

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

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Application for the Correction of  
the Coast Guard Record of:

**BCMR Docket No. 2000-060**

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**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 docketed on January 24, 2000, following the BCMR's receipt of the applicant's complete application.

This final decision, dated April 19, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant, a xxxxxxxx on active duty in the Coast Guard, asked the Board to correct his military record to show that, in 1982, he extended his enlistment so that he could receive a Zone B<sup>1</sup> selective reenlistment bonus (SRB) pursuant to ALDISTs 340/81 and 004/82. The correction he requests would be an extension on top of an extension for which he has already received a Zone A SRB pursuant to these ALDISTs.

The applicant alleged that the Coast Guard had a duty to counsel members about SRB opportunities, but he was never counseled about his eligibility to receive a Zone A or a Zone B SRB by extending his enlistment in February 1982. He stated that his record had already been corrected once by the Commandant in 1995 to qualify him for the

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<sup>1</sup> SRBs vary according to the length of each member's active duty service, the length of the period of reenlistment or extension of enlistment, and the need of the Coast Guard for personnel with the member's particular skills. Coast Guard members who have served between 21 months and 6 years on active duty are in "Zone A," while those who have more than 6 but less than 10 years of active duty service are in "Zone B." In 1982, the applicant was still in Zone A, but because his enlistment, as previously corrected, continued into Zone B, an immediate extension of it would have qualified him for a Zone B SRB. Members may not receive more than one bonus per zone.

Zone A SRB under ALDISTs 340/81 and 004/82. However, he alleged, if he had been properly counseled, he would have extended his enlistment in February 1982 not just once—to get the Zone A SRB he has already received as a result of a record correction by the Commandant—but twice, to earn a Zone B SRB as well.

The applicant alleged that he discovered the fact that his record was in error because he could have received a Zone B SRB if he had been counseled about ALDIST 004/82 on November 19, 1997.

### **SUMMARY OF THE RECORD**

The applicant enlisted in the Coast Guard on September 4, 1979, for a term of four years, through September 3, 1983. He attended "A" School and was advanced from seaman to xxxxxxxx pay grade E-4) on July 17, 1981.

On January 12, 1982, the Commandant issued ALDIST 004/82, temporarily extending the provisions of ALDIST 340/81, which authorized SRBs for members in certain skill ratings who were within 30 days of the end of their enlistment periods and who reenlisted or extended their enlistments for at least three years. The Zone A SRBs authorized for members in the MK rating who extended their enlistments or reenlisted under ALDIST 340/81 were calculated with a multiple of four. The Zone B SRBs authorized for MKs who extended their enlistments or reenlisted were calculated with a multiple of three. ALDIST 004/82 also temporarily waived the requirement that members be within 30 days of the end of their enlistment periods in order to be eligible to receive the SRB for extending their enlistments. To take advantage of the waiver in ALDIST 004/82, members had to sign contracts extending their enlistments before February 15, 1982. There is no evidence in the applicant's record that he was ever advised about the provisions of ALDISTs 340/81 and 004/82.

On July 29, 1983, the applicant reenlisted for four years, through July 28, 1987. On May 6, 1987, he extended his enlistment for 11 months, through June 27, 1988, to obligate sufficient service to accept transfer orders. He extended his enlistment a second time on May 25, 1988, for another 11 months, through May 27, 1989, to accept new transfer orders. On May 26, 1989, he reenlisted for another 4 years. He has served continuously on active duty since that time.

On April 3, 1995, based on the applicant's statement that he had not been counseled about ALDIST 004/82, the Commandant ordered that his record be corrected to show that he signed an extension contract on February 14, 1982, extending his enlistment for four more years, from September 4, 1983, through September 3, 1987, to earn a Zone A SRB. As a result of this correction, his July 29, 1983, reenlistment was cancelled. In addition, the extension contract he signed on May 6, 1987, was corrected to show that it was the second extension of his first enlistment and that he extended his enlistment

for just 10 months, instead of 11, to cover his service from September 4, 1987, through July 3, 1988. Therefore, his second extension contract, dated May 25, 1988, became the third extension of his enlistment and extended his contract from July 4, 1988, through June 3, 1989.

## IEWS OF THE COAST GUARD

On August 11, 2000, the Chief Counsel of the Coast Guard issued a one-paragraph advisory opinion recommending that the Board deny the applicant's request in accordance with the decision of the Deputy General Counsel in BCMR Docket No. 1997-103. The Chief Counsel stated that this case involves a significant issue of Coast Guard policy. Therefore, if the Board decides relief should be granted, its decision would be subject to review by the Deputy General Counsel under 33 C.F.R. § 52.64(b).

### APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 14, 2000, the Chairman sent the applicant a copy of the Chief Counsel's advisory opinion, along with a copy of the decisions in BCMR Docket No. 1997-103 which were referenced by the Chief Counsel, and invited him to respond within 15 days. On October 19, 2000, the Board received a letter from the applicant stating that he had just returned from being underway for 60 days and requesting an extension of 90 days from the date of his letter so that he could respond to the advisory opinion. On October 20, 2000, the Chairman granted the extension through January 17, 2001.

On February 21, 2001, the Board received the applicant's response to the advisory opinion. He asked "Counsel" to "conduct a full review and provide copy of Advisory Opinion as did with case number 1997-103." He indicated that he thought the one-paragraph advisory opinion was incomplete and insufficient.

### APPLICABLE LAW AND PRECEDENT CASES

#### *SRB Regulations*

Commandant Instruction 7220.13E (Administration of the Reenlistment Bonus Program) was released on May 4, 1979, and was in effect when ALDIST 340/81 and ALDIST 004/82 were distributed. Section 1.c.(4) of Enclosure (1) to the Instruction stated that "[e]ntitlement to an SRB vests only on the date the member reenlists or makes operative an extension of enlistment . . . ." Section 1.d.(1) of Enclosure (1) provided the criteria for SRB eligibility in Zone A. It stated the following, in part:

- (1) Zone A Eligibility. [To be eligible, a member must meet all of the following criteria:]
  - (a) Be serving on active duty in pay grade E-3 or higher in a military specialty designated [in the ALDIST].
  - (b) Must have completed at least 21 months of continuous active duty, other than active duty for training, but not more than six years of total

active duty, immediately preceding the date of reenlistment or operative date of extension of enlistment. . . .

(c) The extension of enlistment or reenlistment must be at least three years and, when combined with prior active duty, must yield a total of at least six years of active duty. [Emphasis in original]

(d) Has not previously received a Zone A SRB, nor previously enlisted, reenlisted, or extended (extensions that have become effective) beyond six years of active duty. . . .

Section 1.d.(2) of Enclosure (1) provided the criteria for SRB eligibility in Zone B. It stated the following, in part:

(2) Zone B Eligibility. [To be eligible, a member must meet all of the following criteria:]

(a) Be serving on active duty in pay grade E-3 or higher in a military specialty designated [in the ALDIST].

(b) Must have completed more than six but not more than ten years of active duty immediately preceding the date of reenlistment or operative date of extension of enlistment.

(c) The extension of enlistment or reenlistment must be at least THREE YEARS in length and, when combined with prior active duty, must yield a total of at least ten years of active duty. [Emphasis in original]

(d) Has not previously received a Zone B SRB, nor previously enlisted, reenlisted, or extended (extensions that have become effective) beyond ten years of active duty. . . .

Section 1.g. of Enclosure (1) stated that in order to “attain the objectives of the SRB program, each potential reenlistee who would be eligible for SRB must be informed of their eligibility and the monetary benefits of the SRB program. It is expected that the reenlistment interview, held approximately six months before expiration of enlistment, will provide the potential reenlistee with complete information on SRB.” There was no similar provision for informing potential extendees of an SRB opportunity.

### *Personnel Manual*

Article 1.G.80.(a) of the Personnel Manual in effect in 1982 stated that a member could voluntarily extend or re-extend an enlistment, “subject to approval by his/her

commanding officer, ... [f]or any number of full years not exceeding 6 years.” Article 1.G.80.(c) stated that “[t]he total of all extensions of an enlistment may not exceed 6 years.”

### ***ALDIST 003/82***

On January 8, 1982, the Commandant issued ALDIST 003/82, which changed the performance requirements for reenlistment and extension. To be allowed to reenlist or extend an enlistment for six years, members were required to have the following average evaluation marks: 3.6 for proficiency, 3.6 for leadership, and 3.9 for conduct. Members whose evaluation marks were at least 3.3 for proficiency, 3.3 for leadership, and 3.8 for conduct were allowed to reenlist or extend their enlistments for up to four years. The applicant’s average performance marks while ALDIST 004/82 was in effect were 3.5 for proficiency, 3.5 for leadership, and 4.0 for conduct.

### ***Decision BCMR Docket No. 121-93.***

In BCMR Docket No. 121-93, the applicant asked the Board to reconsider its denial of his request (in the final decision in BCMR Docket No. 237-91) to correct his military record to show that he had extended his service on February 14, 1982, and was therefore due an SRB. Although the Board again denied the requested relief, the Deputy General Counsel granted relief, finding in part that

1. because the Coast Guard had presented no evidence as to how the applicant could or should have learned of ALDIST 004/82 any earlier than he claimed, the applicant’s sworn statement that he learned of it in 1991 would be accepted at face value, especially since “[a]llegations that the first knowledge members have had of the provisions of ALDIST 004/82 came from contact with [the ‘C’ school] are common, and have often been accepted without challenge in the past”;<sup>2</sup> and

2. “Coast Guard regulations require that members be ‘fully advised’ of SRB opportunities.”<sup>3</sup>

### ***Decision in BCMR Docket No. 69-97***

In BCMR Docket No. 69-97, the Board granted the applicant’s request by correcting his record to show that he extended his enlistment for a period of six years on February 14, 1982, in order to receive a Zone B SRB. He stated that he had not been counseled about the SRB opportunity and that, if he had been properly counseled, he would have extended his enlistment for six years.

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<sup>2</sup> The Deputy General Counsel cited in support BCMR Docket No. 151-91.

<sup>3</sup> The Deputy General Counsel cited BCMR Nos. 224-87, 263-87, 268-87, 285-87 for this position.

The Deputy General Counsel wrote a concurring decision that responded to several of the Coast Guard's arguments that were not mentioned in the Board's decision. She stated that the applicant's history of service and his statements concerning the lack of proper counseling were sufficient to nullify the presumption of regularity. She concluded that the "Coast Guard erred in drafting COMDTINST 7220.13E when it failed to require mandatory counseling for potential extendees" as it did for potential reenlistees. She found that potential extendees has as much right to be advised of their SRB opportunities under ALDIST 004/82 as did potential reenlistees. In addition, she cited several "Comptroller General cases that authorize government agencies to correct errors of wrongful advice or failure to advise when an employee otherwise meets the statutory criteria for obtaining a benefit."<sup>4</sup>

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<sup>4</sup> The Deputy General Counsel cited Matter of Hanley, B-202112, November 16, 1981; Matter of Anthony M. Ragunas, 68 Comp. Gen. 97 (1988); and Matter of Dale Ziegler and Joseph Rebo, B-199774, November 12, 1980.

### *Decision in BCMR Docket No. 1997-103*

In BCMR Docket No. 1997-103, the applicant had been counseled about his opportunity to receive a Zone A SRB under ALDIST 340/81 during a reenlistment interview on November 24, 1981. On January 12, 1982, after ALDIST 004/82 was issued, he was again counseled about the chance to receive a Zone A SRB. However, he alleged, he was never counseled that he could receive both a Zone A and a Zone B SRB under ALDIST 004/82 by signing a reenlistment contract to get the Zone A SRB before February 14, 1982, and then immediately signing an extension contract to extend his new enlistment and receive a Zone B SRB. Based on the decision of the Deputy General Counsel in BCMR Docket No. 121-93 that the Coast Guard had a duty to “fully advise” members of their SRB opportunities, the Board decided that relief should be granted by correcting his record to show that he both reenlisted to receive a Zone A SRB and extended his new enlistment to received a Zone B SRB while ALDIST 004/82 was in effect.

The Deputy General Counsel overturned the Board’s decision and denied relief. She found that the applicant had not demonstrated that any Coast Guard regulation obligated the service to advise members that they could receive both a Zone A and a Zone B SRB through the “loophole” in ALDIST 004/82 by signing two contracts within the month it was in effect. In addition, she found that the applicant had not proved that Coast Guard personnel specialists were aware of this possibility or that he had been treated differently than any other member. Therefore, she found that the applicant had not proved that the Coast Guard committed any error or injustice.

### **FINDINGS AND CONCLUSIONS**

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

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. The application was timely.
2. The applicant alleged that if the Coast Guard had properly counseled him about ALDIST 004/82, he would have extended his enlistment twice in February 1982: first, to receive a Zone A SRB and again to receive a Zone B SRB. In 1995, the Commandant corrected the applicant’s record to show that he extended his enlistment for four years to provide him the maximum Zone A SRB he could have earned under ALDISTs 340/81, 003/82, and 004/82.
3. The Deputy General Counsel has ruled that in 1982, the Coast Guard had no duty to counsel its members about the possibility of receiving both a Zone A and a



Zone B SRB by signing two contracts within the month that ALDIST 004/82 was in effect. BCMR Docket No. 1997-103. Therefore, the Board finds that the Coast Guard committed no error or injustice by failing to advise the applicant about this aspect of the “loophole” created by ALDIST 004/82.

4. Under Article 1.G.80.(c) of the Personnel Manual in effect in 1982, “[t]he total of all extensions of an enlistment may not exceed 6 years.” Therefore, after signing the four-year extension contract that earned him a Zone A SRB, the applicant could only have been allowed to extend his contract for another two years. Under Section 1.d.(2)(c) of Enclosure (1) to the SRB Instruction, members had to extend for at least three years to earn an SRB, so a two-year extension would not have earned the applicant a Zone B SRB.

5. In theory, if the applicant had fully absorbed all the provisions of the ALDISTs and the SRB Instruction in February 1982, he could have first extended his enlistment for three years to earn a Zone A SRB and then extended it another three years to earn a Zone B SRB. However, as indicated in Finding 3, above, the Deputy General Counsel has ruled that the Coast Guard had no duty to counsel its member about this possibility. Therefore, the Board concludes that the applicant’s failure to take advantage of the ALDIST 004/82 loophole by signing two three-year extension contracts in February 1982 to earn both a Zone A and a Zone B SRB does not constitute an error or injustice.

6. Furthermore, under Article 1.G.80.(a) of the Personnel Manual then in effect, the applicant could not have extended his enlistment without his commanding officer’s permission. The applicant has not proved that his commanding officer would have allowed him to extend his enlistment for six years by signing two separate three-year contracts in February 1982. Such permission would have amounted to a devious circumvention of the Commandant’s orders under ALDIST 003/82 because the applicant’s average performance marks for proficiency and leadership were not high enough to qualify him for a six-year extension.

7. Accordingly, the applicant’s request should be denied.

**[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]**

**ORDER**

The application of XXXXXXXXX, USCG, for correction of his military record is denied.

