

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction
of Coast Guard Record of:

BCMR Docket No. 2000-031

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. It was commenced on December 7, 1999, upon the BCMR's receipt of the applicant's complete request for correction of his military record.

This final decision, dated October 12, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a quartermaster second class (QM2; pay grade E-5), alleged that the Coast Guard improperly counseled him that he would be eligible for an SRB if he reenlisted on August 9, 1999. He requested that the August 9, 1999 reenlistment contract be canceled and that his prior end of enlistment (EOE) be reinstated so that he "may be eligible for an SRB due to [his] advancement to E-5 on 99NOV01."

VIEWS OF THE COAST GUARD

On June 30, 2000, the Chief Counsel of the Coast Guard recommended to the Board that it grant partial relief to the applicant. The Chief Counsel said that the "Applicant was incorrectly informed on 09 August 1999 that he was eligible to receive a Zone 'A' SRB. . . . [I]n the interests of justice, the Coast Guard recommends that Applicant's 09 August 1999 reenlistment contract be voided thereby allowing him the possibility of becoming eligible for Zone 'B' SRB at a later date."

The Chief Counsel stated that the applicant is estopped from making any claim against the Government based on his reliance on the alleged erroneous advice. Montilla v. United States, 457 F.2d 978 (Ct.Cl. 1972); Goldberg v. Weinberger, 546 F. 2d 477 (2d Cir. 1976).

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 the applicant that he could submit a response to the Coast Guard's views within 15 days of the date of notification.

On July 12, 2000, the Board received a response from the applicant which contained the following sentences: "I respectfully request your careful consideration of my petition regarding payment of Zone 'B' SRB." "I truly feel that if had known prior to my reenlistment that I was not eligible for an SRB I would have seriously considered my career with the Coast Guard."

The applicant notified the Board on July 12, 2000 that he was advanced on November 12, 1999.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the submissions of the applicant and the Coasmilitary record of the applicant, 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 alleged that he was "miscounseled on SRB eligibility at the time of [his] reenlistment on 99Aug09."
3. The Coast Guard admitted that the applicant was incorrectly informed on August 9, 1999, that he was eligible to receive a Zone A SRB.
4. Notwithstanding these assertions, the applicant, as a matter of law, was ineligible for an SRB even if he had detrimentally relied on the promise of one. "[T]he government could scarcely function if it were bound by its employees unauthorized representations." Goldberg v. Weinberger, 546 F.2d 477, 481 (2d Cir. 1976).
5. In the interest of justice, however, the applicant's record should be modified by granting partial relief by voiding the August 09, 1999 reenlistment contract and by offering the applicant a two-year extension; alternatively, the applicant should be discharged from active duty.

ORDER

The application to correct the military record of [REDACTED] USCG, is partially granted, as follows:

- (1) Void the August 9, 1999 enlistment contract.
- (2) Offer the applicant a two-year extension of his enlistment.

All other relief is denied.

