnel may only be extended for the minimum period required to attend a resident or other school, to participate in the Coast Guard Tuition Assistance Program, or for duty INCONUS or OUTCONUS. Commanding Officers are authorized to extend these members in order to meet only the minimum service required without referring to CFTRR or CGPC.

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 when he reenlisted on July 22, 2000, he was improperly counseled because he was not told that he could sign an extension contract in lieu of a reenlistment contract. There is no Page 7 documenting SRB counseling in the applicant's record as required under COMDTINST 7220.33. The applicant's six-year reenlistment contract indicates that he received some SRB counseling, but it does not contain all of the text required by Enclosure (3) to COMDTINST 7220.33. The contract indicates that he was advised that he was reenlisting for six years, he was entitled to a Zone A SRB with a multiple of 5.0 in accordance with ALCOAST 218/00, and his SRB would be calculated with 52 months of newly obligated service. However, Enclosure (3) to COMDTINST 7220.33 requires that the member also be provided with a copy of Enclosure (5) to Commandant Instruction 7220.33 (series) entitled "SRB Questions and Answers." The applicant's reenlistment contract does not indicate whether he was provided with the required information.

3. The Board finds that the Coast Guard erred when it did not document SRB counseling on a Page 7, because the reenlistment contract does not contain all of the language required by COMDTINST 7220.33. Citing the Board's decision in Docket No. 1999-031, the JAG argued that the absence of a Page 7 entry documenting SRB counseling is harmless in this case because SRB counseling was documented on the applicant's reenlistment contract. The Board disagrees. In Docket No. 1999-031, the Board held that a Page 7 entry documenting SRB counseling was not necessary because the member's extension contract contained the same information as a properly executed Page 7 entry. In this case, the applicant's reenlistment contract does not contain the same information as a proper Page 7 entry. Although the reenlistment contract contains much of the language that would have been included on a Page 7 prepared in accordance with COMDTINST 7220.33, it does not state that the applicant was provided with a copy of "SRB Questions and Answers."

4. The Board finds that the applicant was not eligible to extend his enlistment for a term greater than 20 months. Article 1.G.14.e. of the Personnel Manual states that members on their first enlistment may only extend their enlistment for the minimum period required when transferring to a duty station within the continental United States. The applicant was on his first enlistment when he received transfer

orders to Texas in July 2000. Pursuant to Article 1.G.14.e., he was not eligible to extend his enlistment for more than 20 months, because this was the minimum number of months he needed to obligate in order to have three years remaining on his enlistment when he reported to his new assignment on September 20, 2000. Reenlisting for six years was the only way for the applicant to obligate sufficient service and maximize his SRB.

5. Finally, the Board notes that the applicant waited nearly five years to submit an application for correction. The applicant's failure to seek correction of his record shortly after he reenlisted suggests that he was satisfied with his reenlistment and SRB at that time.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

Elizabeth F. Buchanan

Donald A. Pedersen

Darren S. Wall