

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1998-108

FINAL DECISION

ANDREWS, Attorney-Advisor:

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was commenced upon the BCMR's receipt of the applicant's application on August 18, 1998.

This final decision, dated May 6, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant is a xxxxxxxx on active duty in the Coast Guard Reserve. He asked the Board to correct his military record to show that he reenlisted for six years (instead of four years) on July 17, 1998. The correction would entitle him to receive a Selective Reserve Prior Service Enlistment Bonus pursuant to ALDIST 072/98.

APPLICANT'S ALLEGATIONS

The applicant stated that upon the expiration of his enlistment, he immediately reenlisted for a term of 4 years on July 17, 1998. He alleged that he was never counseled about ALDIST 072/98, under which he could have received a maximum reenlistment bonus if he had extended for 6 years. He alleged that he would have reenlisted for 6 years had he been properly counseled about the ALDIST. He stated that he learned about ALDIST 072/98 when he reported to his new unit after reenlistment.

VIEWS OF THE COAST GUARD

On April 13, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant the applicant's request.

The Chief Counsel stated that, on the date of his reenlistment, the applicant was eligible for a Level I bonus pursuant to ALDIST 072/98 and the Selected Reserve Reenlistment/Extension Bonus Program. However, the Chief Counsel alleged that the Coast Guard had no duty to counsel him regarding his eligibility. He alleged that neither COMDTINST 7220.1A nor any other regulation required the Coast Guard to advise Reserve members of their eligibility for bonuses.

Nevertheless, he recommended that the Board grant relief because the applicant's agreement to obligate himself for another two years of service would provide the Service with "the necessary consideration for the Level I Bonus he now seeks." Furthermore, the Chief Counsel stated that the applicant's record supports his claim that he would have reenlisted for 6 years on July 17, 1998, had he known of the bonus opportunity.

The Chairman sent the applicant a copy of the views of the Coast Guard. On April 26, 1999, the applicant responded, concurring in the Chief Counsel's recommendation.

SUMMARY OF THE RECORD

On November 8, 1989, the applicant enlisted in the Coast Guard Reserve for a period of 8 years. His DD Form 214 shows that he was discharged upon the completion of his enlistment (which had been extended) on July 16, 1998. On July 17, 1998, he reenlisted in the Reserve for a term of 4 years. After his reenlistment, on August 18, 1998, the applicant signed a CG-3307 form, which advised him that he had been eligible to reenlist for up to 6 years but would only be paid a bonus for 4 years according to the terms of the reenlistment contract he had signed on July 17th. The applicant applied to the BCMR that same day.

APPLICABLE LAW

Title 37 U.S.C. § 308(a)(1) authorizes the Secretary of Transportation to pay a bonus to a member who has "not more than fourteen years of active duty; is qualified in a military skill designated as critical . . . and reenlists or voluntarily extends the member's enlistment for a period of at least three years—(i) in a regular component of the [Coast Guard]; or (ii) in a reserve component of the [Coast Guard], if the member is performing active Guard and Reserve duty"

ALDIST 072/98, issued on March 23, 1998, announced the continuation of bonuses for certain Reserve members who reenlisted or extended their enlistments before

September 30, 1998. xxxxxxxx, such as the applicant, were authorized to receive Level I bonuses of \$2,500 if they obligated themselves to perform 6 additional years of service.

COMDTINST 7220.1A, "Selected Reserve (SELRES) Enlisted Bonus Programs," issued on February 5, 1998, contains the policies and administrative guidelines governing Reserve bonuses. Enclosure (1) to the instruction contains the eligibility requirements for the reenlistment bonus program. Members in paygrade E-5 who have fewer than 14 years of service and who have not received a previous 6-year bonus or more than one 3-year bonus are eligible if they meet the terms of the current ALDIST. Paragraph 4 of the enclosure, "Administrative procedures for bonus payment," states that "[m]embers must sign an agreement made on an Administrative Remarks form (CG-3307) (sample in this enclosure) when reenlisting or extending their enlistment."¹ The sample form CG-3307 is reproduced below:

Entry Type: Selective Reserve Reenlistment/Extension Bonus (BON-1)	
Reference: COMDTINST 7220.1 (series)	
Responsible Level: Unit	
Entry:	
(DATE): I have been advised that I am currently eligible for a Level ____ Selective Reserve Reenlistment Bonus as listed in ALDIST _____, which has been made available to me.	
I am eligible to reenlist/extend my enlistment up to a maximum of ____ years. My bonus will be computed based on ____ months of newly obligated service.	
I hereby acknowledge that I have read and fully understand the contents and explanation of COMDTINST 7220.1 (series).	
_____	_____
(signature of member/date)	(signature of counselor)

Article 8-B-2 of the Reserve Policy Manual (COMDTINST M1001.28) states that "[t]he provisions of 12-B-4, Personnel Manual, COMDTINST M1000.6 (series) . . . apply to members of the [Selected Reserve], except as explained below." None of the exceptions listed pertains to the contents of a Reservist's pre-discharge interview.

Article 12-B-4.b.(3) of the Personnel Manual provides that during a member's pre-discharge interview, "each potential reenlistee who would be eligible for a Selective Reenlistment Bonus (SRB) must be informed of that eligibility and the monetary benefits of the SRB program."

¹ The Coast Guard Reserve publishes its manuals and bonus instructions on the internet. See, e.g., COMDTINST 7220.1A at <http://www.uscg.mil/reserve/pubs/bonus/boninst.htm>.

PRIOR BCMR DECISIONS

In BCMR Docket No. 121-93, the applicant asked the Board to correct his military record to show that he had extended his service in the regular Coast Guard for 6 years, and was therefore due a selective reenlistment bonus (SRB). The Deputy General Counsel granted relief, finding in part that "Coast Guard regulations require that members be 'fully advised' of SRB opportunities"² and that the Board had "commonly afforded relief under similar circumstances in the past, and . . . reversal of such precedents without a firm basis in the record would be clearly unreasonable here."

In BCMR Docket No. 69-97, the applicant asked the BCMR to correct his record to show that he had extended his enlistment for 6 years in order to receive an SRB. The Deputy General Counsel concurred in the Board's recommended decision. She noted that "the SRB statute, 37 U.S.C. § 308(a), refers equally to SRB eligible members who 'reenlist[] or voluntarily extend[] [their] enlistment[s].'" BCMR Docket No. 69-97, Deputy General Counsel's Concurring Decision, at 2. She concluded that the Coast Guard had no rational basis for distinguishing between potential reenlistees and potential extendees. Therefore, the "Coast Guard erred in drafting COMDTINST 7220.13E when it failed to require mandatory counseling for potential extendees on an equal basis with potential reenlistees." *Id.* at 3.

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 submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. The applicant signed a sworn statement indicating that he was never counseled about the terms of ALDIST 072/98 prior to his reenlistment on July 17, 1998. He alleged that, had he been counseled, he would have reenlisted for six years, instead of four, to earn a Level I bonus. There is no evidence in his record that he was counseled concerning ALDIST 072/98 prior to his reenlistment.

3. The Chief Counsel of the Coast Guard argued that the Coast Guard did not err with respect to this case because it has no duty to counsel members of the Reserve about their eligibility for reenlistment bonuses. Nevertheless, he recommended that the Board grant relief because the applicant would be obligating himself to extra years of service in exchange for the bonus.

² The Deputy General Counsel cited BCMR Nos. 224-87, 263-87, 268-87, 285-87 for this position.

4. In BCMR Docket No. 69-97, the Deputy General Counsel found that the Coast Guard had erred in drafting its regulations to require counseling about bonus eligibility for potential reenlistees but not for potential extendees. She stated that under 37 U.S.C. § 308, Congress intended both reenlistees and extendees to benefit from the bonus program and that the Coast Guard had no rational basis for counseling one group but not the other. Likewise, in 37 U.S.C. § 308, Congress authorized payment of bonuses to members on active duty in the Reserve as well as the regular Coast Guard. The Board recognizes that the different nature of the Reserve may require many differences in policy and regulations. Nevertheless, the Board is not persuaded that members on active duty in the Selected Reserve are any less entitled to being counseled about their bonus opportunities than members of the regular Coast Guard.

5. Enclosure (1) to COMDTINST 7220.1A states that, to receive a bonus, Reserve “[m]embers must sign an agreement made on an Administrative Remarks form (CG-3307) (sample in this enclosure) when reenlisting or extending their enlistment.” The sample form shown in the regulation is to be signed by a “counselor” as well as the member. Moreover, the member must acknowledge that he has been “advised” of his eligibility for a bonus. However, nothing in COMDTINST 7220.1A states that all eligible members must be counseled concerning their eligibility for a bonus.

6. According to Article 8-B-2 of the Reserve Policy Manual, Article 12-B-4 of the Personnel Manual applies to the applicant as a member of the Selected Reserve. Article 12-B-4.b.(3) of the Personnel Manual provides that during a member’s pre-discharge interview, “each potential reenlistee who would be eligible for a Selective Reenlistment Bonus (SRB) must be informed of that eligibility and the monetary benefits of the SRB program.” The SRB program is the reenlistment bonus program for the regular Coast Guard that corresponds to the reenlistment bonus program for the Reserves. Because Article 8-B-2 of the Reserve Policy Manual expressly makes the terms of Article 12-B-4 applicable to the Selected Reserve, the Board finds the Coast Guard had a duty to counsel the applicant concerning his eligibility under the corresponding bonus program for the Reserves.

7. The Coast Guard erred by failing to counsel the applicant about his eligibility for a bonus under ALDIST 072/98. Had the Coast Guard properly counseled the applicant, he would have reenlisted for six years to receive a Level I bonus.

8. Accordingly, the applicant’s request should be granted.

[ORDER AND SIGNATURES APPEAR ON THE NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXXX, USCGR, is hereby granted. His record shall be changed to show that, on July 17, 1998, he reenlisted for a period of 6 years for the purpose of obtaining a reenlistment bonus. The Coast Guard shall pay the applicant the sum he is due as a result of this correction.

Mark A. Holmstrup

Walter K. Myers

Pamela M. Pelcovits