

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1998-063

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was commenced on March 3, 1998, upon the BCMR's receipt of the applicant's request for correction of his military record.

The final decision, dated March 11, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant alleged that he "was improperly counselled of [his] options to receive (sic) [his] SRB."

The applicant asked that the "Agreement to Extend/Reextend Enlistment" that he signed on March 31, 1997 be canceled, and that the reenlistment that he signed on July 1, 1997 be accepted. He alleged that he was told that his first extension could be cancelled. His new reenlistment would be honored within 48 months with a zone A SRB.

SUMMARY OF RECORD

On March 31, 1997, the applicant signed a CG-3301B extension of enlistment form for three years and three months. The 3301B Form also said that he had been provided with "SRB Questions and Answers," and stated that he was "eligible to reenlist/extend [his] enlistment." He also acknowledged that "all his questions

[were] answered concerning SRB eligibility," and he understands "the effect this extension/reextension has upon any SRB, if cancelled."

On July 1, 1996, the applicant signed a second CG-3301B for four years of extension and SRB entitlement. This CG-3301B acknowledged that he extended his enlistment for 4 years. The applicant signed a statement on July 1, 1996 to the effect that that he had "had all his questions answered" concerning SRB eligibility.

VIEWS OF THE COAST GUARD

On January 12, 1999, the Chief Counsel of the Coast Guard recommended that this application be denied.

The Chief Counsel said he recommends that the Board deny relief in this case for lack of proof. He said that the applicant had been counseled regarding the effect that various choices would have on his SRB eligibility, when he signed the March 1997 and July 1997 extension agreements. The applicant, the Chief Counsel said, has failed to meet the burden of proof that the Coast Guard had committed an error or injustice.

By signing both the March 1997 and the July 1997 CG-3301B agreements, the applicant acknowledged that he had been properly counseled on his eligibility for an SRB. The applicant's SRB entitlement, based on the July 1 agreement, will be based on 9 months newly acquired obligated service above the original obligated service. "When the Applicant executed the 01 July 1997 agreement to extend for 48 months, he was, in fact, agreeing to supersede the 31 March 1997 agreement with an agreement that committed himself to an additional 9 months in the service."

The Chief Counsel said that the applicant had failed to show any error as to the counseling the Coast Guard provided him. The Chief Counsel reiterated that the applicant, by his own signature, affirmatively agreed that he had been counseled on his rights and options regarding reenlistments, extension options, and his eligibility for an SRB.

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On January 12, 1999, the Board sent a copy of the views of the Coast Guard to the applicant with an invitation to him to respond to the Coast Guard's statement in 15 days. The applicant asked the Board for a 30-day-extension. That motion was granted. The applicant submitted a response with attachments on March 2, 1999.

The applicant expressed his "strong disagreement" with the Coast Guard's

recommendation on his case. He said he was urged to submit a Form CG 3301B on March 31, 1997, even though there was not a boatswain's mate SRB on that date. He was angry that the Coast Guard says that he was counseled on July 1, 1997 that "[he] would only receive nine months of [his] SRB."

The applicant submitted a statement by his former officer in charge (OIC). The OIC concurred that "he would only receive nine months of an SRB by the way the contracts were laid out," even though he had allegedly been told "he would be eligible to receive an SRB computed on 48 months of additional service if he entered the second contract." The OIC urged him to file an application with the BCMR "to have this situation corrected."

The OIC said there was no reason for the applicant to have executed a 39-month extension on March 31, 1997 unless he had been informed by his command that this was necessary at the time. The Coast Guard stated there was no evidence to this effect and "that his case should be dismissed due to lack of evidence." The OIC admitted that the only true evidence would be statements from the applicable petty officer and administration staff that they "had erroneously counseled him in March of 1997 as to his SRB eligibility." The OIC admitted it could not obtain such evidence: "[W]e have been unable to get in contact with any of the involved persons." The OIC also said "[I]t would be definite loss" if the applicant resigned because of this misunderstanding.

The applicant's submission also included a number of page 7 (administrative remarks) entries that praised his untiring pace, his can do attitude, his handling of high stress situations, his tremendous energy, etc.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard, on the basis of the applicant's military record, and on the basis of applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.
2. The applicant alleged that he "was improperly counselled of [his] options to receive [an] SRB."
3. The applicant did not submit evidence that he had not been properly counseled as to his eligibility for an SRB. As a witness for the applicant stated, the only true evidence would be statements from the administration staff

acknowledging they had erroneously counseled him. "Through numerous attempts . . . , we have been unable to get in contact with any of the involved persons."

4. On March 31, 1997, the applicant signed a Form CG-3301B to extend /reextend his enlistment for a period of 3 years and 3 months. The form he signed contained the following two clauses: "I also understand the effect of extension /re-extension has upon any SRB, if canceled." "I further acknowledge that [with respect to SRB] I have had all my questions answered." There was no SRB in effect on the date the applicant signed his agreement to extend.

5. On July 1, 1997, the applicant signed an extension agreement to qualify for the SRB authorized by ALDIST 135/97. This extension effectively cancelled the March 1997 extension and left him with the additional 9 months of obligated service that he agreed to on July 1, 1997.

6. In March 1997, the applicant obligated himself to serve 39 months of obligated service. In July 1997, he agreed to extend for 48 months that would qualify him to serve 9 months of additional obligated service towards an SRB. The applicant's only effective consideration for a SRB payment was the additional 9 months of obligated service that he agreed to on July 1, 1977. According to Art. 1.G. 19. (b) of the Coast Guard Personnel Manual, "[t]he commanding officer may cancel an Agreement to Extend Enlistment on the effective extension date when the individual has reenlisted or extended on that date for any authorized enlistment term longer than the original extension agreement."

7. The applicant has failed to show that he was not properly counseled.

8. Accordingly, the application should be denied

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of
, USCG, is denied.

