

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-209

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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 July 25, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 22, 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 alleged that when he reenlisted for four years (48 months) on February 12, 2009, he was told that he would receive a Zone A selective reenlistment bonus (SRB) calculated with 47 months of newly obligated service under the contract. However, he alleged, he received an SRB based on only 11 months of newly obligated service. The applicant submitted copies of his reenlistment contract and a Page 7 documenting the SRB counseling he received on February 12, 2009, and both documents state that his SRB would be based on 47 months of newly obligated service. The Coast Guard paid him the SRB based on only 11 months of newly obligated service because in February 2008, the applicant had signed a 36-month extension contract to obligate service to accept transfer orders.

The applicant further alleged that he was miscounseled when he extended his enlistment for 36 months in February 2008. He alleged that the acting executive petty officer (XPO) of his unit, Station Destin, told him that after he advanced to MK2, he would be able to cancel the extension before it became operative to reenlist for a full four-year SRB. Therefore, after he advanced to MK2 on December 1, 2008, he asked to reenlist for the SRB and was allowed to do so on February 12, 2009. However, when his SRB was finally paid in July 2009, it was about \$12,000 less than he expected. A YN2 at his unit investigated and informed him that the 36-month extension contract he had signed in 2008 had counted as previously obligated service and reduced the SRB he received for reenlisting for four years on February 12, 2009. He was directed to Article 3.C.5.6. of the Personnel Manual, which states that only extension contracts

that are less than two years (24 months) in length can be canceled by reenlisting without reducing the SRB for the reenlistment contract.

SUMMARY OF THE RECORD

On March 11, 2003, the applicant enlisted in the Coast Guard for six years, through March 10, 2009.

In February 2008, the applicant received transfer orders from Station Destin, Florida, to a unit in Boston. At the time, the applicant was an MK3. MK3s were not eligible for SRBs under ALCOAST 304/07, which was then in effect, and his record contains no Page 7 documenting any SRB counseling. The transfer orders required the applicant to have four years of obligated service upon reporting to his new unit on May 19, 2008. Because his original enlistment would end on March 10, 2009, to accept the transfer orders, he signed a three-year extension contract, obligating service from March 11, 2009, through March 10, 2012.¹

On December 1, 2008, the applicant advanced to MK2, and that rating was eligible for an SRB under ALCOAST 286/08. On February 12, 2009, he reenlisted for four years, through February 11, 2013. The contract states the following in block 8: “Member is entitled to a Zone A SRB with a multiple of 1.7 based upon 47 months [of] newly obligated service.” A Page 7 in the applicant’s record dated February 12, 2009, states, “My SRB will be computed based on 47 months of newly obligated service.” However, because only the months from the end of the three-year extension, March 11, 2012, through February 11, 2013, were newly obligated under the reenlistment contract, the applicant was paid a Zone A SRB based on 11 months of newly obligated service.

VIEWS OF THE COAST GUARD

On December 18, 2009, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant alternate relief.

The JAG stated that when the applicant reenlisted for four years (48 months) on February 12, 2009, he had previously obligated 37 of the months of service under a prior contract—one month remained to run on his original, six-year enlistment, and the applicant had signed a three-year extension contract in 2008. Therefore, only 11 of the 48 months were newly obligated service. The JAG noted that it is possible that the applicant would not have reenlisted had he known that his Zone A SRB would be based on only 11 months of newly obligated service.

The JAG recommended that the Board backdate the applicant’s reenlistment from February 12, 2009, to December 12, 2009,² to “allow the applicant to take full advantage of the SRB

¹ The Board notes that the extension contract should have extended his enlistment for 39 months, rather than 36, to give him four full years of obligated service upon reporting to his new unit in May 2008.

² The Board staff noted that the correction recommended by the JAG would reduce the applicant’s Zone A SRB from one based on 11 months to one based on 9 months of newly obligated service. Upon inquiry, the JAG’s office stated that the date, December 12, 2009, was in error as the intention was to recommend moving the date of the contract to the applicant’s 6th active duty anniversary, March 11, 2009, rather than to December 12, 2009.

program. If approved, the applicant should be advised that his 10th year active duty anniversary date is 11 March 2013, a few months after his newly suggested EOE date of 9 [sic] December 2012.”

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 5, 2010, the applicant responded to the views of the Coast Guard by noting that he agreed with the JAG’s recommendation.

APPLICABLE REGULATIONS

Under ALCOAST 307/04, which was in effect from July 16, 2007, to July 15, 2008, there was no SRB multiple authorized for MK3s. Under ALCOAST 286/08, which was in effect from July 16, 2008, to July 15, 2009, the applicant, after his advancement to MK2 on December 1, 2008, was eligible for a Zone A SRB calculated with a multiple of 1.7.

Article 3.C.3. of the Personnel Manual states, “All personnel with 10 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign an Administrative Remarks, CG-3307 (page 7), service record entry outlining the effect that particular action has on their SRB entitlement.”

Article 3.C.5.6. of the Personnel Manual states the following:

Extensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment in accordance with Article 1.G.19. Members should be informed that their SRB entitlement will be based only on newly acquired obligated service. For example, a member cancels a 3-year extension to reenlist for 6 years; the member will only be paid SRB entitlement for the additional 3 years of service. An exception to this rule is made for extensions of 2 years or less, or multiple extensions (each of which is 2 years or less in length), required of a member for transfer, training, advancement, or tuition assistance. These extensions may be canceled prior to their operation date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement.

Article 3.C.7.1. of the manual states that SRBs are calculated by multiplying the authorized SRB multiple for the member’s rating by the member’s monthly basic pay and by the number of months of service newly obligated under the contract and dividing the product by 12, as shown below.

$$\frac{\text{SRB multiple} \times \text{monthly basic pay} \times \text{months newly obligated service}}{12}$$

12

Under Article 4.B.6.a. of the manual, a member with less than six years of service must have sufficient obligated service to complete a full tour of duty at a new unit before accepting transfer orders. According to Article 4.A.5.b., a full tour of duty at the applicant’s new station in Boston is 4 years.

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 submissions, 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 miscounseled about his SRB eligibility and promised an SRB based on 47 months of newly obligated service when, in fact, his 48-month reenlistment added only 11 months of service not previously obligated by him under an earlier contract. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.³ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."⁴ For the reasons stated below, the Board finds that the applicant has proved by a preponderance of the evidence that he was miscounseled about the SRB rules and is entitled to some relief.

3. The applicant alleged that he was miscounseled in February 2008 when he received his transfer orders to Boston. He alleged that he was told that although he was not then eligible for an SRB as an MK3, he would be able to cancel the three-year extension after he advanced to MK2 by reenlisting to receive an SRB. His allegation of miscounseling is supported by the lack of a Page 7 in his record documenting SRB counseling.⁵ Under Article 3.C.5.6. of the Personnel Manual, members may cancel an extension within the three months prior to the operative date by reenlisting for an SRB, and so the applicant was allowed to do so on February 12, 2009. However, as that regulation also states, a canceled extension counts as previously obligated service and the resulting SRB is based only on months of newly obligated service. An exception is made for extensions of two years or less, but under Articles 4.B.6.a. and 4.A.5.b. of the Personnel Manual, the applicant could not accept his transfer orders without signing at least a three-year extension.⁶

4. The reenlistment contract and Page 7 dated February 12, 2009, clearly show that the applicant was told that reenlisting for four years would entitle him to an SRB based on 47 months of newly obligated service. In fact, the applicant had already obligated service through March 10, 2012, under his three-year extension contract. Therefore, the four-year reenlistment

³ 33 C.F.R. § 52.24(b); *see* Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁵ Under Article 3.C.3. of the Personnel Manual, members must be counseled about their SRB eligibility on a Page 7 whenever they sign a reenlistment or extension contract.

⁶ *See* note 1, above.

through February 11, 2013, added only 11 new months of military service obligation to his record, and his SRB was calculated with only 11 new months of service. Thus, the applicant has proved that he was miscounseled about his SRB eligibility on February 12, 2009.

5. Article 3.C.5.6. of the Personnel Manual clearly states, as an example, that the SRB of a member reenlisting for six years who already has three years of previously obligated service will be based on only three years of newly obligated service. Therefore, the Board does not see how the applicant's SRB counselor, who should have known this rule, or the applicant himself, who had signed the three-year extension less than a year earlier, could have thought that his 48-month reenlistment would entitle him to an SRB "based upon 47 months [of] newly obligated service," as stated on the reenlistment contract.

6. The alternative relief recommended by the JAG was a mistake because backdating the applicant's February 12, 2009, reenlistment by two months, to December 12, 2008, would entitle him to a Zone A SRB based on just nine months of newly obligated service from the end of his three-year extension to December 11, 2012, instead of February 11, 2013. Therefore, part of the 11-month SRB he has already received would be recouped. The applicant's SRB would also be recouped if the Board removed the four-year reenlistment from his record.

7. The applicant has not stated what he would have done on February 12, 2009, had he known that reenlisting for four years would entitle him to a Zone A SRB based on just 11 months of newly obligated service. As the JAG stated, it is possible that the applicant would not have reenlisted on February 12, 2009, had he known that his Zone A SRB would be based on only 11 months of newly obligated service. However, the applicant's sixth anniversary on active duty—the end of Zone A for him—was March 11, 2009, so he could only receive a Zone A SRB by reenlisting during the three months before that date. The applicant may at some time in the future be eligible for a Zone B SRB if one is authorized for his rating on his tenth active duty anniversary, March 11, 2013. However, under ALCOAST 621/09, all SRB multiples have been cancelled since December 1, 2009, due to the high retention rates of enlisted members.

8. Had he been properly counseled, the applicant might have elected to wait one month to reenlist on his sixth active duty anniversary, March 11, 2009, which would have entitiled him to an SRB based on 12 months of newly obligated service; and he may also have elected to reenlist for five years or the maximum of six years, from March 11, 2009, through March 10, 2015, which would have entitiled him to an SRB based on three years (36 months) of newly obligated service, from March 11, 2012, through March 10, 2015. Because the applicant was clearly miscounseled about his SRB eligibility on February 12, 2009, the Board finds that he should be recounseled and have all of the options that were available to him on February 12, 2009.

9. Accordingly, relief should be granted by offering the applicant SRB counseling and, at his discretion, one of the following options:

(a) He could elect to have the date of his four-year reenlistment changed to March 11, 2009, so that he would be eligible for a Zone A SRB based on 12 months of newly obligated service.

(b) He could elect to have the date of his reenlistment changed to March 11, 2009, and the term of his reenlistment changed to five or six years, at his discretion, so that he would be eligible for a Zone A SRB based, respectively, on 24 months or 36 months of newly obligated service.

(c) He could elect to have his February 12, 2009, reenlistment contract removed from his record as null and void, in which case the three-year extension would be reinstated and the 11-month SRB he has already received would be recouped.

If after SRB counseling, the applicant does not elect one of these three options, the status quo should prevail and no correction should be made to his record.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows. Within 60 days of the date of this decision, the Coast Guard shall counsel him about SRBs and about his options under this order and shall offer him the following options:

(a) He may elect to have the date of his four-year reenlistment changed to March 11, 2009, so that he will be eligible for and entitled to a Zone A SRB based on 12 months of newly obligated service.

(b) He may elect to have the date of his reenlistment changed from February 12, 2009, to March 11, 2009, and the term of his reenlistment changed from four years to five years or six years, at his discretion, so that he will be eligible for and entitled to a Zone A SRB based, respectively, on 24 months or 36 months of newly obligated service.

(c) He may elect to have his February 12, 2009, reenlistment contract removed from his record as null and void, in which case the three-year extension shall be reinstated and the 11-month SRB he has already received may be recouped.

If following SRB counseling, he does not elect one of these three options, the status quo shall prevail and no correction shall be made to his record.

The Coast Guard shall pay him any amount due as a result of any correction made to his record pursuant to this order.

Evan R. Franke

James E. McLeod

Adrian Sevier