

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

Application for the Correction of
the Coast Guard Record of:

**FINAL DECISION
BCMR Docket No. 2009-258**

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SUMMARY OF THE RECORD

The applicant asked the Board to order the Coast Guard to pay him the selective reenlistment bonus (SRB) that is cited on his June 29, 2009, six-year reenlistment contract. The applicant alleged that he was authorized to reenlist because of the obligated service requirements for tuition assistance he had been granted. However, the Coast Guard, citing ALCOAST 043/03, told him that he did not need additional obligated service to accept the tuition assistance and so was not authorized to reenlist. Therefore, the Coast Guard refused to pay him the SRB. The applicant alleged that under the regulations in COMDTINST 5215.6E, ALCOAST 043/03 was automatically canceled one year after it was issued, in 2004. Instead, the applicant alleged, the regulation in COMDTINST 1500.10B, issued in 1992, was valid, and it required one year of obligated service to receive tuition assistance. Therefore, because his prior enlistment was due to end on January 5, 2010, he needed to obligate additional service to accept the tuition assistance in June 2009 and, under Article 3.C.5.5. of the Personnel Manual, was authorized to reenlist for a longer period to receive an SRB.

The applicant's military record shows that he enlisted for 4 years on January 9, 2001; extended that enlistment for 1 year; and on January 6, 2006, reenlisted for 4 years for a Zone A SRB through January 5, 2010. In addition, the Coast Guard has entered the June 29, 2009, 6-year reenlistment contract in his record with a promise of a Zone B SRB multiple of 1.2 under ALCOAST 353/09 (although ALCOAST 286/08 was then in effect) but has not paid him the Zone B SRB.

The Judge Advocate General (JAG) of the Coast Guard recommended that the Board deny the applicant's request. The JAG noted the regulations cited by the applicant in ALCOAST 043/03 and COMDTINST 1500.10B but offered no explanation as to why the ALCOAST rules apply rather than those in the instruction. The JAG further stated that the class for which the applicant received tuition assistance ended on December 19, 2009, and so under ALCOAST 043/03, he already had sufficient obligated service to accept the tuition assistance and was therefore not authorized to reenlist.

In response to the JAG's recommendation, the applicant stated that his command relied on COMDTINST 1500.10B in advising him of the one-year obligated service requirement and the opportunity under Article 3.C.5.5. to reenlist for an even longer period for an SRB. He noted that this instruction was accessible to his command through the Coast Guard Directives System, whereas ALCOAST 043/03 was not and that the accessible rule should apply. He argued that he "should not be penalized for the lack of ability of the CG to properly update the manuals available through CG Central." The applicant noted that after he reenlisted to receive an SRB,

the Coast Guard updated the Directives System to include the new manual, COMDTINST 1500.10C, which reflects the rule under ALCOAST 043/03.

FINDINGS AND CONCLUSIONS

COMDTINST M1500.10C was issued on May 18, 2009, and section 11.H.2.d.(2) states that enlisted members receiving tuition assistance “do not incur a service obligation but must complete the course of instruction prior to RELAD, separation or retirement.” Therefore, the applicant did not need additional obligated service to accept the tuition assistance, and since he was not within 3 months of his end of enlistment or his 6th or 10th active duty anniversary, his commanding officer had no authority under the Personnel Manual to discharge and reenlist him. *See* Personnel Manual, Arts. 12.B.7. and 3.C.5.5. Therefore, he has proved by a preponderance of the evidence that in June 2009 his command erroneously counseled him about his eligibility to reenlist for an SRB.

The question is what remedy is appropriate. With an erroneous promise of an SRB that the Coast Guard has refused to honor, the reenlistment contract is clearly voidable. However, the applicant asks to be paid the SRB instead. He had already obligated service through January 5, 2010, so he has now served about 6 months of active duty that he might not have served had he not been erroneously promised the SRB. On the other hand, with more than 8 years of service, the applicant was already in “career status” in June 2009, and he has not requested discharge or claimed that he would have left active duty but for the promise of the bonus. Because the promise of the SRB is written on the reenlistment contract, because the Coast Guard has enforced the contract, and because the applicant has already served 6 months that he might not have served had he not been promised the SRB, the Board finds that in the interest of justice, the SRB should be paid.

ORDER

The military record of BM1 xxxxxxxxxxxxxxxxxxxxxxxx, USCG, shall be corrected to show that he is eligible for and entitled to a Zone B SRB under ALCOAST 286/08 for his June 29, 2009, 6-year reenlistment contract. The Coast Guard shall pay him the amount due as a result of this correction.

July 8, 2010
Date

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