

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2010-078**

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**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 January 3, 2010, 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 October 8, 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, an operations specialist, first class (OS1; E-6), on active duty in the Coast Guard, asked the Board to correct the date of his reenlistment contract from September 4 to October 1, 2009, so that he will be eligible for the Zone B selective reenlistment bonus (SRB)<sup>1</sup> that he was promised on the contract. He alleged that he was incorrectly counseled that he would receive an SRB for reenlisting on September 4, 2009, and that he could have waited until October 1, 2009, to reenlist because his prior enlistment did not end until then. After reenlisting, he learned that under ALCOAST 393/09, the SRB program had been suspended from July 16, through September 30, 2009. Although the Coast Guard has enforced the reenlistment contract by entering it in his record, the applicant has not received the promised SRB. The applicant also noted that by reenlisting, he canceled a one-year extension contract that he had previously executed to obligate service for his transfer to a new unit on July 1, 2009.

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<sup>1</sup> SRBs are bonuses the Coast Guard offers to members in critical skill ratings as an extra inducement to reenlist. SRBs vary according to the length of each member's service, the number of months of service newly obligated by the reenlistment or extension contract, and the need of the Coast Guard to retain personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's rating, which is published in an ALCOAST. Members who have at least 17 months but no more than 6 years of active duty service are in "Zone A." Members who have completed at least 6 but no more than 10 years of active duty service are in "Zone B." Members may not receive more than one bonus per zone. UNITED STATES COAST GUARD, COMDT-INST M1000.6A, PERSONNEL MANUAL, Art. 3.C.4. (Change 41, June 18, 2007) (hereinafter "PERSMAN").

## SUMMARY OF THE RECORD

On October 2, 2001, the applicant enlisted in the Coast Guard for four years, through October 1, 2005. On May 3, 2005, he extended his enlistment for four years, through October 1, 2009, to obligate sufficient service to transfer. On June 1, 2005, he advanced to OS1.

On December 24, 2008, the applicant was issued orders to transfer to a training center on July 1, 2009, to become an OS instructor. The orders stated the following with regard to the obligated service requirement for the transfer:

OBLIGATED SERVICE: Refer to PERSMAN, COMDTINST M1000.6 (series), Arts 4.B.6. or 4.E.2.a. (as applicable) for OBLISERV requirements. Notify CGPC-epm-2 and CGPC-epm-1 immediately if member declines to reenlist or extend to meet minimum OBLISERV.

This assignment requires minimum four (4) years OBLISERV.

Upon receipt of these orders, the applicant's command apparently required him to extend his enlistment for just one year, from October 2, 2009, and through October 1, 2010. Although there is no evidence of this extension contract in the copy of his record submitted to the Board by the Coast Guard, the applicant himself submitted a copy of this contract, but it is unsigned and undated. In addition, the extension contract states that it was signed at the "request of individual," rather than to have "obligated service for transfer."

On June 12, 2009, the Commandant issued ALCOAST 353/09, which authorized a Zone B SRB with a multiple of 0.5 for OS1s as of July 16, 2009. On July 10, 2009, the Commandant issued ALCOAST 393/09, which suspended the SRB program from July 16 through September 30, 2009, because of fiscal constraints and authorized members to execute short-term extension contracts through October 2009 under certain circumstances to preserve their SRB eligibility. As of October 1, 2009, contracts with promises of SRBs were once again authorized.<sup>2</sup>

On September 4, 2009, the applicant canceled the one-year extension by reenlisting for six years. This reenlistment contract includes the following provision: "MBR AUTHORIZED ZONE B SRB IAW ALCOAST 353/09 WITH MULTIPLE OF 0.5 FOR EXPIRATION OF ENLISTMENT."

There are no Page 7s (forms CG-3307) documenting SRB counseling in the copy of the applicant's record supplied by the Coast Guard.

## VIEWS OF THE COAST GUARD

On June 3, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG stated that when the applicant received his transfer orders in December 2008, his command erred by having him obligate just one year of additional service, pursuant to Article

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<sup>2</sup> However, under ALCOAST 621/09, the SRB program has been suspended indefinitely since December 1, 2009, due to the high retention rate of enlisted members in all ratings.

4.B.6. of the Personnel Manual,<sup>3</sup> when the orders stated that he needed four years of obligated service from the day he reported to his new unit, July 1, 2009. The JAG concluded that the applicant should have been required to obligate service through July 1, 2013, to accept his transfer orders, instead of obligating just one more year of service through October 1, 2010.

The JAG stated that on August 25, 2009, the applicant submitted a Career Intentions Worksheet showing that he wanted to reenlist for six years on October 2, 2009. For reasons unknown, on September 1, 2009, he submitted a second worksheet requesting reenlistment as of September 3, 2009.

The JAG claimed that the applicant was not within three months of his end of enlistment in September and October 2009 and so he was not authorized to reenlist. The JAG alleged that the applicant's end of enlistment was October 1, 2010, because of the one-year extension he had signed to obligate service for his transfer to the training center. The JAG alleged in this regard that Article 3.C.5.6. of the Personnel Manual allows members to cancel extensions by reenlisting for a longer period only "in connection with Article 1.G.19.," and therefore does not apply to "this applicant's scenario."

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On June 25, 2010, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond. No response was received.

#### **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 alleged that he was erroneously counseled about his SRB eligibility and has been denied an SRB that he was promised on his reenlistment contract and that he could have received had he waited a month to reenlist. 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.<sup>4</sup> 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."<sup>5</sup>

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<sup>3</sup> PERSMAN, Art. 4.B.6. ("Personnel E-4 and above with over six years of active duty are considered to be in a career status. Unless otherwise indicated, they are required to have one year of OBLISERV remaining upon reporting to the new unit.").

<sup>4</sup> 33 C.F.R. § 52.24(b).

<sup>5</sup> *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The written promise of the SRB on the applicant's reenlistment contract dated September 4, 2009—when the SRB program was suspended—and the lack of the required Page 7s documenting SRB counseling in the applicant's record prove that he was erroneously counseled about his SRB eligibility.<sup>6</sup> The JAG, however, argued that the applicant was not entitled to reenlist in September or October 2009 because he had already extended his prior enlistment through October 1, 2010, and so was not within three months of his end of enlistment.<sup>7</sup> In this regard, the JAG stated that Article 3.C.5.6. of the Personnel Manual does not apply to the applicant. Article 3.C.5.6. states the following *in toto*:

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.

Thus, Article 3.C.5.6. appears to strongly support the applicant's position that he was entitled to cancel his one-year extension before its operative date, October 2, 2009, by reenlisting for six years for an SRB.

4. The JAG argued that Article 3.C.5.6. does not apply to the applicant because of the reference to Article 1.G.19., which states the following:

Unless canceled for one of the reasons in Article 1.G.20, an Agreement to Extend Enlistment becomes operative on the date next following the normal date the enlistment expires or the enlistment expiration date as voluntarily extended or as extended to make up time not served (Article 12.B.11.), as appropriate.

Thus, Article 1.G.19. states that all extensions become operative following the end of an enlistment unless they are canceled pursuant to Article 1.G.20. However, Article 1.G.20. appears to list only the following grounds for canceling an extension contract before its operative date:

- (1) The service member is absent over or without leave [AWOL] on the date the original enlistment term expires, unless the commanding officer believes the member absented him- or herself to cancel the agreement to extend.
- (2) Before closing the Personnel Data Record on desertion, if it occurs before the date the extension begins to run.
- (3) When the commanding officer receives orders to discharge the member before the date the extension begins to run.
- (4) When an individual's performance of duty or conduct is unsatisfactory and the commanding officer believes the member is not suitable to retain in the Service. Enter the facts in full on Administrative Remarks, CG-3307.

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<sup>6</sup> PERSMAN, Art. 3.C.3. (requiring Page 7s documenting detailed SRB counseling whenever a member reenlists or extends his enlistment).

<sup>7</sup> PERSMAN, Art. 12.B.7.b. (authorizing commanding officers to discharge and reenlist members up to three months before their enlistments end).

5. Therefore, by arguing that Article 3.C.5.6. did not apply to the applicant because he could not cancel the extension in accordance with Article 1.G.19., which only allows cancellations pursuant to Article 1.G.20., the JAG appears to be arguing that the only members who can cancel an extension by reenlisting to receive an SRB under Article 3.C.5.6. of the Personnel Manual are members whose extensions may be canceled pursuant to Article 1.G.20.—i.e., members who are AWOL, members who have deserted, members whose discharge has already been ordered by the Commandant, and members whose conduct is so unsatisfactory that their commanding officers do not want to retain them. This argument is obviously absurd and would logically render Article 3.C.5.6. a nullity because no one whose extension was being canceled for one of the reasons listed in Article 1.G.20. would be allowed to reenlist for a longer period to get an SRB pursuant to Article 3.C.5.6.

6. The mystery of the reference to Article 1.G.19. in Article 3.C.5.6. is solved by reviewing past changes to the Personnel Manual. The wording of Article 3.C.5.6. has not changed since it was entered in the Personnel Manual in 2002,<sup>8</sup> nor has Article 1.G.19. changed since then. However, when Article 3.C.5.6. was entered in the Personnel Manual, Article 1.G.20.2.b. stated the following:

The commanding officer may cancel an Agreement to Extend Enlistment on the effective extension date when the individual concerned has reenlisted or extended on that date for any authorized enlistment term longer than the original extension agreement. ... Extensions of two years or less for a member to receive PCS orders, attend training, or obligate for advancement may be canceled before their operative date for immediate reenlistment or longer extension without any loss of Selective Reenlistment Bonus eligibility.

This provision remained in the Personnel Manual on page 15 of Article 1.G. until Change 41 was published in 2007.<sup>9</sup> In Change 41 of the Personnel Manual, which is still in effect, all of page 15 of Article 1.G. is missing. Upon inquiry by the BCMR staff, the Personnel Service Center investigated and reported that the loss of page 15 of Article 1.G. from the Personnel Manual was inadvertent, that the regulations on that page are still in effect, and that they will be returned to the Personnel Manual in its next publication.

7. Because Article 1.G.20.2.b. of the Personnel Manual is still in effect, the Board finds that in accordance with that article and Article 3.C.5.6. of the Personnel Manual, the applicant was authorized to cancel his one-year extension before it became operative on October 2, 2009, by reenlisting for a longer period to qualify for an SRB under ALCOAST 353/09. Moreover, the applicant's reenlistment contract shows that he was erroneously advised to reenlist for the SRB on September 4, 2009, when the SRB program was suspended pursuant to ALCOAST 393/09. Had he been accurately advised about his SRB eligibility, as required by Article 3.C.3. of the Personnel Manual, he would have reenlisted on October 2, 2009, so that he would be entitled to the SRB and not have any previously obligated service remaining to run on his prior enlistment, which would reduce his SRB.<sup>10</sup> The Board notes that the applicant asked to be reen-

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<sup>8</sup> UNITED STATES COAST GUARD, COMDTINST M1000.6A, PERSONNEL MANUAL, Art. 3.C.5.6. (Change 37, Oct. 21, 2002). Before Change 37 in 2002, the rules for SRBs were published in COMDTINST 7220.33.

<sup>9</sup> PERSMAN, Art. 1.G.

<sup>10</sup> PERSMAN, Art. 3.C.7. (stating that SRBs are paid only for months of service newly obligated under the contract on which the SRB is promised). SRBs are calculated by multiplying a member's monthly base pay by the

listed on October 1, 2009. However, October 1, 2009, was the last day of the applicant's prior enlistment, and under Article 3.C.7.2. of the Personnel Manual, even a single day of previously obligated service counts as an entire month and thus reduces the member's SRB by an entire month unless the last day of the member's enlistment is a Friday, Saturday, Sunday, or holiday.<sup>11</sup> October 1, 2009, was a Thursday and not a federal holiday. Therefore, if the applicant had been properly counseled about his SRB eligibility, he would have reenlisted on Friday, October 2, 2009, to avoid having his SRB reduced by a month of previously obligated service.

8. The JAG noted that when the applicant received his transfer orders in December 2008, he should have been required to obligate four years of additional service, instead of just one year, before executing the transfer. However, the Coast Guard transferred the applicant with only one year of additional service in his record in accordance with the rule that usually applies to members with more than six years of service.<sup>12</sup> Although the applicant's transfer orders stated that he should have four years of obligated service, the Board does not correct records contrary to the requests and interests of applicants.<sup>13</sup> Therefore, the Board will not correct the term of the applicant's extension from one year to four because he has already been transferred and reenlisted, and such a correction would serve no purpose except to reduce his SRB by two-thirds because, with a four-year extension in his record, his SRB for reenlisting for six years would be based on only two years of newly obligated service.<sup>14</sup>

9. Finally, the Board notes that the purpose of the applicant's one-year extension is erroneous. Although both he and the JAG stated that the purpose of the extension was to obligate required service for his transfer to the training center, the contract shows that he signed it "at request of individual." It is important for the purpose to be noted correctly on the extension contract because under Article 3.C.5.6. of the Personnel Manual, only extension contracts of two years or less that are required "for transfer, training, advancement, or tuition assistance" can be canceled without a reduction of the member's SRB.<sup>15</sup>

10. The applicant has proved by a preponderance of the evidence that he was not properly counseled about his SRB eligibility in September 2009 and that if he had been properly counseled, he would have waited until October 2, 2009, and then canceled the extension by reenlisting for six years for an SRB based on 72 months of newly obligated service.

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authorized SRB multiple for the member's rating and by the number of months of service newly obligated under the contract and dividing the product by 12. *Id.*

<sup>11</sup> PERSMAN, Art. 3.C.7.2. ("When computing the additional obligated service for which SRB can be paid, a fraction of a month will be rounded up to the whole month. ... An exception to this rule, however, is members who are discharged no more than 7 days early because their period of active obligated service expires on a Friday, Saturday, Sunday, or holiday. In such cases, members will be considered to have completed the full enlistment for SRB computation.")

<sup>12</sup> PERSMAN, Art. 4.B.6.a. (stating that members in "career status"—i.e., with more than six years of service—normally need to have only one year of obligated service before executing transfer orders).

<sup>13</sup> See *Friedman v. United States*, 141 Ct. Cl. 239, 252-53 (1958) (holding that "[t]he Correction Boards were established for the purpose only of reviewing, on application of a member of the military personnel, a military record to correct errors or injustices *against* such personnel and not to review and reverse decisions of other established boards *favorable* to such personnel.")

<sup>14</sup> See note 10 above.

<sup>15</sup> PERSMAN, Art. 3.C.5.6. (stating that only contracts of two years or less executed for certain purposes can be canceled without reducing the amount of newly obligated service under the new contract).

11. Accordingly, the Board should grant relief by correcting the purpose of the one-year extension contract to show that the applicant signed it to obligate service for transfer, and by correcting the date of his September 4, 2009, reenlistment contract to October 2, 2009, so that he will be eligible for and entitled to the SRB that he was promised when he reenlisted.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of OS1 xxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted.

The Coast Guard shall correct the reason for extension on his one-year extension contract (which would have become operative on October 2, 2009, had it not been canceled) to show that he extended his prior enlistment to obligate service for transfer, instead of at “request of individual.”

The Coast Guard shall correct the date of his six-year reenlistment from September 4, 2009, to October 2, 2009, and the one-year extension shall remain canceled because of this reenlistment.

The Coast Guard shall pay him the Zone B SRB he is due under ALCOAST 353/09 based on 72 months of newly obligated service as a result of these corrections.

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Patrick B. Kernan

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Erin McMunigal

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Kathryn Sinniger