

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-028

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 after receiving the applicant's completed application on November 19, 2008, 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 August 20, 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, an information systems technician, second class (IT2), asked the Board to correct his record to show that he is eligible to receive a Zone A selective reenlistment bonus (SRB)¹ calculated with a multiple of 1.5 for signing a six-year reenlistment contract on September 25, 2008. He alleged that he was counseled that he would receive an SRB with a multiple of 1.5, and that this promise was written on his reenlistment contract. However, the SRB he received was a Zone B SRB calculated with a multiple of 1.0.

In support of his allegations, the applicant submitted a copy of his reenlistment contract dated September 25, 2008, which clearly states: "MEMBER IS ELIGIBLE FOR SRB ZONE A, MULTIPLE 1.5. 72 MONTHS OF NEWLY OBLIGATED SERVICE. MEMBER COMPLIES WITH WEIGHT STANDARDS." He also submitted statements from the yeoman who counseled him regarding his SRB entitlements (YN T) and the yeoman who approved his reenlistment contract (YN2 M). YN T stated the following:

¹ SRBs are a reenlistment incentive offered to members who possess certain critical skills. SRBs vary according to the member's base pay, the number of months of service newly obligated by the new reenlistment or extension of enlistment contract, and the need of the Coast Guard for personnel with the critical skills, which is reflected in the "multiple" of the SRB authorized for the member's rating. Authorized SRB multiples for the critical ratings are 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.

In the month of September I counseled [the applicant] on his SRB entitlements with guidance of YN2 [S]. I did this with the assumption his prior service was not included in the calculation. I told [the applicant] that his SRB would be a zone A with a multiple of 1.5. I did not add his prior Army service into the equation.

YN2 M stated the following:

On September 29, 2008, I was asked by YN2 [S] to approve a reenlistment contract for [the applicant] in Direct Access. Without seeing the reenlistment contract that was to start on September 25, 2008, I went ahead and approved the contract.

SUMMARY OF THE RECORD

On October 21, 2004, the applicant enlisted as a seaman in the regular Coast Guard for a term of four years, through October 20, 2008. He had previously served four years in the Army. He attended IT "A" School and advanced to IT3 on November 18, 2005. From that date until the applicant's sixth active duty anniversary in 2006, the IT3 rating was not authorized an SRB.

The applicant advanced to IT2 on February 1, 2007. On September 25, 2008, a month before his enlistment would end, the applicant reenlisted for six years. The Coast Guard's Direct Access database and the copy of the reenlistment contract submitted by the applicant both show that he was promised a Zone A SRB calculated with a multiple of 1.5 under ALCOAST 286/08, even though he was in Zone B because he had more than six years of active duty. The copy of the record submitted by the Coast Guard does not contain a Page 7² documenting SRB counseling on September 25, 2008.

VIEWS OF THE COAST GUARD

On April 6, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended denying the requested relief and granting alternative relief. The JAG stated that although the record supports the applicant's allegations that he was improperly counseled that he would receive a Zone A SRB with a multiple of 1.5, he was eligible only for a Zone B SRB calculated with a multiple of 1.0 pursuant to ALCOAST 286/08. The JAG argued that the applicant was eligible only for a Zone B SRB because he had completed more than seven years of active duty when he reenlisted, and pursuant to Article 3.C.4.b.3. of the Coast Guard Personnel Manual, Zone B SRBs are available to members who have completed at least six but not more than ten years of active service. Although the JAG recommended denying the relief requested by the applicant, he recommended 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 a Zone B 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

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.

Coast Guard for any unearned SRB payments already received pursuant to his September 25, 2008, reenlistment contract.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 10, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond. The applicant responded on April 23, 2009, but did not state if he agreed with the JAG's recommendation. He did, however, note that contrary to the JAG's assertion, a Page 7 documenting SRB counseling was indeed prepared on September 25, 2008. He provided a copy of this Page 7, which states in pertinent part:

I have reviewed Article 3.C.12 of the Personnel Manual entitled "*Frequently Asked SRB Questions and Answers*." I have been informed that:

My current Selective Reenlistment Bonus (SRB) multiple is 1.5 and is listed in ALCOAST 286/08, which has been made available for my review.

APPLICABLE LAW

Article 3.C.3. of the Coast Guard Personnel Manual requires that all personnel with 10 years or less of active service who reenlist or extend for any period shall be counseled on the SRB program and shall sign a Page 7 outlining the effect that particular action has on their SRB entitlement.

Article 3.C.4.a.3. of the manual states that to receive a Zone A SRB, a member must "[h]ave completed not more than 6 years active service on the date of reenlistment or the date on which the extension becomes operative." Article 3.C.4.b.3. states that to receive a Zone B SRB, a member must "[h]ave completed at least six but no more than ten years of active service on the date of reenlistment or the operative date of the extension."

Article 3.C.7.2. states the following regarding calculation of SRBs:

When computing the additional obligated service for which SRB can be paid, a fraction of a month will be rounded up to the whole month. For example, members discharged 2 months and 10 days prior to the expiration of their enlistment, for the purpose of immediate reenlistment, will have their SRB payment reduced by 3 months. An exception to this rule, however, is members who are discharged no more than 7 days early because their period of active obligated service expires on a Friday, Saturday, Sunday, or holiday. In such cases, members will be considered to have completed the full enlistment for SRB computation.

Article 3.C.9.1. of the manual states that members who are discharged prior to completing the period of service for which they were paid an SRB shall have all paid but unearned bonus recouped.

Article 3.C.12. of the manual, entitled "*Frequently Asked SRB Questions and Answers*," includes the following questions and answers:

Q4. How can I become eligible for a Zone A SRB?

A4. The Zone A SRB is paid to petty officers and designated E-3s serving in critical ratings or skills who extend their enlistment or reenlist for a minimum of 3 years. Ratings or skills deemed critical for the purpose of assigning an SRB multiple are announced in SRB ALCOAST. Members must 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. Members must have completed not more than 6 years active service on the date of reenlistment or the date on which the extension becomes operative. Sorry, only one Zone A SRB to a customer!

Q5. How can I become eligible for a Zone B SRB?

A5. The Zone B SRB is paid only to petty officers second class and above (or E-4s who have been approved to change rate from E-5) serving in critical ratings or skills who extend their enlistment or reenlist for a minimum of 3 years. Ratings or skills deemed critical for the purpose of assigning an SRB multiple are announced in SRB ALCOAST. They must have at least 6 years but not more than 10 years active service at the time of reenlistment or the date their extension becomes operative. Again, they must have completed at least 17 months continuous active service at any point in their military career. Only one Zone B SRB to a customer also!

Under ALCOAST 286/08, which was in effect from July 16, 2008, through July 15, 2009, IT2s in Zone A were authorized an SRB calculated with a multiple of 1.5, while those in Zone B were authorized an SRB calculated with a multiple of 1.0.

Under ALCOAST 353/09, which went into effect on July 16, 2009, IT2s in Zone B are authorized an SRB calculated with a multiple of 0.5.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on 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 has proved by a preponderance of the evidence that although he was in Zone B, the Coast Guard erroneously promised him a Zone A SRB calculated with a multiple of 1.5 for reenlisting for six years on September 25, 2008. The applicant was ineligible for a Zone A SRB in 2008 because he had more than six years of active duty and so was in Zone B. *See* Personnel Manual, Articles 3.C.4.a.3. and 3.C.4.b.3. Under ALCOAST 286/08, IT2s in Zone B were authorized an SRB multiple of 1.0. However, despite the ALCOAST, the Coast Guard erroneously promised the applicant the Zone A SRB with a multiple of 1.5 and documented the promise in his electronic record, on his reenlistment contract, and on the required Page 7 SRB counseling entry. All three records were prepared by and in the control of the Coast Guard during the reenlistment process, and each preparation offered the Coast Guard an opportunity to discover and correct its mistake, but it failed to do so. Moreover, the yeoman who made the erroneous promise has admitted his errors. The applicant relied upon the Coast Guard's experts in making his reenlistment decision. He should not have to bear the brunt of the Coast Guard's error.

3. Therefore, the Board finds that the Coast Guard committed an error and a significant injustice against the applicant by refusing to pay him the SRB with the 1.5 multiple as promised in his reenlistment contract and by instead paying him a smaller SRB with a multiple of 1.0. The Board will exercise its authority and grant equitable relief by ordering the Coast Guard to pay the applicant the SRB calculated with a multiple of 1.5, pursuant to the reenlistment contract, because “equity delights to do justice and not by halves.” *Caddington v. United States*, 147 Ct. Cl. 629, 634 (1959); see *Boyer v. United States*, 81 Fed. Cl. 188, 197 n3 (2008) (noting that “a correction board possesses a greater level of discretion when it is asked for equitable relief regarding a putative injustice, than when relief related to factual or legal error is requested.”). Furthermore, “[w]hen a board does not act to redress clear injustice, its decision is arbitrary and capricious and must be overturned upon review by this court.” *Boyer*, 81 Fed. Cl. at 194. And “when a correction board fails to correct an injustice clearly presented in the record before it, it is acting in violation of its mandate.” *Yee v. United States*, 206 Ct. Cl. 388, 397 (1975). Under the circumstances of this case, making the applicant’s contract voidable so that he could be discharged and have the smaller SRB he has been paid recouped, as recommended by the Coast Guard, would simply exacerbate the injustice already done to him. The Secretary, acting through the Board, “is obligated not only to properly determine the nature of any error or injustice, but also to take ‘such corrective action as will appropriately and fully erase such error or compensate such injustice.’” *Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (quoting *Caddington*, 147 Ct. Cl. at 632).

4. The Board notes that in reenlisting the applicant on September 25, 2008, almost a whole month before his enlistment ended, the yeoman did him a disservice because SRBs are not paid for months of service remaining to run on prior contracts (“previously obligated service”) and are only paid for months of service newly obligated under the new contract. Therefore, the applicant’s six-year (72-month) contract dated September 25, 2008, would entitle him to a bonus based on only 71 months of newly obligated service because the days from September 25, 2008, to October 20, 2008, would be calculated as an entire month of previously obligated service. See Personnel Manual, Article 3.C.7.2.

5. Accordingly, relief should be granted. The Coast Guard should correct the applicant’s record by changing the date of his six-year reenlistment contract from September 25, 2008, to October 20, 2008, and should pay him a Zone B SRB calculated with the multiple of 1.5 he was promised.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of IT2 xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct his record by changing the date of his six-year reenlistment contract from September 25, 2008, to October 20, 2008, and shall pay him a Zone B SRB calculated with a multiple of 1.5. The Coast Guard shall pay him any amount due as a result of this correction.

Francis H. Esposito

Evan R. Franke

Darren S. Wall