

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-097

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 on April 16, 1999, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated January 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to make him eligible to receive a Zone A Selective Reenlistment Bonus (SRB).¹

APPLICANT'S ALLEGATIONS

On his application, the applicant alleged that "at the end of my first enlistment in 1993, I was not properly counseled as per COMDTINST 7220.33. I never received a CG 3307 [page 7 administrative entry documenting SRB counseling] or documentation at the time I elected not to reenlist on active duty. I did stay active reserve at that time." The applicant alleged that he discovered the error in February 1999.

¹ 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, 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. Coast Guard members who have more than 21 months but less than 6 years of active duty service are in "Zone A." Members may not receive more than one bonus per zone.

On an attachment to his application, the applicant stated that at the end of his active duty enlistment in 1984, he decided to reenlist, but before he did, the SRB for his rating was eliminated. Therefore, he "opted to get off of active duty and stay in the active reserve hoping the srb would be reinstated." He alleged that he was never properly counseled and that, if he had been properly counseled, he "would have remained on active duty and probably received the srb as many other members have done in my situation." The applicant alleged that he was entitled to an SRB because he intended to reenlist before the SRB for his rating was eliminated.

The applicant included in his application a photocopy of part of the current SRB Instruction, COMDTINST 7220.33, which was issued in 1988, and a discharge form dated May 6, 1991.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on February 26, 1980, for a term of four years on active duty and a total military service obligation of six years.

On March 30, 1984, while stationed in xxxxxx, the applicant was voluntarily released from active duty and transferred to the Reserve.² On the same day, he signed a page 7 administrative entry in his record indicating that he understood his rights upon separation as prescribed by Article 12-B-53 of the Personnel Manual. He also signed a page 7 waiving the requirement that all separation paperwork be delivered to him that day so that he could be separated "as soon as possible."

At 11:00 p.m. Eastern Standard Time on March 30, 1984, the Commandant issued ALDIST 072/84, which authorized an SRB with a multiple of one for the applicant's rating beginning on May 1, 1984. The ALDIST also authorized commanding officers to extend members' enlistments for one or two months if those enlistments ended between March 30th and May 1st so that such members would be able to take advantage of ALDIST 072/84.

On March 22, 1986, the applicant signed a two-year extension of his Reserve enlistment. A page 7 entry in his record dated February 22, 1987, states that he already had 14 unexcused absences from inactive duty drills for fiscal year 1987.

The applicant reenlisted on active duty on October 21, 1987, for a term of three years, through October 20, 1990. On March 12, 1990, he extended the enlistment for eight months, through June 20, 1991, to accept transfer orders. On May 7, 1991, he reenlisted for a term of three years, through May 6, 1994. On May 6, 1994, he reenlisted

² It is not apparent in the record why or under what authority the applicant remained on active duty from the end of his active duty obligation on February 25, 1984, to March 30, 1984.

for another term of three years, and on March 3, 1997, he again reenlisted for three years.

VIEWS OF THE COAST GUARD

On November 17, 1999, the Chief Counsel of the Coast Guard issued an advisory opinion in which he recommended that the Board deny the applicant's request. He stated that he interpreted the "muddled" application as a request for a Zone A SRB based on the applicant's alleged intention to reenlist in March 1984.

The Chief Counsel argued that the Board should deny the applicant's request because he has "failed to provide sufficient evidence to merit the waiver of the Statute of Limitations." He stated that the applicant knew or should have known of his failure to receive an SRB no later than the date of his separation, March 30, 1984. Therefore, his application arrived more than eleven years after the expiration of the BCMR's three-year statute of limitations.

The Chief Counsel stated that the applicant has failed to prove that there was an SRB in effect for his rating at the time of his discharge. He stated that in March 1984, ALDIST 152/83 was in effect, and it does not authorize an SRB for members in the xx rating. Therefore, the Chief Counsel argued any failure to counsel the member concerning SRBs would have been harmless.

Finally, the Chief Counsel argued, even assuming there was an SRB in effect for the applicant's rating, he is barred from receiving one because he voluntarily separated from active duty and did not actually serve again on active duty until 1987.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On November 19, 1999, the Chairman sent a copy of the Coast Guard's advisory opinion to the applicant and invited him to respond within 15 days. The applicant did not respond.

APPLICABLE REGULATIONS

Commandant Instruction 7220.13G (Administration of the Reenlistment Bonus Program) was released on February 6, 1984. Section 3. of the instruction states that "[c]ommanding officers shall ... insure that all personnel ... who are or will be eligible for ... the Selective Reenlistment Bonus (SRB), are familiar with the contents of this Instruction."

Section 2.a. of the instruction states the following:

All personnel with 14 years or less of active service who reenlist or extend for any period, however, brief, shall be thoroughly counseled about all aspects of the SRB program, and shall sign the below listed Page 7 entry ... in their service record outlining the effect the particular action has on their SRB entitlement.

ALDIST 152/83, issued on June 28, 1983, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments after August 1, 1983. The SRBs remained in effect "until further notice." No SRB was authorized for members in the xx rating.

ALDIST 285/83, issued on December 6, 1983, changed some of the multiples for SRBs authorized for member in certain skill ratings who reenlisted or extended their enlistments on or after January 15, 1984. No SRB was authorized for members in the xx rating. ALDIST 285/83 remained in effect until May 1, 1984, when ALDIST 072/84 became effective.

ALDIST 072/84, issued on March 30, 1984, established a Zone A SRB with a multiple of one for members in the xx rating who reenlisted or extended their enlistments on or after May 1, 1984. The ALDIST also authorized commanding officers to extend a member's enlistment for one or two months if his or her "normal expiration of enlistment falls between the date of this ALDIST and 1 May 1984." The short-term extension would allow the member to take advantage of the SRB.

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 of the United States Code.

2. The applicant knew or should have known that he would not receive an SRB for reenlisting on March 30, 1984, when he was voluntarily released from active duty in the Coast Guard. The BCMR's three-year statute of limitations must be calculated from that date. The applicant did not return to active duty until October 21, 1987. Therefore, his three years to file his request expired under the statute of limitations on March 30, 1987, before he returned to active duty. Pursuant to 10 U.S.C. § 1552, the Board may waive the three-year statute of limitations if it is in the interest of justice to do so. To determine whether it is in the interest of justice to waive the statute of limitations, the Board should conduct a cursory review of the merits of the case. Dickson v. Secretary of Defense, 68 F.3d 1396, 1407 (D.C. Cir. 1995); Allen v. Card, 799 F. Supp. 158, 164 (D.D.C. 1992).

3. The applicant alleged that a short time before his release from active duty on March 30, 1984, an SRB for his rating was eliminated. He alleged that, because he had intended to reenlist and take advantage of this SRB, it was unjust for him to have been denied the SRB. He also alleged that, had he been counseled concerning SRBs, he would not have chosen to leave active duty and therefore would have earned an SRB that was later authorized for his rating.

4. ALDIST 285/83, issued on December 6, 1983, was in effect when the applicant was released from active duty on March 30, 1984. It did not authorize an SRB for members in the applicant's xx rating. There was no SRB in effect for the applicant's rating at any time during the six months before he was released from active duty.

5. The applicant did not reenlist or extend his enlistment on March 30, 1984. Therefore, he was not entitled to the counseling required under Section 2.a. of Commandant Instruction 7220.13G. The regulation concerning counseling submitted by the applicant did not go into effect until 1988.

6. The applicant presented no evidence indicating that he was still on active duty or entitled to counseling when his command received and implemented ALDIST 072/84, which the Commandant issued at 11:00 p.m. Eastern Standard Time on March 30, 1984.

7. Although the applicant alleged that he would have reenlisted if he had known of the future opportunities for and benefits of SRBs, the record indicates that on March 30, 1984, the applicant wanted to be discharged "as soon as possible."

8. The applicant was not on active duty between March 31, 1984, and October 21, 1987. In fact, the record indicates that he failed to perform many of his inactive duty drills during that time. The SRB program is intended to reward those who continue to serve their country on active duty. The applicant has not proved by a preponderance of the evidence that he was treated unfairly or that he is entitled to receive an SRB for time when he was not serving his country on active duty.

9. It is not in the interest of justice to waive the three-year statute of limitations in this case.

10. Accordingly, the applicant's request should be denied because he failed to file his application timely and because a cursory review of his claims indicates they lack merit.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

John A. Kern

Michael K. Nolan

L. L. Sutter