

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-014

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 docketed on October 26, 1998, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated September 23, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a radioman first class (RD1; pay grade E-6), asked the Board to correct his record by canceling his four-year reenlistment contract signed on March 27, 1997 and by replacing it with a two-year extension agreement.

The applicant reenlisted on July 16, 1998 (two days before his tenth-year anniversary date) for six years so that he would be eligible for an selective reenlistment bonus (SRB) (less previously obligated service), in accordance with ALDIST 046/98. The correction requested by the applicant would reduce the amount of obligated service that was deducted from the Zone B SRB that he received as a result of his reenlistment for six years on July 16, 1998.

The applicant enlisted in the Coast Guard for four years active duty on July 18, 1988. He reenlisted for four years, on June 30, 1992. He extended his enlistment for nine months, on March 1, 1996. On March 27, 1997, he reenlisted for four years. He reenlisted for six years on July 16, 1998, two days prior to his tenth-year active duty anniversary date, for the purpose of obtaining a Zone B SRB.

EXCERPTS FROM THE RECORD AND SUBMISSIONS

On May 10, 1998, the applicant was counseled on his eligibility for an SRB prior to his tenth year active duty anniversary date. He reenlisted two days prior to his tenth year anniversary date for an SRB (minus any previously obligated service). He stated that he is not challenging this fact. He contended, however, that if he had been

properly counseled prior to his previous reenlistment, in 1997, he would have elected to extend his current enlistment for two years rather than reenlisting for four years. He alleged that by reenlisting for four years, in 1997, rather than by extending for two years, 32 months were deducted from his Zone B SRB payment.

The applicant described the events surrounding his 1997 four-year reenlistment, as follows:

On or about 20 March 1997, a week prior to my expiration of enlistment, I approached my unit yeoman concerning my reenlistment paperwork. I was not approached or counseled by my yeoman at all prior to this time. I asked my unit yeoman what needed to be done. The yeoman handed me a reenlistment worksheet and said "here, fill this out and return it to me. If you have questions, let me know." I filled out the worksheet and elected to reenlist for four years. I handed the completed form back to the yeoman and was asked who I wanted to have as my reenlistment officer. I gave the yeoman a name and went back to work. After two days, I decided to approach the yeoman again to follow up on my reenlistment paperwork. After all, my expiration was only a couple of days away. The yeoman replied that it would be ready on the day of my reenlistment. Three days later I went back to the yeoman, received my reenlistment contract and reenlisted.

The applicant argued that the SRB instruction states that "members coming up on their end of enlistment should carefully consider ramifications that an extension or reenlistment will have on future entitlements to SRB." He alleged that he was not afforded the opportunity to review the contents of this instruction until May 10, 1998.

In addition to the above statement, the applicant argued that another provision of the SRB instruction states that "it is a WRITTEN AGREEMENT that all personnel with 14 years or less active service who reenlist or extend, however brief, shall be counseled on the SRB program. They shall sign a page 7 service record entry, outlining the effect that particular action has on their SRB entitlement. If necessary, Commanding Officers shall elaborate in the page 7 entry to solve specific cases of questionable SRB eligibility." The applicant stated that he does not recall signing a page 7 entry prior to his 1997 reenlistment.

There are no page 7 entries showing that the applicant was counseled about any SRB eligibility during his 10 year career except for the counseling he received on May 10, 1998, regarding his tenth-year anniversary date. There is, however, on the extension agreement signed by the applicant, on March 1, 1996, an acknowledgement that the applicant "understand[s] the effect [his] extension/reextension will have upon [his] current and future SRB eligibility." He further acknowledged that "[he had been] given the chance to review COMDTINST 7220.33 (series) concerning [his] eligibility for SRB and have had all [his] questions answered"

The applicant submitted a statement from his commanding officer (CO) recommending favorable consideration of the applicant's request for relief. He stated that as a result of the alleged administrative error with respect to the Coast Guard's failure to counsel the applicant in 1997, the applicant will lose approximately \$3,500.00 of SRB pay. The CO offered his opinion that the applicant has substantiated just cause and sufficient documentation to have the enlistment contract he signed in March 1997 declared null and void.

Views of the Coast Guard

On July 19, 1999, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief to the applicant.

The Chief Counsel argued that the applicant received "adequate legal notice" and counseling of the SRB opportunity, in March 1997, when he signed the extension contract and when he received the notice on his Leave and Earning Statement that, "SRB COUNSELING [WAS] REQUIRED WITHIN 3 MONTHS OF 6TH, 10TH, OR 14TH AD BASE DATE. SEE YOUR UNIT ADMIN OFFICE FOR A PAGE 7 ENTRY." The Chief Counsel contended that as the Board decided in Docket No. 1998-049, the SRB counseling a member received when extending, may, under certain circumstances, serve to fulfill the Coast Guard's duty to provide a member with notice of his/her right to re-enlist on their sixth, tenth, or fourteenth year anniversary.

The Chief Counsel alleged that the duty to counsel members concerning their anniversary SRB opportunities was a self-imposed obligation. Therefore, he argued, the Board should defer to the Coast Guard concerning how it meets that obligation, and the Coast Guard has determined that the obligation may be met by use of the extension contracts and Leave and Earning Statements, as well as by the Form CG-3307 entry. Furthermore, the Chief Counsel argued that, because the SRB statute contains no counseling requirement, the BCMR cannot "independently impose [such a requirement] on the Coast Guard as it is within the discretion of the Coast Guard to decide how to manage its workforce policies."

The Chief Counsel stated that in this case, the applicant was counseled of his eligibility to re-enlist on his 10-year service anniversary on May 10, 1998. The Chief Counsel further stated that the applicant received the opportunity to have all his questions answered on any aspect of the SRB program when he extended his enlistment, in 1996. The Chief Counsel also said that the applicant was also informed of this option via his LES three months prior to his 6-year anniversary date. The Chief Counsel argued that the Coast Guard has met its self-imposed policy to inform the applicant of his SRB reenlistment and extension options.

Applicant's Response to the Views of the Coast Guard

On August 10, 1999, a copy of the views of the Coast Guard was sent to the applicant. The applicant was informed that he could respond to them, but no response was received from him.

APPLICABLE REGULATIONS

Enclosure (1) to COMDTINST 7220.33, Section 2., states as follows: "WRITTEN AGREEMENTS. All personnel with 14 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign a page 7 service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement. If necessary, commanding officers shall elaborate in the page 7 entry to cover specific cases of questionable SRB eligibility."

Enclosure (1), Section 3.b.(3), states, in pertinent part, as follows: "Members with exactly 10 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone B multiple in effect for their rating if they are otherwise eligible. . . ."

Enclosure (1), Section 3.d.(9) states, in pertinent part, as follows: "Commanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expiration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB respectively."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions and military record, the Coast Guard's submission, and 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. As a result of receiving appropriate counseling within three months of his 10th year active duty anniversary, the applicant was permitted to reenlist for six years to obtain a Zone B SRB. In accordance with regulations, the 32 months of service remaining from his previous 1997 enlistment were deducted from the SRB. There was no counseling error with respect to the 1998 enlistment period, nor is the applicant claiming an error with respect to it.
3. The applicant claims that the error occurred prior to his 1997 reenlistment, when the Coast Guard failed to counsel him about his SRB eligibility. He asserts that if

he had been counseled he would have extended two years rather than reenlist for four years.

4 Because of the alleged error, the applicant wants his record corrected to show the 1997 four-year reenlistment as a two-year extension. If the correction is granted by the Board, the applicant would be relieved of his previously obligated service, which would allow him to maximize his 1998 SRB, by receiving an SRB payment based on approximately 60 months of newly obligated service rather than on approximately 30 months of newly obligated service.

5. In past decisions, the Board has corrected the military record to grant an SRB for an enlistment or extension where the Coast Guard failed to provide the required counseling and where the applicant qualified for the SRB that was in effect at that time. This case is different. The applicant is not alleging that he was entitled to an SRB in 1997. He is saying that if he had been counseled in 1997, he would have made a different decision and extended for two years rather than reenlisting for four years. The Board finds that the applicant's present contention amounts to a retrospective review of his military record based on a later opportunity that the applicant could not have known about in 1997.

6. The applicant's military record does not contain a page 7 SRB counseling entry with respect to the 1997 reenlistment. Thus, the Coast Guard erred in 1997 by not counseling the applicant on a page 7 entry about his eligibility for an SRB prior to his enlistment in 1997. However, the Board concludes that since there was no SRB multiple for the applicant's rate in 1997, and the applicant is not alleging this, any error that occurred at that time was harmless.

7. The Board is not persuaded that if the applicant had received a page 7 entry in 1997, he would have extended for two years rather than reenlisted for four years. The applicant has presented no evidence to support this allegation, except for his own statement. The letter from his CO states that the applicant's record does not contain a page 7 SRB counseling entry prior to his 1997 enlistment. The applicant's reenlistment history suggests that he would have reenlisted for four years in 1997 (as he did) because he had previously enlisted for four years both in 1988 and 1992. There was no SRB multiple in effect for the applicant in 1988 or 1992, just as there was not one in effect for him in 1997.

8. Additionally, the required page 7 counseling entry does not mandate a discussion of the effect of either an extension or reenlistment on a future SRB. See Enclosure (3), COMDTINST 7220.33. The Board notes that just a year before his 1997 reenlistment, the applicant acknowledged on his 1996 extension agreement that he had been informed about his SRB eligibility (although one was not available for him) and that he understood the effect that the extension would have on his current and future SRB eligibility. Yet, he reenlisted in 1997 without asking any questions. The Board

finds that even with SRB counseling in 1997, the applicant would have probably reenlisted for four years.

9. The Board is not persuaded that the applicant has suffered an error or injustice with respect to the SRB that he received in 1998. Neither is the Board persuaded that any corrective action is necessary with respect to the 1997 reenlistment. "The Board is only obligated to grant enough relief to correct what it sees as an injustice." Reale v. United States, 208 Ct. Cl. 1010, 1011 (1976). The Board does not find that any corrective action is necessary in this case.

10. In denying the applicant's request in this case, the Board is not denying him an SRB as a result of failure to counsel because he would not have received an SRB in 1997. The applicant did receive an SRB in 1998, albeit not in the amount that he would have liked. However, the Board's job is not to perfect records but to correct harmful errors and remove injustices. The applicant was counseled with respect to his eligibility for an SRB on his tenth year active duty anniversary date, and he was permitted to be discharged from his 1997 enlistment and to be immediately reenlisted in 1998 for the sole purpose of obtaining an SRB. The applicant received the SRB that he was entitled to in 1998. The applicant has failed to demonstrate an error or injustice that requires corrective action by the Board.

11. Accordingly, this application should be denied.

Final Decision: BCMR No. 1999-014

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ORDER

The application of ---
his military record is denied.

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