

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-089

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 docketed on April 6, 1999, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated December 30, 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 xxx on active duty in the Coast Guard, asked the Board to correct his military record by changing the reason for extension recorded on an extension contract he signed on September 10, 1998, from "request of individual" to "obligated service for transfer." The correction would entitle him to receive a larger Selective Reenlistment Bonus (SRB) for a 40-month extension he signed on November 26, 1998, pursuant to ALDIST 290/98.

APPLICANT'S ALLEGATIONS

The applicant alleged that the Coast Guard failed to counsel him regarding SRBs when he extended his enlistment on September 10, 1998. Therefore, he alleged, he did not know that having "request of individual" recorded as the reason for his first extension would make him unable to cancel the extension and receive a larger SRB later on. He alleged that the true purpose of the September 10 extension was to accept transfer orders which he was expecting to arrive. He stated that because the Coast Guard failed to counsel him about the effect the erroneous "request of individual" would have on his future SRB eligibility, an SRB he subsequently received was wrongfully diminished.

SUMMARY OF THE RECORD

On March 16, 199x, the applicant enlisted in the Coast Guard for a term of four years, through March 15, 199x. On September 9, 1994, he extended this enlistment for eight months, through November 15, 199x. On November 28, 1995, he reenlisted for three years, through November 27, 1998.

On September 10, 1998, the applicant extended his enlistment for two years, through November 27, 2000. On November 16, 1998, the applicant received PCS [permanent change of station] orders to report to a new unit in December 1998. To accept the orders, the applicant was required to have obligated service through at least one full year at the new unit.

On November 24, 1998, the Commandant issued ALDIST 290/98, which provided a Zone B¹ SRB with a multiple of one for members in the xxx rating. The SRB was in effect from November 25, 1998, to June 14, 1999.

On November 26, 1998, the applicant cancelled the extension dated September 10th prior to its operative date (November 28, 1998) and signed a new extension contract for 40 months (three years and four months), through March 27, 2004. The November 26 extension contract indicates that the applicant could expect to receive an SRB under ALDIST 290/98 based on 40 months of newly obligated service.

On March 15, 1999, the applicant's commanding officer from his previous command, the xxxxxxx, wrote a letter to the Board in which he stated that his command had failed to counsel the applicant regarding SRBs prior to the extension dated September 10, 1998. The commanding officer stated that, although the extension contract dated September 10, 1998, indicates that the applicant was counseled and provided with a copy of the SRB Instruction, COMDTINST 7220.33, in fact, he was not counseled or provided with the instruction.

The commanding officer explained that in September 1998, the applicant was "tour complete" and expecting transfer orders to arrive soon. In addition, since his enlistment was about to end, the applicant knew he would have to extend it in order to accept his transfer orders. Therefore, he extended his enlistment for two years in anticipation of receiving transfer orders. However, because his transfer orders had not

¹ SRBs vary according to the length of each member's active duty service, the length of the period of newly obligated service created by the 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 more than 21 months but less 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 bonus per zone.

actually arrived yet, the purpose for the extension recorded on the September 10, 1998, contract was "request of individual" rather than "obligated service for transfer." The applicant's commanding officer stated that because the command never properly counseled the applicant, he did not know that signing the extension contract before his transfer orders arrived might negatively affect his future eligibility for an SRB.

The commanding officer further explained that when ALDIST 290/98 was issued on November 24, 1998, the applicant was advised he could receive a maximum SRB by canceling the September 10, 1998, extension contract prior to its operative date, November 28, 1998, and extending his enlistment or reenlisting for a longer period of time. He was told that his SRB would be based on all 40 months of service obligated under the new contract. However, after the applicant signed the new 40-month extension contract, he learned that his SRB would be based on only one year and four months of newly obligated service. The two years of service to which he had obligated himself on September 10, 1998, would reduce his SRB because the purpose for the extension recorded on the contract was "request of individual" rather than "obligated service for transfer."

The commanding officer concluded that the real purpose for the September 10, 1998, extension was to permit the applicant to accept his anticipated transfer orders and that, had he been properly counseled, the applicant would have waited until he received his orders before extending his enlistment. Therefore, the commanding officer recommended that the Board grant the applicant's request for relief by voiding the September 10, 1998, extension contract.

VIEWS OF THE COAST GUARD

On November 17, 1999, the Board received an advisory opinion from the Chief Counsel of the Coast Guard in which he recommended that the Board grant relief in this case by changing the applicant's extension contract dated September 10, 1998, to show that the purpose of the extension was "Obligated Service for Transfer (INCONUS/OUTCONUS)" and that the term of the extension was one year and one month, rather than two years.

The Chief Counsel stated that the applicant "has provided sufficient evidence to show that he intended to extend for the sole purpose of OBLISERV when he signed his extension agreement on 10 September 1998."

APPLICABLE REGULATIONS

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.”

Section 3.d.(6) of the instruction states the following:

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-36 of [the Personnel Manual]. 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 operative date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement.

Article 4.B.6.a.2. of the Personnel Manual (COMDTINST M1000.6A) states that members in pay grade E-4 or above with more than six years of active duty service “are considered to be in a career status. Unless otherwise indicated, they are required to have one year of OBLISERV remaining upon reporting to the new unit.”

ALDIST 290/98, issued on November 24, 1998, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments after November 25, 1998. The multiple to be used for calculating Zone B SRBs for members in the xx rating was one.

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 evidence indicates that the applicant extended his enlistment for two years on September 10, 1998, because he was near the end of his enlistment and his tour of duty and was expecting to receive transfer orders soon. Under Article 4.B.6.a.2. of the Personnel Manual, members with more than six years of active duty service must obligate themselves to serve at least one full year at a new unit before accepting transfer orders to that unit. Therefore, the applicant knew he would have to extend his enlistment in order to accept his transfer orders.

3. Although the applicant's September 10, 1998, extension contract indicates he was properly counseled concerning the effect of the extension on his future SRB eligibility, the applicant's commanding officer admitted that the Coast Guard failed to counsel the applicant properly. Because the Coast Guard failed to counsel him, the applicant extended his enlistment prior to receiving his transfer orders and has unjustly been denied an SRB based on all 40 months of the extension contract he signed on November 26, 1998.

4. Had he been properly counseled, the applicant would have waited until he had received his transfer orders before extending his enlistment. Furthermore, he would likely have extended his enlistment for the minimum time required by his transfer orders, and the purpose of the extension recorded on the contract would have been "Obligated Service for Transfer (INCONUS/OUTCONUS)." As a result, under Section 3.d.(6) of Commandant Instruction 7220.33, the SRB received by the applicant for the extension he executed on November 26, 1998, would have been based on all 40 months of service for which he obligated himself under the new extension.

5. Accordingly, relief should be granted. The applicant's extension contract dated September 10, 1998, should be corrected to show that he extended his enlistment for only one year and one month and to show that the purpose of the extension was "Obligated Service for Transfer (INCONUS/OUTCONUS)."

ORDER

The application for correction of the military record of XXXXXXXX, USCG, is hereby granted as follows.

Block 5 of the extension contract signed by the applicant on September 10, 1998, shall be corrected to show that he extended his enlistment for only one year and one month.

Block 7 of the extension contract shall be corrected to show that his enlistment had been extended for a total of one year and one month.

Block 8 of the extension contract shall be corrected to show that the new expiration date of his enlistment was December 27, 1999.

Block 9 of the extension contract shall be corrected to show that the reason for the extension was "Obligated Service for Transfer (INCONUS/OUTCONUS)," instead of "Request of Individual."

As a result of these corrections, the one year and one month of service obligated

by the September 10, 1998, extension contract shall not reduce the SRB received by the applicant as a result of his extension contract dated November 26, 1998, under ALDIST 290/98.

The Coast Guard shall pay the applicant the amount due him as a result of this correction.

Nancy Lynn Friedman

Michael J. McMorrow

Karen L. Petronis