

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-118

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 March 30, 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 January 14, 2010, 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 gunner's mate, second class (GM2/E-5), asked the Board to correct his record to make him eligible for a Zone B selective reenlistment bonus (SRB) for reenlisting on July 12, 2005.¹ The applicant alleged that he reenlisted on July 12, 2005, and was eligible for a Zone B SRB calculated with a multiple of 2 under ALCOAST 306/04, but was not advised of the SRB. In addition, the applicant noted that under ALCOAST 283/06, he was eligible for a Zone B SRB calculated with a multiple of 1.5 on his tenth active duty anniversary, March 19, 2007, and was not counseled about his eligibility on that date either. The applicant stated that he discovered his eligibility and these counseling errors only after the fact, on November 6, 2008, when he was reenlisting and was told that he was no longer eligible for an SRB because his tenth anniversary had passed.

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 17 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.

SUMMARY OF THE RECORD

The applicant served on active duty in the Marine Corps from June 27, 1994, through March 20, 2002.

The applicant enlisted in the Coast Guard Reserve on April 23, 2003. He was assigned to a pay billet in the Selected Reserve at Port Security Unit (PSU) 311. A Reserve drill schedule in the Direct Access database shows that the applicant drilled regularly on inactive duty training (IDT) at the PSU. During the year before he enlisted on active duty on July 12, 2005, duty orders and the drill schedule show that he performed the following duty:

June 1 – July 30, 2004: Orders (undated) in the applicant's record show that he was ordered to report for active duty for special work (ADSW) for these 60 days.

Aug. 3 – 5, 2004: The applicant drilled full days on IDT.

Aug. 6 – 20, 2004: Orders dated August 6, 2004, which show that the applicant was ordered to report to the PSU for fifteen days of active duty training (ADT) for annual training from August 6 to 20, 2004. (Conflicting orders dated July 26, 2004, which show that the applicant was to report for ADT from August 6 to 22, 2004, were apparently superseded.)

Aug. 21 – 27, 2004: The applicant drilled seven full days on IDT.

Sep. 3 – 30, 2004: Orders dated October 5, 2004, show that the applicant was ordered to report to PSU 311 for active duty under Title 10 for this 28-day period.

Dec. 6 – 8, 2004: The applicant drilled three full days on IDT.

Jan. 13 – 14, 2005: The applicant drilled two full days on IDT.

Jan. 16 – 21, 2005: The applicant drilled six full days on IDT.

Feb. 26, 2005: The applicant drilled one full day on IDT.

Mar. 14 – 15, 2005: The applicant drilled two consecutive half-days as a readiness management period (RMP).

Mar. 16 – 18, 2005: The applicant drilled three full days on IDT.

Mar. 21 – 25, 2005: The applicant drilled for a full five-day week on IDT.

Mar. 28 – Apr. 1, 2005: The applicant drilled for a full five-day week on IDT.

Apr. 4 – 8, 2005: The applicant drilled for a full five-day week on IDT.

Apr. 11 – 16, 2005: The applicant drilled for six full days on IDT.

Apr. 17, 2005: The applicant drilled for one-half day as a RMP.

Apr. 18 – 29, 2005: The applicant drilled for twelve consecutive days on IDT.

May 1 – June 15, 2005: Orders dated May 13, 2005, show that the applicant was ordered to report to PSU 311 for active duty under Title 10 for these 46 days. (Conflicting orders dated March 17, 2005, that would have placed the applicant at Gitmo (Guantanamo Bay) from April 1 to December 30, 2005, were apparently superseded).

On July 12, 2005, the applicant enlisted as a GM2 in the regular Coast Guard for four years, through July 11, 2009. There is no Page 7 documenting SRB counseling pursuant to this enlistment contract in his record.

Because of his prior active duty service in the Marine Corps and the Coast Guard Reserve, the applicant's adjusted active duty base date is March 19, 1997. Therefore, his tenth active duty anniversary was March 19, 2007. There is no Page 7 documenting SRB counseling for the applicant's tenth anniversary in his record.

The applicant signed an indefinite reenlistment contract on November 6, 2008.

VIEWS OF THE COAST GUARD

On August 26, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny the requested relief and grant alternative relief. The JAG stated that the applicant did not meet the SRB eligibility criterion under Article 3.C.4.b.1. of the Personnel Manual on July 12, 2005, because he had not been discharged or released from active duty within the three-month period leading up to that date. Under Article 3.C.4.b.1., the first criterion for a Zone B SRB is that the member must “[r]eenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple.”

The JAG stated, however, that the applicant was eligible for a Zone B SRB on his tenth anniversary under ALCOAST 283/06 and that the lack of a Page 7 documenting SRB counseling for the anniversary supports the applicant's allegation that he was not timely counseled. Therefore, the JAG recommended that the Board grant relief by reenlisting the applicant for six years on his tenth anniversary, March 17, 2007, for a Zone B SRB calculated with a multiple of 1.5 under ALCOAST 283/06.

RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the advisory opinion, the applicant alleged that he was told that he was serving on active duty under Title 10 orders during the year before he enlisted in the regular Coast Guard on July 12, 2005. He did not realize that he was “being paid from so many different accounts until he began to have problems receiving his pay on time.” Therefore, he alleged, he should have been offered the Zone B SRB under ALCOAST 306/04 because he was released from active duty during the three months before July 12, 2005.

APPLICABLE REGULATIONS

Article 1.G.1. of the Personnel Manual is entitled “Definition of Reenlistment” and paragraph (a) states, “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 of 12 months or more shall be considered a reenlistment.”

Figure 3-1 in the Reserve Personnel Manual (RPM) shows that for a reservist, there are two main types of “active duty”: “active duty for training” (ADT), which includes initial active duty training (IADT) and annual training (ADT-AT), and “active duty other than for training” (ADOT), which includes active duty for special work (ADSW), extended active duty (EAD), and involuntary recall under Title 10.

Article 3.A.4.b. of the RPM states that EAD is “active duty for reservists who serve in an Active component duty status. It is used to provide Reserve support to fill occasional personnel shortages in specific pay grades, ratings or specialties when active duty Coast Guard resources fall short of requirements.”

Article 3.B.2. of the RPM states that ADT and ADSW “may be performed consecutively or non-consecutively. All other types of active duty shall be performed consecutively.”

Article 3.C.3. of the Personnel Manual states that members who reenlist or extend their enlistments shall be counseled on a Page 7 regarding their SRB eligibility.

Article 3.C.4.b. of the Personnel Manual states that to receive a Zone B SRB, members 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 at least 6 but not more than 10 years active service on the date of reenlistment or the operative date of the extension.
4. Be serving in pay grade E-5 or higher. Personnel who are changing rate, as approved by the Commandant, are eligible as an E-4 provided they were E-5 or higher immediately prior to changing rate.
5. Reenlist or extend enlistment in the Regular Coast Guard for a period of at least 3 full years, provided the reenlistment or extension, when added to existing active service, will provide a total active duty of no less than 10 years.
6. Have not previously received a Zone B 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.5.2. of the Personnel Manual states that “[m]embers with exactly 10 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone

B multiple in effect for their rating if they are otherwise eligible.” Article 3.C.11.2. states that members must be counseled about their eligibility for an SRB within the three-month period before their tenth anniversary, and that counseling must be documented on a Page 7. Article 3.C.5.9. states that

[c]ommanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expiration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB. In such cases, SRB payments will be reduced by any portion of unserved service obligation. Commanding officers shall ensure that such personnel are fully qualified to receive an SRB and advise them that all periods of unserved obligated service will be deducted from their bonus entitlement. Any such discharges shall be under authority of Article 12.B.12., indicating discharge for the purpose of immediate reenlistment at the Convenience of the Government.

ALCOAST 306/04, which was in effect from August 1, 2004, to July 31, 2005, authorized a Zone B SRB multiple of 2 for members in the GM2.

ALCOAST 283/06, which was in effect from July 1, 2006, to July 15, 2007, authorized a Zone B SRB multiple of 1.5 for members in the GM2 rating.

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 alleged that he was eligible for a Zone B SRB on July 12, 2005, and that he should have been counseled about his eligibility and received an SRB for the four-year contract he signed on that date. He argued that his July 12, 2005, contract met the criteria for a Zone B SRB because he had spent the prior year serving on active duty and had been discharged from active duty within the three-month period before July 12, 2005.

3. Article 3.C.4.b. of the Personnel Manual states that to be eligible for a Zone B SRB, a member must be reenlisting in the Coast Guard. Article 1.G.1.a. of the Personnel Manual defines “reenlistment” as “[t]he 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 of 12 months or more shall be considered a reenlistment.” The applicant had never previously served in the Regular Coast Guard. Nor had he, as a reservist, been serving on extended active duty for 12 months on July 12, 2005. Therefore, the Board finds that the applicant was enlisting, rather than reenlisting, in the regular Coast Guard on July 12, 2005, and so he was not eligible for an SRB on that date.

4. The Board acknowledges that the applicant performed a large amount of full-time duty during the year prior to his enlistment in the regular Coast Guard. His IDT drill schedule and the ADSW and Title 10 orders in his record show that of the 365 days from July 12, 2004, through July 11, 2005, he performed 166 full days of duty and 3 half days of duty. However, the

applicant's records also show that he was clearly not serving on extended active duty that year because most of his full-time duty consisted of days in which he performed two IDT drills, rather than active duty, and because his duty was not consecutive or continuous throughout the year. Although the applicant performed a substantial amount of full-time duty during the year before he enlisted, his July 12, 2005, contract is not a reenlistment contract given the definition of "reenlistment" in Article 1.G.1.a. of the Personnel Manual.

5. As the applicant alleged and the JAG admitted, however, the applicant was eligible for a Zone B SRB on his tenth active duty anniversary, March 17, 2007. The lack of a Page 7 documenting counseling about his eligibility for a SRB on the anniversary proves by a preponderance that he was not properly counseled, as required by Article 3.C.11.2. of the Personnel Manual. Under Articles 3.C.5.2. and 3.C.5.9., the applicant was entitled to reenlist for a Zone B SRB on his tenth anniversary. Since the applicant signed an indefinite reenlistment contract on November 6, 2008, the Board finds that if the applicant had been counseled about his eligibility for a Zone B SRB on his tenth anniversary, he would have reenlisted for six years to receive the maximum SRB for which he was eligible.

6. Accordingly, the Board finds that partial relief should be granted by reenlisting the applicant for six years on his tenth active duty anniversary for a Zone B SRB in accordance with ALCOAST 283/06.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of GM2 xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part. The Coast Guard shall correct his record to show that he reenlisted for six years on his tenth active duty anniversary to receive a Zone B SRB in accordance with ALCOAST 283/06.

Donna M. Bivona

Evan R. Franke

James E. McLeod