


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-031

FINAL DECISION

 This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. It was docketed on December 8, 1998, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated October 7, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a xxxxxxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record by changing the term of an extension contract he signed on May 4, 1998, from three years to one year. The correction would allow him to reenlist and receive a selective reenlistment bonus (SRB).

APPLICANT'S ALLEGATIONS

The applicant alleged that when he received permanent change of station (PCS) orders in March 1998, he was told that, to accept the orders, he was required to extend his enlistment through the end of his new tour of duty. Based on this counseling, on May 4, 1998, he extended his enlistment for three years, until November 26, 2001. He further alleged that, when he inquired about the effect of that long extension on his eligibility for an SRB, he was told that, if an SRB was authorized for his rating, he could cancel the extension and reenlist to receive the SRB.

The applicant alleged that he later discovered that the advice was wrong. He alleged that regulations required only that he obligate himself to serve through the first

full year at his new station, from July 1, 1998, to June 30, 1998, rather than through the entire tour. Furthermore, once his extension began to run, he could not cancel it to receive an SRB.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on January 21, 1992, for a term of four years. On November 27, 1995, he was discharged and reenlisted for a term of three years, through November 26, 1998.

On March 19, 1998, the applicant received PCS orders. The orders instruct the applicant's command as follows: "PRIOR EXECUTION ORDS, ENSURE SNM RENL/EXTS TO HAVE MIN OF ONE YEAR SVC REMAINING UPON RPTG NEW UNIT."

On May 4, 1998, the applicant extended his enlistment for three years, through November 26, 2001. The extension contract indicates that the reason for the extension was "OBLIGATED SERVICE FOR TRANSFER" and that there was no SRB authorized for the applicant's rating on that date. However, it also indicates that he was provided a copy of "SRB Questions and Answers"; that he "fully understand[s] the effect of my extension/reextension ... upon my current and future SRB eligibility"; and that all his questions concerning SRBs have been answered.

On November 25, 1998, the applicant was discharged and immediately reenlisted for a term of six years, through November 24, 2004. His reenlistment contract states that it entitles him to a Zone B SRB. He also signed a page 7 administrative entry, which states that under ALDIST 290/98, his six-year reenlistment qualified him for an SRB calculated with a multiple of one and based on 36 months of newly obligated service.

VIEWS OF THE COAST GUARD

On August 23, 1999, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant "conditional relief."

The Chief Counsel stated that the Board "should grant conditional relief in this case because the Applicant signed an extension agreement that exceeded the minimal obligation service required to execute his PCS orders to his new station." The Chief Counsel recommended that the relief be conditional because the applicant did not present any evidence of the erroneous advice he allegedly received. Furthermore, he argued, "the Board should conclude that the Applicant had read his PCS message orders including paragraph 2 and was, therefore, properly informed regarding his options and freely chose to extend for three (03) years."

Therefore, the Chief Counsel stated that the Board should grant relief only if the applicant submits "a statement from his former unit's PERSRU of Command supporting his allegation that he was provided inaccurate information regarding the minimum obligated service needed to execute his PCS order. In the alternative, the Board should deny relief and inform him of his right to reapply for reconsideration when and if he is able to obtain sufficient evidence to support his allegation of error."

The Chief Counsel attached to his advisory opinion a memorandum from the Coast Guard Personnel Command, which pointed out that the applicant's command had no authority to discharge and reenlist him on November 25, 1998, because he was not within three months of his 6th, 10th, or 14th anniversary on active duty and he was not at the end of his enlistment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 25, 1999, the Chairman sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. The applicant did not respond.

APPLICABLE REGULATIONS

Section 2 of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that "[a]ll 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."

Enclosure (3) to the instruction requires that members sign a page 7 administrative entry indicating that they have received and read Enclosure (5), entitled "SRB Questions and Answers." Enclosure (5) explains that previously obligated service reduces an applicant's SRB. It further advises members, "[w]hen coming up on your end of enlistment, carefully consider the advantages/disadvantages of reenlisting vice extending."

Paragraph 3.d.(6) of Enclosure (1) to the instruction states that extensions canceled prior to their operative dates for the purpose of receiving an SRB reduce the SRB by the number of months of previously obligated service unless the extension is for a period of two years or less, in which case the SRB is not diminished.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, 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. The applicant alleged that he was told he had to extend his enlistment for three years to accept his PCS orders rather than just one year. He also alleged that he was told he could cancel the three-year extension to receive a maximum SRB if one was later authorized for his rating. He alleged that had the Coast Guard counseled him properly, he would not have extended his contract for three years. Instead, he would have extended his enlistment for just one year, so that he might remain eligible for the maximum possible SRB when one became available for his rating.

3. Under Section 2 of Commandant Instruction 7220.33, the applicant was entitled to proper counseling concerning SRBs. Proper counseling must be documented by a page 7 entry in the member's record stating that he has received "SRB Questions and Answers," which alerts members to the fact that extensions of more than two years diminish any SRB for which a member might later become eligible.

4. There is no page 7 in the applicant's record with the information concerning SRB counseling. However, the applicant's signed extension contract states that he had received "SRB Questions and Answers" and that he fully understood the effect of his three-year extension on his future SRB eligibility. The extension contract contains all of the information that would have appeared on the page 7.

5. The Chief Counsel argued that the applicant had not proved he had been wrongly counseled. The Chief Counsel recommended that the Board grant relief if the applicant provides evidence of his allegations concerning erroneous counseling.

6. Although the counseling owed to the applicant was memorialized in his extension contract on the day he signed it, rather than on a page 7, the Board finds that the applicant was sufficiently and timely counseled concerning the effect of his extension on his future SRB eligibility. Because (a) the extension contract contains the same information as the required page 7 and (b) the applicant timely received this information when he was making the decision to extend,¹ the Board finds that the Coast Guard's failure to memorialize this counseling on a page 7 as well as on the extension contract itself was harmless.

¹ In this regard, this case is distinguished from other cases before the Board, in which the Coast Guard has argued that an extension contract with SRB information signed many months or years before a member's sixth, tenth, or fourteenth active duty anniversary should be sufficient to fulfill the Coast Guard's duty to counsel its members regarding SRBs within the three months immediately prior to their sixth, tenth, and fourteenth active duty anniversaries.

7. The applicant has not shown by the preponderance of the evidence that the Coast Guard committed any injustice in this instance. However, the Board finds that it would be in the interest of justice to grant relief if the applicant is able to provide substantial evidence, such as a signed statement from whoever wrongly counseled him supporting his allegation that (a) he was mistakenly told that he had to extend his enlistment for more than two years in order to accept his PCS orders; and/or (b) he was mistakenly told that he would be able to cancel his extension of three years without any reduction of his SRB.

8. Therefore, if within 60 days of the date of this Final Decision, the applicant submits evidence supporting his allegations of erroneous counseling, the Board should give further consideration to his request.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application for correction of the military record of XXXXXX, USCG, is denied. However, the Board shall reconsider the applicant's request if within 60 days of the date of this Final Decision, he submits evidence supporting his allegations that he was mistakenly counseled that (a) he had to extend his enlistment for more than one year in order to accept his PCS orders, and/or (b) he would be able to cancel his extension of three years without any reduction of his SRB.

