

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-057

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 January 24, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated September 7, 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 xxxxxxxxxxxxxxxx, asked the Board to correct his record to show that he reenlisted for 6 years on his tenth anniversary on active duty. The correction would entitle him to receive a Zone B selective reenlistment bonus (SRB)¹ pursuant to ALDIST 184/99.

APPLICANT'S ALLEGATIONS

The applicant stated that on his tenth active duty anniversary, he was eligible for an SRB and that, pursuant to Coast Guard regulations, he should have been counseled about his eligibility. He alleged that he was not properly counseled and did not learn about the SRB opportunity until after his tenth anniversary had passed. He further alleged that, if he had been properly counseled, he would have reenlisted for a term of 6 years to receive the maximum allowable SRB for his rating under ALDIST 184/99. In

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 6 and 10 years on active duty are in "Zone B." Members may only receive one SRB per zone.

support of his allegations, he submitted a statement signed by his unit's yeoman, who stated that, because of an administrative error, she was not forewarned of his tenth active duty anniversary and she did not counsel him about his eligibility for an SRB.

SUMMARY OF THE RECORD

On September 30, 1998, the applicant enlisted in the Coast Guard for 4 years, through September 29, 2002. Because he had previously served 9 years, 2 months, and 26 days on active duty in another service, his active duty base date is July 4, 1989.

The applicant's tenth anniversary on active duty fell on July 4, 1999. At that time, ALDIST 184/99 was in effect, authorizing Zone B SRBs calculated with a multiple of one-half for members in the FS rating. There is no administrative entry (page 7) in the applicant's record to indicate that he was ever counseled about his eligibility for an SRB.

VIEWS OF THE COAST GUARD

On August 2, 2000, the Chief Counsel of the Coast Guard recommended that the Board grant relief in this case. He stated that the applicant's request should be granted because the record supports his allegation that he was not counseled about his eligibility to receive the SRB. He also stated that the applicant "took action to rectify the failure to counsel error after its discovery and is now willing to offer a new 6-year enlistment as consideration for the SRB he requests."

The Chief Counsel recommended that the Board correct the applicant's record to show that he reenlisted for 6 years on July 2, 1999, his tenth active duty anniversary.² He noted that because the applicant had previously obligated himself to serve through September 29, 2002, his Zone B SRB would be reduced due to his 38 months of "previously obligated service."

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On August 2, 2000, the BCMR sent the applicant a copy of the Chief Counsel's recommendation and invited him to respond within 15 days. On August 23, 2000, he responded, indicating that he agreed with the Chief Counsel's recommendation.

APPLICABLE REGULATIONS

² In a telephone call with BCMR staff, the Office of the Chief Counsel stated that it recommended the contract date be July 2, 1999, rather than July 4, 1999, to avoid the holiday and weekend, because July 4, 1999, was a Sunday.

Section 3.b.(3) of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) states that to be eligible for a Zone B SRB, a member must “[h]ave completed at least 6 but not more than 10 years active service on the date of reenlistment or the operative date of the extension.”

Section 3.d.(9) of Enclosure (1) states that “[c]ommanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expiration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB respectively.”

Enclosure (3) to the instruction states that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled concerning their eligibility for an SRB. The counseling must be memorialized in their records with a page 7 signed by the member.

ALDIST 184/99, issued on May 13, 1999, established SRBs for members in certain skill ratings who reenlisted or extended their enlistments after June 15, 1999. The multiple to be used for calculating Zone B SRBs for members in the FS rating was one-half.

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 alleged that he was not counseled about his eligibility for an SRB prior to his tenth anniversary on active duty. He alleged that, had he been counseled, he would have been discharged on his tenth anniversary and immediately reenlisted for a term of 6 years to receive the maximum possible SRB for his rating.

3. Under Section 3.d.(9) of Enclosure (1) to Commandant Instruction 7220.33, the applicant was eligible to be discharged any time during the three months prior to his tenth active duty anniversary, July 4, 1999, in order to reenlist and receive a Zone B SRB under ALDIST 184/99. Under Enclosure (3) to the instruction, the applicant had a right to be counseled concerning his eligibility during the three months prior to his tenth active duty anniversary.

4. There is no evidence that the Coast Guard counseled the applicant concerning his eligibility for an SRB prior to his sixth anniversary on active duty. Had he

been so counseled, a page 7 documenting the counseling should appear in his record, but there is none. Moreover, the applicant's unit's yeoman signed a statement indicating that he had not been properly counseled. Therefore, the preponderance of the evidence indicates that the Coast Guard erred by not properly counseling the applicant.

5. Upon discovering the error, the applicant quickly applied to this Board for relief. Therefore, the Board concludes that, if the applicant had been timely counseled, he would have been discharged and reenlisted for a term of 6 years to receive an SRB.

6. The Chief Counsel recommended that the Board grant relief by reenlisting the applicant for 6 years as of July 2, 1999, rather than July 4, 1999, to avoid the holiday and weekend. The Board finds that, had the applicant been properly counseled, it is much more likely that he would have been reenlisted on July 2nd than on July 3rd or July 4th.

7. Accordingly, relief should be granted by correcting the applicant's record to show that he reenlisted for 6 years on July 2, 1999.

ORDER

The application of XXXXXXXXX, USCG, for correction of his military record is hereby granted as follows:

His record shall be corrected to show that he was discharged and reenlisted on July 2, 1999, for a term of six years, for the purpose of receiving a Zone B SRB with a multiple of one-half under ALDIST 184/99.

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

George J. Jordan

Michael K. Nolan

Thomas A. Phemister