

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 1999-130

FINAL DECISION

[REDACTED]

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 June 2, 1999, following the BCMR's receipt of the applicant's completed application for correction of his military record.

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

RELIEF REQUESTED

The applicant, an electronics technician second class (ET2; pay grade E-5), asked the Board to correct his record to entitle him to a selective reenlistment bonus (SRB). The applicant made the following statement:

I understand that there are many people that are having to apply for corrections, due to problems with counselling for a Selective Reenlistment Bonus. Many are eligible for a bonus and due to counselling errors are having to apply to this board as I am. My case, however, is not about failure to receive a SRB. My case is about future eligibility. (emphasis added).

The applicant asked the Board to change his reenlistment contract of 3 years to an agreement to extend his enlistment for 2 years. "[N]ew information, plus counselling, would have given [him, he said] "cause to reconsider a 3 year reenlistment versus a 2 yr Agreement to extend." He added that he feels that "counselling would have benefited my decision, whether or not there was any

SRB's for the Electronics Technician rate."

VIEWS OF THE COAST GUARD

On January 6, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. The Chief Counsel recommended that the Board deny relief to the applicant, consistent with the Board's decision in BCMR Docket No. [REDACTED]

The Chief Counsel said that the Board should deny relief because the Coast Guard did not have a duty to counsel the applicant regarding the effect his September 1998 reenlistment might have on future SRB entitlement.

According to the Chief Counsel, the applicant's first enlistment end date was October 14, 1995; his 3 year enlistment contract became operational on October 15, 1995; on September 1, 1998, he reenlisted for a period of 3 years, and his end of enlistment date then became October 14, 2001.

If the applicant had extended for 2 years instead of reenlisting for 3 years, the applicant now believes he could have reenlisted on his 10-year service anniversary with no prior service obligation remaining. The Chief Counsel said the applicant failed to prove that the Coast Guard had a duty to counsel him "regarding the effect his September 1998 extension might have on a potential future SRB."

The Chief Counsel noted that the Congress did not articulate any specific counseling requirement, but knowingly delegated such a decision to the Coast Guard as the executive agency responsible for implementing the policy. Chevron v. Natural Resource Defense Council, 467 U.S. 837, 865 (1984). Under that delegation of authority, the Coast Guard promulgated COMDINST 7220.33 to effectuate its SRB policy. It established the extent of the SRB counseling a member should receive as the current SRB multiple, the specific number of years the member may reenlist or extend, and the months of newly obligated service used to calculate his SRB.

APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On January 6, 2000, the Chairman sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 15 days. The applicant responded on January 18, 2000.

The applicant asked why the instruction states that a page 7 entry has to be inserted in the member's record "[i]f the Coast Guard does not have a duty to counsel members."

BOARD PRECEDENTS

The applicant in BCMR Docket No. 1999-014, like the applicant in this case, claimed that the Coast Guard committed an error when it failed to counsel him about his SRB eligibility. He asserted that if he had been counseled he would have extended for 2 years instead of reenlisting for 4 years. The Board found that the applicant's current contention amounts to a "retrospective review of his military record based on a later opportunity that the applicant could not have known about [when the decision was made]." The required page 7 does not mandate a discussion of the effect of either an extension or reenlistment on a future SRB. The Board in Docket No. 1999-014 held that it is "the Board's job is not to perfect records but to correct harmful errors and remove injustice" The Board in that case also attached weight to another factor present in this case: "Yet, he reenlisted in 1997 without asking any questions."

The delegate of the Secretary (Deputy General Counsel), in BCMR Docket No. 1999-042, addressed a similar claim, on review: "Applicant's argument is not convincing. [I]t assumes that Coast Guard has 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, if an SRB is offered then. Applicant has not presented any evidence that a regulation, order or directive of the Coast Guard establishes such a duty and I know of none."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and of the Coast Guard, on the basis of the applicant's military record, and on the basis of 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 merited corrections "due to problems with counselling" and "counselling errors."

3. The applicant claims that the error occurred prior to his 1998 reenlistment when the Coast Guard failed to counsel him about his SRB eligibility. If he had been counseled, he argues, he would have asked the Board "to reform his reenlistment contract to reflect that he extended for two (2) years in September 1998 so that he might reenlist on his 10-year service anniversary with no service obligation remaining." The applicant asked the Board to do "whatever [it] finds feasible" to

change a 3-year enlistment to a 2-year contract of extension followed by reenlistment on his 10-year active duty anniversary date.

4. Because of the alleged error, the applicant wanted his record corrected to show the 1998 3-year enlistment as a 2-year extension of enlistment. If this correction is granted by the Board, the applicant would be relieved of his previously obligated service.

5. The applicant's "case . . . is not about failure to receive a SRB. [H]is case is about future eligibility." The Coast Guard does have a duty to counsel an applicant about his current SRB entitlement, but it does not have a duty to counsel him about the effect his current decision might have on future SRB entitlement, where that future entitlement involves a retrospective review of the applicant's military record.

6. The applicant has failed to show an error or an injustice.

8. Accordingly, the application should be denied

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record
USCG, is denied.

