

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2005-121**

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**FINAL DECISION**

**AUTHOR:** Andrews, J.

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application on June 14, 2005, upon receipt of the completed application.

This final decision, dated April 5, 2006, 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 so that he will be entitled to receive a Zone A selective reenlistment bonus (SRB) for reenlisting on his sixth active duty anniversary in May 2001 and a Zone B SRB for reenlisting on his tenth active duty anniversary in May 2005.<sup>1</sup>

The applicant alleged that he was eligible for a Zone A SRB when he extended his original enlistment in 1999, but was not properly counseled and never received the bonus. He further alleged that when he asked about receiving a Zone A SRB prior to his sixth anniversary on active duty, which was May 22, 2001, he again received no SRB counseling and was told to wait until October 2001 to reenlist. However, by the time he

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<sup>1</sup> 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." Members who have completed at least 6 years but no more than 10 years of active duty service are in "Zone B." Members may not receive more than one bonus per zone. COMDTINST 7220.33.

reenlisted, he was in Zone B and so received a Zone B bonus and missed his opportunity for a Zone A bonus.

The applicant alleged that because he was never paid the SRB he was promised in 1999, he should have been allowed to reenlist for a Zone A SRB in 2001, in which case he would have been eligible to reenlist for a Zone B SRB on his tenth active duty anniversary in May 2005.

### **SUMMARY OF THE RECORD**

On May 22, 1995, the applicant enlisted in the Coast Guard for four years, through May 21, 1999. He was advanced to boatswain's mate third class (BM3) on December 1, 1997.

On April 30, 1998, in receipt of transfer orders, the applicant signed a 37-month extension contract, which obligated him to serve through June 21, 2002. The extension was necessary for the applicant to accept the transfer orders because under Article 4.B.6.a. of the Personnel Manual, members with less than six years of service must obligate sufficient service to complete a full tour of duty at the new unit before accepting their transfer orders. Under Article 4.A.5.b., a full tour at his new unit was four years. and the applicant was to report to the new unit on June 15, 1998. On April 30, 1998, ALDIST 046/98 was in effect and it authorized a Zone A SRB with a multiple of 1 for BM3s. There is no "page 7" in the applicant's record documenting SRB counseling at the time.<sup>2</sup> The page 7 would have informed him that he was eligible to reenlist or extend his enlistment for up to six years to receive a maximum SRB. However, the applicant's extension contract contained the following language:

### **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 A is 01 and is listed in ALDIST 046/98, 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

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<sup>2</sup> Paragraph 2 of Enclosure (1) to COMDTINST 7220.33, which was in effect in 1998 and contained the SRB regulations, states that "[a]ll personnel with 14 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign a page 7 [CG-3307] service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement." On the CG-3307, which is Enclosure (3) to the instruction, the member also acknowledges having received and reviewed a copy of COMDTINST 7220.33.

pay grade is \$ 35,000. My SRB will be computed based on 37 months newly obligated service.[<sup>3</sup>]

### **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 understand that continued entitlement to unpaid installments may be terminated and a prorated portion of advance bonus payments recouped if I am considered not to be technically qualified or unable to perform the duties of the rating for which the bonus was paid, in accordance with COMDTINST 7220.33 (series). 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.

On May 22, 1999, the applicant's 37-month extension contract went into effect, but he was never paid the Zone A SRB noted on the contract. On September 1, 2000, the applicant was advanced to BM2.

On May 22, 2001, the applicant's sixth anniversary on active duty,<sup>4</sup> ALCOAST 127/01 was in effect and it authorized a Zone A multiple of 1.5 for BM2s who signed reenlistment or extension contracts between May 1, 2001, and January 31, 2002. It authorized no Zone B SRB multiple for BM2s from May 1 through September 30, 2001, but a multiple of 1.0 for BM2s who reenlisted or extended their enlistments from October 1, 2001, through January 31, 2002.

Because funding for SRBs was short and some SRB multiples could not be authorized for certain critical ratings from May 1 through September 30, 2001, the Commandant also issued ALCOAST 198/01, which allowed members whose sixth or tenth anniversaries fell between May 1 and September 30, 2001, to wait to reenlist until October 2001. In such cases, ALCOAST 198/01 provided, the members who waited until October 2001 would receive the SRB that they would have received on their actual anniversaries as if the SRB multiple in effect after October 1, 2001, had been in effect on their anniversaries.

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<sup>3</sup> Paragraph 3.f. of Enclosure (1) to COMDTINST 7220.33 states that an SRB is calculated by multiplying the "multiple" authorized for the member's rating by his monthly basic pay and by the number of months of "newly obligated service" under the contract and dividing that figure by 12.

<sup>4</sup> On a member's sixth active duty anniversary, the member is eligible to reenlist for either a Zone A or a Zone B SRB if one is authorized for his rating and the member has not already received one. The member must be counseled about this opportunity, and the counseling must be documented on a page 7. COMDTINST 7220.33, Enclosure (1), Para. 3.d.

The applicant's record does not contain a page 7 documenting SRB counseling upon his sixth anniversary.

On October 1, 2001, the applicant reenlisted for six years. His reenlistment contract shows that he was promised a Zone B SRB with a multiple of one for this reenlistment.

The applicant's tenth active duty anniversary was May 22, 2005. ALCOAST 306/04 authorized a Zone B SRB with a multiple of 2.5 for boatswain's mates on that date. However, because the applicant had already received a Zone B SRB, he was not eligible for another.

### **VIEWS OF THE COAST GUARD**

On October 5, 2005, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the requested relief but grant alternate relief.

The JAG stated that the applicant was inexplicably never paid the Zone A SRB he was promised and entitled to upon signing the 37-month extension contract in 1998. He recommended that the Board order the Coast Guard to pay that SRB. The JAG argued that this proposed relief would bring the "result that most closely represents the bargain" that the applicant made. The JAG argued that the relief recommended by the applicant would be an inappropriate remedy.

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On October 14, 2005, the applicant responded to the views of the Coast Guard. He disagreed with the JAG's recommendation. He stated that if he had been properly counseled about SRBs in 1988, he would have made different decisions. He alleged that when he signed the extension contract in 1998, he

was completely unaware of what it actually was. I was never in the understanding that I was entitled to an SRB and believed the statement on the contract was a standard remark. I did not receive any payments and had I been aware that I should have received money, I can confidently say, I would have extended or even reenlisted for the full six years to maximize any bonus I would get. At the time of signing the extension contract, my wife was pregnant with our second child and I was transferring. The overall lack of SRB counseling I have had in my career I believe to be a great monetary loss to myself, as well as my family. Further, I would like to add, when I did reenlist for 6 years in 2001, the PERSRU who did my paperwork never bothered to look up whether or not I had or had not received a Zone A SRB. Rather, it was assumed I did

because it was typed up on the extension contract as if I had. My records also show no documentation of proper counseling at that time either. If the PERSRU had looked into it, I would have submitted [an application for] correction to my record then.

The applicant concluded that the Board should correct his record to show that the SRB he received on October 1, 2001, was a Zone A bonus, and to show that he reenlisted for six years on his tenth anniversary for a Zone B bonus.

## 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 over this matter pursuant to 10 U.S.C. § 1552. As the applicant remains of active duty, the application was timely.<sup>5</sup>

2. The applicant alleged that when he signed the extension contract on April 30, 1998, he was not told and did not realize that he was eligible for an SRB. The extension contract itself states that he would be receiving an SRB based on 37 months of newly obligated service. The applicant's allegation, however, is supported by the fact that he was never paid the SRB; he never complained about not receiving the SRB; and there is no page 7 in his record documenting SRB counseling. The Board finds that the preponderance of the evidence in the record indicates that the applicant did not know and was not told in 1998 that the extension contract would entitle him to an SRB.

3. The applicant alleged that if he had been told about the SRB in 1998, he would have extended his enlistment for the maximum time and he would have complained about not receiving the SRB. If the applicant had been properly counseled about SRBs with a page 7, as was required by COMDTINST 7220.33, he would have been informed that he could reenlist or extend his enlistment for up to six years to maximize his SRB. He noted that at the time, his family was moving pursuant to his transfer, and his wife was pregnant with their second child. Given these facts and the lack of a completed page 7 in his record, the Board finds that the preponderance of the evidence in the record indicates that when he signed the extension contract on April 30, 1998, the applicant did not know that he could extend his enlistment for up to six years to maximize his SRB and that, if he had known, he would have done so. Such a decision would be typical of members in the applicant's situation.

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<sup>5</sup> *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 "tolls the BCMR's limitations period during a servicemember's period of active duty").

4. The applicant asked the Board to ignore the fact that his 37-month extension, which was required for his transfer, entitled him to a Zone A SRB and to pay him instead for a Zone A SRB on his sixth anniversary. However, when the Board discovers an error in a member's record, the Board's policy is not to grant whatever relief is requested but to put the member back into the position he would have been in had no error been made. In this case, the Board finds that, had the Coast Guard properly counseled the applicant about his eligibility for an SRB with a page 7, he would have extended his enlistment for six years on April 30, 1998, to maximize his SRB. Although the JAG recommended that the Board simply order the Coast Guard to pay the applicant the SRB for the 37-month extension, this recommendation ignores the fact that the applicant was not counseled in 1998 about his eligibility to extend his enlistment for up to six years. Therefore, the Board finds that the applicant's record should be corrected to show that on April 30, 1998, he extended his enlistment for six years, or 72 months, instead of 37 months.

5. If the applicant had extended his enlistment for six years on April 30, 1998, his end of enlistment date would have been extended from May 21, 1999, to May 21, 2005. Therefore, it is unlikely that he would have reenlisted on his sixth anniversary or on October 1, 2001, when so much obligated service remained on his previous contract. However, on May 22, 2005, his tenth anniversary on active duty, he would have been eligible to reenlist for six years for a Zone B SRB. Therefore, the Board finds that the applicant's October 1, 2001, reenlistment contract should be removed from his record as null and void, and the applicant should be reenlisted for six years on his tenth active duty anniversary for a Zone B SRB, as he requested.

6. Accordingly, partial relief should be granted by correcting the term of the applicant's 37-month extension contract to 72 months; by voiding his October 1, 2001, reenlistment contract; and by reenlisting him for six years on his tenth active duty anniversary. In accordance with paragraph 4 of Enclosure (1) to COMDTINST 7220.33, the Coast Guard will be entitled to recoup the Zone B SRB that the applicant received for reenlisting on October 1, 2001.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall correct his record to show that

- (1) on April 30, 1998, he extended his enlistment for 72 months, instead of 37 months, for a Zone A SRB;
- (2) his reenlistment contract dated October 1, 2001, is null and void; and
- (3) on his tenth anniversary on active duty, he reenlisted for six years for a Zone B SRB.

The Coast Guard shall pay him any amount he is due under ALDIST 046/98 and ALCOAST 306/04 as a result of these corrections, minus any amount that must be recouped due to the voiding of his October 1, 2001, reenlistment contract.

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Frank H. Esposito

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Jordan S. Fried

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William R. Kraus