

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-070

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 February 23, 1999, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated December 30, 1999, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a boatswain's mate first class (BM1; pay grade E-6), asked the Board to correct his record to show his extension of enlistment on April 8, 1997, for three years and four months as a reenlistment with an SRB. In the alternative, he requested that he be allowed to cancel this extension and replace it with a new two year extension.

The applicant reenlisted on August 25, 1997 (his sixth year anniversary date), for six years so that he would be eligible for a selective reenlistment bonus (SRB). His SRB for this enlistment was based on twenty three months of newly obligated service, since he had already committed himself to serve for three years and four months, just three months earlier, on April 8, 1997. The correction requested by the applicant would increase the amount of his SRB by reducing the amount of previously obligated service time remaining as a result of the April 8, 1997, extension.

The applicant enlisted in the Coast Guard for four years of active duty on August 27, 1991. Subsequently, he executed extensions totaling approximately one year and eight months. On April 8, 1997, he extended his enlistment for three years and four months so that he would have enough remaining obligated service to accept transfer orders. The applicant acknowledged by his signature on the April 8, 1997, extension agreement that there was no SRB in effect for his rating at that time and that "he understood the effect [his] extension would have upon [his] current and future eligibility." The applicant's record does not contain an administrative remarks (page 7) SRB counseling entry as required by COMDTINST 7220.33.

On August 27, 1997, the applicant's sixth year active duty anniversary date, he reenlisted for a period of six years for the purpose of obtaining an SRB. As explained above, the SRB was based on 23 months of newly obligated service.

EXCERPTS FROM THE RECORD AND SUBMISSIONS

With respect to the extension that the applicant is asking to have modified, he stated that on April 8, 1997, he was told by the executive petty officer to sign the extension agreement, if he wanted a transfer. He stated that he was not given a copy of the SRB instruction to read and review before making his decision to extend. The applicant also complained that he was told he needed to extend for three years and four months to accept a duty transfer, when in fact, he needed to extend only for three years and two months. He claimed that he should have received an SRB based on twenty-five months, rather than twenty-three months of newly obligated service.

The applicant submitted a statement from the executive petty officer who presented the 1997 extension agreement to the applicant for signature. The executive petty officer stated the following:

I . . . as Executive Petty Officer . . . believe that [the applicant] was not properly counseled on April 8, 1997 concerning an SRB for the Boatswain's mate rating. During this period of time there was a lot of misinformation given to our unit concerning this new[] . . . issue. . . . Shortly after the applicant signed the extension papers to transfer, is when all this was straightened out. . . . The applicant never signed a CG-3307 stating he was counseled.

Views of the Coast Guard

On November 12, 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, except that his record should be corrected to show that he extended on April 8, 1997, for three years and two months rather than three years and four months.

The Chief Counsel argued that the applicant received SRB counseling on April 8, 1997, when he signed the extension contract. That contract informed the applicant that there was no multiple in effect at the time for his rating. The applicant also acknowledge by his signature that he understood the effect the extension would have on his current and future SRB eligibility. The Chief Counsel stated that notwithstanding the fact that the applicant acknowledged receiving SRB counseling on his extension agreement, the Coast Guard had no duty to counsel the applicant regarding the effect the extension might have on future entitlement. In addition, the

Chief Counsel stated that the SRB instruction does not mandate a discussion of the effect of either an extension or reenlistment on a future SRB eligibility.

The Chief Counsel alleged that the duty to counsel members concerning their SRB opportunities was a self-imposed obligation, and not mandated by law. Therefore, he argued, the Board should defer to the Coast Guard concerning how it meets that obligation. He stated that the Coast Guard has determined that the obligation may be met by use of the extension contracts as well as by the Form CG-3307 entry. Furthermore, the Chief Counsel argued that, because the SRB statute contains no counseling requirement, the Coast Guard has the discretion to establish SRB regulations including a qualified requirement for counseling.

The Chief Counsel argued that there was no error when the applicant knowingly signed a contractual agreement to extend on April 8, 1997. He stated that the applicant affirmatively acknowledged on his extension contract that there was no multiple for his rating and that he would be ineligible to receive an SRB at that time. The Chief Counsel stated that the applicant knowingly signed and accepted a valid contract, and without evidence of fraud or duress, he should be bound by it.

The Chief Counsel argued that the applicant was counseled, as documented on the extension agreement, about his SRB eligibility in 1997. He cited BCMR Docket No. 1999-031 for the proposition that "a CG-3301B can either stand in place of required page 7 counseling or constitute harmless error. . . . Hence, under the presumption of regularity afforded his military superiors, the applicant can be presumed to have received such counseling in the absence of substantial evidence to the contrary."

Applicant's Response to the Views of the Coast Guard

On December 6, 1999, the Board received the applicant's response to the Coast Guard's views. He stated that since filing his application with the Board, he has been advanced to BM1 and assigned the responsibilities of an executive petty officer.

The applicant submitted a copy of ALDIST 154/97, dated June 27, 1997, entitled "Selective Reenlistment Bonus (SRB) and Centralized First Term Reenlistment Review (CFTRR) Policy Changes." The applicant stated that this ALDIST mandated that obligated service required to reenlist pursuant to a CFTRR be treated the same as the other mandatory obligated service requirements. The applicant stated that commanding officers shall cancel any extension of more than two years and reenlist the member or execute a new extension agreement with full SRB entitlement. He stated that the Chief Counsel of the Coast Guard possibly overlooked this provision when he submitted his advisory opinion. He asserted based on this policy change, that his April 8, 1997, extension should be canceled.

APPLICABLE REGULATIONS

SRB Instruction

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.d.(2), 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."

ALDIST 154/97

The pertinent provision of ALDIST 154/97 states that "[t]he CFTRR policy is changed to require two years' [obligated service] vice three years. This is effective for all CFTRR candidates selected for reenlistment (or extension) by the 18 March 97 CFTRR panel." The ALDIST also permitted cancellation of an extension for two years or less to meet CFTRR requirements without any loss of SRB entitlement for any CFTRR selectee who had not begun serving the extension of enlistment. The extension must be canceled prior to its effective date (the date it becomes operative) for the purpose of immediate reenlistment or extension for a longer period.

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 sixth year active duty anniversary, the applicant was permitted to reenlist for six years on August 25, 1997, to obtain a Zone A SRB. In accordance with regulations, the obligated service remaining from his previous April 8, 1997, extension was deducted

from the six year reenlistment, and the applicant received an SRB based on approximately twenty three months of newly obligated service. There was no counseling error with respect to the August 25, 1997 enlistment, nor is the applicant claiming an error with respect to it.

3. The applicant claims that the error occurred prior to his April 8, 1997, extension, when the Coast Guard allegedly failed to counsel him about his SRB eligibility, as evidenced by the absence of a page 7 SRB counseling entry from his military record. He asserts that if he had been counseled he would have reenlisted or extended for two years rather than for three years and four months.

4. Because of the alleged error, the applicant wants his record corrected to show that he extended on April 8, 1997, for two years. If the correction is granted by the Board, the applicant would be relieved of approximately 13 months of previously obligated service, which would increase the SRB that he received as a result of his August 25, 1997 reenlistment.

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 on April 8, 1997. He is saying that if he had been counseled in April 1997, he would have made a different decision and extended for two years rather than for three years and four months.

6. The Board finds that the applicant was counseled with respect to the April 8, 1997 extension, although his military record does not contain a page 7 SRB counseling entry. However, the extension contract that the applicant signed contained SRB counseling. It advised that the applicant that there was no SRB multiple in effect for his rating. The extension contract also contained a statement that the applicant understood the effect the extension would have upon his current and future SRB eligibility. He also acknowledged that he had been given the opportunity to review the SRB instruction and to ask any questions that he might have had. Even though the Coast Guard erred by not counseling the applicant on a page 7 entry about his eligibility for an SRB prior to his enlistment in April 8, 1997, the Board concludes that the error in this regard was harmless, since the same information that would be contained on a page 7 was contained on the extension agreement. The applicant states that nothing was explained to him and he was told to sign the extension if he wanted a transfer. However, some responsibility for the present situation must be placed on the applicant for not reading his enlistment contract and for not asking questions that might have concerned him.

7. The applicant did receive an SRB in August 1997, albeit not in the amount that he would have liked. The applicant was counseled with respect to his eligibility for an SRB on his sixth year active duty anniversary date, and he was permitted to be discharged from his earlier enlistment and to be immediately reenlisted on August 25,

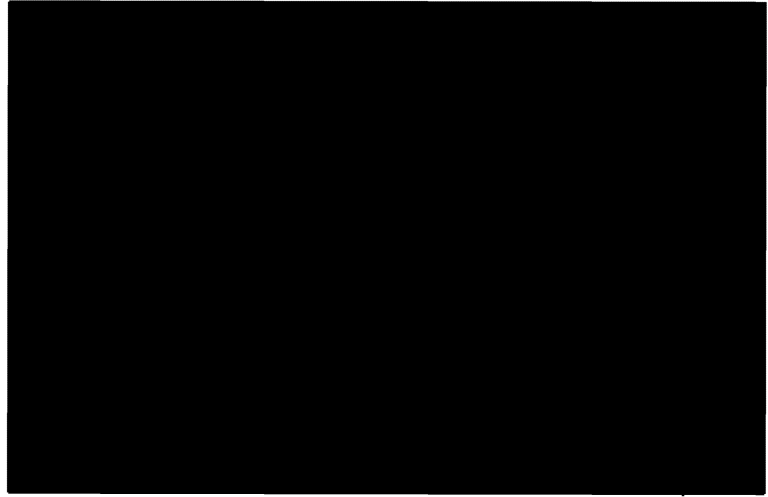
25, 1997 for the sole purpose of obtaining an SRB. The SRB that the applicant received in August 1997 should be increased by two months, since the applicant's April 8, 1997 extension should have been for three years and two months rather than three years and four months.

8. The applicant's claim that ALDIST 154/97 permits him to cancel his April 8, 1997 extension to reenlist or extend for a longer period, without loss of SRB entitlement, is not supported by that regulation. Pursuant to the ALDIST and the SRB instruction, an enlistment of two years or less may be canceled without loss of benefit if it has not become operative. The applicant's extension became operative on April 8, 1997, the day he signed it. Additionally, the applicant's April 8, 1997 extension was not to obligate service as the result of a CFTRR selection for reenlistment/extension, but rather for a transfer.

9. Accordingly, the applicant should receive limited relief, as recommended by the Coast Guard.

ORDER

The application of _____ JSCG, for correction of his military record is denied, except that the extension agreement he signed on April 8, 1997, shall be corrected to show that he extended his enlistment for 38 months rather 40 months. The Coast Guard shall pay the applicant for two additional months of SRB entitlement.



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

Application for the Correction of
Coast Guard Record of:

BCMR Docket No. 1999-070

**MINORITY REPORT CONCURRING
IN FINAL DECISION AND ORDER**

I concur completely in the Final Decision and Order of the Board majority in this proceeding, but add the following paragraph to its **FINDINGS AND CONCLUSIONS**:

Albeit not required by statute, the Coast Guard has the unqualified duty and obligation to properly counsel members concerning their SRB opportunities.

12/30/99
Date

