

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


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Application for the Correction of  
the Coast Guard Record of:

BCMR Docket No. 1999-006

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**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 commenced on October 21, 1998, upon the BCMR's receipt of the applicant's application for correction.

This final decision, dated August 5, 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 boatswain's mate second class (BM2; pay grade E-5) on active duty in the Coast Guard, asked the Board to correct his military record to show that he was discharged on his six-year active duty anniversary date, September 17, 1997, and immediately reenlisted for a term of six years. The correction would entitle him to receive a Selective Reenlistment Bonus (SRB) pursuant to ALDIST 135/97.

**APPLICANT'S ALLEGATIONS**

The applicant alleged that pursuant to Coast Guard regulations, he should have been counseled prior to the sixth anniversary of his enlistment concerning his eligibility for an SRB. The applicant alleged that he was not properly counseled and that the absence in his record of a Form CG-3307 shows that he was not counseled as required. The applicant alleged that, if he had been properly counseled, he would have been discharged and immediately reenlisted on his sixth anniversary for a term of six years in order to receive the maximum allowable SRB for his rating under ALDIST 135/97.

## SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on September 17, 1991, for a term of four years. On June 1, 1993, the applicant received a page 7 administrative entry in his record documenting poor performance of work and teamwork and lack of responsibility and respect for others. After noting specific instances that reflected these problems, his commanding officer wrote the following:

Despite all of the above, at times your performance proves that you are a truly talented individual; however, you lack the persistence and conscientiousness to properly apply technical skills. You are somewhat of a perfectionist with an inclination toward stubbornness. You are very reluctant to accept any type of criticism or even a different opinion from those senior to you. In this organization, before you can give orders, you have to learn to follow them.... [capital letters lower-cased]

On November 6, 1993, the applicant extended his service for 15 months, through December 16, 1996, to meet an obligated service requirement for being transferred to the Coast Guard cutter *Escanaba*.

April 20, 1995, the applicant extended his service for another two years and nine months, through September 16, 1999. The reason for the extension is listed merely as "authorized by Commander, [Military Personnel Command]." The extension contract he signed stated that he had received a copy of "SRB Questions and Answers" and that he "fully under[stood] the effect any extension/reextension will have upon [his] current and future SRB eligibility."

On August 13, 1996, the applicant received a Coast Guard Achievement Medal for superior performance of duty on board the *Escanaba*. The citation noted that he displayed "exceptional competence and leadership skills," "superior coxswain skills," and "diligence, perseverance, and devotion to duty." He had "improved the Deck Department's training and expertise," "singularly enhanced ESCANABA's mission execution," and "set high work standards."

On April 30, 1997, the applicant received three page 7 administrative entries documenting substandard performance and unwillingness to follow instructions. His commanding officer noted that his work required constant monitoring and supervision. He received criticism for poorly prioritizing his work, supervising subordinates, and following instructions. It was noted that he had failed to prepare his unit for inspection and frequently failed to keep his superiors informed.

On May 5, 1997, the applicant received a page 7 entry for improper watch standing, failing to secure the stern mooring lines of a board, and failing to follow set policy by informing the chain of command that the boat's brow was removed. The page 7 entry noted that the applicant had previously been counseled twice on his watch standing practices.

On May 12, 1997, the applicant received a page 7 entry noting that he had failed to complete Boatcrew Qualification and "Nav. Rules." The page 7 stated that he must complete both by November 12, 1997, or he would be transferred. During the six-month period, he would not be recommended for advancement.

On August 13, 1997, the applicant received a page 7 entry noting that his commanding officer had lost confidence in his ability to qualify as a coxswain. After nine months at the unit, he had not yet qualified as a boatcrewman and had failed the Nav Rules course four times. His "navigational skills underway are questionable at the very least."

On August 24, 1997, the applicant received a page 7 entry noting that he had not responded to the unit after being paged twice and after a message was left on his answering machine. Apparently, he had failed to take his pager with him when he left home in violation of policy.

The applicant's six-year anniversary on active duty in the Coast Guard occurred on September 17, 1997. There is no Form CG-3307 in the applicant's record showing that he was counseled concerning his opportunity to seek an SRB by requesting discharge and reenlistment during the three months prior to his sixth anniversary. Under ALDIST 135/97, boatswain's mates who reenlisted in September 1997 were eligible to receive an SRB with a multiple of one.

On September 25, 1997, the applicant was counseled concerning his "future in the Coast Guard." He was advised to change rates.

On October 25, 1997, the applicant was informed that he might be reduced in rate "by reason of incompetency." He had failed to qualify as boatcrewman and failed six attempts to complete Nav Rules. He was advised that he had three months in which to "demonstrate satisfactory progress and meet the requirements of [his] billet in order to retain [his] present rate." If he did not, he would be reduced from BM2 to BM3.

On October 31, 1997, the applicant received two page 7 entries noting that he had received low marks on his performance evaluation for "professional/specialty knowledge," "quality of work," "directing others," and "responsibility." It was noted that he had "up to three times as many [underway] hours as some of the junior personnel who qualified in much less time." He had failed to complete logs and paperwork correctly, and his poor workmanship had caused others to have to redo his work. He blamed others for his failures. The applicant refused to sign the page 7 entries.

#### VIEWS OF THE COAST GUARD

On July 7, 1999, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel argued that relief should be denied despite the lack of a Form CG-3307 in the applicant's record notifying him of his right to seek discharge and reenlistment within three months of his sixth anniversary to receive an SRB. The Chief Counsel stated that the applicant received "adequate legal notice" and counseling of the SRB opportunity when he signed the extension contract in April 1995 and because the Leave and Earning Statement the applicant received three months before his sixth anniversary contained the statement, "SRB COUNSELING 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 this notice fulfilled "the Coast Guard's duty to provide a member with notice of his/her right to reenlist on a 6/10/14 year enlistment anniversary date."

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 further alleged that the Coast Guard's failure to counsel the applicant by way of a Form CG-3307 entry in his record was harmless because the applicant's commanding officer would never have permitted him to reenlist for six years. The Chief Counsel stated that, under Article 1.G.f.1.b.3. [sic] of the Personnel Manual, members seeking to reenlist must be recommended for reenlistment by their command. The Chief Counsel argued that the applicant's performance record was so bad that he would not have received the recommendation of his commanding officer.

#### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On July 9, 1999, the Chairman sent a copy of the Coast Guard's advisory opinion to the applicant and invited him to respond within 15 days. On July 27, 1999, the BCMR received his response.

The applicant stated that he had successfully completed his probationary period by completing Coxswain C school, qualifying as a coxswain on all his unit's boats, and being recommended for advancement by his command. He stated that he "would like to think that if [he] was told about the SRB at that time, the Coast Guard would wait for the results of the 'probation period' prior to passing judgment."

The applicant further argued that the extension contract he signed in April 1995 did not constitute adequate notice, coming so long before his sixth anniversary. Moreover, in April 1995, he stated, he was simply counseled that he was not eligible for an

SRB at that time; he was not told that he might become eligible for an SRB during his the extension of his enlistment.

### APPLICABLE REGULATIONS

Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration), Section 3.d.(1), states that "[m]embers with exactly 6 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone A multiple in effect for their rating if they are otherwise eligible."

Section 3.d.(9) of Enclosure (1) states that "[c]ommanding 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."

Enclosure (3) to the instruction states that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled concerning their eligibility for an SRB. The counseling must be memorialized in their records with a Form CG-3307 signed by the member.

ALDIST 135/97, issued on June 5, 1997, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments after July 1, 1997, and September 30, 1997. The multiple to be used for calculating SRBs for members in the BM rating was one.

Article 1.G.5.3. of the Personnel Manual establishes as one requirement for a member to be eligible for reenlistment that he or she "[b]e recommended for reenlistment by the officer effecting discharge."

### 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 not properly counseled about his eligibility for an SRB prior to the sixth anniversary of his enlistment. He alleged that, had he been properly counseled, he would have been discharged on his sixth anniversary, September 17, 1997, and immediately reenlisted for a term of six years to receive the maximum possible SRB for his rating.

3. Under Enclosure (3) to Commandant Instruction 7220.33, the applicant had a right to be counseled concerning his opportunity to receive an SRB under ALDIST 135/97 on the sixth anniversary of his original enlistment. Such counseling must be memorialized on a Form CG-3307 entered in a member's record. No such form appears in the applicant's record.

4. The Chief Counsel argued that the applicant's April 1995 extension contract and a notice of a Leave and Earning Statement constituted adequate legal notice of the sixth anniversary SRB opportunity. However, Coast Guard regulations require that members be counseled within three months of their sixth, tenth, or fourteenth active duty anniversaries concerning their SRB opportunities and that this counseling be memorialized on a Form CG-3307. The fact that this obligation is self-imposed does not mean that the Coast Guard can ignore it. The notice on the applicant's Leave and Earning Statement and the information he received in April 1995, two and one-half years before his sixth anniversary, cannot be considered the equivalent of the timely, detailed counseling he was due under COMDTINST 7220.33. Therefore, the Coast Guard erred by not counseling the applicant concerning his SRB opportunity within three months of his sixth anniversary.

5. The Chief Counsel argued that the lack of counseling concerning the SRB opportunity within three months of the applicant's sixth anniversary was harmless because the applicant would not have been allowed to take advantage of the opportunity by his command. Under Article 1.G.5.3. of the Personnel Manual, all members must have the recommendation of their commanding officers in order to be reenlisted. Given the many derogatory page 7 entries in the applicant's record, the Board finds that his command was sufficiently unhappy with his performance during the three months leading up to his sixth anniversary that he would not have been authorized for discharge and reenlistment in order to receive the SRB. Therefore, the Coast Guard's error in failing to counsel the applicant concerning the SRB during the three months prior to his sixth anniversary was harmless.

6. The applicant did not contradict the Coast Guard's argument that his commanding officer would not have recommended him for reenlistment during the three months prior to his sixth anniversary. Instead, the applicant stated that he "would like to think that if [he] was told about the SRB at that time, the Coast Guard would wait for the results of the 'probation period' prior to passing judgment." However, by the time the applicant successfully completed his probation period, his sixth anniversary was long past, and he was no longer eligible to receive the SRB he seeks. There is no flexibility in the regulations for commanding officers to authorize a discharge and reenlistment for the purpose of receiving an SRB after a member's sixth anniversary has passed because the member was on probation at the time of the anniversary.

7. Therefore, the applicant's request should be denied.

**ORDER**

The application for correction of the military record of  
USCG, is hereby denied.

