


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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 18-97

FINAL DECISION

 This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on November 14, 1996, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated November 21, 1997, is signed by the three duly appointed members who were designated to serve as the Board in this case.

Applicant's Request for Relief

The applicant, an ADC (chief aviation detailer; pay grade E-7), alleged that he was denied a Zone A selective reenlistment bonus (SRB) in 1982 on the ground that he was not made aware that he could extend his enlistment and receive a reenlistment bonus under ALDIST 004/82. Specifically, he alleged that he "was not properly [counseled] as to [his] options when the SRB was offered."

The applicant alleged that he was denied a Zone A SRB to which he was entitled under ALDIST 004/82. He alleged that the Coast Guard did not inform him of the "special period" when he could extend his enlistment and "lock in" to a particular SRB multiple.

The applicant enlisted in the Coast Guard on November 20, 1978. In January 1982, he was eligible for a four-year reenlistment. On January 12, 1982, the Coast Guard published ALDIST 004/82 with a multiple of 1 effective February 5, 1982. On October 26, he extended his enlistment for two years.

Views of the Coast Guard

On November 7, 1996, the Commandant of the Coast Guard notified the applicant that his request for payment of a Zone A SRB was denied. On February

28, 1997, the Coast Guard Personnel Command (CGPC), and on October 10, 1997, the Chief Counsel of the Coast Guard, recommended denial of a Zone A SRB.

The Coast Guard said that he had not provided "substantial evidence" that an error has been made. The Commandant said that the Coast Guard was not obligated to notify each person seeking an SRB, when the SRB multiples changed. The Coast Guard did not find that any administrative error was committed, and the applicant did not demonstrate that the Service failed to give him access to information on multiple-levels.

The CGPC, in 1997, said the applicant wanted a "Zone A reenlistment bonus under ALDIST 004/82" on the claim that he was not "properly counseled" of the opportunity to obtain an SRB. CGPC found that the applicant "did not submit substantial proof to support his allegations of error."

The CGPC said that the applicant has "not submitted substantial evidence that he was not aware of the opportunity," nor has he "not presented evidence that he was not advised of the SRB opportunities." CGPC also said that "[t]he only requirement to document counseling via a page 7 is when a member is within six months of an expiration of enlistment."

Seven and 1/2 months later, on October 10, 1997, the Chief Counsel of the Coast Guard recommended denial of relief in this case. According to the Chief Counsel, the applicant was not entitled to a Zone A SRB because he provided no proof that he would have agreed to reenlist "if he had been fully counseled" regarding the contents of ALDIST 004/82. Even if the Coast Guard had a duty to counsel, which it breached, the applicant failed to show, according to the Chief Counsel, that he would have been entitled to a Zone A SRB. The Chief Counsel declared further that the applicant's statement to the effect that he "was not properly [counseled] as to [his] options when the SRB was offered" was merely a conclusory statement of opinion.

Response of the Applicant

On October 17, 1997, a copy of the views of the Coast Guard was sent to the applicant along with a letter encouraging him to respond to the views of the Coast Guard within 15 days of the letter. No response was received by the Board.

Case Decision Precedent

On July 13, 1994, the Deputy General Counsel, on review, granted an application for reconsideration of an earlier SRB decision (BCMR No. 237-91). The Deputy issued an order for correction in BCMR 121-93.

The Deputy noted that "Coast Guard regulations require that members be 'fully advised' of SRB opportunities." According to the Deputy, "the applicant has stated, with full knowledge of the civil and criminal penalties of Title 18 of the United States Code for the making of false claims against the United States, that he had not been counseled or otherwise made aware of ALDIST 004/82 until [nine years after the issuance of ALDIST 004/82]." The Deputy said that the Coast Guard did not challenge that assertion or adduce any independent evidence that would rebut this statement.

In light of the failure to "fully advise" members of SRB opportunities, the Deputy directed record correction and payment.

FINDINGS AND CONCLUSIONS

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

2. The Deputy General Counsel, the Delegate of the Secretary, issued a decision granting relief in a case (BCMR Docket 121-93) that is similar to this case.

3. The Deputy made the following finding in that case: "Coast Guard regulations require that members be 'fully advised' of SRB opportunities. See, Decision of the Deputy General Counsel in BCMR Nos 224-87, 263-87, 268-87, and 285-87, October 16, 1988."

4. The Coast Guard asserted that two requirements must be met in order to conclude that there was an SRB error in a member's record: It must be established that the member was not advised of his eligibility for an SRB, and it must be proved that he would have reenlisted or extended when the ALDIST was issued, had he been aware of its contents.

5. The Coast Guard assertion that an SRB applicant must prove that he would have reenlisted or extended is unrelated to the requirement that the Service require that its members be fully advised of SRB opportunities.

6. The Coast Guard did not fully advise the applicant of his eligibility for a Zone A SRB under ALDIST 004/82.

7. Accordingly, relief should be granted.

ORDER

The military record of _____ USCG, shall be corrected by providing that his record shall be granted, as follows:

Such record shall be corrected to indicate that the applicant agreed to extend his enlistment for six years on February 14, 1982, and that he received a Zone A SRB. Such record shall also be corrected to show his agreement to reenlist for four years on November 18, 1988; shall show his agreement to extend his reenlistment for four years on November 18, 1992; and shall show his agreement to re-extend his enlistment for three years signed on November 18, 1996 .

The reenlistment on November 20, 1984; the reenlistment on November 20, 1988, the reenlistment on November 20, 1988; and the reenlistment on November 18, 1991, shall be cancelled and shall be null and void. The Coast Guard shall pay the applicant the amount due him as a result of these corrections.

