

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-125

XXXXXXXXXXXXX
xxxxxxx, MK2/E-5

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 after receiving the applicant's completed application on April 10, 2009, and assigned it to staff members D. Hale and J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated June XX, 2010, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant, a machinery technician, second class (MK2), originally asked the Board to correct his record by changing the term of his April 26, 2005, extension contract from 23 months to 24 months. He alleged that if he had been counseled to extend his enlistment for 24 months, instead of 23, then he would have been eligible to reenlist or extend his enlistment for a Zone A selective reenlistment bonus (SRB)¹ after he advanced to MK2 on August 1, 2007. (Until he advanced from MK3 to MK2, the applicant was not eligible for an SRB.)

The applicant later revised his allegations, alleging that if he had been properly counseled prior to his transfer from the *CGC Farallon* to Station Miami Beach in June 2007, he would have been able to delay his transfer and wait to reenlist until after he advanced to MK2 on August 1, 2007, and so would have received an SRB.

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. Personnel Manual, Article 3.C.4.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on August 7, 2001, for four years, through August 6, 2005. He advanced to MK3 on April 2, 2002.

On April 26, 2005, the applicant signed a 23-month extension contract to obligate service for a transfer to the *Farallon* in June 2005. The extension obligated him to serve from August 7, 2005, through July 6, 2007. As an MK3, he was not then eligible for an SRB under ALCOAST 306/04, which was then in effect.

On March 5, 2007, the Coast Guard issued orders transferring the applicant from the *Farallon* to Station Miami Beach, where he was assigned to serve from June 1, 2007, through July 1, 2011. The orders stated that the June 1st reporting date could be adjusted by a maximum of 30 days if both commands agreed to the change, and the applicant actually reported to Station Miami Beach on July 1st instead of June 1st. The orders also stated that the applicant was required to have at least four years of obligated service in his record before reporting to his new unit. Therefore, on June 22, 2007, before reporting to Station Miami Beach, he signed a four-year extension contract since his original enlistment, as extended, was due to end on July 6, 2007. As an MK3, the applicant was not eligible for an SRB under ALCOAST 283/06, which was in effect through July 15, 2007.

On June 29, 2007, the Commandant issued the advancement eligibility lists resulting from the May 2007 servicewide examination (SWE). The applicant placed 36th out of 178 MK3s who took the SWE and were thus included on the eligibility list for advancement to MK2.

On July 1, 2007, the applicant reported for duty to Station Miami Beach, and on July 7th his new four-year extension contract became operative.

On July 26, 2007, the Commandant issued ALCGENL 114/07, authorizing the advancement of the applicant and 135 other MK3s on the list to MK2 as of August 1, 2007.

On August 1, 2007, the applicant advanced to MK2 and thereby became eligible for an SRB under ALCOAST 304/07, which had gone into effect on July 16, 2007.

The applicant's 6th anniversary on active duty² was August 7, 2007. His record does not contain a Page 7 documenting SRB counseling on this date.

On August 27, 2007, the Commandant issued ALCGENL 134/07 announcing the initial cutoffs for guaranteed advancement from the eligibility lists resulting from the May 2007 SWE. The cutoff for MK2s indicates that every MK3 on the list was guaranteed advancement.

² On a member's 6th and 10th active duty anniversary, the member is eligible to reenlist for either a Zone A or a Zone B SRB if one is authorized for his rating and the member has not already received one. The member must be counseled about this opportunity, and the counseling must be documented on a Page 7. Personnel Manual, Article 3.C.5.9.

INITIAL ADVISORY OPINION OF THE COAST GUARD

On August 25, 2009, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief because the applicant received transfer orders in March 2007 that required him to obligate four more years of service before reporting to a new unit in June 2007, which was weeks before the Commandant issued an announcement authorizing the applicant's advancement to MK2. The JAG argued that on June 22, 2007, neither the applicant nor anyone else could have known that he would be advanced to MK2 and become eligible for an SRB on August 1, 2007.

APPLICANT'S RESPONSE TO THE INITIAL ADVISORY OPINION

The applicant responded to the JAG's advisory opinion on December 18, 2009, and stated the following:

I am contesting that I was counseled incorrectly prior to transfer from *CGC Farallon* to Station Miami Beach. I had taken the May 2007 servicewide. I was above the cut to make MK2 and that I would be advancing on 01Aug07. Regardless of this information, my YN told me that there was absolutely no possible way to receive an SRB. I was in contact with the [station] I was transferring to because it was located on the same pier as *CGC Farallon*. Per both commands and my orders (if given the proper counseling) I would be have been allowed to push back the date of my transfer date 30 days. This would have enabled me to advance to MK2 and then obligate the necessary time to transfer to [Station Miami Beach] and receive the SRB prior to reporting to my new unit. At this time I would have reenlisted for a period of six years.

In support of his new allegations and request for relief, the applicant submitted copies of his transfer orders and the pertinent ALCGENL announcements and two statements from the commanding officers of the *Farallon* and Station Miami Beach:

- In an email dated December 18, 2009, the 2007 commanding officer of the *Farallon* wrote that she would have allowed the applicant to remain attached to the *Farallon* for an extra 30 days so that he could have reenlisted for an SRB and reported to his next duty station after advancing to MK2.
- In an email dated December 21, 2009, the commanding officer of Station Miami Beach wrote that he would have "gladly allowed [the applicant] to stay attached to the *CGC Farallon* for an additional 30 days in order to obtain his SRB prior to reporting to Station Miami Beach [in] July 2007."

SUPPLEMENTAL ADVISORY OPINION OF THE COAST GUARD

On December 23, 2009, the BCMR sent a copy of the applicant's new allegations and evidence to the JAG and invited him to submit a supplemental advisory opinion. On February 17, 2010, the JAG submitted a supplemental advisory opinion and recommended that the Board grant alternative relief.

The JAG affirmed his earlier finding that “unfortunate time lines” prevented the applicant from receiving an SRB when he transferred from the *Farallon* to Station Miami Beach. However, he noted that there is no documentation in the applicant’s record of SRB counseling on his 6th active duty anniversary, August 7, 2007. Accordingly, the JAG recommended that the Board grant relief by allowing the applicant to reenlist for six years on his 6th anniversary, August 7, 2007, to receive an SRB in accordance with ALCOAST 304/07. The JAG noted that because the applicant’s four-year extension already obligates him to serve through July 6, 2011, the six-year reenlistment would entitle him to an SRB based on 25 months of newly obligated service.

RESPONSE TO THE SUPPLEMENTAL ADVISORY OPINION

On February 25, 2010, the Chair sent the applicant a copy of the Coast Guard’s supplemental advisory opinion and invited him to respond within 30 days. The Chair did not receive a response.

APPLICABLE LAW

Article 4.B.6.a.1. of the Coast Guard Personnel Manual provides that members with less than six years of active duty will not normally be transferred “unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit.” Under Article 4.A.5.b., a full tour of duty at Station Miami Beach is four years.

Article 3.C.5.9. of the manual provides that commanders are authorized to effect early discharge and reenlist members within three months prior to their 6th and 10th year anniversaries, for the purpose of qualifying for an SRB.

Article 3.C.11. of the manual requires that a Page 7 entry regarding counseling about SRB eligibility be made in a member’s record whenever they reenlist or extend an enlistment and within three months prior to his 6th and 10th anniversaries.

ALCOAST 304/07 was issued on June 15, 2007, and was in effect from July 16, 2007, through July 15, 2008. Under ALCOAST 304/07, MK2s in Zone A were authorized an SRB calculated with a multiple of 2.0.

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 submission, and applicable law.

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. On March 5, 2007, the Coast Guard issued orders transferring the applicant from the *Farallon* to Station Miami Beach, with a report date of June 1, 2007, and a four-year OBLISERV requirement. The record shows that he actually reported to Station Miami Beach on July 1, 2007. Because his previous enlistment was ending on July 6, 2007, under Article 4.B.6.a.1. of the Per-

sonnel Manual, he needed to obligate a minimum of 48 months to accept the orders before report to the new unit, and so he signed a 48-month extension contract on June 22, 2007. As an MK3, he was not eligible for an SRB under ALCOAST 283/06.

3. The applicant originally alleged that he was improperly counseled when he signed an extension contract on April 26, 2005, to obligate service for a transfer to the *Farallon*, and asked the Board to change the term of the contract from 23 months to 24 months. However, changing the term of that extension would have no positive impact on the applicant's SRB eligibility, and in his response to the JAG's advisory opinion, the applicant made new allegations and changed his request for relief. He alleged that he was incorrectly counseled regarding his SRB eligibility when he signed the 48-month extension contract on June 22, 2007. He alleged that if properly counseled on June 22, 2007, he would have requested and been granted permission from his losing and gaining commands to delay his reporting date until August 1, 2007, and he would not have signed the 48-month extension, but instead would have waited until August 1st, when he could then have reenlisted for an SRB as an MK2 before reporting to Station Miami Beach.

4. In support of his allegations, the applicant submitted December 2009 emails from the losing and gaining commands, who stated that they would have delayed his reporting date by 30 days so he could advance to MK2 and reenlist for the SRB. However, the Board notes that the applicant reported to Station Miami Beach on July 1, 2007, which was 30 days after his scheduled report date of June 1, 2007. Therefore, it appears to the Board that the losing and gaining commands had already delayed the applicant's reporting date by 30 days, and the orders clearly state that the commands can adjust a report date by a maximum of 30 days. There is no authority under the orders for the commands to delay the reporting date by 61 days, from June 1 to August 1, 2007.

5. Moreover, although the applicant alleged that if properly counseled he would have elected to remain on the *Farallon* until he advanced to MK2 on August 1, 2007, there was simply no way for him to know before the issuance of ALCGENL 114/07 on June 26, 2007, whether and when he would advance to MK2. On June 22, 2007, the applicant could not know where he would place on the advancement list or when the Commandant would authorize advancements from the list or how many advancements would be authorized. When the applicant's command was advising him in June 2007, they could not predict that seeking authority to delay his transfer until August 1, 2007, would have enabled him to obligate the required service after advancing to MK2 and thus to receive an SRB. Accordingly, the Board finds that the applicant has not proved by a preponderance of the evidence that the four-year extension contract he signed on June 22, 2007, is erroneous or unjust.

6. As the JAG noted in the advisory opinion, the applicant was eligible to reenlist on his 6th active duty anniversary, August 7, 2007, for a Zone SRB under ALCOAST 304/07, but there is no documentation of SRB counseling in his record as required by Article 3.C.11.2. of the Personnel Manual.

7. Accordingly, the applicant's request should be denied, but alternative relief should be granted by offering him the opportunity to reenlist on his 6th anniversary for five or six years for a Zone A SRB under ALCOAST 304/07.

ORDER

The application of XXXXXXXXX, xxxxxxxx, USCG, for correction of his military record is denied, except that the Coast Guard shall counsel him about SRBs and offer him the opportunity to reenlist as of his 6th active duty anniversary for five or six years, at his discretion, to receive a Zone A SRB under ALCOAST 304/07. The Coast Guard shall pay him any amount due under ALCOAST 304/07 as a result of his 6th anniversary reenlistment if he chooses to reenlist pursuant to this order.
