

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-080

**XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX**

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 7, 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 21, 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 asked the Board to reenlist her on June 12, 2009, for a Zone A selective reenlistment bonus (SRB).¹ She alleged that she should have been counseled about her eligibility to reenlist for an SRB on that date under ALCOAST 286/08, but was not. She stated that if she had been timely counseled, she would have reenlisted for the SRB. Instead, she was not counseled about reenlisting until August 2009, by which time she was ineligible for an SRB because none was authorized for her rating under ALCOAST 353/09. In August 2009, she was told that because a four-month extension in her record would run from September 13, 2009, to January 12, 2010, she did not need to reenlist until November or later. Therefore, on November 30, 2009, she returned to the administrative office and spoke to a different yeoman, who told her that she could have reenlisted for an SRB in June 2009 under ALCOAST 286/08. Ultimately, she reenlisted for four years on January 8, 2010, for no SRB.

¹ 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 September 13, 2005, the applicant enlisted in the Coast Guard for four years, through September 12, 2009. On November 21, 2006, she extended her enlistment for four months, from September 13, 2009, through January 12, 2010, to obligate service for transfer. On January 8, 2010, she reenlisted for four years. There are no Page 7s (forms CG-3307) documenting SRB counseling in the applicant's record.

From July 16, 2008, through July 15, 2009, ALCOAST 286/08 was in effect and authorized a Zone A SRB with a multiple of 1.7 for MK2s. Under ALCOAST 353/09, which canceled ALCOAST 286/08 and went into effect on July 16, 2009, no SRB multiple was authorized for MK2s.

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 alleged that the applicant was not authorized to reenlist for an SRB in June 2009 because she was not then within three months of her end of enlistment (EOE) since she had signed a four-month extension in November 2006 to obligate service through January 1, 2010, for a transfer. 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 the applicant's situation.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 14, 2010, the applicant responded to the views of the Coast Guard. She disagreed with them and alleged that she was actually eligible for an SRB under ALCOAST 353/09 too.

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 applicant was timely.

2. The applicant alleged that the Coast Guard erred by failing to counsel her about her SRB eligibility in June 2009. 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.² Absent evidence to the contrary, the Board presumes

² 33 C.F.R. § 52.24(b).

that Coast Guard officials and other Government employees have carried out their duties “correctly, lawfully, and in good faith.”³

3. The JAG argued that the applicant was not entitled to reenlist in June 2009 because she had extended her prior enlistment through January 12, 2010, and so was not within three months of her EOE.⁴ 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 she was entitled to cancel her four-month extension before its operative date, September 13, 2009, by reenlisting 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, under Article 1.G.19., 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.

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

⁴ 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 she could not cancel the extension in accordance with Article 1.G.19., which only allows cancelations 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 2002,⁵ 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 2007.⁶ 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. Under Article 12.B.7. of the Personnel Manual, members may be discharged up to three months before their EOE for the purpose of immediate reenlistment. The applicant's EOE was September 12, 2009. Therefore, she could have been discharged and reenlisted as early as June 13, 2009. Moreover, because Article 1.G.20.2.b. was 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 her four-month extension before it became operative by reenlisting for an SRB under ALCOAST 286/08 before it was canceled on July 16, 2009.

8. Under Article 12.B.4.b. of the Personnel Manual, members are supposed to be counseled about reenlistment and their SRB eligibility, if any, six months prior to their EOE. Under Article 3.C.11., SRB counseling must be documented on a Page 7 in the member's record. There is no such Page 7 dated in the applicant's record. Therefore, the preponderance of the

⁵ 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.

⁶ PERSMAN, Art. 1.G.

evidence shows that she was not properly counseled about her eligibility to reenlist for an SRB under ALCOAST 286/08. Had she been timely counseled about her eligibility for an SRB, the applicant would have known in June and July 2009 that she could cancel her extension and reenlist for an SRB. She would also have known that her SRB would be larger if she reenlisted on July 15, 2009, because under Article 3.C.7. of the Personnel Manual, months of service remaining to run on a prior reenlistment reduce an SRB paid for a new enlistment since SRBs are paid only for months of newly obligated service.⁷

9. The Board notes that in the applicant's response to the JAG's advisory opinion, she alleged that she was also eligible for an SRB under ALCOAST 353/09. However, under that ALCOAST, no SRB multiple was authorized for members in the MK2 rating as of July 16, 2009.

10. Accordingly, relief should be granted by correcting the applicant's record to show that she reenlisted on July 15, 2009, for a Zone A SRB under ALCOAST 286/08. Although she reenlisted for four years on January 8, 2010, she did not state what term of reenlistment she would have chosen had she been allowed to reenlist for an SRB in July 2009. Therefore, she should be able to choose to reenlist for 4, 5, or 6 years.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁷ 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 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.*

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of her military record is granted.

The Coast Guard shall correct her record to show that she canceled her four-month extension contract dated November 21, 2006, by reenlisting for a Zone A SRB on July 15, 2009, for a term of 4, 5, or 6 years, at her discretion. Her January 8, 2010, reenlistment contract shall be removed from her record as null and void.

The Coast Guard shall pay her the sum due under ALCOAST 286/08 as a result of these corrections.

Philip B. Busch

Paul B. Oman

Dorothy J. Ulmer