

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-117

XXXXXXXXXXXXXX
xxxxxxx, FS2/E-5

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 April 6, 2009, 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 December 4, 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, a foodservice specialist, second class (FS2), alleged that he was not counseled regarding his eligibility for a Zone A selective reenlistment bonus (SRB)¹ on his 6th active duty anniversary, April 6, 1999.² Although he complained about the Coast Guard's failure to counsel him on his 6th anniversary, the applicant did not expressly ask the Board to correct his record to show that he reenlisted on his 6th anniversary.

The applicant did, however, ask the Board to correct his record by replacing his January 31, 2002, six-year reenlistment contract with a five-month extension contract. He alleged that when he signed the January 31, 2002, reenlistment contract to obligate sufficient service for a

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. Coast Guard Personnel Manual, Articles 3.C. and 3.C.4.a.

² Within 90 days prior to 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. The member must be counseled about this opportunity, and the counseling must be documented on a Page 7. Personnel Manual, Article 3.C.5.9.

transfer to a new unit, he was counseled that he was eligible to receive a Zone B SRB. However, he was not eligible because he was still an FS3 at the time, and only FS2s and above are eligible for Zone B SRBs. He alleged that if he had known that he was not eligible for a Zone B SRB, he would not have reenlisted for six years but would have instead signed a five-month extension contract, which was the minimum amount of service he needed to obligate for the transfer. The applicant stated that correcting his January 31, 2002, contract from a six-year reenlistment to a five-month extension will allow him to receive a larger Zone B SRB for the six-year reenlistment contract that he signed on April 4, 2003, for his 10th active duty anniversary. In support of his allegation that he was erroneously counseled that he would receive a Zone B SRB, the applicant submitted a copy of his January 31, 2002, six-year reenlistment contract, which states, "MEMBER ENTITLED TO ZONE B SRB."

SUMMARY OF THE RECORD

On February 23, 1999, the applicant enlisted in the Coast Guard as an FS3 for a term of four years, through February 22, 2003. His 6th anniversary on active duty was April 6, 1999, because he had previously served nearly six years in the U.S. Army. There is no Page 7 in his record to document SRB counseling on his 6th anniversary.

In December 2001, the applicant received orders to transfer to a new unit, Station Port Canaveral, Florida, on July 1, 2002. On January 31, 2002, he signed a six-year reenlistment contract, and the contract states, "MBR ENTITLED TO ZONE B SRB." There is no Page 7³ in the record to document that the applicant was counseled regarding his SRB eligibility. The applicant did not receive this SRB.

The applicant's 10th active duty anniversary was April 6, 2003, and on April 4, 2003, he signed a six-year reenlistment contract and received a Zone B SRB calculated with 14 months of newly obligated service. His SRB was calculated with only 14 months of service because it was reduced by the service previously obligated under his January 31, 2002, six-year reenlistment contract. The applicant signed an indefinite reenlistment contract on May 28, 2008.⁴

VIEWS OF THE COAST GUARD

On August 18, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant relief. The JAG stated that the Coast Guard failed to counsel the applicant regarding his eligibility for a Zone A SRB on his 6th active duty anniversary, and noted that it is believable the applicant would have reenlisted on the anniversary if he had been properly counseled. However, the JAG did not recommend that the Board reenlist the applicant on his 6th anniversary. The JAG also stated that the applicant was erroneously counseled that he was eligible to receive a Zone B SRB for signing a six-year reenlistment contract on January 31, 2002. The JAG recommended that the Board grant relief by cancelling

³ 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.

⁴ Members who have 10 or more years of active service reenlist for an indefinite period of time. Indefinite reenlistments are for an indefinite period up to a member's 30-year active duty anniversary date. Article 1.G.2.A. of the Personnel Manual.

the January 31, 2002, six-year reenlistment contract and correcting the record to show that the applicant signed a two-month extension contract on January 31, 2002.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 21, 2009, the Chair 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 25, 2009, and agreed with the Coast Guard's recommendation.

APPLICABLE LAW

Under COMDTINST 7220.33, which contained the SRB regulations until they were entered in Article 3.C. of the Personnel Manual in October 2002, and Article 3.C.5.9. of the Personnel Manual, commanding officers are authorized to effect early discharge and reenlist members within three months prior to their 6th and 10th active duty anniversaries for the purpose of qualifying for an SRB if one is authorized for their rating.

Under both COMDTINST 7220.33 and Article 3.C.4. of the Personnel Manual, third class petty officers in pay grade E-4 (such as an FS3) are eligible for Zone A SRBs if one is authorized for their skill rating under the ALCOAST in effect. However, to be eligible for a Zone B SRB, a member must be at least a second class petty officer in pay grade E-5 (such as an FS2).

COMDTINST 7220.33 and Article 3.C.11. of the Personnel Manual require that a Page 7 entry regarding counseling about SRB eligibility be made in a member's record within three months prior to his or her 6th and 10th anniversaries and whenever the member reenlists or extends an enlistment.

ALDIST 290/98 was issued on November 25, 1998, and was in effect from November 25, 1998, through June 14, 1999. Under ALDIST 290/98, FS3s were eligible for a Zone A SRB calculated with a multiple of 2.0.

ALCOAST 127/01 was issued on March 27, 2001 and was in effect from May 1, 2001, through January 31, 2002. ALCOAST 127/01 states that after October 1, 2001, the Zone B SRB multiple authorized for members in the FS rating was 1.0.

ALCOAST 329/02 was issued on July 3, 2002, and was in effect from August 5, 2002, through June 30, 2003. Under ALCOAST 329/02, FS2s were eligible for a Zone B SRB calculated with a multiple of 1.0.

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.⁵

2. The applicant alleged that he was not counseled about his eligibility to reenlist on his 6th active duty anniversary, April 6, 1999, to receive an SRB. There is no Page 7 in his record to document that he was counseled, as was required under COMDTINST 7220.33. Therefore, the applicant has proved by a preponderance of the evidence that he was not properly counseled about his eligibility for a Zone A SRB on that day. The Board finds that if he had been counseled, he might well have elected to be discharged and immediately reenlisted on his 6th anniversary to receive a Zone A SRB calculated with a multiple of 2.0 pursuant to ALDIST 290/98.

3. The Board notes that because the applicant had enlisted in the Coast Guard for four years on February 23, 1999, he had already obligated service through February 22, 2003, and SRBs are only paid for whole months of service newly obligated under the new reenlistment contract.⁶ Therefore, if he had reenlisted for four years on his 6th anniversary—from April 6, 1999, through April 5, 2003, his Zone A SRB calculated with a multiple of 2 would have been based on only one whole month of newly obligated service—from February 23, 2003, through March 22, 2003. If he had elected to reenlist for six years on his 6th anniversary—from April 6, 1999, through April 5, 2005, his Zone A SRB would have been calculated based on 25 months of newly obligated service.

4. The applicant also alleged that the Coast Guard erroneously counseled him that he was eligible to receive a Zone B SRB for signing a six-year reenlistment contract on January 31, 2002. The contract clearly shows that he was promised the SRB even though he was not eligible because he was still an FS3, and under COMDTINST 7220.33 and Article 3.C.4 of the Personnel Manual, only second class petty officers in pay grade E-5 and above are eligible for Zone B SRBs. The Coast Guard erred when it counseled the applicant that he was eligible to receive a Zone B SRB for signing a six-year reenlistment contract on January 31, 2002. Therefore, the January 31, 2002, reenlistment contract should be removed from the applicant's record as null and void.

5. If the applicant had reenlisted for four years on his 6th anniversary—from April 6, 1999, through April 5, 2003—he would not have needed to reenlist or extend his original enlistment in 2002, and his 6th anniversary four-year reenlistment would have ended the day before his 10th anniversary, April 6, 2003, allowing him to reenlist for six years on his 10th anniversary (as he in fact did) but to receive an SRB based on all 72 months of newly obligated service under the 10th anniversary contract. Therefore, he would have received, as explained in finding 3, a Zone A SRB as an FS3 calculated with a multiple of 2 based on one month of newly obligated service for his 6th anniversary contract and a Zone B SRB as an FS2 calculated with a multiple of 1.0 based on 72 months of newly obligated service for his 10th anniversary contract. The applicant's monthly basic pay as an FS3 in 1999 was \$1,428.60⁷ and his basic pay as an FS2 in 2003 was

⁵ Although the application was not filed within three years of the applicant's failure to receive the SRB he was promised on January 31, 2002, it is considered timely under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that, under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

⁶ COMDTINST 7220.33; Personnel Manual, Art. 3.C.7.

⁷ See <http://www.defenselink.mil/specials/paycharts/99BasPay.html>.

\$2,151.90.⁸ Therefore, under the SRB calculation provided in COMDTINST 7220.33 and Article 3.C.7. of the Personnel Manual, which show that a member's SRB equals his monthly basic pay, multiplied by the SRB multiple authorized under the ALCOAST in effect, multiplied the number of months of service newly obligated under the contract, and divided by 12, if the applicant had reenlisted for four years on this 6th anniversary and for six years on his 10th anniversary, his Zone A SRB would be \$238.10 and his Zone B SRB would be \$12,911.40 for a total of \$13,149.50.

6. On the other hand, if the applicant had reenlisted for six years on his 6th anniversary—from April 6, 1999, through April 5, 2005—he would not have needed to reenlist or extend his original enlistment in 2002, and he would have received a Zone A SRB based on 25 whole months of newly obligated service, from the end of his original enlistment, February 23, 2003, through March 22, 2005. Then his six-year reenlistment on his 10th anniversary would have entitled him to a Zone B SRB based on 48 months of newly obligated service from the end of his 6th anniversary contract, April 6, 2005, through April 5, 2009. Therefore, under the SRB calculation provided in COMDTINST 7220.33 and Article 3.C.7. of the Personnel Manual, if the applicant had reenlisted for six years on his 6th anniversary and for six years on his 10th anniversary, his Zone A SRB would have been \$5,952.50 and his Zone B SRB would be \$8,607.60, for a total of \$14,560.10.

7. The Coast Guard erred twice in this case, first by failing to counsel the applicant about his SRB eligibility on his 6th active duty anniversary and then by erroneously promising him a Zone B SRB on January 31, 2002, which induced him to reenlist for six years on that date and greatly reduced the SRB he received for reenlisting on his 10th anniversary in 2003. Therefore, the Board finds that the applicant's record should be corrected so that he will be entitled to the greatest total SRB that he could have received had he been properly counseled about his SRB eligibility in 1999 and 2002.

8. Accordingly, relief should be granted by (a) correcting the applicant's record to show that he signed a six-year reenlistment contract on his 6th active duty anniversary, April 6, 1999, to receive a Zone A SRB in accordance with ALDIST 290/98 and (b) removing his January 31, 2002, six-year reenlistment contract from his record as null and void. These corrections will increase the amount of the Zone B SRB to which the applicant is entitled under ALCOAST 329/02 for his April 4, 2003, six-year reenlistment and will also entitle him to the Zone A SRB under ALDIST 290/98.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁸ See <http://www.militarypay.com/military-pay-chart/2003-military-pay.html>.

ORDER

The application of XXXXXXXXXX, xxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct his record to show that he reenlisted for six years on his 6th active duty anniversary, April 6, 1999, to receive a Zone A SRB. The Coast Guard shall also remove the January 31, 2002, six-year reenlistment contract from his record as null and void.

The Coast Guard shall pay him the amounts due under ALCOAST 290/98 and ALCOAST 329/02 as a result of these corrections.

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