

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-043

XXXXXXXXXXXXXXXXXX
XXXXXXXXXX, BM1 (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. The Chair docketed the case on January 20, 2006, upon receipt of the applicant's completed application.

This final decision, dated September 28, 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 boatswain's mate first class (BM1), asked the Board to correct his record to show that he reenlisted on February 14, 2001, for a 6th anniversary¹ selective reenlistment bonus (SRB).² In addition, the applicant asked the Board to correct his

¹ On a member's 6th and 10th 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.

² 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.

record to show that he reenlisted on February 14, 2005, for a 10th anniversary SRB. The applicant alleged that he was never counseled regarding his eligibility to reenlist on his 6th or 10th anniversary for an SRB. The applicant further alleged that because he was never counseled about his eligibility for a Zone A SRB, he received a Zone B SRB for his April 25, 2001, reenlistment. He stated that because he received a Zone B SRB for his April 2001 reenlistment, he was ineligible to receive another Zone B SRB on his 10th active duty anniversary.

SUMMARY OF THE RECORD

On February 14, 1995, the applicant enlisted in the Coast Guard for a term of four years, through February 13, 1999. On March 19, 1997, the applicant extended his enlistment for 29 months to obligate service for transfer, with a new end of enlistment (EOE) date of July 13, 2001. The applicant's 6th active duty anniversary was February 14, 2001, and there is no Page 7³ entry in the record to indicate that he received SRB counseling prior to his 6th anniversary. 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 Zone A SRB pursuant to ALCOAST 488/00. On March 19, 2001, approximately one month after his 6th anniversary, a Page 7 was placed in the applicant's record to document that he was eligible to reenlist for an SRB. On April 25, 2001, he reenlisted for four years, through April 24, 2005, and received a Zone B SRB pursuant to ALCOAST 488/00.

On March 15, 2004, the applicant signed a 15-month extension contract extending his enlistment to July 24, 2006. The applicant's 10th anniversary was February 14, 2005, and there is no Page 7 entry in the record to indicate that he received SRB counseling prior to his 10th anniversary. ALCOAST 306/04 authorized a Zone B SRB for BMs on that date. However, because the applicant had already received a Zone B SRB for his April 25, 2001, reenlistment, he was not eligible for another. On April 18, 2006, the applicant signed a 12-month extension contract, with an adjusted EOE date of July 24, 2007.

VIEWS OF THE COAST GUARD

On June 6, 2006, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended denying relief. He stated that the applicant was properly counseled regarding his eligibility for a Zone B SRB for his April 25, 2001, reenlistment. The JAG noted that the applicant received a Zone B SRB because on the date of his reenlistment he had more than six years of active service and was ineligible for a Zone A SRB.

³ 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.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 24, 2006, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond. The Chair did not receive a response.

APPLICABLE LAW

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.11.2. of the Personnel Manual requires that a Page 7 entry regarding counseling about SRB eligibility be made in a member's record within three months prior to his 6th and 10th anniversaries.

ALCOAST 488/00 was issued on December 21, 2000, and was in effect from February 1, 2001, through April 30, 2001. Under ALCOAST 488/00, BM2s were eligible for an SRB calculated with a multiple of one.

ALCOAST 306/04 was issued on June 21, 2004, and was in effect from August 1, 2004, through July 31, 2005. Under ALCOAST 306/04, BM1s were eligible for an SRB calculated with a multiple of two.

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 applicant remains on active duty and thus his application was timely.⁴

2. The applicant alleged that he was never counseled regarding his eligibility to reenlist on his 6th active duty anniversary for an SRB. There is no Page 7 in the record documenting counseling on his 6th anniversary as required under Article 3.C.11.2. of the Personnel Manual. The lack of documentation of SRB counseling is persuasive evidence that the applicant was never counseled about his opportunity to reenlist on his 6th anniversary for a Zone A SRB. The Board notes that when the applicant was counseled about SRBs one month after his 6th anniversary, the command documented the counseling with a Page 7.

⁴ *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").

3. As a result of his command's error, the applicant never received a Zone A SRB, and received a Zone B SRB for his April 25, 2001, reenlistment. He did not receive a Zone A SRB for the April 25, 2001, enlistment because he had more than six years of active service, and pursuant to Article 3.C.4.a., to receive a Zone A SRB, the member cannot have completed more than six years of active service. If the applicant had been properly counseled prior to his 6th anniversary, he would have been told that, under Chapter 3.C.11.2. of the Personnel Manual, he was eligible to reenlist on his 6th anniversary for a Zone A SRB pursuant to ALCOAST 488/00. The applicant alleged that if he had been told about his eligibility for an SRB on his 6th anniversary, then he would have reenlisted for four years to receive a Zone A SRB, instead of reenlisting in April 2001 for a Zone B SRB. The record indicates that the applicant reenlisted for four years on April 25, 2001. Thus, it is reasonable to believe that he would have reenlisted for four years on his 6th anniversary, February 14, 2001, for a Zone A SRB had he been timely counseled. Therefore, his record should be corrected to show that he reenlisted for 4 years on February 14, 2001, for a Zone A SRB, instead of on April 25, 2001, for a Zone B SRB.

4. If the applicant had reenlisted for four years on February 14, 2001, instead of April 25, 2001, he would have been eligible to reenlist for a Zone B SRB on his 10th anniversary, pursuant to ALCOAST 306/04.

5. Accordingly, relief should be granted by voiding his April 25, 2001, reenlistment contract, and by reenlisting him for four years on his 6th active duty anniversary, February 14, 2001, for a Zone A SRB pursuant to ALCOAST 488/00. In accordance with paragraph four 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 April 25, 2001. In addition, relief should be granted by reenlisting him on his 10th anniversary, February 14, 2005, for a term of three, four, five, or six years, at his discretion, for a Zone B SRB pursuant to ALCOAST 306/04.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of BM1 XXXXXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is granted. The Coast Guard shall correct his record by removing his April 25, 2001, reenlistment contract as null and void, and by placing in his record a four-year reenlistment contract dated February 14, 2001, for a Zone A SRB pursuant to ALCOAST 488/00. In addition, the Coast Guard shall correct his record to show that he reenlisted on his 10th anniversary, February 14, 2005, for a term of three, four, five, or six years, at his discretion, for a Zone B SRB pursuant to ALCOAST 306/04. In accordance with paragraph four of Enclosure (1) to COMDTINST 7220.33, the Coast Guard will be entitled to recoup the Zone B SRB that he received for reenlisting on April 25, 2001.

The Coast Guard shall pay him any amount due pursuant to ALCOAST 488/00 and ALCOAST 306/04 as a result of these corrections.

Julia Andrews

H. Lee Einsel, Jr.

Kathryn Sinniger