

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-040

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XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

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 Chair docketed the case on December 14, 2007, upon receipt of the applicant's completed application, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated September 11, 2008, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record to show that the selective reenlistment bonus (SRB)¹ he received for extending his enlistment in order to transfer from the CGC ADAK, which was stationed in Bahrain, to the CGC RUSH is tax exempt. The applicant stated that when he arrived on the RUSH, he learned that the command of the ADAK was supposed to have required him to obligate additional service by signing an extension or enlistment contract before letting him transfer to the RUSH. Moreover, if they had done so in compliance with regulations, the SRB he received for signing the contract would have been tax exempt because the ADAK was in a combat zone.² However, because the command of the ADAK failed to comply with the regulations, he did not sign the necessary contract until he was aboard the RUSH and so his SRB was not eligible for the combat-zone tax exemption.

¹ SRBs allow the Coast Guard to offer a reenlistment incentive to members who possess highly desired skills at certain points during their career. 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 contract, 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, which is published in an ALCOAST. Coast Guard members who have at least 21 months but no more 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 SRB per zone. Coast Guard Personnel Manual, Article 3.C. and 3.C.4.a.

² Service members may exclude from their gross income any compensation received for any month during any part of which the member served in a combat zone, "provided that the member's entitlement to the compensation fully accrued in a month during which the member served in the combat zone." 26 C.F.R. § 1.112-1.

In support of his allegations, the applicant submitted a copy of his transfer orders, which were issued on January 31, 2007. The orders indicate that the applicant was to leave his billet on the ADAK in the Kingdom of Bahrain and to report for duty on the RUSH homeported in Honolulu, Hawaii, by August 15, 2007. The orders note that the applicant's tour of duty aboard the RUSH would be three years; that the "assignment requires minimum three (3) years OBLISERV" (future service obligated by a reenlistment or extension contract); and that Article 4.B.6. of the Personnel Manual would apply. The orders also indicate that the applicant might be required to attend training in Portsmouth, Virginia, prior to reporting to the RUSH.

The applicant also submitted a series of e-mails in which the Executive Officer of the ADAK advised a senior chief in Portsmouth on May 13, 2007, that the applicant "had to leave hastily from Bahrain to make a 'C' School. Long story short, he didn't get a proper check out and he needs an extension (see e-mail below). Was wondering if you could help me out and put me in contact with someone there in Portsmouth to help us take care of this before he reports to CGC RUSH. ET1 is attending a school there in Yorktown right now." The e-mail string below this message indicated that the applicant's end of enlistment (EOE) date, December 12, 2008, was "not good" and that he needed to obligate additional service for his transfer to Hawaii.

SUMMARY OF THE RECORD

The applicant first enlisted on August 10, 1999, and has remained on active duty since then. He signed a four-year reenlistment contract on December 13, 2004, with an EOE of December 12, 2008, to receive a Zone A SRB. The applicant reported to the ADAK, stationed in Bahrain, on July 1, 2006. He was transferred and reported to the RUSH on July 5, 2007. On August 24, 2007, while serving aboard the RUSH, he signed a 72-month extension contract to get a Zone B SRB calculated with a multiple of 2.0.

VIEWS OF THE COAST GUARD

On April 30, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny the applicant's request but grant alternate relief. The JAG stated that the applicant's orders referenced Article 4.B.6. of the Personnel Manual, and under that article, the three-year OBLISERV requirement noted on the orders did not apply to him. The JAG stated that the applicant was not required to sign a reenlistment or extension contract to accept his transfer orders to the RUSH because he had more than six years of service and so was in a "career status." Members in a "career status" need to have only one year of remaining obligated service upon reporting to a new unit. Since the applicant reported to the RUSH on July 5, 2007, and his EOE was not until December 12, 2008, he already had sufficient obligated service to accept his transfer orders and was not required or authorized to sign a new contract. The JAG noted that under Article 3.C.5.5. of the Personnel Manual, members may not sign a reenlistment or extension contract just to get an SRB. However, if they are required to sign a contract for another purpose, they may do so and get any SRB in effect. The JAG stated that the applicant was not authorized to sign any contract in 2007 because he had sufficient service remaining on his prior enlistment to accept his transfer orders and he was not within three months of the end of his enlistment. Therefore, the August 24, 2007, contract does not make him eligible for any SRB because he signed the contract more than a year

too early. The JAG stated that the applicant's claim that his SRB should be tax exempt "is a moot point as the applicant was not qualified for the SRB."

The JAG argued, however, that the 72-month extension contract dated August 24, 2007, is erroneous because it was not required for OBLISERV purposes as it indicates. The JAG stated that because the applicant did not need to extend his enlistment at all in 2007, if properly counseled, he would have waited until December 13, 2008, to reenlist to qualify for an SRB. Therefore, the JAG recommended that the Board void the August 24, 2007, extension contract so that the applicant can reenlist upon his EOE this December.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On June 2, 2008, the applicant responded to the views of the Coast Guard. He argued that Article 4.B.6.a.2. of the Personnel Manual, which states that members in a career status need only one year of OBLISERV to accept transfer orders, applies only to INCONUS transfers. Since he was being transferred to Hawaii, that article did not apply. The applicant stated that his assignment to the RUSH was an OUTCONUS transfer and so Article 4.B.6.b. applied. Article 4.B.6.b. states that all personnel assigned to OUTCONUS duty stations must have enough obligated service to complete a full tour of duty at the new unit. A full tour of duty aboard the RUSH lasts three years. The applicant repeated his claim that the regulations and transfer orders required him to obligate additional service before transferring to the RUSH and that if the ADAK command had properly transferred him, he would have signed the extension contract while aboard the ADAK in a designated combat zone, and his SRB would have been tax exempt.

APPLICABLE REGULATIONS

Article 4.B.6.a. of the Personnel Manual governs "INCONUS Reassignments" and states that "[u]nless otherwise indicated, these obligated service (OBLISERV) requirements apply when service members transfer PCS to INCONUS duty stations." Subparagraph 1 states that assignment officers will normally not transfer service members E-4 and above with fewer than six years of active duty unless they reenlist or extend to have enough obligated service to complete a full tour of duty upon reporting to a new unit. It also states that "a member must comply with OBLISERV requirements before he or she will be permitted to execute his or her preferred assignment." Subparagraph 2 states that "[p]ersonnel E-4 and above with over six years of active duty 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."

Article 4.B.6.b. of the Personnel Manual governs "OUTCONUS Reassignments." Subparagraph 1 states that "[a]ll personnel ordered to OUTCONUS duty stations shall obligate to complete the full tour as specified in Article 4.A.5. The tour commences on the reporting date." Subparagraph 2 states that if a member refuses to reenlist or extend to meet the OBLISERV requirement for an OUTCONUS assignment, his transfer orders may be canceled.

According to Appendix A of the Joint Federal Travel Regulations and the glossary in Exhibit 4.G.1. of the Personnel Manual, CONUS or INCONUS means within the continental (48

contiguous) United States and the District of Columbia, while OCONUS or OUTCONUS means outside of CONUS and so includes Hawaii.

Article 4.A.5.b. of the Personnel Manual states that a full tour of duty for an E-6 aboard a cutter stationed OUTCONUS in Hawaii is three years.

Article 1.G.15.a.2. of the Personnel Manual states that a member may extend his enlistment “[f]or any number of full years and/or full months up to six years to ensure sufficient obligated service for these purposes: a. Attend a resident school. b. INCONUS and OUTCONUS assignments; [see] Article 4.B.6.”

Article 3.C.5.5. of the Personnel Manual states that “[u]nder no circumstances will an individual be permitted to extend their enlistment more than 3 months early for SRB purposes alone. However, a member who must extend for some other reason (i.e., transfer, training, advancement, or tuition assistance) may extend for a period greater than the minimum required for the purpose of gaining entitlement to an SRB.”

ALCOAST 283/06 was in effect from July 1, 2006, through July 15, 2007, and it authorized a Zone B SRB calculated with a multiple of 2.0 for members in the ET1 rating. ALCOAST 304/07 was in effect from July 16, 2007, through July 15, 2008, and it authorized a Zone B SRB calculated with a multiple of 2.0 for members in the ET1 rating. ALCOAST 286/08 became effective on July 16, 2008, and it authorizes a Zone B SRB calculated with a multiple of 1.7 for members in the ET1 rating.

Section 2 of ALPERSRU S/03, issued on September 17, 2003, states that “[c]ombat tax exclusion applies to the initial payment, and future installment payments, of a Selective Reenlistment Bonus (SRB) ... if a member executes a reenlistment or extension ... while serving in a combat zone.”

Under Article 8.G.2. of the Pay Manual, the combat-zone tax exclusion applies to any pay or compensation to which a member becomes entitled while serving in Bahrain (as well as other countries) and in the waters and air space of the Persian Gulf, the Red Sea, the Gulf of Aden, the Gulf of Oman, and the Arabian Sea north of 10°N latitude and west of 68°E longitude.

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 10 U.S.C. § 1552. The application was timely.

2. The CGC RUSH is homeported in Honolulu, Hawaii, and thus is an OUTCONUS assignment because Hawaii is not part of the continental United States. The record shows that on January 31, 2007, the applicant was issued permanent transfer orders from the CGC ADAK in Bahrain to the RUSH, and he reported to the RUSH on July 5, 2007. Therefore, the OBLISERV

regulations for OUTCONUS reassignments under Article 4.B.6.b. of the Personnel Manual applied to his transfer to the RUSH. The Board notes that in recommending denial of the applicant's request, the JAG relied on the regulations for INCONUS reassignments under Article 4.B.6.a., which is inapplicable to this case.

3. Under Article 4.B.6.b. of the Personnel Manual, the applicant was required to have sufficient obligated service to complete a full tour of duty on the RUSH before effecting his transfer. The chart in Article 4.A.5.b. shows that a full tour of duty aboard the RUSH for an E-6 is three years. This OBLISERV requirement was accurately reflected on the applicant's transfer orders. As the applicant reported to the RUSH on July 5, 2007, he should have obligated service at least through July 4, 2010, before reporting aboard. However, the applicant's EOE was then December 12, 2008, and so he did not have sufficient obligated service to complete a full tour of duty aboard the RUSH when he received the transfer orders. Therefore, the command of the ADAK was required by both Article 4.B.6.b. and the transfer orders to have the applicant obligate additional service before allowing him to transfer to the RUSH.

4. The applicant's extension contract is dated August 24, 2007, which is long after he transferred from the ADAK to the RUSH. Therefore, the applicant has proved by a preponderance of the evidence that the Coast Guard erred in failing to have him comply with Article 4.B.6.b. by signing an extension contract to obligate additional service before transferring from the ADAK to the RUSH. This finding is strongly supported by the email of the Executive Officer of the ADAK dated May 13, 2007, which states that because the applicant's departure from the ADAK was rushed, he was not properly required to sign an extension contract and so still needed to sign one.

5. Article 3.C.5.5. of the Personnel Manual states that "a member who must extend for some other reason (i.e., transfer, training, advancement, or tuition assistance) may extend for a period greater than the minimum required for the purpose of gaining entitlement to an SRB." Article 1.G.15.a.2. states that a member may extend his enlistment for a maximum of six years, or 72 months. Therefore, when the applicant received transfer orders to the RUSH on January 31, 2007, he was not only required to extend his enlistment at least through July 4, 2010, but he was authorized to extend his enlistment for 72 months to receive the maximum possible SRB.

6. While the Board makes no findings on tax law, we understand that the Coast Guard's error has harmed the applicant because an SRB resulting from a contract signed in Hawaii, outside of a combat zone, is not tax exempt under 26 C.F.R. § 1.112-1, whereas Bahrain is a designated combat zone under Article 8.G.2. of the Pay Manual. Therefore, pursuant to ALPERSRU S/03, if the applicant had signed his extension contract while aboard the ADAK in Bahrain, prior to his transfer to the RUSH, as required by Article 4.B.6.b. of the Personnel Manual, his SRB under ALCOAST 283/06 would presumably have been tax exempt.

7. Accordingly, relief should be granted by correcting the date of execution of the applicant's 72-month extension contract to February 1, 2007, when he was serving aboard the ADAK in Bahrain, a designated combat zone. In addition, because the JAG indicated that the Coast Guard may have denied the applicant his SRB, the Board should order the Coast Guard to pay the applicant the SRB he is due for the 72-month extension under ALCOAST 283/06.

ORDER

The application of ET1 xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct his 72-month extension contract to show that he executed it on February 1, 2007 (instead of August 24, 2007), while he was serving aboard the CGC ADAK in Bahrain, a designated combat zone. The Coast Guard shall pay him any amount due under ALCOAST 283/06 as a result of this correction.

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