

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-038

XXXXXXXXXXXXXXXXX.
XXXXXXXXXX, FS2/E-5

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. The Chair docketed the case on January 13, 2006, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated August 31, 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, a food service specialist, second class (FS2; pay grade E-5) asked the Board to correct his record to show that the selective reenlistment bonus (SRB)¹ that he received while aboard a ship in a combat zone is eligible for the combat tax exclusion.² He alleged that he was counseled that his SRB payments would be eligible

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. Coast Guard Personnel Manual, Article 3.C. and 3.C.4.a.

² Service members may exclude from their gross income any compensation received for any month during any part of which the member served in a combat zone, "provided that the member's entitlement

for the combat tax exclusion because he would be serving in a combat zone on the operative date of the extension.

to the compensation fully accrued in a month during which the member served in the combat zone.”
26 C.F.R. § 1.112-1.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 11, 2001, for a term of four years, through December 10, 2005. On March 17, 2005, the applicant executed a six-year extension contract to obligate service for a one-year tour aboard the Coast Guard Cutter *Baranof*. There is a Page 7³ in the applicant's record documenting counseling that he would receive an SRB for signing the six-year extension contract. The applicant transferred to the *Baranof* on June 17, 2005, while it was in a designated combat zone. The March 17, 2005, extension did not become operative until December 11, 2005, while the *Baranof* was still in the combat zone. In July 2006, the applicant completed his one-year tour aboard the *Baranof* and was transferred to Sector San Francisco.

VIEWS OF THE COAST GUARD

On May 31, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request. The JAG argued that the applicant's SRB is not eligible for the combat tax exclusion because the effective date of the extension was March 17, 2005, three months before he transferred to a vessel within a combat zone.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 6, 2006, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The BCMR did not receive a response.

APPLICABLE REGULATIONS

Article 3.C.3. of the Coast Guard 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.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

³ A 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.

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.

Article 4.B.6.a. of the Personnel Manual states that assignment officers will normally not transfer service members E-4 and above with fewer than six years of active duty unless they reenlist or extend to have enough obligated service for a full tour upon reporting to a new unit. A full tour aboard the CGC *Baranof* was one year.

ALCOAST 332/05 was issued on June 24, 2005, and was in effect from August 1, 2005, through June 30, 2006. Under ALCOAST 332/05, and its predecessor ALCOAST 306/04, FS2s were eligible for an SRB calculated with a multiple of 3.

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 he was counseled that his SRB payments would be eligible for the combat zone tax exclusion because his extension contract would become operative while he was serving on a cutter within a combat zone. Although there is a Page 7 in the record indicating that the applicant was counseled regarding his SRB eligibility, there is nothing in the record indicating that the applicant was counseled that the SRB payments would be eligible for the combat zone exclusion. The JAG recommended that the BCMR deny relief because the applicant executed his extension contract several months before he entered a combat zone.

3. The Board finds that the applicant was not properly counseled regarding his SRB eligibility when he received transfer orders to the *Baranof*. The applicant should have been counseled pursuant to Article 3.C.3. of the Personnel Manual that he was only required to extend his enlistment for seven months⁴ to obligate the minimum amount of service before reporting to the *Baranof*. Moreover, he should have been advised that under Article 3.C.5.6 of Personnel Manual, he could cancel the extension before it became operative and reenlist for an SRB while he was in the combat zone. The SRB that he would have received for the reenlistment would have been earned while he was in a combat zone and thus eligible for the combat zone exclusion.

⁴ When the applicant reported to the *Baranof* on June 17, 2005, his EOE date was December 10, 2005. Accordingly, he only needed to obligate service from December 11, 2005, through June 16, 2006.

4. The applicant's record should be corrected by changing the applicant's March 17, 2005, extension contract from six years to seven months. In addition, his record should be corrected to show that on December 11, 2005, he cancelled the extension and reenlisted for six years. These corrections will allow him to receive an SRB under ALCOAST 332/05 calculated with a multiple of 3 pursuant to a reenlistment contract executed while he was serving in a combat zone.

ORDER

The application of FS2 xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct the term of his March 17, 2005, extension contract from six years to seven months. In addition, the Coast Guard shall correct his record to show that on December 11, 2005, he cancelled the March 17, 2005, seven-month extension and reenlisted for six years. The Coast Guard shall pay him any amount due under ALCOAST 332/05 as a result of these corrections.

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