

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-084

**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 27, 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 correct his record so that he will receive a Zone A selective reenlistment bonus (SRB) calculated with a multiple of 2.0 and based on 72 months of newly obligated service for reenlisting for 6 years on February 27, 2008. He alleged that on February 2, 2007, he was erroneously told that he had to reenlist for at least 3 years because his enlistment was ending on April 27, 2007. He alleged that if properly counseled, he would have extended his prior enlistment for just 1 year, from February 27, 2007, to February 26, 2008. He alleged that a 1-year extension was authorized under Article 1.G.15.a. of the Personnel Manual.

The applicant further alleged that since he advanced to MK2 on August 1, 2007, he could have reenlisted for 6 years on February 27, 2008, for a Zone A SRB under ALCOAST 304/07, which authorized a Zone A multiple of 2 for MK2s. Instead, because of the erroneous advice, he reenlisted for 3 years on February 27, 2007, and when he was due to transfer in the summer of 2008, he was advised to sign a 6-year extension contract for a Zone B SRB on May 22, 2008, because the extension would become effective on February 27, 2010, by which date he was in Zone B. Therefore, he alleged, because of the erroneous advice he received in February 2007, he missed the chance to receive a Zone A SRB.

SUMMARY OF THE RECORD

The applicant enlisted for 4 years on April 28, 2003, through April 27, 2007. On February 2, 2007, he signed a Career Intentions Worksheet, which shows that he acknowledged having received SRB counseling (although there is no Page 7 documenting SRB counseling) and, given the option of extending his enlistment for 2 to 6 years or reenlisting from 3 to 6 years, he planned to reenlist for 3 years. On February 27, 2007, the applicant reenlisted for 3 years, through February 26, 2010, and sold 30 days of leave. At the time, he was still an MK3 and so not eligible for an SRB. The Coast Guard's database mistakenly shows that this 3-year reenlistment ran from April 28, 2007, through April 27, 2010.

On August 1, 2007, the applicant advanced to MK2. On May 22, 2008, he was counseled about his SRB eligibility on a Page 7 and extended his 3-year enlistment for another 6 years, from February 27, 2010, through February 26, 2016, to obligate service for a transfer and to receive a Zone B SRB calculated with a multiple of 1.5 under ALCOAST 304/07 and based on 72 months of newly obligated service. At the time, the Zone A SRB multiple for MK2s was 2.0.

VIEWS OF THE COAST GUARD

On June 3, 2010, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board grant relief by voiding the 6-year extension contract and reenlisting the applicant for 6 years on May 22, 2008, for a Zone A SRB calculated with a multiple of 2.0 and based on 50 months of newly obligated service.

The JAG also alleged that the applicant should have been counseled that he could reenlist for 6 years for a Zone A SRB based on 10 months of newly obligated service with a multiple of 1.7 on his 6th anniversary, April 28, 2009, but was not. The JAG did not address the applicant's allegation that he could have extended his enlistment for just 1 year in February 2007.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On July 26, 2010, the applicant informed the Board that he agreed with the JAG's recommendation.

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 requiring him to reenlist for 3 years on February 27, 2007, and by advising him to extend his enlistment for a Zone B SRB on May 22, 2008. 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.¹ 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.”²

3. Article 1.G.15.a.1. of the Personnel Manual in effect in February 2007 (Change 40) stated that members could extend their enlistments “[f]or any number of full years not less than two nor greater than six years, when requested by the member.” Article 1.G.15.a.4. stated that in specific cases, the Commander of the Personnel Command could authorize an extension for just one year. Article 1.G.2.a.1. stated that members with less than 10 years of service could reenlist for periods of 3 to 6 years. The applicant alleged that he was erroneously required to reenlist for 3 years in February 2007. However, his Career Intentions Worksheet clearly showed his option to extend his enlistment for just 2 years, in lieu of reenlisting, but he reenlisted for 3 years. In addition, although the applicant alleged that if properly counseled, he would have extended his enlistment for just 1 year, under Article 1.G.15.a.1., the normal minimum extension at the request of an individual whose enlistment was ending was 2 years, and he has not shown that the Personnel Command would have approved a shorter extension. In light of his worksheet showing that he voluntarily reenlisted for 3 years in February 2007, the Board sees no reason to void his February 27, 2007, reenlistment. However, the database erroneously shows that his 3-year reenlistment ended on April 27, 2010, so this error should be corrected because a 3-year reenlistment contract signed on February 27, 2007, ends on February 26, 2010.

4. Under Article 3.C.4. of the Personnel Manual, on May 22, 2008, the applicant was still in Zone A because he had less than 6 years of service. However, his 3-year reenlistment ran through February 26, 2010, by which time he was in Zone B. Under ALCOAST 304/07, in May 2008, MK2s were eligible for a Zone A SRB multiple of 2.0 or a Zone B SRB multiple of 1.5. Therefore, on May 22, 2008, the applicant was authorized either to reenlist for a Zone A SRB with a multiple of 2.0 or sign an extension contract that would become operative in his Zone B and thus earn him a Zone B SRB with a multiple of 1.5.

5. On May 22, 2008, the applicant had previously obligated service running through February 26, 2010. Therefore, any SRB he received for reenlisting would be reduced by the 22 months remaining to run on his prior enlistment because, under Article 3.C.7. of the Personnel Manual, SRBs are paid only for months of service newly obligated under the new contract. Thus, if the applicant had reenlisted for 6 years (72 months) on May 22, 2008, he would have received a Zone A SRB based on just 50 months of newly obligated service. By extending his enlistment for 6 years, he forwent his Zone A SRB but became entitled to a Zone B SRB based on 72 months of newly obligated service.

6. Under Article 3.C.7. of the Personnel Manual, SRBs are calculated by multiplying (a) the member’s monthly basic pay on the date of reenlistment or the operative date of the extension by (b) the authorized SRB multiple by (c) the number of months of newly obligated service and then (d) dividing that product by 12. Using this formula, it appears that if the applicant had reenlisted for 6 years on May 22, 2008, he would have received a Zone A SRB of

¹ 33 C.F.R. § 52.24(b).

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

about \$18,000, whereas by extending his enlistment for 6 years, he forwent the Zone A SRB but received a Zone B SRB of about \$23,000. Therefore, it appears that on May 22, 2008, the applicant, not unreasonably, signed the contract that would get him the largest SRB.

7. The Board notes that the JAG alleged that the applicant should also have been advised of his Zone A SRB eligibility on his 6th anniversary, April 28, 2009, pursuant to Article 3.C.9. of the Personnel Manual, which authorizes commanding officers to reenlist members on their 6th anniversary for either a Zone A or Zone B SRB. However, under Article 3.C.4. of the Personnel Manual, members may only receive one SRB per zone. Therefore, if the applicant had reenlisted for 6 years for a Zone A SRB on May 22, 2008—obligating service through May 21, 2014—he could not have reenlisted for another Zone A SRB on his 6th anniversary. In addition, having previously obligated service through February 26, 2016, for his Zone B SRB, he could not reenlist for 6 years for a Zone A SRB on his 6th anniversary because there would be no newly obligated service under the latter contract. However, if the applicant had reenlisted for a Zone A SRB on May 22, 2008, he could have reenlisted for 6 years for a Zone B SRB on the anniversary, but the SRB would be based on just 11 months of newly obligated service from May 22, 2014—the end of his enlistment—to April 27, 2015, the end of a 6-year reenlistment signed on his 6th anniversary, April 28, 2009. Under the formula for calculating SRBs in Article 3.C.7., this Zone B SRB would have been about \$2,500. There is no Page 7 in the applicant's record documenting SRB counseling on his 6th anniversary, but since he had already extended his enlistment through February 26, 2016, to receive a Zone B SRB and so could not reenlist for just 6 years, through April 27, 2015, to receive a Zone A SRB, he was not actually eligible for an SRB on his 6th anniversary.

8. It is not clear to the Board that the Coast Guard has erred in this case with regard to the applicant's SRB eligibility. He acknowledged having been counseled about SRBs in February 2007, when he was not actually eligible for an SRB. On May 22, 2008, he was properly counseled on a Page 7 about his SRB eligibility, and he extended his enlistment to receive the largest SRB for which he was then eligible. This was a Zone B SRB, and in taking it he lost the opportunity to reenlist for a Zone A SRB, but as stated in finding 6, above, the Zone B SRB was significantly larger than the Zone A SRB he would have received. The JAG has recommended granting relief, and the applicant agreed, but it appears to the Board that if the relief recommended by the JAG is granted, the applicant may actually lose money. However, the applicant may prefer to get the Zone A SRB he could have received on May 22, 2008, and hope for a larger Zone B SRB in the future, or get the Zone A SRB and a small Zone B SRB for a 6th anniversary reenlistment and have less obligated service. Only he can make that decision.

9. Although the applicant received SRB counseling on May 22, 2008, it appears that he may not have understood his options on that date. Accordingly, partial relief should be granted. The applicant should be counseled about SRBs, about his options under this order, and about the amount of the SRBs he might receive under this order, and he should be allowed to choose among the following options which might have occurred:

- He could, as he did, forgo his Zone A SRB by extending his enlistment for 6 years, through February 26, 2016, for a Zone B SRB worth approximately \$23,000.

- He could have reenlisted for 6 years for a Zone A SRB based on 50 months of newly obligated service, which would total about \$18,000, and then he could have reenlisted for 6 years on his 6th anniversary for a Zone B SRB of about \$2,500. Under this scenario, his Zone A and B SRBs would add up to about \$20,500, which is less than the Zone B SRB he is already entitled to, but he would have obligated service only through April 27, 2015.
- He could have reenlisted for 6 years for the Zone A SRB of about \$18,000, and then not reenlisted for the small Zone B SRB on his 6th anniversary but waited to see if a larger Zone B SRB would be authorized for his rating prior to his 10th active duty anniversary, which will be April 28, 2013. However, the Board notes in this regard that no SRBs are authorized at this time, and it is not known whether another Zone B SRB will be authorized for the applicant's rating prior to April 28, 2013. By taking this option, the applicant would risk accepting the smaller Zone A SRB and having no Zone B SRB authorized for his rating in the future.

The Board notes that if the applicant has already been paid the Zone B SRB for his 6-year extension contract, choosing option (b) or (c) above could result in a recoupment of part of his bonus.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

The Coast Guard shall correct its database to show that the 3-year reenlistment that he signed on February 27, 2007, ran through February 26, 2010, rather than April 27, 2010, and that his 6-year extension dated May 22, 2008, became operative on February 27, 2010. In addition, within 90 days of the date of this decision, the Coast Guard shall counsel him about SRBs, about his options under this order, and about the amount of the SRBs he could receive pursuant to this order, and shall, at his discretion, either

- (a) make no other corrections to his record so that he will be entitled to the Zone B SRB noted on his May 22, 2008, 6-year extension contract;
- (b) void the May 22, 2008, 6-year extension contract, reenlist him for 6 years on May 22, 2008, for a Zone A SRB under ALCOAST 304/07, and reenlist him again on his 6th active duty anniversary for a Zone B SRB under ALCOAST 286/08; or
- (c) void the May 22, 2008, 6-year extension contract, and reenlist him for 6 years on May 22, 2008, for a Zone A SRB under ALCOAST 304/07.

If he does not choose option (b) or (c) above, the status quo under option (a) shall prevail. The Coast Guard shall pay him any amount that may become due as a result of any correction made to his record pursuant to this order.

Philip B. Busch

Paul B. Oman

Dorothy J. Ulmer