DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 1999-141

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 July 1, 1999, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated June 1, 2000, 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 third class (BM3; pay grade E-4) on active duty at the time he filed his application, asked the Board to "honor [his] reenlistment contract and either pay the reenlistment bonus [he] was guaranteed or cancel [his] contract."

After serving on active duty in the Marine Corps, the applicant enlisted in the Coast Guard for four years on June 27, 1995. On December 4, 1996, he extended his enlistment for 6 months, with an expiration date of December 26, 1999. On April 30, 1999, the applicant reenlisted for 6 years. His reenlistment contract contained a promise of a Zone B SRB with a multiple of one.

The applicant stated that although he was counseled that he was eligible for the Zone B SRB prior to reenlisting, the Coast Guard stated that he was not eligible for the SRB after he reenlisted.

Views of the Coast Guard

In the Coast Guard advisory opinion, dated January 13, 2000, the Chief Counsel recommended that the applicant be granted partial relief by voiding his April 30, 1999, reenlistment contract.

The Chief Counsel stated that the applicant was incorrectly counseled that he was eligible to receive a Zone B SRB for his BM rating. The Chief Counsel stated that the applicant was not eligible to receive the Zone B SRB when he reenlisted on April 30, 1999, because he was not serving in pay grade E-5 or higher as required by Service regulation. The Chief Counsel stated that the Coast Guard is barred from paying the applicant the SRB he now seeks.

The Chief Counsel stated the following:

> The Government is not estopped from repudiating the inaccurate SRB counseling or the SRB provision included in Applicant's 30 April 1999 reenlistment contract. Even assuming arguendo that Applicant had detrimentally relied on this promise of a SRB, the doctrine of estoppal does not apply, because, as a matter of law, Applicant was ineligible for an SRB. Utah Power & Light Co. v. United States, 243 U.S. 389, 409, 37 S. Ct. 387, 61 L. ED. 791 (1917). Furthermore, the Applicant is estopped from making any claim against the Government based on his reliance on the alleged erroneous advice. In Montilla v. United States, 457 F.2d 978, 198 Ct. Cl. 48 (1972), the Court of Claims held that the misrepresentations of officers of the U. S. Army to the plaintiff, leading him to believe that he had completed twenty years of active military service and was thus eligible for retirement pay upon reaching age sixty, could not alter the fact that the plaintiff had not actually completed twenty years of active service as computed under 10 U.S.C. § 1332 (1964). . .
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> Moreover, in Goldberg v. Weinberger, 546 F. 2d 477 (2d Cir. 1976), cert. Denied sub nom. Goldberg v. Califano, 431 U.S. 937, 97 S. Ct. 2648, 53 L.Ed. 2d 255 (1977), the Court explained "[t]he government could scarcely function if it were bound by its employees unauthorized representations. Where a party claims entitlement to benefits under federal statutes and lawfully promulgated regulations, that party must satisfy the requirements imposed by Congress. Even detrimental reliance . . . on misinformation obtained from a seemingly authorized government agency will not excuse a failure to qualify for the benefits under the relevant statutes and regulations." 546 F.2d at 481. As in Goldberg, the Applicant appears to have relied on the advice of a seemingly authorized government employee. However, that advice misstated the statutory requirements imposed by Congress and the Applicant cannot now make a claim against the Government based on his reliance. Therefore, the Government may not pay the Applicant an SRB, as it would be contrary to existing law and regulation.

The Chief Counsel stated that the applicant's April 30, 1999, reenlistment contract is voidable, since he will not receive the SRB that he was promised. He recommended that the applicant's April 30, 1999, reenlistment contract be voided thereby allowing him the possibility of becoming eligible for a Zone B SRB at a later date, if he should be able to advance to the grade of E-5 or higher.

Applicant's Response to the Views of the Coast Guard

On January 19, 2000, a copy of the advisory opinion was sent to the applicant, with an invitation for him to respond. He did not submit a response.

Additional Information

The Board has learned that on May 18, 2000, the applicant was discharged from the Coast Guard with an other than honorable discharge by reason of misconduct.

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 applicant was improperly counseled that he was eligible for a Zone "B" SRB when reenlisted on April 30, 1999. The Board finds that he was not eligible for the Zone B SRB when he reenlisted because he was not serving in pay grade E-5 or higher, at the time of his reenlistment. See COMDTINST 7220.33, Enclosure (1), Section 3.b.(4). Moreover, the Board finds that the Coast Guard is not bound by the incorrect advice provided to the applicant by his unit yeoman and may repudiate that advice.

3. The Coast Guard has recognized that the applicant's April 30, 1999 reenlistment contract is voidable, since the applicant will not receive the SRB that he was promised when he reenlisted April 30, 1999. The Board finds that the reenlistment contract could be voided and replaced with a short-term contract extension.

4. However, under the circumstances of this case, the Board finds that a short-term contract is unnecessary to replace the April 30, 1999 reenlistment, because on May 18, 2000, the applicant was discharged from the Coast Guard. Therefore, due to this change in circumstance, the Board finds that corrective action is not necessary in this case.

5. Accordingly, the applicant's request should be denied.

ORDER

The application of [redacted] USCG, for the correction of his military record is denied.

[redacted]