

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-022

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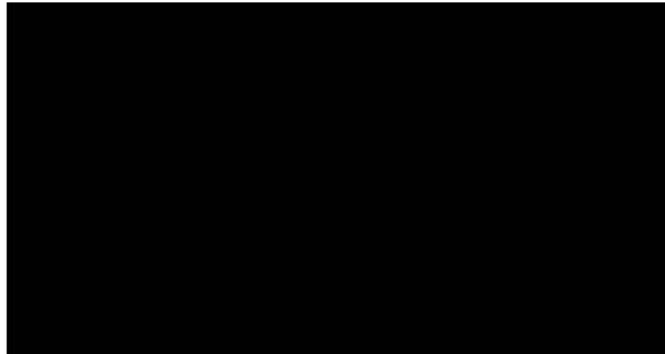
DECISION OF THE DEPUTY GENERAL COUNSEL

I approve the recommended Order of the Board.

I disapprove the recommended Order of the Board.

I concur in the relief recommended by the Board.

DATE: Feb. 16, 2001



**DEPARTMENT OF TRANSPORTATION  
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**FINAL DECISION**

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The proceeding was docketed on November 23, 1999, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated October 6, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

At the time of application, the applicant was a marine science technician second class (MST2) under an enlistment contract that was due to expire on December 7, 1998. He extended his enlistment early, for two years, on October 1, 1998; the extension was due to become operational on December 8, 1998. On December 7, 1998, the applicant reenlisted for three years. The reenlistment contract provided that the applicant would receive a Zone B SRB based on 36 months of service; his end of enlistment then became December 6, 2001.<sup>1</sup>

On November 18, 1999, the applicant asked that the two-year extension contract that he signed on October 1, 1998, be 'expunged.'

**APPLICABLE REGULATION**

Article 1.G.19. of the Coast Guard Personnel Manual provides in part: "(1) An extension of enlistment may not be canceled after it begins to run, either for the convenience of the Government or the person concerned.... (2) An appropriate authority may cancel an Agreement to Extend Enlistment at any time before the extension begins to run if any of these situations applies."

Section 2 of Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) prescribes that a member extending or reenlisting for any period shall be counseled on the SRB program.

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<sup>1</sup> ALDIST 290/98 became effective on November 25, 1998. It authorized a Zone B SRB with a multiple of 1 for the MST rating. Prior to that date, the MST rating had no SRB multiple.

### VIEWS OF THE COAST GUARD

The Chief Counsel stated that the applicant failed to prove that the basis of his action was error or injustice. "Injustice," according to the Chief Counsel, is treatment that shocks the sense of justice, but is not technically illegal. The Chief Counsel said the applicant "failed to prove by a preponderance of the evidence that his extension contract was executed in error or represents an injustice that 'shocks the senses.'"

The applicant's commanding officer made the following statement in a memo of March 17, 1999: "[The applicant] received improper counseling from my staff and the ISC Cleveland PERSRU."

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The following are the two major arguments presented by the Chief Counsel of the Coast Guard:

"Applicant has failed to prove that his [October 1] 1998 extension agreement was entered into in error or was unjust." "Applicant's [December 6] 1998 reenlistment is voidable."

The Chief Counsel recommended partial relief in the subject case: "[T]he Applicant should be given an opportunity to either maintain or void his current reenlistment contract." "Please accept the following comments as the Coast Guard's advisory opinion recommending partial relief in the subject case by providing Applicant the opportunity to void his December 1998 reenlistment contract." "Although Applicant was eligible to receive only 12 months of a Zone B SRB, Applicant's December 1998 reenlistment improperly indicated he was entitled to 36 months of SRB entitlement. That evidence support the conclusion that an error was committed in the interpretation of Coast Guard policy."

The Chief Counsel concluded with a declaration: "This Application involves a significant issue of Coast Guard policy. Action by the Board other than denial would therefore be subject to final action by the Secretary pursuant to 33 C.F.R. 52.64(b)."<sup>2</sup>

### APPLICANT'S RESPONSE TO COAST GUARD VIEWS

On June 29, 2000, the Board sent the applicant a copy of the views of the Coast Guard on this case and notified him that he could submit a response to these views within 15 days of the date of this letter. On July 17, 2000, a timely response was received from the applicant.

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<sup>2</sup> The significant policy issue is not identified. A policy issue was noted in the context of earlier administrative proceedings for "Waiver from Internal Coast Guard Rules." It is unclear whether the same significance exists in the present posture of a matter before the Board. The Chief Counsel should confirm the existence of, and identify, the significant issue of Coast Guard policy as the predicate for a referral for final action by the Secretary under 33 CFR §52.64(b). Absent confirmation, the unanimous decision of the Board is final.

The applicant disagreed with the advisory opinion of the Coast Guard. Specifically, he took issue with the Coast Guard's assertion that the applicant "failed to prove by a preponderance of the evidence that his extension contract was executed in error or represents an injustice that 'shocks the senses.'" He used the same phrase - shocks the senses - as the Coast Guard, but reached a different conclusion as to whether the conduct was shocking.

The applicant said that he was counseled on October 1, 1998, that he could cancel his extension and if an SRB was implemented he could cancel that extension and receive the full SRB. This statement amounts to incorrect counseling, the applicant said, as he "was denied the full SRB that [he] was counseled [he] would receive and was written in to the comments section of the reenlistment contract [he] signed in December 1998."

He said it "shocks the senses" that the Chief Counsel says he could have been properly counseled in October 1998 and improperly counseled by the same administrative personnel two months later, in December 1998. He proposes that it is the administrative personnel who improperly counseled him in October 1998, and that his signing a document stating that he was properly counseled is therefore null and void.

The applicant alleged that it "shocks the senses" to penalize him for working with his Command to facilitate personnel assignment issues. Signing an extension two months early did not bring any financial gain. He did it, he said, "in the spirit of trying to work well with others and to assist the unit by not having to generate unnecessary requests and paperwork."

The applicant further says it "shocks the senses" that the Chief Counsel would not want to right a wrong committed by administrative personnel who improperly and incorrectly counseled a service member.

### FINDINGS AND CONCLUSION

The Board makes the following findings of fact and conclusions of law on the basis of the submissions of the applicant and the Coast Guard, the military record of the applicant, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to section 1552 of title 10 of the United States Code. The application was timely.
2. On October 1, 1998, the applicant extended his enlistment for a period of two years, effective on December 8, 1998. He did so voluntarily, but in error stemming from the false promise that he could cancel the extension and, if an SRB was implemented, receive the full SRB.
3. No SRB was authorized for the applicant's MST rating on the date of the

extension contract. On November 25, 1998, however, ALDIST 290/98 authorized a multiple of 1 for the MST rating.

4. On December 7, 1998, the applicant canceled the extension contract before it had begun to run and reenlisted for three years. The reenlistment contract was consistent with the erroneous advice on October 1, 1998, in that it recited the applicant's entitlement to a SRB of 36 months based on three years of newly obligated service.

5. The Board agrees with the Coast Guard that the applicant's December 1998 reenlistment contract is voidable due to the Coast Guard's error on applicant's entitlement to an SRB. The Board finds that Coast Guard reasoning logically applies to the October 1998 extension contract as well: the Coast Guard erroneously advised the applicant that the extension contract could be canceled and, if an SRB was implemented, he could receive the full SRB. Under Commandant Instruction 7220.33, a member is entitled not only to counseling; he or she is entitled to proper and correct counseling.

6. Accordingly, the applicant's extension contract of October 1, 1998, should be null and void. The SRB for 36 months of newly obligated service entered on applicant's said reenlistment contract needs no correction.

**[ORDER AND SIGNATURES ON FOLLOWING PAGE]**

ORDER

The application to correct the military record of [REDACTED] is granted, that is, applicant's extension contract dated October 1, 1998, shall be null and void. The SRB for 36 months of newly obligated service entered on applicant's reenlistment contract needs no correction. The Coast Guard shall pay the applicant any sum he may be due as a result of this correction.

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