

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

Application for Correction
of Coast Guard Record of:

BCMR Docket
No. 2000-132

[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 May 18, 2000, following the BCMR's receipt of the applicant's completed application.

This final decision, dated March 29, 2001, is signed by the three duly appointed members who were designated to serve as the Board in this case.

RELIEF REQUESTED

The applicant is a radar technician third class (RD3; pay grade E-5) on active duty in the Coast Guard. He alleged that on August 25, 1999, when he was in pay grade E-4, he "entered into a contract with the Coast Guard to reenlist for three years. In return [he] was promised an SRB (selective reenlistment bonus) Zone B, Multiple of 2."

With his application, he enclosed a copy of his three-year reenlistment contract dated August 25, 1999, which contained the following text under remarks: "MBR entitled to SRB multiple 2 zone B."

The applicant alleged that he did not receive his promised Zone B SRB. He was told that it was a mistake and that he would not be receiving an SRB.

The applicant alleged that three months later, he was informed that he was not qualified to receive an SRB "due to the fact that [he] went over ten years of service on 28 Aug 99." He responded that "[n]ow I am upholding my part of the contract and I expect the Coast Guard to uphold their part of the contract."

The applicant requested that the Coast Guard pay him his SRB or release him

from his present contract of reenlistment.

On September 1, 2000, an e-mail was sent to an ensign regarding the applicant. According to the email, the applicant sent out an email to have the applicant see him. The applicant "was sent such an email and never showed up."

SUMMARY OF RECORD

The applicant signed a reenlistment contract on August 25, 1999 when he was in pay grade E-4. The reenlistment contract was for three years of obligated service. That contract indicated he was to receive a Zone B SRB with a multiple of two.

The applicant's end-of-enlistment date was August 28, 1999, based on his original enlistment date of August 29, 1989 and three extensions of his original enlistment totaling six years of obligated service. On August 29, 1999, he observed his 10-year active duty anniversary.

On September 1, 1999, the applicant was advanced to pay grade E-5.

On March 30, 2001, the applicant told the Chairman of the Board that he was on the list for promotion to RD1 (radar technician first class). He said he was No. 2 on the advancement list and No 10 was the cut-off number. He said he would probably be advanced in July and that he definitely wanted to remain in the Coast Guard.

VIEWS OF THE COAST GUARD

On November 28, 2000, the Chief Counsel of the Coast Guard recommended that partial relief be granted to the applicant.

The Chief Counsel said that the applicant held pay grade E-4 on the date (August 25, 1999), the applicant signed a reenlistment contract for three years of obligated service. According to Article 3.b.(5) of COMDTINST 7220.33, a member must be serving in pay grade E-5 to be eligible for a Zone B SRB. Accordingly, the applicant was ineligible to receive a Zone B SRB on August 25, 1999.

The Chief Counsel said that the Coast Guard incorrectly promised the applicant a Zone B SRB, in the August 25, 1999 reenlistment contract. The Coast Guard, according to the Chief Counsel, is "barred from paying the Applicant the SRB he ... was promised in his reenlistment contract."

The Chief Counsel said that the Government is not estopped from repudiating its promise to pay a Zone B SRB on August 25, 1999. He said "the doctrine of estoppel does not apply, because, as a matter of law, Applicant was ineligible for an SRB."

According to the Chief Counsel, the applicant is estopped from making any claim against the Government based on his reliance on the alleged erroneous advice. See Montilla v. United States, 457 F.2d 978 (Ct. Cl. 1972). In Goldberg v. Weinberger, 546 F.2d 477 (2d Cir. 1976), cert denied sub nom. Goldberg v. Califano, 431 U.S. 937 (1977), the Court held that "[t]he Government could scarcely function if it were bound by its employees' unauthorized representations." In the present case, the applicant relied on the advice of a seemingly authorized government employee. However, that advice misstated the statutory requirements imposed by Congress. Therefore, the Chief Counsel said, the Government can not pay the applicant an SRB "as it would be contrary to existing law and regulation."

The Chief Counsel recommended "[i]n the interests of equity," that the applicant's reenlistment contract dated August 25, 1999, be "voided based on the promise of an SRB he was not eligible to receive." This correction, however, would create an unintended consequence because the applicant's current service obligation expired on August 29, 1999. The Chief Counsel stated that "the Coast Guard would have been required to discharge the Applicant due to expiration of service obligation" unless he voluntarily extended or enlisted by August 29, 1999. If the applicant desired to remain on active duty, he had no choice but to reenlist no later than August 29, 1999, because no further extensions were permitted to his original enlistment contract.

The Chief Counsel seeks to provide the applicant with a result that most closely represents the relief he seeks.

[T]he Coast Guard recommends the Board establish an equitable extension contract dated 28 August 1999 to coincide with Applicant's end-of-enlistment date running until such time as to the date of the Board's decision if he should so choose. However, should Applicant indicate his desire to remain in the Service the Board should leave undisturbed Applicant's 25 August 1999 reenlistment contract because Applicant would necessarily have been required to reenlist for a minimum period of three (3) years on that date.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On December 4, 2000, the Board sent the applicant a copy of the Chief Counsel's views of the Coast Guard and invited him to respond with any comments within 15 days.

No response was received by the Board.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the

Final Decision: BCMR No. 2000-132

4

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. The applicant, an E-4 on August 24, 1999, entered into a contract with the Coast Guard to reenlist for three years. In return, the Coast Guard promised him a Zone B SRB with a multiple of two.

3. According to COMDTINST 7220.33, a member must be serving in pay grade E-5 to be eligible for a Zone B SRB. The applicant was advanced to pay grade E-5 on September 1, 1999.

4. On August 29, 1999, the applicant observed his 10-year active duty anniversary. He was not eligible for a Zone B SRB on that date because he was not an E-5 until September 1, 1999.

5. The applicant asked the Coast Guard to pay him his SRB or release him from his present contract of reenlistment

6. The applicant told the Board that he wishes to remain in the active duty Coast Guard. He has been selected for advancement to RD1 and will probably be advanced in July 2001.

7. If the applicant desires to remain in the Coast Guard, the applicant's August 25, 1999 reenlistment shall remain in full force and effect, and no equitable extension contract shall be created.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application to correct the military record of [REDACTED]
[REDACTED] SCG, shall be granted as follows:

If, as stated by the applicant on March 31, 2001, the applicant desires to continue to serve in the active duty Coast Guard, his August 25, 1999 reenlistment contract shall remain in full force and effect. No changes shall be made in his record.

