

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-271

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 completed application on September 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 June 16, 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, third class (GM3), asked the Board to correct his record to show that he is entitled to a selective reenlistment bonus (SRB)¹ for signing a 4-year enlistment contract on June 28, 2009. He stated that prior to signing the contract he was counseled that he would receive an SRB, but that he never received the bonus. The applicant submitted a copy of his enlistment contract and a Page 7², both of which state that he was eligible to receive an SRB calculated with a multiple of 1.0.

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. Coast Guard Personnel Manual, Article 3.C.4.

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.

SUMMARY OF THE RECORD

On October 30, 2007, the applicant enlisted in the Coast Guard Reserve for a term of 6 years. He served as reservist on active duty in Guantanamo Bay from November 1, 2008, through June 27, 2009. He integrated into the regular Coast Guard by signing a 4-year contract on June 28, 2009. His record contains the June 28, 2009, contract which states “member eligible for SRB with 1.0 multiple.” His record also contains a Page 7 dated June 28, 2009, which states that he is entitled to reenlist for a maximum of 6 years to receive an SRB with a multiple of 1.0, in accordance with ALCOAST 286/08. His record also contains a DD Form 214 documenting his active service, and it shows that he had served on continuous active duty for 7 months, 27 days, and had 4 months, 15 days of prior active service.

VIEWS OF THE COAST GUARD

On February 17, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board deny relief. The JAG argued that the applicant is not entitled to receive an SRB for signing a contract on June 28, 2009, because Article 3.C.4.a.2. of the Coast Guard Personnel Manual requires that to receive a Zone A SRB, the member must have completed 17 months continuous active duty at any point in their military career. The JAG noted that the applicant had served only 12 months, 12 days of cumulative, not consecutive, active duty. Moreover, the JAG pointed out that under Article 1.G.1.a. of the Personnel Manual, unless a reservist has been serving on extended active duty for more than a year, his integration into the regular Coast Guard is an enlistment, not a reenlistment.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 24, 2010, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The Chair did not receive a response.

APPLICABLE LAW

Article 1.G.1.a. of the Coast Guard Personnel Manual provides that “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 for 12 months or more shall be considered a reenlistment.”

Article 3.C.4.a.2. of the manual states that to receive a Zone A SRB, the member 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.

Under ALCOAST 286/08, which was in effect from July 16, 2008, through July 15, 2009, GM3s in Zone A were authorized an 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.

2. The applicant was promised a Zone A SRB for signing a 4-year reenlistment contract on June 28, 2009, but he never received the bonus. The JAG recommended that the Board deny relief, arguing that the applicant was not eligible for an SRB because he did not complete 17 months of continuous active duty prior to signing the contract, and because his June 28, 2009, contract was an enlistment, rather than a reenlistment since he had not served more than 12 months on extended active duty.

3. The applicant's record contains both an enlistment/reenlistment contract and a Page 7 dated June 28, 2009, stating that he was entitled to receive an SRB for signing a 4-year reenlistment contract. However, the applicant was not eligible for an SRB for integrating into the regular Coast Guard on June 28, 2009, for two reasons: First, he had not completed 17 months of continuous active duty at any point in his military career as required by Article 3.C.4.b.2.³ Second, he had not completed 12 months or more of extended active duty pursuant to Article 1.G.1.a. of the Personnel Manual, and thus he was "enlisting" in the regular Coast Guard on June 28, 2009, and not "reenlisting." Selective reenlistment bonuses are not available to those enlisting in the Coast Guard.

4. The record indicates that the Coast Guard promised the applicant the bonus as an enticement to enlist for 4 years in the regular Coast Guard and memorialized that promise on the applicant's enlistment contract and on a Page 7. The Board believes that, whenever reasonable, such promises should be kept, especially when the member relies on the erroneous advice and gives due consideration for the promised benefit—i.e., a 4-year enlistment in the regular Coast Guard. Although the Government is not estopped from repudiating the false promises made by its employees,⁴ this Board has "an abiding moral sanction to determine . . . the true nature of an alleged injustice and to take steps to grant thorough and fitting relief."⁵ The applicant was promised an SRB bonus for enlisting, and he has already given consideration on the contract by enlisting in the Coast Guard for 4 years. There is no evidence that the applicant would have chosen to enlist in the regular Coast Guard had he not been promised the SRB. In light of the clear error by the Coast Guard in promising the applicant an SRB, the Board finds that it is in the interest of justice to pay the applicant the SRB that he was promised.

5. Accordingly, the applicant's record should be corrected to show that he is entitled to receive a Zone A SRB for signing a 4-year enlistment contract on June 28, 2009, in accordance with ALCOAST 286/08.

³ The longest time the applicant spent on extended active duty was 7 months, 27 days.

⁴ *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972); *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), *cert. denied sub nom. Goldberg v. Califano*, 431 U.S. 937 (1977).

⁵ *Caddington v. United States*, 178 F. Supp. 604, 607 (Ct. Cl. 1959).

ORDER

The application of xxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted. His record shall be corrected to show that he is entitled to receive a Zone A SRB for signing a 4-year enlistment contract as a GM3 on June 28, 2009, in accordance with ALCOAST 286/08. The Coast Guard shall pay him any amount due as a result of this correction.

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