

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-090

FINAL DECISION

[REDACTED]

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 April 6, 1999, upon the BCMR's receipt of the applicant's request for correction of his military record.

This final decision, dated January 13, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, a machinery technician second class (MK2; pay grade E-5), asked the Board to correct his record to show that he reenlisted for six years on January 4, 1999, (his sixth year active duty anniversary date) so that he would be eligible to receive a Zone A selective reenlistment bonus (SRB), in accordance with ALDIST 290/98. He further requested that a six year extension that he signed on May 6, 1998 be cancelled.

On January 4, 1993, the applicant enlisted in the regular Coast Guard for four years. On October 8, 1996, he reenlisted for three years. On May 6, 1998, he extended his enlistment for six years so that he would have enough obligated service to accept permanent change of duty orders.

EXCERPTS FROM THE RECORD AND SUBMISSIONS

The applicant stated that he was incorrectly counseled that if he extended his enlistment for six years he would receive an SRB with a multiple of 1, when the extension became operative on October 8, 1999. The applicant stated that he was not eligible for a Zone A SRB on October 8, 1999, because at that time he had more than six years of active duty. Pursuant to the SRB instruction, the applicant could have not have more than six years of active duty and still remain eligible for a zone A SRB.

The applicant was promised an SRB on his May 6, 1998 extension agreement. He submitted a statement from the yeoman who incorrectly advised him at that time. The yeoman stated that she improperly counseled the applicant by providing him with the following information:

[T]hat he would be able to extend his enlistment for 6 years to receive a Zone A SRB. I told him that he would receive the first of the SRB in October 99, when the extension began. Upon speaking with a YN2 [KB] . . . I was told that [the applicant] was not entitled to a Zone SRB when the SRB [begins to run] because the member will be over six years at that time, per COMDTINST 7220.33 [SRB Instruction].

The applicant stated that he was not counseled at all with respect to his right to be discharged and to immediately reenlist on January 4, 1999, his sixth year anniversary date for the purpose of obtaining an SRB. The applicant's military record does not contain any administrative remarks (page 7) entries showing that he was counseled about his SRB eligibility with respect to his sixth year anniversary date.

Views of the Coast Guard

On November 17, 1999, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the Board grant partial relief to the applicant.

The Chief Counsel stated that the Board should grant partial relief because the applicant was improperly counseled on his May 1998 extension agreement that he would be eligible for an SRB on October 8, 1999. However, the Chief Counsel stated that the applicant's May 6, 1998, extension should not be canceled but should be modified to cover a period of two years and seven months, which was the minimum amount of time he had to commit to the Coast Guard in order to receive a transfer. (The two years and seven months of previously obligated service will be deducted from the SRB that the applicant expects to receive as a result of corrective action showing that he reenlisted on January 4, 1999 for six years.)

In recommending partial relief, the Chief Counsel stated that "the applicant took prompt and appropriate action to rectify the alleged error after its discovery and is willing to offer a new 6-year reenlistment as consideration for the SRB he requests."

Applicant's Response to the Views of the Coast Guard

On December 6, 1999, the Board received the applicant's response to the advisory opinion. He stated that he had no objections whatsoever.

APPLICABLE REGULATIONS

Enclosure (1) to COMDTINST 7220.33, 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, and 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 COMDTINST 7220.33 requires that within 3 months prior to the 6th, 10th, and 14th active duty anniversary date, each member must be counseled about eligibility for an SRB, the requirement to reenlist within 3 months prior to the 6th, 10th, and 14th active duty anniversary date to receive an SRB, that the entitlement to have all questions concerning SRBs answered and to be provided with a copy of Enclosure (5), which is entitled "SRB Questions and Answers." The counseling must be memorialized in the member's record on an administrative remarks (page 7) entry signed by the member.

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. The Board finds that the Coast Guard committed an error by incorrectly counseling the applicant on May 6, 1998, that if he extended his enlistment for six years, he would be eligible for an SRB on October 8, 1999. The applicant entered into this extension not only to obtain an SRB but also to obtain a transfer by committing himself to an additional period of active duty. To accept the transfer, the applicant needed only to have extended his enlistment for two years and 7 months, not six years. Without the promise of the SRB, the applicant probably would not have extended his enlistment for six years but rather for the minimum amount of time necessary to obtain the transfer.

3. Thus, the applicant's May 6, 1998, extension agreement should not be canceled, but rather, modified to show he extended his enlistment for a period of two years and seven months.

4. The Board further finds that the Coast Guard erred by not counseling the applicant with respect to his right to be discharged and to immediately reenlist on his sixth year anniversary date for the purpose of obtaining a Zone A SRB. Enclosure (1), Para. 3.d.(9), COMDTINST 7220.33 requires that members be counseled three months prior to their sixth year active duty anniversary date that they can be discharged from

their current enlistment and immediately reenlisted for up to six years to obtain a Zone A SRB.

5. January 4, 1999, was the applicant's sixth year active duty anniversary date. The Board finds that if the applicant had been properly counseled he would have reenlisted on this date. There was an SRB multiple of 2 in effect on that date for members in the MK rating. This SRB multiple became effective on November 25, 1998, and remained in effect until June 14, 1999. The applicant was eligible for this SRB.

6. Accordingly, the applicant's request for relief should be granted.

6. The Coast Guard concurs in this grant of relief.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted. His record shall be corrected to show that he extended his enlistment on May 6, 1998 for a period of two years and seven months rather than for six years.

His record shall be further corrected to show that he was discharged on January 4, 1999, his sixth year active duty anniversary date, and immediately reenlisted on the same date for a period of six years to obtain a Zone A SRB with the appropriate multiple. The Coast Guard shall pay the applicant, less any previously obligated service, the amount due him as a result of this correction.

