

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-058

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. The BCMR docketed the case on February 3, 1999, upon receipt of the applicant's completed application.

This final decision, dated November 18, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that he extended his enlistment for four years instead of six years on August 31, 1997.

APPLICANT'S ALLEGATIONS

The applicant alleged that on September 2, 1997, he was wrongly counseled concerning the amount of time he had to extend his enlistment in order to receive a selective reenlistment bonus (SRB) under ALDIST 135/97. He alleged that he extended his enlistment for six years, through August 30, 2003, because he was told he had to do so to receive an SRB of \$10,000. He alleged that under the regulations, he only had to extend his enlistment for four years, through August 30, 2001, to receive the \$10,000 SRB.

The applicant submitted a letter from his commanding officer, who stated that the applicant "was incorrectly informed that in order to receive a Selective Reenlistment Bonus of \$10,000, it was mandatory that he cancel his three year commitment dated

12MAY97 and sign up for a total of 6 years of active duty service to expire 30AUG03. ...[However, the applicant] only needed to obligate one more year of active duty service to receive this bonus amount. ... I highly recommend that [the applicant] be allowed to change his 02SEP97 commitment to four years of active duty vice six."

SUMMARY OF THE RECORD

On August 31, 199x, the applicant enlisted in the Coast Guard for four years, through August 30, 199x.

In May 1997, the applicant received PCS (permanent change of station) orders for a transfer to a new unit in xxxxxx. To accept these orders, the applicant was told he had to obligate himself to serve for at least three years beginning on the date he would report to his new unit. Therefore, on May 12, 1997, the applicant extended his enlistment for three years, through August 30, xxxx. The applicant's extension contract indicated that there was no SRB authorized for his rating at that time. It also contained the following paragraph:

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 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 5, 1997, the Commandant issued ALDIST 135/97, which authorized an SRB calculated with a multiple of 1 for xx who enlisted or extended their enlistments after July 1, 1997, for three or more years. The applicant reported to his new unit on June 16, 1997.

On August 30, 1997, the applicant canceled the three-year extension contract he had signed on May 12, 1997, and signed instead a six-year extension contract, obligating him to serve through August 30, xxxx. The six-year extension contract contains the following paragraph in addition to the one shown above:

SRB ELIGIBILITY ACKNOWLEDGMENT

I have been provided with a copy [of] "SRB Questions and Answers" based on Commandant Instruction 7220.33 (series). I have been informed that: My current Selective Reenlistment Bonus (SRB) multiple under zone A is 1 and is listed in ALDIST 135/97, which has been made available for review. I further understand the eligibility requirements for Zone A, B, and C SRB's and that the maximum SRB paid to my current pay

grade is \$ 10,000 . My SRB will be computed based on 36 months newly obligated service. [1]

VIEWS OF THE COAST GUARD

On October 28, 1999, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel stated that Article 4.B.6. of the Personnel Manual (COMDT-INST M1000.6A) required the applicant to commit himself to serve at least three years past the date he reported to his new unit prior to accepting his transfer orders. He alleged that the applicant's statement that he was only required to extend his service for one year is incorrect.

The Chief Counsel further stated that the applicant knowingly extended his enlistment for six years to receive an SRB based on his additional obligated service. Absent evidence of fraud or duress, the Chief Counsel argued, the applicant should be bound by his contract.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 2, 1999, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. On November 15, 1999, the applicant responded. He stated that, when he signed the six-year extension form on August 30, 1997, he was "under the impression that 3 years would be active duty, [after which he] would process out of the Coast Guard and have 3 years active or inactive reserve time." He explained that he was under this impression because (1) the yeoman who processed his extension did not inform him that he would have to perform three extra years of active duty to receive the SRB, and (2) when he originally enlisted in the Coast Guard, he was told that when he was discharged he might be released into the Reserve. Therefore, he asked the Board to correct his record to make his enlistment end on August 30, xxxx, even if the correction would make him ineligible for an SRB.

APPLICABLE REGULATIONS

Article 4.B.6.a. of the Personnel Manual states that "[s]ervice members ... E-4 and above with less than six years of active duty will not normally be transferred unless

¹ SRBs vary according to the length of each member's active duty service, the length of the period of reenlistment or extension of enlistment, and the need of the Coast Guard for personnel with the member's particular skills. Coast Guard members who have served between 21 months and 6 years on active duty are in "Zone A," while those who have more than 6 but less than 10 years of active duty service are in "Zone B." On August 30, 1997, the applicant was still in Zone A. Members may not receive more than one bonus per zone.

they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit.”

Section 2 of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that “[a]ll personnel with 14 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign a page 7 service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement.”

Enclosure (3) to the instruction requires that members sign a page 7 administrative entry indicating that they have received and read Enclosure (5), entitled “SRB Questions and Answers.” Enclosure (5) explains that previously obligated service reduces an applicant’s SRB. It further advises members, “[w]hen coming up on your end of enlistment, carefully consider the advantages/disadvantages of reenlisting vice extending.”

Paragraph 3.d.(6) of Enclosure (1) to the instruction states that extensions canceled prior to their operative dates for the purpose of receiving an SRB reduce the SRB by the number of months of previously obligated service unless the extension is for a period of two years or less, in which case the SRB is not diminished.

ALDIST 135/97, issued on June 5, 1997, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments on or after July 1, 1997. The multiple to be used for calculating SRBs for members in the xx rating was one. The ALDIST indicates that the maximum possible SRB authorized for members in the E-4 pay grade.

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. Prior to accepting his PCS orders to xxxxxxxx, the applicant was required under Article 4.B.6.a. of the Personnel Manual to obligate himself to serve for a “full tour,” or at least three years, after the date he would report to his new unit. Therefore, the applicant extended his enlistment for three years, through August 30, xxxx. The contract signed by the applicant indicates that he understood the effect of this extension on any future SRB for which he might become eligible.

3. After ALDIST 135/97 became effective on July 1, 1997, the applicant was eligible to receive an SRB if he canceled his three-year extension prior to its operative date, August 31, 199x, and signed a new contract extending his enlistment for more than three years.

4. Under Paragraph 3.d.(6) of Enclosure (1) to COMDTINST 7220.33, extensions of three years may be canceled prior to becoming operative so that a member may extend his enlistment or reenlist to receive an SRB. However, the awarded SRB is based only on the months of service newly obligated by the subsequent extension or reenlistment contract. Because on May 12, 1997, the applicant obligated himself to serve through August 30, xxxx, the SRB due to the applicant is properly based on only the three years of service (August 31, xxxx, through August 30, xxxx) newly obligated by the contract dated August 30, 199x. The applicant's new extension contract clearly indicated that the SRB would be based on only 36 months (3 years) of newly obligated service.

5. The applicant is mistaken in thinking that he can receive the same SRB for a shorter extension. SRBs are based on the number of months of service to which members newly obligate themselves in their reenlistment and extension contracts. Moreover, the \$10,000 SRB claimed by the applicant is clearly indicated in both ALDIST 135/97 and the applicant's extension contract as the maximum SRB a member in his pay grade could receive; nowhere is it indicated that the applicant himself will receive \$10,000.

6. While the applicant may have misunderstood the terms of his six-year extension contract, he has not proved that his misunderstanding was the fault of the Coast Guard. The contract clearly states that the term of the extension is for six years, ending on August 30, xxxx. It also clearly states that it requires 36 months of newly obligated service. The Coast Guard Reserve is not mentioned in the contract. Therefore, the applicant has failed to prove any error or injustice on the part of the Coast Guard in holding him to his commitment to serve through August 30, xxxx.

7. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXXXX, USCG, is hereby denied.

George Kuehnle, Jr.

Gareth W. Rosenau

Coleman R. Sachs