

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 71-96

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FINAL DECISION ON REQUEST FOR RECONSIDERATION

**[REDACTED]**  
This is a proceeding under 10 U.S.C. § 1552 for the reconsideration of the final decision of the BCMR, on November 30, 1995, in BCMR Docket No. 28-95. The proceeding was commenced on January 3, 1996, upon the BCMR's receipt of the request for reconsideration, which was docketed as BCMR Docket No. 71-96.

This final decision, dated January 31, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**Original Proceeding (BCMR No. 28-95)**

The applicant, a chief warrant officer W-2 (CWO2), asked the Coast Guard, in BCMR No. 28-95, to correct his military record so that he could receive a Zone B selective reenlistment bonus (SRB). The applicant claimed that he "was not able to take advantage of the opportunity to obligate [himself] for a six-year re-enlistment prior to the 15 FEB 82 deadline" because he "was never informed of ALDIST 004/82 via [a] page 7 (administrative remarks) entry."

The Board found that the applicant could not have reenlisted while ALDIST 004/82 was in effect because the applicant had approximately two years remaining on his enlistment contract during the period when ALDIST 004/82 was in effect. The Board said that Coast Guard regulations only permit a member to cancel and immediately reenlist when he or she is within three months of the stated expiration of his or her enlistment or reenlistment. Thus, the Board concluded that the applicant would not have been eligible, during the period covered by this ALDIST, to obligate himself by reenlisting to secure a Zone B SRB, even if the applicant had been properly counseled regarded ALDIST 004/82.

Accordingly, the Board denied relief to the applicant in BCMR No. 28-95.

### Proceeding upon Reconsideration (BCMR No. 71-96)

On January 3, 1996, the applicant asked the BCMR to reconsider its findings in BCMR No. 71-96. He stated that the Board found he was not eligible to reenlist under ALDIST 004/82. He maintained, however, that ALDIST 004/82 waived all "time constraints" in order to allow "enlistment extentions" (sic) to obtain an SRB. He argued that if he had been "aware of the provisions of ALDIST 004/82," he would have extended his existing enlistment instead of requesting a reenlistment (emphasis added).

The applicant's commanding officer (CO) endorsed the applicant's reconsideration request on the ground that if the applicant had "been properly counselled on the contents of ALDIST 004/82 and known that he did not qualify for reenlistment, he would have opted for an extension in order to take advantage of this selective reenlistment bonus."

### Views of the Coast Guard

On June 12, 1996, the BCMR received the views of the Coast Guard with respect to the application. The Coast Guard recommended that the applicant's request for reconsideration be denied on the ground that he has failed to meet the requirements for reconsideration under the rules of the BCMR. The Coast Guard also stated that the applicant was not authorized "to make self-serving retrospective changes to his allegations once the Board decides an application on the merits."

The Coast Guard also alleged that the applicant had not submitted substantial proof that he had not been counseled about SRB opportunities under ALDIST 004/82. (emphasis added). According to the Service, the fact that there were no administrative remarks about SRB counseling is not proof of violation because "no requirement exists to document advice, via page 7 entries or otherwise, every time an SRB ALDIST is published." Under the circumstances, lack of documentation should not be held against the Service.

### Applicant's Responses to the Views of the Coast Guard

On July 29, 1996, the Board received the supplemental views of the applicant. He reiterated that "the Coast Guard failed to counsel or inform [him] of these matters. "

He also alleged that the fact that he used the term "re-enlistment" in his original applications instead of the term "extension" was "a technical error made by a layman."

### APPLICABLE REGULATION

Section 52.67(a) of the Board's regulations provides that reconsideration of an application shall occur if the request meets the requirements of paragraph (a)(1) or (a)(2). Paragraph (a)(1) provides as follows:

(1) An applicant presents evidence or information that was not previously considered by the Board that could result in a determination other than that originally made. Evidence or information may only be considered if it could not have been presented to the Board prior to its original determination if the applicant had exercised reasonable diligence;"

Paragraph (a)(2) provides for reconsideration if the applicant presents evidence that the Board or the Secretary committed legal or factual error.

### FINDINGS AND CONCLUSIONS

The BCMR makes the following findings and conclusions on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law.

1. The BCMR has jurisdiction of the case pursuant to section 1552 of title 10, United States Code.

2. The current application, BCMR No. 28-95, is an application for reconsideration of the final decision in BCMR 71-96.

3. Section 52.67 of the regulations of the BCMR sets forth the standard for reconsideration of a final decision of the Board.

4. Section 52.67 states that there are two bases for reconsideration. The first is that a decision may be reconsidered if the applicant submits new evidence or information that could result in a different determination, provided that the new evidence or information could not have been presented prior to the Board's original determination if the applicant had exercised reasonable diligence. The second is that the applicant proves that the Board committed legal or factual error that could have resulted in a different determination.

5. The Board decided, in the original proceeding, that the applicant was not eligible to reenlist while ALDIST 004/82 was in effect and that he was therefore not

eligible to secure a Zone B SRB. The applicant thereupon amended his request by asking instead for an extension of his existing enlistment.

6. The applicant has submitted new information that could have resulted in a different determination. The applicant has not, however, submitted any evidence to the effect that he could not have introduced that information earlier.

7. The applicant did not allege that the Board had committed legal error or factual error in the original proceeding. There was in fact no error of law or fact in the final decision in BCMR No. 71-96. The applicant was in fact not eligible to reenlist at the time of ALDIST 004/82.

8. The application for reconsideration should, accordingly, be denied.

[ORDER AND SIGNATURE ON FOLLOWING PAGE]

**ORDER**

The application for reconsideration of the final decision in BCMR No. 28-95, with respect to an application to correct the military record of \_\_\_\_\_, USCG, is denied.

