

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 1999-091

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

This final decision, dated February 24, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

The applicant, an electronics technician (ET1; pay grade E-6), asked the Board to correct his record by canceling the three-year reenlistment contract he signed on September 3, 1998, and by replacing it with a two-year extension agreement. This correction will allow the applicant to maximize the selective reenlistment bonus (SRB) payment he received for his six-year reenlistment on October 31, 1999, his tenth anniversary on active duty.

The applicant enlisted in the Coast Guard for three years active duty on October 31, 1989. He extended his enlistment for three years, on August 19, 1991. He extended his enlistment for one month, on October 28, 1991. On November 8, 1994, he reenlisted for three years. On October 14, 1997 he extended his enlistment for ten months. On January 5, 1998, the applicant again extended his enlistment for a period of two years. He reenlisted for three years on September 3, 1998, thereby effectively canceling the two-year extension agreement he signed on January 5, 1998. On October 31, 1999, his tenth anniversary on active duty, the applicant reenlisted for six years. He received a Zone B SRB with a multiple of 1.

On both the 1997 and 1998 extension agreements the applicant acknowledged the following: "I fully understand the effect my extension/reextension will have upon my current and future SRB eligibility. . . . I further acknowledge that I have been given the chance to review COMDTINST 7220.33 concerning my eligibility for an SRB and have had all my questions answered." He also acknowledged the statement: "My SRB will be computed based on [not applicable] months newly obligated service."

### **Applicant's Allegations**

The applicant stated that in August 1998 he was faced with the decision whether to extend his current reenlistment, to reenlist, or to seek employment in the civilian sector. He alleged that when he reenlisted for three years on September 3, 1998, he received insufficient SRB counseling. He stated that if he had received proper counseling he would not have reenlisted in 1998 but would have extended his enlistment for two years. He stated that, at the time, he believed there was no chance for him to receive a Zone B SRB because a two-year extension "would put my next reenlistment or extension well beyond my 10th anniversary of military service (October 31, 1999)." He further stated that "[a]s it stands now I will have to buy back over two years of my remaining contract when I should have to buy back only approximately one year."

The applicant alleged that his SRB counseling consisted of the yeoman informing him that there was no SRB available for his rate at the time of his 1998 reenlistment. The applicant stated that even though he explained to the yeoman that he wanted "to remain within the window of opportunity for a Zone B SRB, [he] was told that the minimum extension was two years which would make this impossible." The applicant stated that he learned on March 3, 1999, that he had the right to be discharged and immediately reenlisted on the anniversary of his tenth year of active duty for the purpose of obtaining an SRB.

### **Views of the Coast Guard**

On November 17, 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 stated that the Coast Guard had no duty to counsel the applicant regarding the effect the reenlistment/extension would have on future SRB entitlement. He further stated that the SRB regulation does not mandate a discussion of the effect of either an extension or reenlistment on future SRB eligibility.

The Chief Counsel stated that it is undisputed that there is no statutory or common law obligation to counsel a service member of their option to reenlist for an SRB. See 37 U.S.C. § 308(a). He stated that only through the implementation of service policy, as set forth in the SRB regulation, has the Coast Guard established an SRB counseling procedure, prior to an optional reenlistment decision point. The Chief Counsel stated that the SRB policy is within the province of the service to establish, modify, or eliminate as there is no statutory right or entitlement to an elective SRB. He stated that the Coast Guard has clear authority to establish SRB regulations including a qualified requirement for service member counseling.

The Chief Counsel stated that enclosure (3) to COMDTINST 7220.33 established the Coast Guard's policy with respect to the extent of any SRB counseling. The Chief Counsel stated that the member should be specifically informed of his current SRB multiple; the specific number of years he may reenlist or extend for; and the months of

newly obligated service used to calculate his SRB. The Chief Counsel stated that the Board should deny relief consistent with its decision in BCMR Docket No. 1999-014.

The applicant, in Docket No. 1999-014, stated that the Coast Guard failed to provide him with SRB counseling when he reenlisted for four years, 1997. He claimed that if he had received SRB counseling in 1997, he would not have reenlisted for four years but would have extended his enlistment for two years. This would have allowed him to maximize the SRB payment that he received as a result of his 1998 reenlistment, on his tenth anniversary on active duty.

On March 1, 1996, approximately one year prior to the 1997 reenlistment, the applicant, in Docket 1999-014, signed an extension agreement acknowledging that he "[understood] 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 72233 . . . concerning [his] eligibility for SRB and have had all [his] questions answered."

The Board made the following pertinent findings in BCMR Docket No 1999-014.

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 . . . any error that occurred at that time was harmless.

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 applicant's reenlistment history suggests that he would have reenlisted for four years in 1997 . . . 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.

[T]he 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.

### Applicant's Response to the Views of the Coast Guard

On December 21, 1999, the Board received the applicant's reply to the views of the Coast Guard.

While the applicant concurred that under the Coast Guard's limited definition of counseling he was not entitled to information on the effect of a three-year reenlistment versus a two year extension, the reality is that counseling should encompass more than just hitting the highlights. He stated that his dictionary describes counseling as the mutual exchange of ideas including discussion and deliberation and any advice resulting from such an exchange. The applicant stated that he made the decision to reenlist without knowledge of the tenth year anniversary clause.

The applicant stated that the Coast Guard's position -- that there is no entitlement or right to an elective SRB, and it can make all of the regulations and determinations without informing its members -- places an unfair responsibility on the service members to have certain information that has not been shared with them.

The applicant stated that his case is different from that in Docket No. 1999-014 because the applicant in that case did not state to the yeoman his intentions of keeping his options open for a Zone B SRB. He further stated that he was not given an opportunity to review COMDTINST 7220.33 and to have all of his questions answered as the applicant had in Docket No. 1999-014.

The applicant stated that he has signed extension agreements acknowledging that he had been informed about his SRB eligibility, but for most of his career it has been a formality to agree to an extension with the knowledge that there was not an SRB available. He stated that it has only been in recent years that the ET rating had developed a need to find alternative ways to retain personnel. He stated that although there was no SRB in effect when he reenlisted in September 1998, it was widely anticipated by the field, through sources such as the ET force notes and the Command Enlisted Advisor network, that an SRB was just around the corner. He stated that on November 24, 1998 a multiple of one was authorized for ET members in Zone B. Unlike the applicant in Docket No. 1999-014, the applicant, in this case, stated that his enlistment history makes it clear that he always agreed to the minimum required service obligation with the sole intent of remaining eligible for an SRB.

The applicant submitted a leave and earnings statement (LES) for the month of June 1995. The LES contained the following advice: "SRB counseling required within 3 months of 6<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup> AD base date. See your unit admin officer for a page 7 entry." The applicant stated that when he spoke to the yeoman about the advice, he was told that he did not need counseling because his enlistment was not about to expire. He further stated that the Coast Guard is currently stressing SRB counseling in its ALDISTs related to SRBs.

The applicant also stated that he is amending his request for relief. Instead of asking for a correction to the length of 1998 reenlistment, he now wants to be paid the sum of \$1,844.10. According to the applicant, this amount represents the year's reduction in the SRB that he lost as a result of improper SRB counseling.

### APPLICABLE REGULATIONS AND PRECEDENT

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."

#### BCMR Docket No. 1999-042

In BCMR Docket No. 1999-042, the Deputy General Counsel was not convinced by the applicant's argument "that the Coast Guard erred by failing to counsel him, prior to his July 1997 five-year reenlistment, that he should have reenlisted for the minimum amount of time so that he later could obtain the maximum SRB." She stated that the applicant has not presented any evidence that a regulation, order, or directive of the Coast Guard establishes a duty to advise members to reenlist for the minimum amount of time in order to receive the maximum SRB at a future reenlistment or extension.

The Deputy General Counsel also rejected the applicant's claim, in Docket No. 1999-042, that "if he knew his current obligation would diminish the obligated service for which he could receive an SRB, then he would have kept to a minimum his current obligation while awaiting an SRB opportunity. She stated that

[the] applicant apparently knew this fact about the SRB program because he signed an agreement to extend/reextend enlistment (Form CG3301B) on May 8, 1996, in which he stated: (a) "I have been provided with a copy [of] 'SRB Questions and Answers' based on Commandant Instruction 7220.33(series)"; and (b) "My SRB will be computed based on [not applicable] months newly obligated service." His signature under these statements indicates that applicant knew, on July 15, 1997, that any future SRB would be diminished by the years remaining on his current enlistment."

### 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. On October 31, 1999, his tenth active duty anniversary, the applicant was discharged from his then-current enlistment and immediately reenlisted for six years for the sole purpose of obtaining a Zone B SRB. In accordance with regulations, the 23 months of service remaining from his previous September 3, 1998 enlistment were deducted from the SRB. The applicant does not claim an error with respect to the 1999 reenlistment.

3. The applicant claims that the error occurred with the September 3, 1998 reenlistment, when the Coast Guard failed to provide him with sufficient counseling about his SRB eligibility. He asserts that if he had been counseled he would have extended for two years on September 3, 1998, rather than reenlisting for four years. If the Board grants the applicant's request, the applicant would be relieved of approximately one year of previously obligated service. This would allow him to maximize his 1999 SRB, by receiving an SRB payment based on approximately 60 months of newly obligated service rather than on approximately 48 months of newly obligated service.

5. The Board is not persuaded by the applicant's contention that he would have extended for two years rather than having reenlisted for three years on September 3, 1998. The Board notes that when the applicant reenlisted on September 3, 1998, he had already executed a two-year extension that would have given him the same result he seeks from this Board. That extension would have become operative on September 6, 1998 and ended on September 7, 2000. However, when the applicant reenlisted on September 3, 1998, he effectively cancelled that two-year extension. The applicant has not provided the Board with an explanation for his decision to cancel the two-year extension and reenlist for three years, if he wanted to commit for the shortest period of time in 1998.

6. The applicant's military record does not contain a page 7 SRB counseling entry with respect to the September 3, 1998 reenlistment. However, the Board finds that the applicant was knowledgeable of the fact that previously obligated service will reduce an SRB. A mere nine months earlier, the applicant acknowledged on the January 5, 1998 extension contract 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. He further acknowledged on that contract that he had been given the chance to review COMDTINST 7220.33 concerning his eligibility for an SRB and that all of his questions had been answered. He further acknowledged that "[m]y SRB will be computed based on [not applicable] months newly obligated service." The applicant acknowledged this same advice on his

extension agreement, dated October 14, 1997. Yet, he opted to reenlist over the two-year extension that he had already executed. Additionally, he made this decision without reviewing the SRB instruction for himself. The Board finds that the essence of the applicant's claim in this case is the same as that in Docket No. 1999-042. Accordingly, the Board relies on the decision of the Deputy General Counsel in that case to support its findings in this case.

7. The applicant claimed that the SRB counseling he received, which consisted of the yeoman stating that there was no SRB available for the applicant in September, 1998, was insufficient. The yeoman's counseling was correct. Since the applicant was not within three months of his tenth year anniversary on active duty in September 1998, the SRB instruction does not place a responsibility on Coast Guard personnel to provide "anniversary counseling" until a member is within three months of his tenth anniversary on active duty.

8. The Board is not persuaded that the applicant has suffered an error or injustice with respect to the SRB that he received in 1999. Neither is the Board persuaded that any corrective action is necessary with respect to the September 3, 1998 reenlistment.

9. In his most recent submission, the applicant amended his request and asked to be paid the sum of \$1,844.10 (which represents the loss of one year of SRB), rather than correcting the September 1998 reenlistment contract. Since the applicant has not established that he is entitled to a correction to his record, no basis exists for directing the Coast Guard to pay him any sum of money.

10. Accordingly, the applicant's request for relief should be denied.

ORDER

The application of [redacted]  
his military record is denied.

[redacted], USCG, for correction of

