

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 103-97

**DECISION OF THE DEPUTY GENERAL COUNSEL,  
ACTING UNDER DELEGATED AUTHORITY**

Applicant, who received a Zone A selective reenlistment bonus (SRB) in 1982, requests the Board to change his record to show that he also received a Zone B SRB in 1982 under ALDIST 004/82. In support, applicant argues that Coast Guard erred by failing to counsel him on his eligibility to obtain the Zone B SRB pursuant to ALDIST 004/82 and that, if he had been properly counseled, he would have obligated himself for six years.<sup>1</sup> Additionally, applicant argues that relief was granted in a similar case, BCMR Docket No. 325-89.

Applicant's record indicates: that he was counseled in November 1981 and on January 12, 1982 concerning reenlistment opportunities; that his enlistment contract expired on March 26, 1982 (and under Coast Guard Personnel

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<sup>1</sup> Applicant does not explain how he could qualify for both a Zone A and a Zone B SRB during the effective period of ALDIST 004/82 (January 12 through February 14, 1982). Nonetheless, the March 25, 1998 Coast Guard Chief Counsel's Advisory Opinion describes a possible theory. First, during January and February 1982, applicant was within three months of expiration of his enlistment and therefore, under Coast Guard Personnel Manual (PERSMAN) Article 12-B-7, he could have reenlisted. Pursuant to ALDIST 340/81, applicant could receive a Zone A SRB for his rating for reenlisting for three or more years. Second, immediately after reenlisting, applicant could have requested to extend the reenlistment contract for six years and could have invoked ALDIST 004/82's provision temporarily suspending PERSMAN Article 1-G-83, which article prohibited offering opportunities to extend enlistment until within approximately 30 days of the end of the current enlistment. If the commanding officer agreed to offer applicant an extension of enlistment, then applicant would qualify for a Zone B SRB for his rating since he would have met the requirement of having completed more than six but less than ten years of active duty on the beginning date of his reenlistment contract's extension (COMDINST 7220.13E, Enclosure (1), paragraph 1.d(2)(b)).

Manual (PERSMAN) Article 12-B-7, he could reenlist within three months of expiration of enlistment); and that on March 18, 1982, he extended his enlistment for three years, for which he received a Zone A SRB.

Among several Coast Guard arguments in opposition to applicant's claim, Coast Guard argues that applicant's claim for a Zone B SRB is based on a "loophole," created by ALDIST 004/82, "which would not be apparent even to a reasonably sophisticated personnel specialist ...." March 25, 1998 Coast Guard Chief Counsel's Advisory Opinion at pp. 2-3. In his April 17, 1998 response to this argument, applicant implies that Coast Guard had a duty to inform applicant of his eligibility for a Zone B SRB, and that Coast Guard unfairly shifts responsibility to him for interpreting the provisions of ALDIST 004/82.

Coast Guard's argument is instructive in revealing a flaw in the presentation of applicant's case.

In order to prevail, applicant must first show that the Coast Guard committed an error or injustice. Engels v. United States, 230 Ct.Cl. 465, 678 F.2d 173 (1982). Even though applicant received a Zone A SRB, applicant alleges that the Coast Guard committed error by failing to counsel him that he was eligible for a Zone B SRB under ALDIST 004/82. However, neither applicant nor the record shows:

(a) that ALDIST 004/82, COMDINST 7220.13E, any Coast Guard regulation, directive or policy statement requires Coast Guard personnel specialists or the command to inform members that they are eligible for both Zone A and Zone B SRBs in applicant's situation (i.e., when a member is within three months of expiration of his or her enlistment contract while ALDIST 004/82 is in effect);

(b) that, regardless of any written directives, Coast Guard personnel specialists or the command were aware that members in applicant's situation might have been eligible for both Zone A and Zone B SRBs; or

(c) that other members in applicant's situation were counseled on -- or received -- both Zone A and Zone B SRBs in 1982 and therefore applicant was treated differently than other members of the service.<sup>2</sup>

In light of the above, I conclude that applicant has not demonstrated: (1) that the Coast Guard knew or should have known that members in applicant's situation might be eligible for both a Zone A and a Zone B SRB during the effective period of ALDIST 004/82, or (2) that he was treated in a manner differently than other members during the effective period of ALDIST 004/82.

<sup>2</sup> Applicant's reference to BCMR Docket No. 325-89 does not support applicant's position because that Board's decision makes no finding -- nor even mentions -- that any member received such counseling in 1982 or received both Zone A and Zone B SRBs during the ALDIST's effective period.

Thus, I do not find that Coast Guard committed an error in failing to inform applicant of his alleged Zone B eligibility.

Furthermore, I do not find a basis in the record for concluding that applicant has suffered an injustice.

During ALDIST 004/82's effective period (January 12, 1982 through February 14, 1982), applicant was still serving under his first enlistment contract. Since he was within three months of expiration of contract, he could have reenlisted for three or more years and thus qualify for the Zone A SRB. Alternatively, under ALDIST 004/82, applicant could have extended his enlistment contract within the two and one-half months prior to the contract's expiration and likewise receive a Zone A SRB. But instead, applicant chose in March 1982 to extend for three years, for which he received a Zone A SRB. When applicant did not reenlist or extend prior to or during ALDIST 004/82's effective period, applicant was simply ineligible for a Zone B SRB because he had no enlistment contract in place: (a) which would end after his completion of the minimum six years active duty and (b) on which he could extend his obligated service for a minimum of three years.

Under these circumstances, I do not find that applicant suffered an injustice, *i.e.*, was treated in a manner that shocks the sense of justice. See Sawyer v. United States, 18 Cl.Ct. 860 (1989) ("Injustice ... is treatment by the military authorities that shocks the sense of justice. Reale v. United States, 208 Ct.Cl. 1010, 1011, 529 F.2d 533, cert. denied, 429 U.S. 854 (1976)." *Id.* at 868).

Finally, applicant's reference to BCMR Docket No. 325 is not controlling because the Secretary's delegate is not bound by decisions of the Board. See, e.g., Miller v. Lehman, 801 F.2d 492 (D.C. Cir. 1986) (where court upheld Navy Secretary's decision to reject BCNR finding that was not supported by the record). Moreover, the decision in Docket No. 325-89 contains no reasoning nor findings of fact to support that Board's implied conclusion that Coast Guard committed error by not advising that applicant of his possible eligibility to reenlist and then to extend reenlistment during the ALDIST's effective period. Thus, no reasoning or findings were presented in that decision to support applicant's position in the instant case.

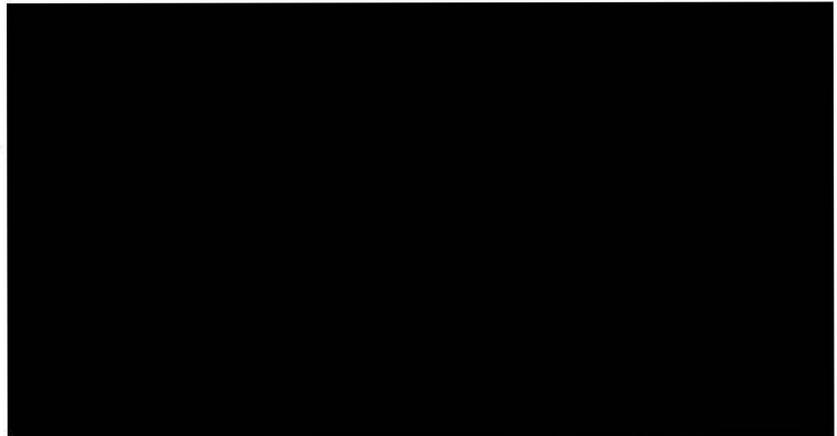
In light of the above, I find that applicant has not proved by a preponderance of the evidence that Coast Guard committed an error or an injustice by failing to inform him he was eligible for a Zone B SRB.

**ORDER**

The application of  
military record is denied.

or correction of his

DATE: Dec. 30, 1998



DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

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Application for Correction  
of Coast Guard Record of:

BCMR Docket  
No. 103-97

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FINAL DECISION

  
This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on April 22, 1997, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated May 8, 1998, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**Applicant's Request for Relief**

On April 22, 1997, the applicant requested a Zone B selective reenlistment bonus (SRB) for six years with a multiple of one. He alleged that he was eligible to "lock in" for a Zone B SRB in 1982 under the provisions of ALDIST 004/82. He alleged that "at no time [until 1996] was [he] counseled or notified in any way of [his] eligibility for a Zone B SRB under ALDIST 004/82."

The applicant alleged that he should have received counseling concerning his option to extend his enlistment prior to February 15, 1982. He cited four decisions of the Deputy General Counsel (the Delegate of the Secretary) which require that a member be "fully advised" of SRB opportunities: BCMR 224-87; BCMR 263-87; BCMR 268-87; and BCMR 285-87.

The applicant alleged that he was not advised and never received proper counseling regarding his SRB options pursuant to ALDIST 004/82. He alleged that the Coast Guard did not properly inform him of his option to extend his enlistment for six years during the period from January 12 to February 14, 1982. He claimed that

he was not properly informed of his option to extend in order to become eligible for a Zone B SRB.

The applicant alleged that he was eligible for a Zone B SRB in January 1982, pursuant to ALDIST 004/82. He said that he was not personally aware until 1997, however, that he had an opportunity to receive an SRB. In 1997, another petty officer informed him that he was eligible for an SRB. The applicant said he was indeed eligible to obligate service and lock into a Zone B had he "been properly counseled."

The applicant also alluded to what he viewed as a basic unfairness. He was an aircraft mechanic working on the hanger deck with a duty to know about aircraft maintenance. He believed he was also expected to know more about SRBs than the administrative personnel who directed the program.

#### Views of the Coast Guard

The Chief Counsel of the Coast Guard said that "the Coast Guard was not required to counsel members who became eligible to extend early under ALDIST 004/82."

The Chief Counsel recommended that the application be denied for various reasons:

(1) He said there was no error because the applicant was in fact counseled on two occasions, in accordance with the Personnel Manual, prior to his March 1982 extension. According to his service record, he was counseled on November of 1981 and on January 12, 1982.

(2) He said there was no error because the Coast Guard did not "have a duty to counsel" the applicant regarding his eligibility for an SRB. The Chief Counsel also said that the Coast Guard was not required to advise the applicant that he could also lock in ALDIST 340/81's Zone B SRB, by asking his command to immediately enlist him and, if the reenlistment request were granted, by extending the new enlistment.

(3) The Chief Counsel alleged that Coast Guard members "generally" received notice of SRB matters "through the ALDIST system, command announcements, Coast-Guard wide publications, and other means." There was no requirement of personal notification of such information or of adding such material to records.

In Docket No. 123-97, the Chief Counsel argued that the duty to counsel was

one that was established for the benefit of the Coast Guard, rather than for the benefit of enlisted members. To the extent that the Coast Guard was required to counsel members about SRBs, the duty was one that was established primarily for the benefit of the Coast Guard and the United States, rather than a duty to establish a private right to relief for enlisted members.

In the opinion of the Chief Counsel, granting such SRB relief provided an unearned windfall to applicants at the expense of the limited funds appropriated to support Coast Guard missions. He also said that "past practice is not justification for continuing to expend funds for Coast Guard missions on entitlements never intended by Congress."

The Chief Counsel stated that this case involves "a significant issue of Coast Guard policy." This statement means that any grant of relief in this decision must be reviewed by the delegate of the Secretary, pursuant to 33 CFR § 52.64(a)(2) of the rules of the Board.

#### **Applicant's Response to the Views of the Coast Guard**

On April 3, 1998, a copy of the advisory opinion of the Coast Guard was sent to the applicant. On April 17, 1998, the applicant submitted his "final attempt to respond" to the position of the Service.

The applicant repeated that he was "indeed eligible to obligate service and lock into Zone B SRB had [he] known and been properly counseled on ALDIST 004/82."

The applicant also objected to the Coast Guard's inference that he was trying to take funds appropriated for Coast Guard missions. He takes offense at that because the amount of money for this SRB is so small.

#### **1994 DECISION OF THE DEPUTY GENERAL COUNSEL**

On July 13, 1994, the Delegate of the Secretary of Transportation (the Deputy General Counsel) took final action in a case similar to the present case (BCMR Docket No. 121-94).

In that case, the Board had recommended that relief be denied to the applicant. The Deputy General Counsel (DGC) reversed that decision and granted relief to the applicant on the ground that the Coast Guard failed to "timely apprise the applicant of SRB provisions of ALDIST 004/82." The DGC held that the Coast Guard must fully advise members of their SRB opportunities.

The following passages, which relate to the Coast Guard's obligation to counsel an enlisted member regarding an SRB are taken verbatim from the DGC decision in Docket No. 121-94.

Coast Guard regulations require that members be 'fully advised ' of SRB opportunities. . . .

However, the applicant has stated, with full knowledge of the civil and criminal penalties . . . 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 . . . 1991. The Coast Guard did not challenge that assertion, no independent evidence has been adduced that would rebut his statement, and allegations such as this have routinely been accepted at face value in the past. . . .

[The Coast Guard has not offered any evidence] as to how information on SRB rights has been disseminated, whether and to what extent efforts had been undertaken to apprise personnel of their rights under ALDIST 004/82, how relevant information would have come to the applicant's attention, how others similarly situated individuals learned of their SRB opportunities.

#### EXCERPTS FROM RECORD

The following administrative remarks (page seven entries) were included in the applicant's military record:

"81NOV24: Reenlistment interview conducted this date in accordance with Article 12-B-4, PERSMAN. Recommended for reenlistment. [Applicant] has stated he is undecided about extending for one year at this time.

"82JAN12: Follow-up interview conducted this date in accordance with "Article 12-B-4, PERSMAN. [The applicant] has stated his intentions are to extend his enlistment for one (1) year.

"82MAR18: I hereby request 50% of the total of my bonus in one accelerated payment, with the remainder to be paid.

[Signed by Applicant]"

On March 18, 1982 and March 27, 1982, there were page seven entries to the

effect that accelerated Zone A SRB payments were approved to the applicant. The applicant's military record also included page seven entries that dealt with SRB entitlement on February 5, 1987, February 6, 1987, and March 24, 1993.

### 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 concerning this matter pursuant to section 1552 of title 10, United States Code.

2. The application is timely, because the U.S. Court of Appeals has held that the limitations period in section 1552 of title 10 is tolled by section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940. 50 U.S.C. App. § 525. The court determined that "[t]he period of military service shall not be included in computing any period now or hereafter to be limited to any law. . . ." Detweiler v. Pena, 38 F.3d 591 (D.C. Cir. 1994).

3. In 1997, the applicant asked for a Zone B SRB on the ground that he "was not properly informed of [his] option to extend during the period of [1/12/82 to 2/14/82] to become eligible for a Zone B [SRB]." He stated that he should have received counseling concerning his options as they related to the SRB announced by ALDIST 340/81 and ALDIST 004/82.

4. The applicant originally enlisted in the Coast Guard on March 27, 1978 for four years. He agreed to extend his enlistment for three years on March 26, 1982; he agreed to extend for seven months on September 24, 1984 for obligated service; he agreed to extend his enlistment for one year on October 1, 1985; and he agreed to extend for one year on October 15, 1986. On February 6, 1987, the applicant reenlisted for three years; on June 2, 1989, he extended his enlistment for 18 months; and on August 6, 1993, he reenlisted for six years.

5. The applicant alleged that he was not notified, prior to February 15, 1982, that ALDIST 004/82 had been issued.

6. In 1994, the delegate of the Secretary held, in BCMR Docket No. 121-93, that the Coast Guard had a duty to keep members "fully advised" of SRB opportunities.

7. It is clear from the applicant's military record that he was "advised" about selective reenlistment bonuses. There were at least eight entries in his record

regarding SRB eligibility and payment. Neither party, however, submitted evidence as to whether the applicant was "fully" advised. (BCMR No. 121-93 does not define "fully advised.")

8. The applicant alleged that the Coast Guard did not keep the applicant advised of his opportunity to receive a Zone B SRB pursuant to ALDIST 004/082, and that it did not notify the applicant that he was eligible to receive an SRB bonus under that ALDIST. The applicant has proved these allegations by a preponderance of the evidence.

9. Accordingly, the application should be granted.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

**ORDER**

The application to correct the military record of  
USCG, shall be corrected as follows: The military record shall be corrected to indicate that the applicant agreed to extend his enlistment for four years on February 14, 1982, and he received a Zone A Selective Reenlistment Bonus with a multiple of one. His agreements to extend his enlistment for three years, dated March 27, 1982, and for one year, dated March 27, 1986 shall be canceled. These shall be null and void and shall have no effect on his SRB entitlement. The Coast Guard shall pay the applicant the amount due him as a result of these corrections to his record.

