

DEPARTMENT OF TRANSPORTATION  
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of  
Coast Guard Record of:

BCMR Docket  
No. 2000-026

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 November 22, 1999, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated September 21, 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 second class (ET2; pay grade E-5), asked the Board to correct his record by canceling the six-year reenlistment contract he signed on October 5, 1998, and by reinstating the 16-month extension agreement he signed on November 5, 1996. He requested that his record be further corrected to show that he reenlisted for six years on August 17, 1999, his sixth year active duty anniversary date, making him eligible to receive an SRB with a multiple of 3 pursuant to ALDIST 290/98.

The applicant enlisted in the Coast Guard for four years on August 17, 1993. He extended his enlistment for 14 months on one occasion and on November 5, 1996, he again extended his enlistment for 16 months. This last extension would have become operative on or about December 17, 1998. Prior to that date, however, the applicant canceled the extension and reenlisted for six years, on October 5, 1998. He was promised and received a Zone A SRB with a multiple of one for this reenlistment SRB.

**EXCERPTS FROM THE RECORD AND SUBMISSIONS**

The applicant stated that he was improperly counseled about his SRB entitlements in October 1998 and he did not have access to the SRB instruction. He stated he was incorrectly advised that if he did not reenlist before the extension he signed on November 5, 1996 became operative he "would never be eligible for a Zone "A" SRB because of the extension continuing past [his] 6th year service mark. . . ."

The applicant described the events leading up to his reenlistment as follows:

In August of 1988, I viewed the new SRB eligibility message. This is the first time ET's were on the list and for a multiple of "1". I did not know

anything about the program therefore I spoke with . . . the XPO [executive petty officer] about SRBs and how to become eligible to obtain one. He got back to me and stated that I had a voluntary extension<sup>1</sup> that was going to begin on October 5, 1998. He said that if I didn't re-enlist before October 5 and cancel the upcoming extension, I would not be eligible for 2 more years (the time of the extension). I knew about the upcoming shortages in the ET rating and the possibility of the multiple increasing. However, I was told that I had to reenlist before my extension began or else I would never be eligible for a Zone A SRB because of the extension continuing through my 6 year service mark. The only option I was given was "now or never". Because of this, I canceled my extension and reenlisted for 6 years on 05 OCT 98, receiving an SRB multiple of "1".

On October 1, 1999, I read a statement from the Chief Counsel, U.S. Coast Guard to [a] BM2 . . . concerning his request for SRB appeal. Only then, according to COMDTINST 7220.33, Article 3.d.9, did I find out that I could have begun my 2 year extension on 05 OCT 98. Then, when I had reached my 6th year in service on 17 AUG 99, I could have had the opportunity for an early discharge to reenlist for the purpose of qualifying for a Zone "A" SRB. In this case the SRB only counts for newly obligated service.

I feel that I have been financially shortchanged for asking a question and being improperly counseled. My decision to reenlist was based on incorrect information. Had I not asked the question, with the information I now know about SRBs, my extension would have begun and then on 17 AUG 99 I would have had the opportunity to reenlist then with the current multiple of "3".

The XPO submitted a written statement corroborating the applicant's description of events that preceded his reenlistment. The applicant's commanding officer (CO) also wrote a statement recommending favorable consideration of the applicant's request for relief. He stated that as a result of incorrect counseling, the applicant would lose significant financial entitlements during his reenlistment. He stated that because the command is geographically separated from its personnel office, the support it receives is not as thorough as that provided personally. He further stated that the applicant was an outstanding performer and an integral part of the crew. He restated his belief that the applicant is entitled to relief.

There are no page 7 entries showing that the applicant was counseled about any SRB eligibility at any time. There is, however, on the extension agreement signed by the applicant, on November 5, 1996, an acknowledgement that the applicant "understand[s] 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 7220.33 (series) concerning [his] eligibility for SRB and have had all [his] questions answered."

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<sup>1</sup> The military record indicates that the extension was executed so that the applicant would have a sufficient amount of obligated service to qualify for a transfer.

The applicant's reenlist agreement, dated October 5, 1998, contained the following sentence: "Member is entitled to Zone "A" SRB with a multiple of one."

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

On June 29, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief to the applicant for lack of merit. He further stated the following:

Contrary to Applicant's allegation, he had no way of predicting the SRB multiple for the ET rating would increase. His allegation is purely speculative and should be afforded no weight by the Board. In fact, applicant signed a reenlistment contract properly entitling him to a Zone "A" SRB with a multiple of 1. Applicant certified that he read and understood his reenlistment contract and that any questions he had were explained to his satisfaction. Applicant received the SRB he was entitled to when he executed his reenlistment contract. Therefore, he should be denied relief.

The Chief Counsel argued that the Board should decide this case consistent with its decision in BCMR No. 1999-014. He stated that the Board concluded in that case the SRB regulation "does not establish a duty to counsel members on possible effects a current reenlistment/extension may have on future SRB eligibility." According to the Chief Counsel, when the applicant signed his reenlistment contract with the Coast Guard, neither party could predict the SRB multiple for his rating would increase. The Chief Counsel stated that on November 24 1998, ALDIST 290/98 was promulgated and became effective November 25, 1998, with a multiple of 3.

The Chief Counsel asserts that the applicant should be bound by the contract he signed. In this regard, he argued that the applicant had the opportunity to ask questions about the terms of his enlistment, there was no evidence of fraud or duress, and the applicant was of majority age.

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

On July 12, 2000, the Board received the applicant first response to the views of the Coast Guard and on August 29, 2000, the Board received the applicant's second response to the views of the Coast Guard.

The applicant stated that he is not arguing that the Coast Guard, had an affirmative duty to counsel him about the possible effects a current reenlistment/extension may have on future eligibility. Instead, he is asserting that he was given incorrect information by his personnel office. He stated that he relied on this incorrect information to his detriment.

The applicant submitted a statement from the CO of the personnel reporting unit (PERSRU). He stated that the applicant's military record does not contain an administrative remarks (page 7) entry documenting SRB counseling. He stated that an interview with the yeoman who advised the applicant revealed

(1) the yeoman does not necessarily recall this specific phone conversation but did state that several SRB counseling sessions were conducted via phone conversations for the remotely located units; (2) the yeoman stated that he was not completely familiar with all the requirements of [the SRB regulation]; and (3) the yeoman did not know about the six year anniversary rule until sometime later when he was assigned a new PERSRU team leader/auditor.

The applicant stated that due to the geographical isolation of his unit he was unable to get a copy of the SRB regulation. He stated that although he asked the yeoman for a copy of the regulation, he was told that it was too large to copy or to fax. He argued this proves his point that if the yeoman were knowledgeable about the regulation, he would have known that "there is a couple page pamphlet designed with the sole purpose for counseling and frequently asked questions."

The applicant stated that the SRB regulation was created to protect the Coast Guard and its members and if that regulation had been followed, his case would not be before the Board. He asserted that he has proven that the Coast Guard erred by providing him incorrect counseling when he reenlisted in 1998 and that the error came about because the yeoman's and the command's lack of familiarity with the SRB regulation.

#### APPLICABLE REGULATION

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), to COMDTINST 7220.33, 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."

Enclosure (3) to COMDTINST 7220.33 requires that members be counseled on a page 7 entry within three months of the their 6th, 10th, or 14th year active service anniversary dates that they are eligible to reenlist for the purpose of obtaining an SRB.

#### 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 has shown by a preponderance of the evidence that he was incorrectly advised by unit personnel that his 1998 reenlistment would be the only opportunity he would have to receive a Zone A SRB. The unit personnel advised him that once the extension agreement he signed in 1996 became operative (in the fall/winter 1998), it could not be canceled. As a result of this advice, the applicant alleged that he canceled his extension and reenlisted for 6 years on October 5, 1998. He received a full Zone A SRB with a multiple of 1, based on six years of new service.

3. The applicant stated that approximately one year later, he read, in a case pertaining to another individual, that a servicemember could reenlist on his sixth year active duty anniversary for the sole purpose of obtaining a Zone A SRB. If the applicant had not reenlisted in October 1998 and reenlisted on his sixth year anniversary (August 1999), he would have been eligible to receive a Zone A SRB with a multiple of 3 (he received a multiple of 1 in 1998). The applicant claims that he was neither told that he had the option of reenlisting on his sixth year anniversary date nor given a copy of the SRB instruction to review.

4. Even though the advice given to the applicant that his reenlistment in 1998 would be the only opportunity for him to receive a Zone A SRB was incorrect, the Board is not persuaded that he would not have taken advantage of the Zone A SRB available at that time. As the applicant stated this was the first time that the ET rating had been included on an ALDIST for a SRB multiple. The applicant was obviously interested in obtaining an SRB in 1998, since he initiated a conversation with the XPO about his eligibility for the SRB.

5. The Board is not persuaded that the applicant would have passed on a guaranteed SRB in 1998 and taken a chance that there would have been a higher SRB multiple for his rating approximately one year later in 1999. It could have been that there would have been no SRB in effect at all on the applicant's sixth year anniversary date. There was no way for the applicant to know when he reenlisted in 1998 that there would be a higher multiple on his sixth year anniversary date.

6. In previous decisions, the Board has corrected the military records to grant an SRB for an enlistment or extension where the Coast Guard failed to provide the required counseling and where the applicant qualified for, but did not receive, the SRB that was in effect at that time. This case is different. The applicant received the SRB that he was eligible for in 1998. He is asserting that if he had not been improperly advised in 1998 about reenlisting on his sixth year anniversary date, he would have made a different decision and not reenlisted at that time. The Board finds that the applicant's present contention amounts to a retrospective review of his situation based on a later opportunity for a larger SRB multiple that he could not have known about in 1998.

7. The applicant's military record does not contain a page 7 SRB counseling entry with respect to the 1998 reenlistment. Thus, the Coast Guard erred in 1998 by not counseling the applicant on a page 7 entry about his eligibility for an SRB prior to his

reenlistment in 1998. However, the Board concludes that without the page 7 entry the applicant received the SRB that he was eligible for at that time. The Coast Guard was not obligated to counsel the applicant on a page 7 with respect to reenlisting on his sixth year anniversary date until he was within three months of that date. On October 6, 1998, the applicant was approximately 10 months away from his sixth year anniversary date.

8. Additionally, the 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 two years before his 1998 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 1998 without challenging the alleged incorrect advice.

9. In denying the applicant's request in this case, the Board is not denying him an SRB. The applicant received the SRB that he was entitled to in 1998, albeit not in the amount that he would have liked. While he did not have to reenlist in 1998 and could have waited and reenlisted on his sixth year anniversary date, the Board is not persuaded, even without the erroneous advice, that he would have done so without knowing for certain that a higher SRB would have been available at that time.

10. Accordingly, the applicant has failed to persuade the Board that an error or injustice exists in his record that requires corrective action.

11. Accordingly, no relief is warranted under the circumstances of this case.

**ORDER**

The application of  
military record is denied.

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