

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-166

XXXXXXXXXXXX
xxxxxxx; CWO4 (retired)

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 14, 2008, 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 April 16, 2009, 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, who retired from active duty on September 30, 2008, asked the Board to correct his record by replacing his October 14, 1981, 13-month extension contract, which he signed to obligate sufficient service to accept overseas transfer orders, with a six-year reenlistment contract, to make him eligible for a Zone A selective reenlistment bonus (SRB) under ALDIST 340/81. He alleged that his record contains no documentation of SRB counseling in 1981 and that "to the best of my knowledge I was not counseled on the SRB program so I did not know that there was a SRB for my rate or I would have reenlisted for six years."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on July 31, 1978, for a term of four years, through July 30, 1982. From October 14, 1981, through July 17, 2000, he signed the following reenlistment and extension contracts:

October 14, 1981	13 months
July 22, 1983	19 months
March 29, 1985	3 years
March 28, 1988	12 months
August 9, 1988	6 months
March 8, 1989	4 years
January 25, 1993	6 years
March 13, 1997	19 months

August 25, 1998. 10 months
July 17, 2000. 24 months

The applicant was appointed a chief warrant officer (CWO) on September 1, 2000, and so was not required to sign any additional enlistment or extension contracts. His record does not contain documentation of SRB counseling in 1981.

VIEWS OF THE COAST GUARD

On December 1, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant relief. The JAG stated that the applicant was not properly counseled regarding his eligibility for an SRB when he signed his extension contract on October 14, 1981.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 8, 2008, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant responded on August 3, 2008, and agreed with the Coast Guard's recommendations.

APPLICABLE LAW

ALDIST 340/81 was released on October 1, 1981, and it allowed members to receive an SRB if they reenlisted or extended their current enlistments for at least three years. Under ALDIST 340/81, SK2s were eligible for a Zone A SRB calculated with a multiple of 1.0.

Commandant Instruction 7220.13E (Administration of the Reenlistment Bonus Program) was released on May 4, 1979, and was in effect when ALDIST 340/81 was distributed. Section 1.d.(1) of Enclosure (1) provided the criteria for Zone A SRB eligibility. It stated the following, in part:

(1) Zone A Eligibility. [To be eligible, a member must meet all of the following criteria:]

(a) Be serving on active duty in pay grade E-3 or higher in a military specialty designated [in the SRB announcement].

(b) Must have completed at least 21 months of continuous active duty, other than active duty for training, but not more than six years of total active duty, immediately preceding date of reenlistment or operative date of extension.

(c) The extension of enlistment or reenlistment must be at least three years and, when combined with prior active duty, must yield a total of at least six years of active duty. [Emphasis in original]

- (d) Has not previously received a Zone A SRB, nor previously enlisted, reenlisted, or extended (extensions that have become effective) beyond six years of active duty. . . .

Section 1.g. of Enclosure (1) stated that in order to “attain the objectives of the SRB program, each potential reenlistee who would be eligible for SRB must be informed of their eligibility and the monetary benefits of the SRB program. It is expected that the reenlistment interview, held approximately six months before expiration of enlistment, will provide the potential reenlistee with complete information on SRB.”

PREVIOUS BCMR DECISION

In BCMR Docket No. 69-97, the applicant asked the Board to correct his record to show that he was eligible to receive an SRB for signing a six-year extension contract on February 14, 1982. He stated that if he had been properly counseled and made aware of the provisions of ALDIST 004/82, he “would have taken the necessary steps to secure [a] zone ‘B’ bonus.” There was nothing in the applicant’s record to show that he was counseled regarding his eligibility for an SRB. The Board recommended granting relief, despite the fact that the Personnel Manual in effect at the time required only that members *reenlisting* receive SRB counseling. The delegate of the Secretary¹ wrote a concurring decision which responded to the Coast Guard’s argument that it was not required to counsel the applicant because he was signing an *extension* contract and not a reenlistment contract. The delegate stated that Congress had intended both reenlistees and extendees to benefit from the SRB program and that the Coast Guard had presented no rational basis for counseling one group but not the other. She concluded that the “Coast Guard erred in drafting COMDTINST 7220.13E when it failed to require mandatory counseling for potential extendees. . .” BCMR Docket No. 69-97, delegate of the Secretary’s Concurring Decision, at 3.

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 over this matter pursuant to the provisions of 10 U.S.C. § 1552. The application was timely under *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”).

2. The applicant did not receive an SRB for signing an extension contract on October 14, 1981, and stated that “to the best of my knowledge I was not counseled on the SRB program so I did not know that there was a SRB for my rate or I would have reenlisted for six years.” He alleged that if he had been counseled regarding his eligibility for an SRB, then he would have signed a six-year reenlistment contract for the SRB, instead of signing a 13-month extension contract for which he did not receive an SRB. The JAG agreed that the applicant was not properly counseled regarding his SRB eligibility and recommending granting relief.

¹ When the Final Decision in Docket No. 69-97 was issued, the delegate of the Secretary was the Deputy General Counsel for the Department of Transportation.

3. As he alleged, the applicant's record contains no documentation of SRB counseling in 1981. However, COMDTINST 7220.13E, which was in effect in 1981, did not require documentation of SRB counseling in a member's record, as is the case today under Article 3.C.3. of the Personnel Manual. Therefore, the lack of documentation of SRB counseling in the applicant's record is not probative of whether he was counseled. However, in 1981, the applicant was extending his enlistment to obligate service for transfer, and COMDTINST 7220.13E did not require extendees to be counseled about their SRB eligibility at all. Given this regulation and the applicant's statement that "to the best of [his] knowledge [he] was not counseled" about his SRB eligibility in 1981, the Board finds that the preponderance of the evidence indicates that the applicant was not counseled about his SRB eligibility when he signed the 13-month extension contract on October 14, 1981.

4. In BCMR Docket No. 69-97, the delegate of the secretary held that the "Coast Guard erred in drafting COMDTINST 7220.13E when it failed to require mandatory counseling for potential extendees on an equal basis with potential reenlistees." The Board and the delegate of the Secretary have granted relief in several similar cases based on the delegate's finding that the Coast Guard had a duty to counsel extendees, as well as reenlistees, about their SRB eligibility in the early 1980s, despite the lack of such a requirement in COMDTINST 7220.13E.² As in those prior cases, the Board finds that the Coast Guard had a duty to counsel the applicant about his SRB eligibility when he signed the extension contract on October 14, 1981, and so the lack of such counseling was administrative error.

5. The applicant alleged that if he had been told of his SRB eligibility in 1981, he would have reenlisted for six years to receive a Zone A SRB under ALDIST 340/81. The Board notes in this regard that the applicant had no break in service whatsoever during his military career even though a member may have a three-month break in service with no loss of eligibility for an SRB.³ The lack of any break in service during this period—as well as the applicant's approximately 30 years of continuous service—demonstrates his long-term commitment to the Coast Guard. Furthermore, the applicant has signed a sworn statement to the effect that he would have signed a six-year reenlistment contract for an SRB in 1981 if he had been properly counseled. Therefore, the Board finds that the preponderance of the evidence indicates that the applicant would have signed a six-year reenlistment contract, instead of a 13-month extension contract, on October 14, 1981, if had he been properly counseled regarding his eligibility for an SRB under ALDIST 340/81.

6. Accordingly, the applicant's request should be granted. The Coast Guard should correct his record by removing his October 14, 1981, 13-month extension contract from his record and replacing it with a six-year reenlistment contract, for a Zone A SRB pursuant to ALDIST 340/81.

² Docket No. 1999-022 (DOT BCMR, Sept. 9, 1999), Docket No. 1998-008 (DOT BCMR, Aug. 27, 1998), Docket No. 1997-123 (DOT BCMR, Sept. 11, 1998), and Docket No. 1997-062 (DOT BCMR, Sept. 23, 1998).

³ Article 1.d.(3)(b) of Enclosure (1) to COMDTINST 7220.13E.

ORDER

The application of XXXXXXXXXXXX, xxxxxxxx, USCG (Retired), for correction of his military record is granted as follows:

The Coast Guard shall remove his October 14, 1981, 13-month extension contract from his record as null and void and shall replace it with a six-year reenlistment contract dated October 14, 1981, for a Zone A SRB pursuant to ALDIST 340/81.

The Coast Guard shall pay him any amount due as the result of this correction.

Diane Donley

Robert S. Johnson, Jr.

Kathryn Sinniger