

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-007

XXXXXXXXXXXXXX.
xxxxxxx, IS3/E-4

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 on October 10, 2008, upon receipt of the applicant's completed application, 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 July 16, 2009, 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 intelligence specialist, third class (IS3), asked the Board to correct his record to show that he signed a four-year reenlistment contract on July 16, 2008, to receive a Zone A selective reenlistment bonus (SRB).¹ He alleged that when he received his transfer orders to Portsmouth, VA, he was erroneously counseled about his SRB eligibility and extension/reenlistment options. He also alleged that he did not receive proper counseling regarding SRB eligibility when he changed rates on January 1, 2008.²

The applicant stated that upon receiving transfer orders to Portsmouth, VA, he was counseled by a yeoman on his cutter to sign a 46-month extension contract to obligate the service necessary to complete a four-year tour. He alleged that the yeoman told him that:

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 21 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. Personnel Manual, Articles 3.C. and 3.C.4.a.

² On January 1, 2008, the applicant changed to the intelligence specialist rate from the operations specialist (OS) rate.

I did not have to reenlist for my obligated service at that time. He [the yeoman] indicated that I could extend, wait for the July SRB message release, and then reenlist, cashing in on the SRB then. He informed me that a reenlistment would cancel the extension completely and that I would receive the SRB covering the time obligated to complete the future assignment.

The applicant stated that he followed the yeoman's advice and signed a 46-month extension contract on May 12, 2008, to obligate sufficient service to accept the transfer to Portsmouth, with the understanding that he could cancel the contract at his new unit by reenlisting for four years to receive a Zone A SRB under ALCOAST 286/08, which went into effect on July 16, 2008. The applicant stated, however, that after arriving at his new duty station and inquiring about signing a reenlistment contract for an SRB, he was told that if he cancelled the May 12, 2008, extension contract and reenlisted for an SRB under the new ALCOAST, then his SRB would be reduced by the 46 months obligated by the May 12, 2008, extension contract.

The applicant also alleged that if he had been properly counseled regarding his SRB eligibility prior to signing the May 12, 2008, 46-month extension contract, then he would have delayed signing the extension contract until the new ALCOAST was issued on June 13, 2008. He stated that "Commands have a 30 day window for deciding when a member reports. I could have easily negotiated with both commands to report a month later than I had planned, ensuring I received the SRB in its entirety had I been properly and fully informed."

In support of his allegations, the applicant submitted a letter from the commanding officer of his new unit, CAPT L, who stated that "I strongly recommend approval of [applicant's] request to void his extension dated 12 May 2008 and reenlist with full SRB eligibility. Based on the statements and facts given, as well as the requirements of the CG Personnel Manual, it is clear that [the applicant] was not given a proper SRB counseling prior to signing his extension agreement."

The applicant also alleged that he was not properly counseled regarding how his rate change would effect his SRB entitlement. He alleged that Chapter 3.C.5.7. of the Coast Guard Personnel Manual requires that "any member who changes rate should be instructed to sign a CG-3307, stating that he or she is always aware that they will not receive any bonus entitlement for the new rate until they have reenlisted/extended and have attained the new rate." He alleged that he was not informed about this requirement and "did not sign such a document when I changed rates from OS to IS on 01 January 2008."

SUMMARY OF THE RECORD

On September 21, 2004, the applicant enlisted in the Coast Guard for a term of four years, through September 20, 2008. On January 1, 2008, he switched from the OS rate to the IS rate. On May 12, 2008, while assigned to the CGC LEGARE, which is homeported in Portsmouth, Virginia, he signed a 46-month extension contract to obligate service (OBLISERV)³ for a

³ Obligated service is all periods of military service covered by signed agreements in the form of enlistment contracts, reenlistment contracts, and/or agreements to extend enlistment between Coast Guard members and the

transfer to a shore unit in Portsmouth, VA, but he was not eligible for an SRB under the ALCOAST in effect at the time. The applicant's orders, issued on November 7, 2007, state that the "assignment requires four (4) years OBLISERV." The orders also state that the applicant was to serve at Portsmouth from July 15, 2008, to July 1, 2012. However, he reported to the unit on June 23, 2008. The applicant's orders also state:

THE MAXIMUM AMOUNT OF TIME COMMANDS CAN ADJUST A REPORT DATE, WITH CONCURRENCE OF THE DEPARTING AND RECEIVING COMMAND AND WITHOUT PRIOR APPROVAL FM CGPC-EPM-2, IS 30 DAYS.

On May 12, 2008, when the applicant signed the 46-month extension contract, ALCOAST 304/07 was in effect. Under ALCOAST 304/07, no SRB was authorized for the applicant's rating. There is no Page 7⁴ in the applicant's record to document that he was counseled about SRBs upon signing the extension contract. However, the applicant's extension contract states the following:

EFFECT OF EXTENSION/REEXTENSION ON SRB ENTITLEMENT

I fully understand the effect my extension/reextension will have upon my current and future SRB eligibility. I understand that continued entitlement to unpaid installments may be terminated and a prorated portion of advance bonus payments recouped if I am considered not to be technically qualified or unable to perform the duties of the rating for which the bonus was paid. In accordance with the provisions of COMDTINST 7220.33 (series), I further acknowledge that I have been given the chance to review COMDTINST 7220.33 (series) concerning my eligibility for SRB and have had all my questions answered.

On June 13, 2008—after the applicant signed the extension contract to accept his transfer order and ten days before he reported to his new unit—ALCOAST 286/08 was issued announcing new SRB multiples that would go into effect on July 16, 2008. Under ALCOAST 286/08, members in the applicant's rating were eligible for a Zone A SRB calculated with a multiple of 1.0.

VIEWS OF THE COAST GUARD

On February 25, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant relief. The JAG noted that the Coast Guard failed to counsel the applicant regarding his eligibility for an SRB when he signed his 46-month extension contract on May 12, 2008. The JAG stated that "it is believable that had the applicant been counseled properly, he would have elected to adjust his report date to 15 August 2008, vice 15 July 2008, so that he could extend his enlistment for a period of six (06) years, in order to receive the Zone A SRB he would have been entitled to." Accordingly, the JAG recommended that the Board correct the applicant's record by voiding the May 12, 2008, 46-month extension contract and allowing him to reenlist for six years on July 18, 2008, for a Zone A SRB in accordance with ALCOAST 286/08. The JAG did not comment on the applicant's

U.S. Coast Guard where members agree to serve for designated periods of time. Article 3.C.2.7. of the Coast Guard Personnel Manual.

⁴ 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.

allegation that he was not counseled regarding his rate change and its effect on his SRB eligibility.

RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 5, 2009, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. The applicant responded on March 11, 2009, stating that he agreed with the Coast Guard's recommendation that his extension contract should be voided so he can "make another extension or reenlistment after the 15 July 08 date without incurring any penalty and qualifying me for the Zone A SRB, with a multiple of 1." However, the applicant stated, he wanted to reenlist for only four years.

APPLICABLE LAW

Article 3.C.3. of the Coast Guard Personnel Manual requires that all personnel with 10 years or less of active service who reenlist or extend for any period shall be counseled on the SRB program and shall sign a Page 7 outlining the effect that particular action has on their SRB entitlement.

Article 3.C.5.6. states that extensions may be canceled prior to their operative dates for the purpose of extending or reenlisting for a longer term to earn an SRB. However, if the term of the canceled extension is longer than two years (24 months), the extension reduces the number of months used to calculate the SRB because SRBs are based only on months of service newly obligated under a reenlistment (or extension) contract.

Article 3.C.11.1. provides that a Page 7 entry must be made any time a member reenlists or extends an enlistment. The Page 7 that a member must sign after receiving SRB counseling states the following:

DATE: I have reviewed Article 3.C.12. of the Personnel Manual entitled "Frequently Asked SRB Questions and Answers." I have been informed that:

My current Selective Reenlistment Bonus (SRB) multiple is ____ and is listed in ALCOAST _____, which has been made available for my review.

In accordance with article 12-B-4 I am eligible to reenlist/extend my enlistment for a maximum of ____ years.

My SRB will be computed based on ____ years newly obligated service. (If extension/reenlistment is for less than 36 months, enter "00")

The following SRB policies were unclear to me, but my SRB counselor provided me with the corresponding answers: (list specifics)

(Signature of Member/date)

(Signature of Counselor)

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 regarding the effect his May 12, 2008, extension contract would have on his future eligibility for an SRB. He alleged that his unit's yeoman advised him that because there was currently no SRB available for his rate, he should sign a 46-month extension contract to obligate the required service for the transfer to Portsmouth, and that if an SRB multiple was approved for his rating in July, he could cancel the extension by reenlisting for the SRB after he arrived at his new unit. The applicant stated that this counseling was erroneous because after arriving in Portsmouth he learned that cancelling the May 12, 2008, contract by reenlisting for an SRB would reduce his SRB by the 46 months obligated by the extension contract. The applicant asked the Board to cancel the May 12, 2008, 46-month extension contract and allow him to reenlist for four years on July 16, 2008, for an SRB not reduced by the service obligated by the May 12, 2008, extension contract.

3. The JAG recommended that the Board grant relief in this case, noting that the Coast Guard failed to counsel the applicant regarding his eligibility for an SRB when he signed his 46-month extension contract on May 12, 2008. The Board agrees. Pursuant to Articles 3.C.3. and 3.C.11.1. of the Personnel Manual, the Coast Guard was required to counsel the applicant regarding his SRB eligibility and to document that counseling on a Page 7. There is no such Page 7 in his record.

4. Accordingly, the Board will grant the relief recommended by the JAG, except that the applicant has requested a four-year reenlistment in lieu of the six-year contract that the JAG recommended.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXXXXXXXXXXX, xxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct his record to show that he signed a four-year reenlistment contract on July 16, 2008, for a Zone A SRB pursuant to ALCOAST 286/08. The Coast Guard shall remove his May 12, 2008, 46-month extension contract from his record as null and void, and pay him the amount due as a result of these corrections.

Lillian Cheng

Nancy L. Friedman

Vicki J. Ray