

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-116



TECHNICAL AMENDMENT TO ORDER

This is a proceeding conducted under 33 C.F.R. § 52.73 at the request of the Chief of the Office of Military Justice of the Coast Guard to consider a technical amendment to the order issued by the Board in Docket No. 2000-116.

In its Final Decision in Docket No. 2000-116, the Board found that the applicant had missed an opportunity to receive a Zone B selective reenlistment bonus (SRB) because his command failed to include his 3 years and 9 months of active service in the Navy when calculating his total active service. As a result of his command's miscalculation, the applicant was wrongly and unnecessarily required to extend his enlistment on February 23, 1996, and July 13, 2000, and he missed an opportunity to receive a Zone B SRB under ALDIST 184/99 in November 1999.

Accordingly, the Board granted relief by (a) voiding the applicant's February 23, 1996, extension contract; (b) correcting his record to show that he extended his enlistment for two years, from November 9, 1997, through November 8, 1999; (c) correcting his record to show that he extended his enlistment a second time beginning on November 9, 1999, and running continuously thereafter for 2, 3, 4, 5, or 6 years, at the applicant's sole discretion; and (d) voiding a 4-month extension contract that he had signed on July 13, 2000. Under the order, if the applicant chose his November 9, 1999, extension to run for at least 3 years, he would receive a Zone B SRB under ALDIST 184/99.

REQUEST FOR TECHNICAL AMENDMENT

On March 12, 2001, the Chief Counsel of the Coast Guard requested that the Board correct its order to take into account Article 1.G.14.c. of the Personnel Manual, which states that "[t]he total of all extensions of an enlistment may not exceed six years." He pointed out that, under this rule, the applicant's new November 9, 1999, extension contract could not be for more than 4 years because his original enlistment had already been extended for two years under the order to cover his service from November 9, 1997, through November 8, 1999. Therefore, under the order as written, the applicant could not receive the maximum 6-year SRB for which he was eligible.

The Chief Counsel asked the Board to amend its order to show the November 9, 1999, contract as a reenlistment contract rather than an extension contract. With this technical amendment, the applicant would have the option of reenlisting for 6 years to get the maximum possible SRB.

FINDINGS AND CONCLUSIONS

The Board finds that its original order in this case, though intended to allow the applicant to receive a Zone B SRB for a 6-year contract, erroneously limited him to a 4-year extension contract because of the limitation on extensions in Article 1.G.14.c. of the Personnel Manual. Therefore, the Board should amend its order to allow the applicant to reenlist for up to 6 years on November 9, 1999, instead of extending his original enlistment. The order below shows the amended language underlined.

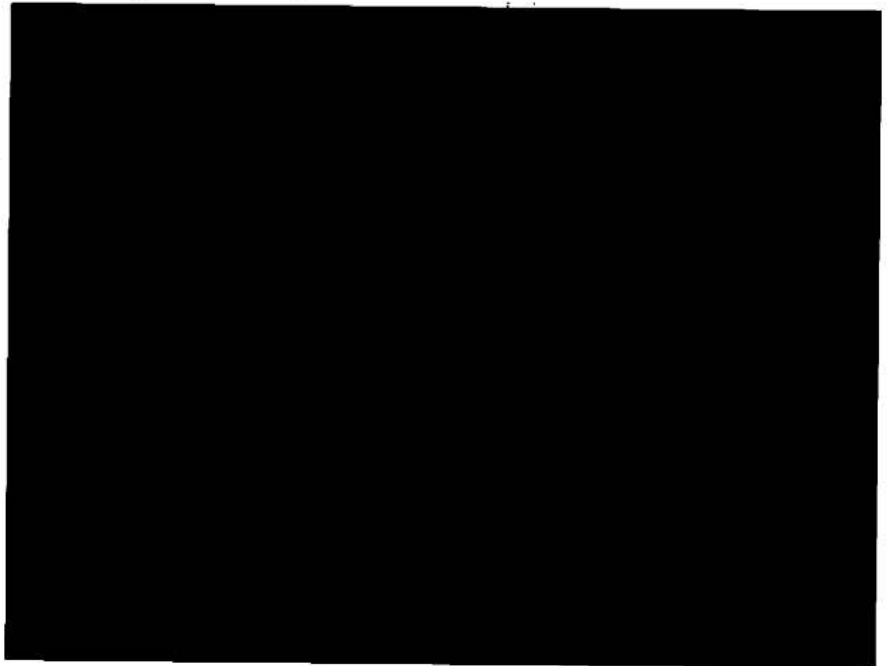
ORDER AS AMENDED

The application of [REDACTED] USCG, for correction of his military record is granted as follows:

- His 3-year and 5-month extension contract dated February 23, 1996, shall be null and void.
- His record shall show that he extended his first enlistment for two years from November 9, 1997, through November 8, 1999.
- His record shall show that he reenlisted on November 9, 1999. The duration of this enlistment shall be for 3, 4, 5, or 6 years, at the applicant's discretion. The Coast Guard shall pay the applicant the Zone B SRB he shall be due as a result of this correction under ALDIST 184/99.
- His 4-month extension contract signed on July 13, 2000, shall be null and void.

April 12, 2001

Date



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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2000-116

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 April 18, 2000, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated January 4, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant, a boatswain's mate second class (BM2), asked the Board to grant him an "eligibility waiver" so that he could receive the maximum Zone B selective reenlistment bonus (SRB)¹ available for his rating.

APPLICANT'S ALLEGATIONS

The applicant alleged that in February 1996, he was erroneously advised that because he had performed less than 6 years of active duty in the Coast Guard, he was in Zone A and was required to extend his enlistment for 3 years and 5 months in order to accept transfer orders. In fact, because he had performed more than 6 years of total active military service and his then-current enlistment still had 21 months to run, he was not required to extend his enlistment at all to accept the orders under Article 4.B.6.a. of the Personnel Manual. He alleged that this mistake was made because, prior to entering the Coast Guard, he had served more than 3 years and 9 months in the Navy and National Guard, which had not been taken into account.

¹ SRBs vary according to the length of each member's active service, the amount of newly obligated service, and the need of the Coast Guard for personnel with the member's particular skills. Members who have served between 21 months and 6 years on active duty are in "Zone A," while those who have served more than 6 but less than 10 years are in "Zone B." Members may not receive more than one bonus per zone.

The applicant also alleged that on April 4, 2000, nearing the end of his tour, he submitted a career intention worksheet on which he requested reenlistment and a Zone B SRB since he had served on active duty in the Coast Guard for more than 6 but less than 10 years. However, he was told that because he had performed more than 10 years of total active military service, he was no longer eligible for a Zone B SRB. Therefore, the applicant alleged that he was unjustly denied an SRB because of the erroneous counseling he had received.

SUMMARY OF THE RECORD

On November 9, 1993, the applicant enlisted as an E-3 in the Coast Guard for four years, through November 8, 1997. Prior to entering the Coast Guard, he had served more than 3 years and 9 months on active duty in the Navy and National Guard. On January 1, 1996, he was advanced to BM3, pay grade E-4.

On February 23, 1996, the applicant extended this enlistment for 3 years and 5 months, from November 9, 1997, through April 8, 2001, to obligate sufficient service to accept transfer orders to a new station. The extension contract indicates that he was advised he was still in Zone A, even though by that date he had performed more than 6 years of active military service and was therefore already in Zone B. Apparently because of this miscalculation, he was required to extend his enlistment to cover a full tour at the new station. Under Article 4.B.6.a. of the Personnel Manual, members who have served less than 6 years of active duty must obligate themselves to serve for a full tour before they can accept transfer orders. However, members with more than 6 years of active duty are considered to be in "career status" and need obligate themselves to serve only one full year at a new station to accept transfer orders. When the applicant signed the extension contract on February 23, 1996, his enlistment still had 21 months left to run, which was more than sufficient to cover his first year at his new station, from April 26, 1996, through April 25, 1997.

On July 1, 1998, the applicant was advanced to BM2, pay grade E-5.

On October 12, 1999, the applicant signed a form, CG-3307, acknowledging that he had been counseled about his SRB eligibility under ALDIST 184/99 and that he had read and understood the terms of the SRB Instruction, COMDTINST 7220.33. His 10th anniversary on active duty fell on January 20, 2000. Thereafter, he entered Zone C, for which no SRBs are authorized.

On July 13, 2000, the applicant signed another contract, extending his enlistment for 4 months, from April 9, 2001, through August 8, 2001. The extension contract indicates that the extension was necessary for him to accept transfer orders to a new station as of August 1, 2000.

VIEWS OF THE COAST GUARD

On September 29, 2000, the Chief Counsel of the Coast Guard recommended that the Board grant partial relief.

The Chief Counsel stated that the record supports the applicant's allegation that he was erroneously required to extend his enlistment for 3 years and 5 months when he accepted transfer orders in February 1996. However, the Chief Counsel denied that the applicant should have or could have expected a Zone B SRB when he submitted his career intention worksheet in April 2000. The Chief Counsel stated that the CG-3307 signed by the applicant on October 12, 1999, proves that he was properly counseled about SRBs approximately 3 months prior to his 10th anniversary on active duty, as required by the SRB Instruction. The Chief Counsel alleged that only the upcoming 10th anniversary would have triggered that counseling session. Therefore, he alleged, the applicant must have known or been told that his 10th anniversary fell on January 20, 2000, and that he would receive a Zone B SRB only if he reenlisted or extended his enlistment by that day.

The Chief Counsel further alleged that, even if the applicant remained confused and mistook his 10th anniversary counseling on October 12, 1999, for 6th anniversary counseling, he would have believed that his 6th anniversary, as counted from his entry into the Coast Guard, was November 9, 1999. Therefore, he argued, "the Board should conclude that it is unable to determine how Applicant might have believed, under any scenario, that he was eligible to reenlist for an SRB in April 2000, even in light of the alleged faulty assumptions he may have reached based on the incorrect information he received in February 1996."²

The Chief Counsel concluded that because the applicant has proved that he was erroneously counseled in 1996 but has not proved any error by the Coast Guard with respect to his SRB eligibility in 1999 or 2000, the Board should correct the applicant's record by voiding the unnecessary February 23, 1996, extension. If the applicant had not signed that extension, he would have been required to reenlist or extend his enlistment at the end of his original enlistment on November 9, 1997. On that day, the Chief Counsel alleged, the applicant would have been eligible for a Zone B SRB with a multiple of one.³ Therefore, the Chief Counsel recommended that the Board correct the applicant's record to show that he reenlisted on November 9, 1997, for 6 years to receive the maximum authorized Zone B SRB for his rating.

² The Chief Counsel apparently misinterpreted the applicant's claim. His advisory opinion indicates that he thought the applicant was claiming that, based on the erroneous counseling in 1996, he reasonably believed that his 10th anniversary fell in April 2000 and that he could reenlist on his 10th anniversary. In fact, the applicant claimed that, based on the erroneous counseling in 1996, he reasonably believed in April 2000 that he was still in Zone B and would be eligible for an SRB when he reenlisted or extended his enlistment to accept new transfer orders. He reasonably expected to have to reenlist or extend his enlistment in the near future because in April 2000 he was once again nearing the end of a tour of duty, expected to be transferred in August 2000, and was obligated to serve only through April 8, 2001, which would not cover one full year at a new station. Therefore, the applicant's alleged expectation of receiving a Zone B SRB was reasonable.

³ In making this allegation, the Chief Counsel apparently misread ALDIST 226/97, under which no SRB was in effect for members in the BM rating on November 9, 1997. In addition, he apparently did not realize that the applicant was ineligible for a Zone B SRB in November 1997 because he was still a BM3 and was not advanced to BM2 until July 1, 1998.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On September 29, 2000, the BCMR sent the applicant a copy of the Chief Counsel's recommendation and invited him to respond within 15 days. On October 18, 2000, the applicant responded, stating that he agreed with the Chief Counsel's recommended relief.

APPLICABLE REGULATIONS

Article 4.B.6.a.1. of the Personnel Manual states the members with less than 6 years of active duty "will not normally be transferred unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit." Article 4.B.6.a.2. states that members in pay grade "E-4 and above with over six years of active duty are considered to be in a career status. Unless otherwise indicated, they are required to have only one year of [obligated service] remaining upon reporting to a new unit."

Article 1.G.14.a. states that voluntary extensions of enlistments shall be for "any number of full years not less than two nor greater than six."

Section 3.d.9. of Enclosure (1) to COMDTINST 7220.33 (Reenlistment Bonus Programs Administration) states 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 the SRB Instruction states that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled concerning their eligibility for an SRB. The counseling must be memorialized in their records with a form CG-3307 signed by the member. In addition, under Section 2 to Enclosure (1), members must be counseled about the SRB program and sign a CG-3307 every time they reenlist or extend for any reason and for any length of time.

Under Section 3 of Enclosure (1) to the SRB Instruction, members are only eligible for Zone A SRBs when they have performed less than 6 years of active duty "at any point in their military career." Upon their sixth active duty anniversary, they enter Zone B. Section 3.b.(4) of Enclosure (1) to the SRB Instruction states that, to be eligible for a Zone B SRB, members must "[b]e serving in pay grade E-5 or higher." To receive a Zone A or Zone B SRB, members must reenlist or extend their enlistments for at least 3 years. Enclosure (1), Sections 3.a.(5) and 3.b.(5).

ALDIST 003/94, which was still in effect on the applicant's sixth active duty anniversary on January 20, 1996, did not authorize any SRBs for members in the BM rating.

ALDIST 135/97, issued on June 5, 1997, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments between July 1, 1997, and September 30, 1997. The multiple to be used for calculating SRBs for members in the BM rating in Zone A was one. No SRB was authorized for members in the BM rating in Zone B.

ALDIST 226/97, issued on September 30, 1997, authorized members to receive an SRB if they reenlisted or extended their enlistments between October 1, 1997, and March 31, 1998. No Zone B SRB was authorized for members in the BM rating.

ALDIST 184/99, issued on May 13, 1999, authorized member to receive an SRB if they reenlisted or extended their enlistment between June 15, 1999, and December 31, 1999. The multiple to be used for calculating Zone B SRBs for members in the BM rating was one.

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 concerning this matter pursuant to section 1552 of title 10, United States Code. The application was timely.

2. As the Chief Counsel admitted, the preponderance of the evidence indicates that the applicant was erroneously required to extend his enlistment for 3 years and 5 months in February 23, 1996, to accept transfer orders. On that day, he was in pay grade E-4, he had performed over 6 years of active duty, and he had already obligated sufficient service to cover at least one full year at his new station. That first year began on April 26, 1996, and ended April 25, 1997. His first enlistment was not due to end until November 8, 1997.

3. The applicant should not have been required to reenlist or extend his enlistment until his first enlistment ended on November 8, 1997. Because of the Coast Guard's error, his service obligation was unjustly extended until he had served more than 10 years of active duty and was ineligible for a Zone B SRB.

4. The Chief Counsel recommended that the Board correct the applicant's record by voiding the February 23, 1996, extension and reenlisting him for 6 years as of November 9, 1997. This recommendation was based on the belief that the correction would entitle the applicant to a Zone B SRB for 6 years of newly obligated service. The applicant agreed with the Chief Counsel's recommendation based on the belief that it would entitle him to a Zone B SRB.

5. The Chief Counsel's recommended correction would not entitle the applicant to a Zone B SRB. Neither ALDIST 226/97 nor ALDIST 135/97, which were in effect during the last three months of the applicant's enlistment in the fall of 1997, authorized a Zone B SRB for members in the BM rating. Moreover, under

Section 3.b.(4) of Enclosure (1) to the SRB Instruction, the applicant did not meet the criteria for a Zone B SRB because he was still in pay grade E-4 in November 1997. Therefore, even if the Board corrected the applicant's record as recommended by the Chief Counsel, the correction would not result in any SRB payment to him.

6. To remain on active duty past November 8, 1997, the applicant was required, at a minimum, to extend his enlistment for at least 2 years, through November 8, 1999. Personnel Manual, Article 1.G.14.a.1. If he had done so, he would have been required to reenlist or extend his enlistment again as of November 9, 1999, to remain on active duty. On that day, if he had reenlisted or extended his enlistment for at least 3 years, he would have received a Zone B SRB under ALDIST 184/99 because he had been advanced to BM2, pay grade E-5, and had not yet completed 10 full years of active duty.

7. Therefore, relief should be granted to the applicant by (a) voiding his February 23, 1996, extension contract; (b) correcting his record to show that he extended his enlistment for two years, from November 9, 1997, through November 8, 1999; (c) correcting his record to show that he extended his enlistment a second time beginning on November 9, 1999, and running continuously thereafter for 2, 3, 4, 5, or 6 years, at the applicant's sole discretion; and (d) voiding the applicant's 4-month extension contract that he signed on July 13, 2000. If the applicant chooses his November 9, 1999, extension to run for at least 3 years, the contract will entitle him to a Zone B SRB under ALDIST 184/99.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of [REDACTED] USCG, for correction of his military record is hereby granted as follows:

- His 3-year and 5-month extension contract dated February 23, 1996, shall be null and void.
- His record shall show that he extended his first enlistment for two years from November 9, 1997, through November 8, 1999.
- His record shall show that he extended his enlistment a second time beginning on November 9, 1999. The duration of this second extension shall be for 2, 3, 4, 5, or 6 years, at the applicant's discretion. If he chooses an extension of at least 3 years, the Coast Guard shall pay the applicant the Zone B SRB he shall be due as a result of this correction under ALDIST 184/99.
- His 4-month extension contract signed on July 13, 2000, shall be null and void.

