

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

Application for Correction
of Coast Guard Record of:

**BCMR Docket
No. 1999-007**

FINAL DECISION

██████████ ██████████

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14, United States Code. It was commenced on October 21, 1998, upon the Board's receipt of the applicant's request for correction of his military record.

The final decision, dated August 19, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant originally enlisted in the Coast Guard on October 29, 1991 for 4 years. On September 1, 1995, he reenlisted for 3 years, and on March 4, 1997, he extended this enlistment for one year and seven months.

The applicant asked the Board to discharge and reenlist him in the Coast Guard on October 29, 1997, for 6 years, so that he might receive a Zone A SRB (selective reenlistment bonus) with a multiple of 0.5. He alleged that he should have been allowed to receive an SRB because October 29, 1997 was his "sixth . . . year active service anniversary date."

The applicant alleged that he "was never counselled" about his entitlement to an SRB, nor did he certify that he "understood the SRB policy." The applicant alleged that he was entitled to receive a Zone A SRB on his sixth year active duty anniversary date.

VIEWS OF THE COAST GUARD

On July 7, 1999, the Chief Counsel of the Coast Guard submitted an advisory opinion recommending that the Board deny relief to the applicant.

The Coast Guard's advisory opinion declared that the applicant observed his 6th year anniversary in the Coast Guard on October 29, 1997. The Chief Counsel said that the applicant was eligible to receive an early discharge and to reenlist within three months prior to this date for the purpose of qualifying for a Zone A SRB, "if he was qualified in all other respects."

The Chief Counsel said that the applicant was not so qualified. The Chief Counsel said that the applicant would never have received his command's recommendation to reenlist because of "his prior unsatisfactory performance and conduct." The following statements were made, and actions taken, regarding his performance:

* Applicant "was counseled that he was not capable of satisfactorily performing all of the duties and responsibilities of" the rank which he aspired (10/29/91; 8/31/93; and 3/15/94).

* Applicant was counseled concerning timeliness for work (6/17/97).

* Applicant "provided false official statements to superiors regarding an incident while on liberty and asked a junior service member to lie about his whereabouts so he could avoid becoming implicated in the situation" (10/27/97).

* Applicant said that if he were the fisheries enforcement boarding officer, "he would disregard enforcement policies and would not inform the command" of discrepancies that he felt were unimportant (11/6/97).

* Applicant "will need to demonstrate his ability and commitment to meeting and enforcing standards [and] telling the truth" (11/6/97).

The applicant was taken to mast for failing to report possession and consumption of alcoholic beverages by his boat crew, and he received non-judicial punishment (NJP) for that offense (12/22/94). The applicant also received an NJP for violation of Articles 81 and 107 of the Uniform Code of Military Justice (UCMJ) for providing false official statements to superiors regarding an incident and had asked a member to lie about the applicant's whereabouts at the time (11/6/97).

The Chief Counsel also alleged that the applicant "was counseled regarding his option to reenlist for an SRB on his 6-year service anniversary." There is no dispute, he said, "that the Applicant received SRB counseling prior to his 6-year enlistment anniversary date." The applicant signed a CG-3301B extension agreement, on March 4,

1997; the applicant acknowledged in this form that he had received SRB counseling. The applicant also received a 6-year anniversary notice attached to his LES (leave and earnings) statement. The Chief Counsel said this notice is "adequate legal notice to a member of their right to reenlist for an SRB on a 6/10/14 year enlistment anniversary."

The Chief Counsel said that the applicant would not "have received the required recommendation to reenlist from his command on the date of his 6-year service anniversary." Article 1.G.5.1.b.3 of the Coast Guard Personnel Manual requires that a member receive a "specific recommendation" from the officer effecting discharge in order to be eligible for reenlistment.¹

The Chief Counsel said that it is clear from the applicant's record that he would not have received his command's recommendation to reenlist on October 29, 1997. The record included an NJP for violations of Articles 81 and 107 of the UCMJ.

APPLICANT'S RESPONSE TO THE COAST GUARD VIEWS

On July 8, 1999, the Board sent a copy of the Coast Guard's views to the applicant, together with an invitation to him to submit a response to those views if he disagrees with them. The response is due within 15 days from the date of the transmission.

The applicant did not submit a response.

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 and on the basis of the applicant's military record and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10, United States Code. The application is timely.

2. The applicant alleged that he was "never counselled" as to his eligibility to receive a Zone A SRB due to his 6-year active service anniversary (10/29/97), and had not signed a Form CG-3307 indicating that he "understood the [CG] SRB policy."

3. The applicant was a machinery technician third class (MK3; pay grade E-4) at the time he alleged he was not counseled.

¹ "3. Each member must receive from the officer effecting discharge a specific recommendation of whether or not he or she should be allowed to reenlist. In making such recommendation, the officer . . . should consider the member's overall performance, potential for continued service, and conduct during the current enlistment. If a member has received an . . . NJP punishment, the officer . . . should also consider how the severity and nature of the offense(s) impacts the member's overall record of service during the current enlistment."

4. The applicant received SRB counseling prior to October 29, 1997, his 6-year active duty anniversary date in the Coast Guard. On March 4, 1997, he signed an acknowledgment of SRB counseling on a CG-3301B extension agreement. The applicant attested that "[he] further acknowledge[s] that [he] has been given the chance to review COMDTINST 7220.33 (series) [SRB instruction] concerning [his] eligibility for SRB and have had all my questions answered." In addition, a 6-year anniversary date LES (leave and earnings statement) was sent to the applicant notifying him to see his administrative officer for the required page 7 SRB counseling and the opportunity to reenlist within 3 months of his 6th, 10th, or 14th anniversary of his original enlistment.

5. The Coast Guard committed error by failing to counsel the applicant under Enclosure (3) of COMDTINST 7220.33 within 3 months of his 6-year anniversary, but it was harmless error. The applicant would not have been permitted to reenlist on his 6-year anniversary in any case because his record was such that he was not eligible to be reenlisted. See Article 1.G.5.1.b.3 of the CG Personnel Manual. Just before his 6-year anniversary, he had received NJP for violations of Articles 81 and 107 of the UCMJ (providing false official statements to superiors regarding an incident and asking a member to lie about his whereabouts).

6. Thus, the application should be denied.

ORDER

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

