

DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2000-141

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 commenced on June 8, 2000, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

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.

The applicant, a machinery technician first class (MK1; pay grade E-6), asked the Board to correct his record to show that he reenlisted for 6 years on February 14, 1982 to obtain a Zone A selective reenlistment bonus (SRB) under ALDISTs 315/81, 340/81, 003/82 and/or 004/82. He alleged that he was eligible for an SRB pursuant to these ALDISTs.

The applicant entered active duty initially on January 9, 1978. He was released from active duty into the Reserve on January 8, 1982. On February 2, 1983, after his discharge from the Reserve, he reenlisted in the active duty Coast Guard for four years and has served continually on active duty since that time. (The applicant incurred a break in service of approximately 13 months.)

The applicant alleges that he was not counseled about the SRB opportunity that existed under ALDISTs 315/81, 340/81, 003/82 and/or 004/82. He claimed that if he had been counseled he would have reenlisted in the active duty Coast Guard rather than choosing to be released from active duty.

On June 8, 1981, the following administrative remarks (page 7) entry was entered in the applicant's military record: "[r]enlistment interview conducted this date in accordance with Article 12-B-4, Personnel Manual. Recommended for reenlistment. [The applicant] has stated his intentions not to reenlist."

On November 15, 1981, a second page 7 entry was made documenting a follow-up reenlistment interview. The entry stated that a "[r]enlistment interview conducted this date in accordance with Article 12-B-4, Personnel Manual. Recommended for reenlistment. [The applicant's] intentions are not to reenlist and to join the active reserve upon separation from the Service."

Views of the Coast Guard

On November 30, 2000, the Board received an advisory opinion from the Chief Counsel of the Coast Guard, recommending that the Board deny relief to the applicant.

The Chief Counsel stated that the applicant has failed to prove that he was entitled to a SRB under the provision of ALDIST 004/82. He stated that this ALDIST was released by the Commandant on January 8, 1982, and it was required to be delivered to Coast Guard units not later than January 9, 1982. The Chief Counsel stated that "in view of Applicant's separation date of 08 January 1982, a day before the effective promulgation of ALDIST 004/82, the Coast Guard had no duty to bring the contents of ALDIST 004/82 to Applicant's attention." (Actually, ALDIST 004/82 was not published until January 12, 1982.)

Moreover, the Chief Counsel stated that the record reveals that the applicant was discharged at his request after twice indicating in reenlistment interviews that he had no intention of reenlisting. He stated that these page 7 entries rebut the applicant's unsupported allegation that he would have reenlisted in 1982, if he had known about 004/82. The Chief Counsel stated that in addition to being discharged prior to the promulgation of ALDIST 004/82, the applicant has failed to prove that "but for" the alleged lack of counseling he would have reenlisted in January 1982.

The Chief Counsel stated that this matter involves a significant issue of Coast Guard policy and requires review by the Deputy General Counsel, if the Board enters an order substantially inconsistent with that recommended by the Chief Counsel.

Applicant's Response to the Views of the Coast Guard

On December 6, 2000, a copy of the advisory opinion was sent to the applicant for his review and comment. He did not submit a reply.

APPLICABLE REGULATIONS

SRB Regulations

Section 1.d.(3)(b) of Enclosure (1) to COMDTINST 7220.13E, the SRB Regulation in effect at that time stated that: "If discharged or released from active duty, a member must reenlist in the Regular Coast Guard within three months to be eligible for an SRB."

Section 1.g. of Enclosure (1) to COMDTINST 722.13E stated that each potential reenlistee who would be eligible for a SRB must be informed of their eligibility and the monetary benefits of the SRB program. This provision further stated: "[I]t is expected that the reenlistment interview, held approximately six months before expiration of enlistment, will provide the potential reenlistee with complete information on SRB. Article 12-B-4, Personnel Manual, CG 207, lists the specific subjects to be covered during the course of the interview."

Personnel Manual

Article 12-B-4(b)(4) of the Personnel Manual in effect at that time required, among other things, "that each potential reenlistee who would be eligible for {SRB} must be informed of that eligibility and the monetary benefits of the SRB program." Subsection (c) of the section required a follow-up interview for those members who had indicated their intentions not to reenlist.

Article 12-B-4(d) of the Personnel Manual required a service record page 7 entry with the following information: (1) The date of the interview. (2) The member's expressed intention regarding reenlistment. (3) The commanding officer's determination regarding eligibility for reenlistment, and if not eligible for reenlistment the reasons therefore.

ALDISTs

ALDIST 315/81 issued on September 14, 1981 did not provide for any SRB payments, but rather, provided guidance to commands in managing the SRB program.

ALDIST 003/82 issued on January 8, 1982 provided further guidance to commands on the eligibility requirements for an SRB. This ALDIST revised and increased the standard for a preferred reenlistment (RE-RE1) recommendation. Only members with an RE-RE1 could reenlist for a maximum of 6 years.

ALDIST 340/81 issued on October 10, 1981 authorized an SRB multiple of 4 for the MK rating. It was cancelled on February 15, 1982.

ALDIST 004/82 was published on January 12, 1982 and its effective date was February 15, 1982. It authorized SRB payments for various ratings including the MK rating. Paragraph 5. of this instruction stated that "[t]he provisions of the [Coast Guard Personnel Manual] which limit extensions to 30 days or less days before expiration of enlistment are suspended until 15 February 1982."

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 BCMR has jurisdiction concerning this matter under section 1552 of title 10, United States Code. The application was timely, pursuant to Detweiler v. Pena, 38 F.3rd 591 (D.C. Cir. 1994).

2. ALDIST 004/82, was published on January 12, 1982 after the expiration of the applicant's active duty obligation. He was released from active duty on January 8, 1992 and did not reenlist until February 2, 1983. Therefore, it was not possible for the Coast Guard to counsel the member on this ALDIST. By the time the applicant reenlisted on February 2, 1983, ALDIST 004/82 had expired.

3. ALDISTs 315/81 and 003/82 did not contain any authorizations for SRB multiples but dealt mainly with the standards to be applied in determining the length of extensions and reenlistments. Therefore, the applicant did not qualify for an SRB payment under either of these ALDISTs.

4. ALDIST 340/81 issued on October 10, 1981 was still in effect when the applicant was discharged on January 8, 1982. However, this ALDIST was not in effect on June 8, 1981, when the applicant had his first reenlistment interview. During this reenlistment interview, the applicant expressed his intent not to reenlist. The page 7 entry documenting this reenlistment interview is sufficient evidence of the applicant's intent not to reenlist immediately after the expiration of his original enlistment. In addition, the Coast Guard could not discuss this ALDIST with the applicant at the first reenlistment interview because it had not been issued at that time.

5. ALDIST 340/81 was in effect when the applicant had his follow-up reenlistment interview on November 15, 1991, and may have been discussed with him at that time, although the applicant denies that it was. Documentation of detailed SRB discussions was not required by the Personnel Manual or the SRB regulation at that time. The Personnel Manual required only that the command enter a page 7 entry containing the date of the interview, the member's expressed intention regarding reenlistment, and the commanding officer's determination regarding eligibility for reenlistment. A page 7 entry containing this information was entered in the applicant's record on June 8, 1981 and November 15, 1981.

6. The applicant claims that he would have reenlisted in 1982, if he had been properly counseled about his eligibility for an SRB. This may well be true, however there is nothing before this Board, except for the applicant own allegation that he would have reenlisted in 1982. His expressed intention not to reenlist is evidence to the contrary. In cases where the Board has granted relief with respect to these "old" SRB cases, the individuals receiving relief have served continually on active duty (no extended break in service), thereby establishing their intent to make the Coast Guard a career. The applicant had a 13-month break in service from January 8, 1982 until February 1983. Therefore, the Board is not persuaded that the applicant would have reenlisted on January 9, 1982, even with the knowledge of an SRB.

7. This case is also complicated by the fact that the applicant had a 13-month break in service (from 1982 until 1983). The SRB regulation states that if discharged or released from active duty, a member must reenlist in the Regular Coast Guard within three months to be eligible for an SRB. The applicant had approximately a 13 month break in service. In order to grant the requested relief in this case the Board would have to correct the applicant's record to show that he reenlisted at some point between January 9, 1982 and February 14, 1982 for a period of at least three years. Such a correction would give the applicant approximately one year of active duty credit, none of which he served. This, the Board will not do. The applicant was not forced to leave active duty. He chose to do so.

8. The applicant has not established that the Coast Guard committed an error or injustice that requires any corrective action by this Board.

9. Accordingly, the applicant's request should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of
military record is denied.

SCG, for correction of his

