

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-157

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 July 13, 2007, upon receipt of the applicant's completed application, and assigned it to staff members D. Hale and J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated March 13, 2008, is approved and 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, an operations specialist second class (OS2), asked the Board to correct his record to show that he is eligible to receive a Zone A selective reenlistment bonus (SRB)¹ for signing a six-year enlistment/reenlistment contract on April 1, 2007. He stated that on that date, he was a reservist serving on twelve-month active duty orders under Title 10. The orders ran from October 1, 2006, to September 30, 2007. He alleged that he was counseled that he was eligible to receive an SRB if he integrated into the regular Coast Guard at any point during the term of his Title 10 orders. This counseling was documented on a Page 7,² and the promised SRB was noted on the enlistment/reenlistment contract he signed to integrate into the regular Coast Guard on April 1, 2007. However, the Coast Guard denied his SRB on May 15, 2007, citing Article 1.G.1.a. of the Personnel Manual. Article 1.G.1.a. requires reservists serving on active duty to complete at least twelve months of continuous active duty before their subsequent

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. Personnel Manual, Article 3.C.

² A Page 7 (CG-3307, or Administrative Remarks) 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.

enlistment in the regular Coast Guard counts as a reenlistment on active duty. Because he had completed just six months of continuous active duty on April 1, 2007, instead of twelve months, he did not receive the promised SRB.

The applicant alleged that if he had been told that he would not be eligible for the SRB until October 1, 2007—when his twelve-month Title 10 active duty orders were due to expire—he would have remained a reservist and completed his year of active duty under the Title 10 orders and then integrated into the regular Coast Guard on October 1, 2007, for the SRB. If he had been told he could not do this, he would have enlisted for four years instead of six so that he would at least become eligible for an SRB sooner.

SUMMARY OF THE RECORD

On July 15, 2005, the applicant enlisted in the Coast Guard Reserve for a term of four years, through July 14, 2009. He had previously served on active duty in the U.S. Army from May 30, 1996, through October 9, 1998, and was a member of the Army Reserve from October 10, 1998, through January 26, 2004.

On October 1, 2006, the applicant was recalled to active duty in the Coast Guard Reserve under Title 10. On February 16, 2007, the Coast Guard Personnel Command (CGPC) granted his request to integrate into the regular Coast Guard. CGPC authorized the applicant to be discharged from the Reserve and enlisted in the regular Coast Guard on April 1, 2007, for a period of four years. On April 1, 2007, the applicant integrated into the regular Coast Guard by signing an “Enlistment/Reenlistment Document” (DD Form 4/1) for a six-year term running through March 31, 2013. The contract states that he is “entitled to a SRB bonus multiple of 1.5 for 72 months of newly obligated service.” On the same day, a Page 7 was placed in his record to document that he was counseled that he was eligible to reenlist for six years for an SRB pursuant to ALCOAST 283/06.

VIEWS OF THE COAST GUARD

On December 4, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended denying relief. The JAG stated that the Coast Guard needed to complete a statement of creditable service (SOCS)³ to determine the applicant’s active duty base date (ADBBD)⁴ before it could make any decision regarding the applicant’s SRB eligibility.

On February 19, 2008, the JAG submitted a supplemental advisory opinion in which he recommended that the Board deny the relief requested but grant alternate relief. The JAG stated that the applicant is not eligible to receive an SRB for reenlisting on April 1, 2007, because on that date he had never previously enlisted in the regular Coast Guard and he had served only five months on extended active duty under Title 10. Therefore, under Article 1.G.1.a. of the Person-

³ A Statement of Creditable Service verifies and validates all periods of prior military service (all branches) and sea service to adjust a member’s Pay Base Date (PBD), Active Duty Base Date (ADBBD), or cumulative sea service time. Chapter 2.A. of the Coast Guard Pay Manual.

⁴ A member’s active duty base date is the date the member entered active duty for pay purposes.

nel Manual, the contract he signed on April 1, 2007, is an enlistment contract, rather than a reenlistment contract. The JAG further stated that the Page 7 and contract dated April 1, 2007, in the applicant's record are erroneous in that they indicate that he was eligible for an SRB.

The JAG recommended that the Board grant alternate relief by offering the applicant the choice of voiding his April 1, 2007, enlistment contract and being discharged, or having his record corrected by deleting the errors on his enlistment contract to show that on April 1, 2007, he was eligible to enlist for a term of four years but was not eligible to receive an SRB.

APPLICANT'S RESPONSES TO THE VIEWS OF THE COAST GUARD

On December 11, 2007, the applicant submitted his response to the original advisory opinion of the Coast Guard. He disagreed with the recommendation therein, stating that when his request to integrate from the Reserve into the regular Coast Guard was approved, he "was assured that everything had been taken care of regarding my prior service time being credited and was shown in the Coast Guard Personnel Manual M1000.6A, Article 3.C.4.a, that all criteria for a Zone A SRB had been met." In further correspondence, he stated that the promise of an SRB was a significant factor in his decision to reenlist for six years, and that if he had known that he was not eligible for an SRB, he would have reenlisted for only four years.

On February 26, 2008, the applicant responded to the supplemental advisory opinion. He disagreed with the JAG's recommendation and stated that when he inquired about integration, he was told that he could request it at any time as long as his Title 10 orders had not yet expired. In addition, he was told that he was eligible to reenlist for six years and that he met all of the eligibility requirements for an SRB under Article 3.C.4.a. of the Personnel Manual. He alleged that Article 3.C.4.a. only required him to have served at least seventeen months on continuous active duty at any point in his military career and that he had met this criterion by serving more than seventeen months on continuous active duty in the Army. The applicant stated that after the initial payment of his SRB was denied, the yeoman at his unit "was not able to find any documentation that showed the amount of time that must be served while on Title 10 orders."

APPLICABLE LAW

Article 1.G.1. of the Personnel Manual is titled "Definition of Reenlistment." Article 1.G.1.a. states that a "reenlistment" on active duty is "the enlistment of any person who has previously served in the Regular Coast Guard shall be considered a reenlistment. The enlistment of Coast Guard Reserve personnel who are serving on extended active duty and who have served on extended active duty for twelve months or more shall be considered a reenlistment."

Article 3.C.4.a. states that to receive a Zone A SRB, the member must meet the following criteria:

1. Reenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple.
2. Have completed 17 months continuous active duty (including extended active duty as a Reserve) at any point in their military career. The 17 months continuous active duty need not have been completed immediately prior to the reenlistment or extension.

3. Have completed not more than 6 years active service on the date of reenlistment or the date on which the extension becomes operative.
4. Be serving in pay grade E-3 or higher on active duty in a rating that is designated as eligible for an SRB multiple.
5. Reenlist or extend enlistment in the Regular Coast Guard for a period of at least 3 full years.
6. Have not previously received a Zone A SRB.
7. Attain eligibility prior to the termination of a multiple for that particular rating.
8. Meet any additional eligibility criteria the Commandant may prescribe.

Article 3.C.3. requires that all personnel with ten years or less of active service who reenlist for any period be counseled on the SRB program and sign a Page 7 outlining the effect that their reenlistment will have on their SRB entitlement.

ALCOAST 283/06 was issued on May 15, 2006, and was in effect from July 1, 2006, through July 15, 2007. Under ALCOAST 283/06, OS2s were eligible for a Zone A SRB calculated with a multiple of 1.5. The next SRB authorization, ALCOAST 304/07, which went into effect on July 16, 2007, and was still in effect on October 1, 2007, did not authorize a Zone A SRB for members in the OS rating.

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 application was timely filed.

2. The JAG recommended that the Board deny the requested relief because, under to Article 1.G.1.a. of the Personnel Manual, his contract was an enlistment contract, rather than a reenlistment contract, because on April 1, 2007, he had never previously enlisted in the regular Coast Guard and he had not served on extended active duty as a reservist for at least twelve months. The applicant stated that he was never told about this requirement, which is not listed with the SRB eligibility criteria under Article 3.C.4.a. of the Personnel Manual. He alleged that he was told that he could receive an SRB by reenlisting for six years on April 1, 2007. His record supports his allegation as it contains both a DD Form 4/1 "Enlistment/Reenlistment Document" and a Page 7 dated April 1, 2007, stating that he was eligible for an SRB.

3. Under Article 3.C.4.a. of the Personnel Manual, only members who reenlist (or extend an enlistment) for at least three years are eligible for a selective *reenlistment* bonus (SRB). Article 1.G.1.a. defines a "reenlistment" on active duty as the enlistment of someone who has previously enlisted in the regular Coast Guard or the enlistment into the regular Coast Guard of a Coast Guard reservist who is serving on continuous active duty and has been doing so for at least twelve months. On April 1, 2007, the applicant was a reservist who had been serving on active duty for only six months. Thus, the DD Form 4/1 "Enlistment/Reenlistment Document" he signed that day was not a reenlistment contract but an enlistment contract. Therefore, the notation on that contract stating that he was eligible for an SRB and the SRB counseling documented on the Page 7 are clearly erroneous.

4. The applicant has proved by a preponderance of the evidence that he was erroneously promised an SRB for signing a six-year enlistment contract on April 1, 2007. Although the applicant asked to be paid the SRB he was erroneously promised, when an applicant proves that he has received erroneous SRB counseling, the Board's policy is not to offend the regulations by fulfilling the erroneous promise, but to return the applicant to the position he would have been in had he been properly counseled.⁵

5. The applicant alleged that if he had known that he would not be eligible for an SRB until October 1, 2007, he would have waited until his Title 10 active duty orders expired on that date and reenlisted for an SRB. However, by October 1, 2007, ALCOAST 283/06 had expired, and the new SRB authorization, ALCOAST 304/07, did not authorize an SRB multiple for members in the OS rating. Therefore, by the time a contract signed by the applicant would count as a reenlistment contract, in accordance with the definition of "reenlistment" under Article 1.G.1.a. of the Personnel Manual, his rating was no longer authorized an SRB.

6. The applicant stated that if he had known he could not get an SRB for integrating in the Coast Guard, he might have signed only a four-year contract with the hope of becoming eligible for an SRB at a later date, such as his sixth anniversary on active duty, October 5, 2009. The Coast Guard stated that the contract is voidable because of the erroneous promise of the SRB and that the Board should offer the applicant the options of being expeditiously discharged or having the term of his enlistment changed from six years to four years.

7. The Board agrees with the Coast Guard that the enlistment contract is voidable because of the erroneously promised SRB. If the applicant had been properly counseled on April 1, 2007, he might have remained a reservist serving on Title 10 active duty orders or he might have enlisted for four years, instead of six. Therefore, the Board finds that he should be able to choose either of these options after receiving counseling about them.

8. Accordingly, partial relief should be granted. After counseling the applicant about his options under the Board's order, the Coast Guard should offer him the following options:

- (a) Correct the term of his April 1, 2007, enlistment contract from six to four years and remove the notation regarding his entitlement to an SRB; or
- (b) Remove his April 1, 2007, enlistment contract as null and void, be expeditiously released from active duty, and correct his record to show that he remained a reservist serving on active duty under Title 10 orders from October 1, 2006, to the date of his expeditious discharge.⁶

⁵ See *Denton v. United States*, 204 Ct. Cl. 188, 199-200 (1975) (stating that under *Kimmel v. United States*, 196 Ct. Cl. 579 (1971), a BCMR applicant is entitled to "nothing more than placement in the same position he would have been had no error been made").

⁶ The Board notes that no SRB multiple is currently authorized for members in the OS rating under ALCOAST 304/07 but that if one is authorized by the time the Board's order is implemented in this case and if the applicant chooses option (b), he might then be eligible to reenlist for an SRB.

ORDER

The application of OS2 xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows: Within ninety (90) days of the date of this decision, the Coast Guard shall counsel him about his options under this order and, at his discretion, correct his record by either

- (a) correcting the term of his April 1, 2007, enlistment contract (DD Form 4/1) to show four years, instead of six years, and removing from block 8.b. the comment concerning his entitlement to an SRB; or
- (b) removing the April 1, 2007, enlistment contract as null and void, expeditiously releasing him from active duty, and correcting his record to show that he remained a reservist serving on Title 10 active duty orders from October 1, 2006, to the date of his expeditious release from active duty pursuant to this order.

If after counseling he makes no election pursuant to this order, his record shall be corrected as stated in option (a), above.

Charles P. Kielkopf

Kenneth Walton

Eric J. Young