

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-108

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 case on March 8, 2007, upon receipt of the completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 4, 2007, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

BACKGROUND

In BCMR Docket No. 2006-115, the applicant asked the Board to correct his record to show that he reenlisted on his 6th active duty anniversary, March 30, 2005, to receive a Zone B selective reenlistment bonus (SRB)¹ pursuant to ALCOAST 306/04. His record did not contain documentation of SRB counseling prior to his 6th anniversary, as required by Article 3.C.11.2. of the Personnel Manual, and the applicant had already received a Zone A SRB for reenlisting for four years on March 29, 2003.

The applicant also asked the Board to void a six-year extension contract he had signed on April 13, 2006, to accept transfer orders to a new unit beginning on June 20, 2006. In this extension contract, he acknowledged receiving SRB counseling and was promised a Zone B SRB based on 72 months of newly obligated service and calculated with a multiple of 2 under ALCOAST 332/05. The applicant also signed a Page 7 acknowledging the same counseling. The applicant apparently believed that he would have been entitled to a bigger Zone B SRB if he had been counseled about his opportunity to reenlist on his 6th anniversary, when the multiple applicable to SRBs for his rate (BM) was larger.

¹ 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." Those with at least 6 years of service but no more than 10 years are in "Zone B." Members may not receive more than one SRB per zone. Personnel Manual, Article 3.C.4.a.

In the advisory opinion for Docket No. 2006-115, the Judge Advocate General (JAG) recommended that the Board grant the requested relief because of the lack of SRB counseling prior to the applicant's 6th anniversary. On December 14, 2006, the Board issued the following order:

The military record of [the applicant] shall be corrected to show that he reenlisted for 3, 4, 5, or 6 years, at his discretion, on his 6th active duty anniversary to receive a Zone B SRB as provided under ALCOAST 306/04. The Coast Guard shall remove his April 13, 2006, extension contract from his record as null and void. The Coast Guard shall pay him the amount due as a result of this correction.

In February 2007, the JAG notified the Board that after someone “worked the numbers,” the applicant found that he would have been better off had he never filed his application because he would receive a bigger bonus for the 6-year extension calculated with a multiple of 2 than with a 6-year reenlistment calculated with a multiple of 2.5 since his SRB for a 6-year reenlistment had to be reduced by the amount of previously obligated service remaining on his four-year contract dated March 29, 2003. The JAG also stated that the applicant had refused to exercise his discretion under the Order by choosing a term of years for the new reenlistment contract.

APPLICANT'S NEW REQUEST AND ALLEGATIONS

In his new application, the applicant asked the Board to rescind its Order in Docket No. 2006-115 because if implemented it would put him “in a less advantageous position.” He stated that he filed his first application “based upon incorrect SRB/reenlistment counsel [he] received.”

The applicant also asked the Board to change the term of his April 13, 2006, extension from six years to just three months, which was the minimum he needed to accept his transfer orders. He alleged that he extended his enlistment on that date because he was advised that he would receive an SRB based on all six years of newly obligated service, but he has since been advised that his SRB would be based on only five years of service.² The applicant submitted a copy of the Page 7 that documented his SRB counseling on March 29, 2006, for the six-year extension contract that he signed on April 13, 2006. Both the Page 7 and the extension contract show that he was promised an SRB based on 72 months (six full years) of newly obligated service. The applicant also submitted a copy of his transfer orders dated February 13, 2006, which state that to accept them, the applicant needed but one year of obligated service upon reporting to his new unit.

The applicant stated that, knowing that his rate (BM) has been authorized an SRB multiple “for at least the past 3 years,” if he had been properly advised, he would have extended his enlistment, which was due to end on March 28, 2007, for the minimum required—three months—and then canceled that extension by reenlisting for six years on March 29, 2007, for a Zone B SRB.

² The first advice the applicant received was correct in that members who sign extension contracts when they are entitled to SRBs receive the SRBs based on all of the months of a new contract since the extension does not become operative until the member's prior enlistment ends, so the SRB is not normally reduced by previously obligated service. Therefore, the applicant's six-year extension did entitle him to an SRB based on all 72 months of newly obligated service.

VIEWS OF THE COAST GUARD

On August 7, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternate relief. The JAG stated that after a thorough review of the applicant's record, he had determined that the most advantageous correction the Board could make would be to rescind its Order in the applicant's prior case and leave in place his six-year extension dated April 13, 2006. The JAG stated that, contrary to the applicant's belief, the SRB he would receive for the April 13, 2006, extension contract would be based on all 72 months of newly obligated service. SRBs awarded for extension contracts are never reduced by previously obligated service since extensions by definition begin at the end of the prior enlistment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 20, 2007, the applicant responded to the advisory opinion and stated that had no objection to the alternate relief recommended by the JAG.

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's experience is a cautionary tale in just how many mistakes can be made with respect to SRB counseling. First, he was not properly counseled on his 6th anniversary; then, when he extended his enlistment for six years to obligate service for transfer, he was erroneously advised that he would have received a bigger SRB had he reenlisted on his 6th anniversary; and later, he was erroneously advised that his six-year extension would not actually entitle him to an SRB based on 72 months of newly obligated service.
3. The Board granted the requested relief in Docket No. 2006-115 in the belief that it was in the applicant's interest to do so. The applicant and the Coast Guard have determined that the relief requested and granted in that case is not in the applicant's financial interest. Because SRBs are affected by, *inter alia*, a member's basic pay, which depends upon his pay grade and years of service; his previously obligated service; authorized SRB multiples; and multiple "kickers" related to a member's competency codes, which are not usually apparent in the records received by the Board, applicants should read the SRB regulations very carefully and calculate their potential SRBs before filing their applications. In light of the insufficient counseling that the applicant in this case received on several occasions and the apparently detrimental effect that implementation of the Board's Order would have, the Board finds that it would be in the interest of justice to rescind its prior Order.

4. The applicant asked that the term of his April 13, 2006, extension contract be changed from six years to three months. He apparently made this request because he was mis-counseled that the six-year extension would entitle him to an SRB based on only five years of newly obligated service. However, his six-year extension will in fact entitle him to a Zone B SRB based on all 72 months of newly obligated service under the contract, assuming he does not leave active duty during those 72 months. Because an extension contract does not become operative until the member's prior enlistment ends, a member who signs an extension contract when he is entitled to an SRB normally receives the SRB undiminished by any previously obligated service remaining on a prior enlistment.³

5. Accordingly, the alternate relief recommended by the Coast Guard and accepted by the applicant should be granted in that the Board should rescind its prior Order and leave the applicant's six-year extension contract dated April 13, 2006, unchanged in his record.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

³ Personnel Manual, Article 3.C.7. However, if the new extension contract cancels a prior, shorter extension contract, the prior, shorter extension contract might constitute previously obligated service depending upon its term and purpose. Personnel Manual, Article 3.C.5.6.

ORDER

The Board's Order in BCMR Docket No. 2006-115 with respect to the application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record, is rescinded. The Coast Guard shall not implement the Order issued in Docket No. 2006-115. If the Coast Guard has already implemented any part of that Order, it shall remove the 6th anniversary reenlistment contract from his record as null and void and reinstate his April 13, 2006, six-year extension contract in his record.

The Coast Guard shall pay him any amount owed under ALCOAST 332/05 as a result of this Order.

Toby Bishop

Patrick B. Kernan

Adrian Sevier