

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-168

XXXXXXXXXXXX.
xxxxxxx, MK1/E-6

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 27, 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 February 7, 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, a machinery technician first class (MK1), asked the Board to correct his record to show that he is eligible to receive a selective reenlistment bonus (SRB)¹ calculated with a multiple of 1.5 for signing a six-year reenlistment contract on July 7, 2005. He alleged that he signed a Page 7² indicating that he was eligible to receive an SRB with a multiple of 1.5, and that his reenlistment contract also indicates that he was eligible for a 1.5 multiple. He stated, however, that the SRB he received for signing the July 7, 2005, reenlistment contract was calculated with a multiple of 1.0. The applicant alleged that prior to signing the reenlistment contract, he contacted his servicing personnel office (SPO) regarding his bonus, and was told that he was eligible to reenlist for six years to receive a Zone B SRB calculated with a multiple of 1.5. After receiving a smaller bonus than he expected, he alleged that he once again contacted his

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, Articles 3.C. and 3.C.4.a.

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.

SPO and was told that he was entitled to only a multiple of 1.0. The applicant stated that “knowing beforehand that I would only get a multiple of 1.0 may have swayed my decision of reenlisting.”

SUMMARY OF THE RECORD

On September 19, 1995, the applicant enlisted in the regular Coast Guard for a term of four years, through September 18, 1999. On June 21, 1999, a Page 7 was placed in his record documenting that he was eligible to reenlist for an SRB with a multiple of 2.0. On June 21, 1999, he signed a six-year reenlistment contract, through June 20, 2005, to receive a Zone A SRB.

On March 23, 2005, the applicant signed an 11-month extension contract to obligate service for transfer. On July 7, 2005, a Page 7 was placed in his record documenting that he was eligible to extend or reenlist for up to six years, to receive an SRB with a multiple of 1.5. On July 7, 2005, he also signed a six-year reenlistment contract, which states that “MBR IS ELIGIBLE FOR SRB MULTIPLE OF 1.5.” The applicant was eligible to reenlist on July 7, 2005, because he was within 90 days of his 10th active duty anniversary, September 19, 2005.³

VIEWS OF THE COAST GUARD

On December 6, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended denying the requested relief. The JAG stated that although the record supports the applicant’s allegations that he was improperly counseled that his SRB would be calculated with a multiple of 1.5, he was eligible only for an SRB calculated with a multiple of 1.0 pursuant to ALCOAST 306/04. Although the JAG recommended denying the requested relief, he suggested that the Board offer the applicant the option of voiding the reenlistment contract and being expeditiously discharged, or having his record corrected to show that he was eligible for an SRB with a multiple of 1.0. The JAG noted that if the applicant chooses to be discharged, he will be responsible for reimbursing the Coast Guard for any SRB payments already received pursuant to his July 7, 2005, reenlistment contract.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 6, 2007, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. The Chair did not receive a response.

APPLICABLE LAW

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, MK2s were eligible for a Zone B SRB calculated with a multiple of 1.0. An MK2 in Zone A was eligible for an SRB calculated with a multiple of 1.5.

³ 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. Personnel Manual, Article 3.C.5.9.

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, MK2s were eligible for a Zone B SRB calculated with a multiple of 0.5.

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.

2. The applicant requested an oral hearing before the Board. The Chair, acting pursuant to 33 C.F.R. § 52.51, denied the request and recommended disposition of the case without a hearing. The Board concurs in that recommendation.

3. The applicant's record contains a Page 7 and a reenlistment contract, both dated July 7, 2005, stating that he was eligible to receive an SRB calculated with a multiple of 1.5 for signing a six-year reenlistment contract. This is erroneous. On July 7, 2005, ALCOAST 306/04 was in effect and MK2s were eligible for a Zone B SRB calculated with a multiple of 1.0. The Board notes that if the applicant had waited to reenlist on his 10th anniversary, September 19, 2005, he would have been eligible only for an SRB with a multiple of 0.5 under ALCOAST 332/05.

4. The applicant has proved by a preponderance of the evidence that he was erroneously promised an SRB with a multiple of 1.5 for signing a six-year reenlistment contract on July 7, 2005. Therefore, the contract is voidable. When an applicant proves, as the applicant does here, that he has received erroneous SRB counseling, the Board's policy is not to offend the regulation by fulfilling the erroneous promises, but to return the applicant to the position he would have been in had he been properly counseled.

5. The Board finds that if the applicant had been properly counseled on July 7, 2005, he would have had the following options in lieu of reenlisting for six years for an SRB with a multiple of 1.0:

- (a) be discharged on May 20, 2006 (the expiration date of his enlistment);
- (b) reenlist for a term of 3, 4, or 5 years, instead of 6 years, for an SRB with a multiple of 1.0 under ALCOAST 306/04.

6. Accordingly, the relief requested by the applicant should be denied, but the Coast Guard should counsel the applicant in accordance with the findings above and allow him to maintain the status quo or to choose one of the options that would have been available to him on July 7, 2005. The Board notes that if the applicant elects to be expeditiously discharged, the Coast Guard would legally be entitled to recoup from him any unearned SRB payments made pursuant to his July 7, 2005, reenlistment contract.

ORDER

The application of MK1 XXXXXXXX, xxxxxxxx, USCG, for correction of his military record is denied, except that within 90 days of the date of this decision, the Coast Guard shall provide him with proper SRB counseling concerning his options under this order, and at his discretion, he shall be allowed to choose from one of the following:

- (a) maintain his six-year July 7, 2005, contract with the SRB calculated with a multiple of 1.0 under ALCOAST 306/04;
- (b) be expeditiously discharged, in which case the July 7, 2005, reenlistment contract shall be null and void, and an extension contract shall be created to cover his service from July 7, 2005, to the date of discharge;
- (c) reenlist on July 7, 2005, for a term of 3, 4, or 5 years, instead of 6 years, for an SRB calculated with a multiple of 1.0 under ALCOAST 306/04.

If the applicant makes no election pursuant to this Order, no correction shall be made to his record and he shall remain eligible for the SRB calculated with a multiple of 1.0 under ALCOAST 306/04.

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