

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2006-124

**XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX**

TECHNICAL AMENDMENT

This proceeding was conducted under the provisions of section 1552 of title 10 and in response to a request by the Judge Advocate General (JAG), dated March 8, 2007, to return the Final Decision in Docket No. 2006-124 to the Board for a technical amendment of the order in accordance with 33 C.F.R. § 52.73.

BACKGROUND

The applicant first enlisted in the Coast Guard on September 24, 1991. On June 15, 1998, he reenlisted for six years, through June 14, 2004, to receive a Zone B selective reenlistment bonus (SRB). On February 18, 2000, the applicant accepted a temporary commission as an officer, which made him ineligible to receive further payments of the SRB.¹ However, the commission was revoked on October 26, 2002.

Upon revocation of the applicant's commission, his prior six-year enlistment should have been reinstated.² Instead, he was required to sign a new four-year reenlistment contract dated October 26, 2002. In his application in BCMR Docket No. 2006-124, the applicant asked the Board to void the new four-year reenlistment contract and reinstate his 1998 six-year contract. He alleged that this correction would entitle him to further installments of his Zone B SRB for the period from October 26, 2002, through the end of the 1998 enlistment on June 14, 2004.

In the advisory opinion for BCMR Docket No. 2006-124, the JAG recommended that the Board grant relief. He stated that when the applicant's commission was revoked, he automatically reverted to enlisted status because the six-year enlistment was still in effect. Therefore, the applicant was not required to reenlist and there was no other authorized purpose for the October

¹ Article 3.C.5.8.a. of the Personnel Manual states that "[m]embers entering officer procurement programs who have reenlisted/extended for an SRB will have remaining installments suspended upon appointment in an officer procurement program (i.e., OCS, CWO appointment, etc.). The time spent in officer procurement program is creditable towards SRB payments. Members' SRB entitlement will terminate upon appointment."

² Under Article 1.A.3.c. of the Personnel Manual, when an officer's temporary commission is revoked, he or she reverts to his or her permanent status.

26, 2002, four-year contract. The JAG also stated that the applicant was legally entitled to the remaining Zone B SRB payments for his 1998 reenlistment although the SRB regulations did not expressly address the unusual circumstances of the applicant's case.³ The JAG recommended that the Board void the 2002 contract; reinstate the June 15, 1998, contract to make the applicant eligible for further SRB installments for his service from October 26, 2002, through June 14, 2004; and enter an indefinite reenlistment contract dated June 15, 2004, in the applicant's record.

In response to the advisory opinion, the applicant noted that on October 26, 2006, while his application was pending, he had signed an indefinite reenlistment⁴ contract because his October 26, 2002, contract expired. He also noted that he sold 60 days of leave on October 26, 2006, and did not want to lose the opportunity to sell leave. He asked that the sale of leave be shifted to the new contract dated June 15, 2004, that the Board would create if it granted relief.

In the Final Decision in Docket No. 2006-124, the Board found that the requested relief should be granted because the applicant's 1998 reenlistment was still in effect when his commission was revoked and so he "became eligible for the remaining SRB payments from his June 15, 1998, reenlistment." Therefore, the Board issued the following Order:

The Coast Guard shall remove his October 26, 2002, four-year reenlistment from his record as null and void. In addition, the Coast Guard shall correct his record to show that he signed an indefinite reenlistment contract on June 15, 2004. The Coast Guard shall pay him the SRB installments for which he was eligible as an enlisted member from October 26, 2002, to June 14, 2004, as a result of his June 15, 1998, six-year reenlistment as provided under ALDIST 046-98.

The Coast Guard shall also correct his record to show that, upon his discharge and indefinite reenlistment on June 15, 2004, he sold the same excess annual leave that he had sold upon his October 26, 2002,⁵ reenlistment, provided that such a sale of leave would not put him in a negative leave status. The Coast Guard shall ensure that his leave balances are adjusted, as necessary.

REQUEST FOR TECHNICAL AMENDMENT

In his request, the JAG stated that he was seeking a technical amendment of the Order because, after reviewing the applicant's pay records, the Coast Guard Personnel Command (CGPC) and the applicant "agreed that even with the relief ordered by the Board, the applicant is not entitled to additional SRB payments." The JAG stated that before accepting his temporary commission, the applicant had already received sufficient installments of the SRB to cover his months of enlisted service from October 26, 2002, through June 14, 2004. Therefore, he had received in advance all of the SRB payments to which he became entitled after October 26, 2002.

³ Article 3.C.5.8.b. of the Personnel Manual states that "[m]embers who do not successfully complete the officer procurement program and continue in an enlisted status in the same rate will have SRB installments resumed and are entitled to receive the SRB payments previously suspended." Article 3.C.5.8.c. states that "[f]or those temporary commissioned officers who revert to enlisted status in their original rating, who still have time remaining on their contract, the time served as a commissioned officer shall not count toward SRB entitlement."

⁴ Article 1.G.2.a.2. of the Personnel Manual states that "[p]ersonnel who have 10 or more years of active service shall be reenlisted for an indefinite period of time. Indefinite reenlistments are for an indefinite period up to a member's 30-year active duty anniversary date."

⁵ Note that the year 2002 was a typographical error since the applicant sold the leave on October 26, 2006.

In support of this argument, the JAG submitted an email from CGPC showing that of the applicant's six-year (72-month) 1998 contract, only 60 months were newly obligated service entitling him to SRB payments because he had reenlisted about 12 months before the end date of his prior enlistment. Of those potential 60 months of newly obligated service, the applicant spent 32 as a commissioned officer, leaving only 28 months of newly obligated service that he actually performed as an enlisted member. With an SRB multiple of 2 and base pay of \$1779.90, the applicant was entitled to a total SRB payment of \$8,306.20 for those 28 months of enlisted service. However, he received half of his projected total SRB in June 1998 and then an accelerated bonus payment in March 1999, so that he actually received \$10,679.40 in SRB payments before he became an officer. Thus, the applicant was actually paid for more months of newly obligated service than he actually performed as an enlisted member during the term of the contract.

The JAG concluded that if the Coast Guard implemented the Order, the applicant would not get any additional SRB payments, and his sale of leave would be based on his pay in June 2004, instead of September 2006, which would significantly reduce his payment for his leave because the applicant advanced to E-7 on June 1, 2006. Therefore, the JAG stated, it might be in the applicant's interest for the Board to rescind its Order. He recommended that the Board give the applicant the option of leaving his record uncorrected pursuant to the Order.

APPLICANT'S RESPONSE TO THE JAG'S REQUEST

In response to the JAG's request, the applicant asked the Board to leave his record as it was before the Order was issued since he is not due further SRB payments.

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 and 33 C.F.R. § 52.73.

2. The Board issued the Order in BCMR Docket No. 2006-124 based in large part upon the applicant's and the Coast Guard's claims that he was still due SRB payments for the period October 26, 2002, through June 14, 2004, which were being denied him because of the unusual circumstances of his interrupted 1998 enlistment and the lack of a regulation expressly entitling him to SRB installments upon the revocation of his commission. SRBs are paid only for months of service "newly obligated"⁶ and performed⁷ under a reenlistment contract. As the applicant's temporary commission did not void his 1998 enlistment contract,⁸ the Board determined in the Final Decision that the applicant was entitled to SRB payments for the months of

⁶ Under Article 3.C.7.1. of the Personnel Manual, SRB payments are only owed for months of service "newly obligated" under the contract—i.e. months that the member did not previously promise to serve under a prior reenlistment or extension contract.

⁷ Under Article 3.C.9. of the Personnel Manual, SRB payments are not paid and may be recouped if the applicant does not perform the promised enlisted service.

⁸ Personnel Manual, Article 1.A.3.c.

newly obligated service that he actually performed as an enlisted member under the 1998 contract. However, upon further review, CGPC has determined, and the applicant admits, that before he accepted his commission, the applicant received advance and accelerated SRB payments sufficient to account for all of the months of newly obligated service that he ultimately performed as an enlisted member under the 1998 contract.

3. The Board's Order was intended to affirm his legal entitlement to SRB payments for the period October 26, 2002, through June 14, 2004, and the Board did not know that the applicant had already received advance and accelerated payments representing most of the SRB to which he would have been entitled had he never accepted the temporary commission. As he had already received sufficient SRB payments to cover all the months of newly obligated service that he performed under the 1998 contract as an enlisted member, both before and after his commissioned service, the Order is essentially moot with respect to the applicant's SRB since the corrections therein will not entitle him to additional SRB payments.

4. In indefinitely reenlisting the applicant as of June 15, 2004, however, the Order voided his subsequent 2006 indefinite reenlistment and so required the correction of the date of his sale of leave from 2006 to 2004.⁹ Because the applicant's base pay in 2004 was lower than his base pay in 2006, following his advancement to E-7, the Board's Order, if implemented, would result in a lower payment for the sale of his leave. Had the applicant been entitled to additional SRB payments as a result of the Order, he would have benefited from the corrections in the Order despite this reduction, but since he is entitled to no further SRB payments, the Order apparently works only to his financial detriment, which was not the Board's intent.

5. The Board notes that if it rescinds its Order, the applicant's unauthorized four-year contract dated October 26, 2002, will remain in his record. However, that contract does not harm the applicant, and the Coast Guard does not object to its existence. Without it, there would be no contract covering his service from June 15, 2004, when his 1998 enlistment ended, to October 26, 2006, when he reenlisted. Therefore, although the applicant's 1998 reenlistment was still in effect on October 26, 2002, and was not due to end for about 20 months, the Board should rescind the entire Order and leave the October 26, 2002, contract in the applicant's record. The continuing existence of the October 26, 2002, contract will not deprive him of his right to the SRB payments for the 1998 contract.¹⁰

6. Accordingly, the Board finds that it would be in the interest of justice to rescind the Order issued in its Final Decision in BCMR Docket No. 2006-124.

⁹ Under Article 7.A.20.a. of the Personnel Manual, members are only allowed to sell unused accrued leave "on date of discharge, separation from active duty, or the date preceding the effective date of first extension of enlistment regardless of duration, to a maximum career total of 60 days."

¹⁰ Article 3.C.9.2. of the Personnel Manual states that a "member paid any reenlistment bonus who is discharged early for the purpose of immediate reenlistment is not required to refund the unearned portion of the bonus provided the term of the reenlistment is for a greater period than the obligated service remaining to be served."

ORDER

The Order of the Board in Final Decision in Docket No. 2006-124, upon the application of XXXXXXXXXXXXXXXXXXXX, USCG, for correction of his military record is rescinded. The Coast Guard shall not implement the Order in that Final Decision.

October 4, 2007
Date

Toby Bishop

Patrick B. Kernan

Dorothy J. Ulmer