

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

Application for Correction of
Coast Guard Record of:

BCMR Docket
No. 2001-004

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10, United States Code. It was docketed on October 5, 2000, upon the BCMR's receipt of the applicant's complete application for correction of his military record.

This final decision, dated July 26, 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 third class (MK3; pay grade E-4), asked the Board to correct his record so that he would be eligible for a selective reenlistment bonus (SRB) with a multiple of 2, pursuant to ALDIST 206/98, which was effective from November 25, 1998 to June 14, 1999. The applicant stated that he "was not counseled and was unaware of a SRB being in effect at the time of [his] discharge.¹ [He] also was not told that [he] had three months after [his] discharge date to come back into the Coast Guard and be eligible for a SRB." (The applicant did not provide the date on which he discovered the alleged error or injustice in his military record).

The applicant entered active duty in the Coast Guard on August 29, 1994 for four years. He was released from active duty into the Reserve on August 28, 1998. Approximately 9 months after leaving active duty, the applicant reenlisted in the active duty Coast Guard on June 1, 1999

Views of the Coast Guard

On February 23, 2001, the Board received an advisory opinion from the Chief Counsel of the Coast Guard. He recommended that the Board deny relief in this case. The Chief Counsel stated as follows:

As a threshold matter, Applicant was not eligible for a SRB when he reenlisted in June 1999. Under Article 1.G..a.1. of the Personnel Manual and Paragraph 3.a.(1) of Enclosure (1) to COMDTINST 7220.33, members must reenlist within three months of being released from active duty to be eligible for an SRB. Because the applicant did not reenlist within three months of his discharge on 28 August 1998

¹ On the date of the applicant's discharge an SRB with a multiple of 1 was available for the applicant's rating under ALDIST 046/98.

(by November 1998), but waited until 01 June 1999, he was not eligible for an SRB.

Applicant has failed to prove the Coast Guard had a duty to counsel him that he had 90 days within which to reenlist for an SRB once he was discharged from the service. Article 3.A.1. of COMDINST 7220.33 provides that a member must reenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple to receive an SRB. However, that particular regulation does not establish an affirmative duty to counsel a departing service member of the 90-day requirement.

However, even if Applicant could prove such a regulation existed, he should still be denied relief. Under the strong presumption of regularity afforded his military superiors, the Board may properly conclude that applicant received such SRB information during the mandatory separation counseling he received prior to separation. See Article 12.B.4.b. CGPERSMAN.

Second, Applicant failed to prove that "but for" the alleged failure to counsel, he would have reenlisted within 90 days of his discharge. Applicant was discharged on 28 August 1998 and reenlisted on 01 June 1999, some ten months later. Applicant's lengthy reenlistment delay affirmatively rebuts Applicant's allegation that he would have reenlisted earlier if he had known certain information.

The Chief Counsel stated that the applicant has not alleged that his record is factually incorrect, but simply alleges that he was denied information regarding his SRB eligibility prior to his voluntary discharge. The Chief Counsel further stated that the only "record correction" the Board could order that would provide Applicant the relief sought would be to show that he enlisted on or before 28 August 1998. Such a correction would create a legal fiction that would impose a duty on the Coast Guard to pay Applicant not only the SRB he desires but also to compensate Applicant for the unearned pay and allowances for the period of time between his "corrected" reenlistment date and his actual reenlistment date.

The Chief Counsel stated that "[b]ecause any decision in this case contrary to the Coast Guard's recommendation would affect the efficient use of Coast Guard Resources, this application involves a significant issue of Coast Guard policy," and would be subject to review by the Deputy General Counsel.

Applicant's Response to the Views of the Coast Guard

A copy of the views of the Coast Guard was sent to the applicant on February 27, 2001, with an invitation for him to respond. The applicant did not submit a response.

APPLICABLE REGULATIONS

Article 12.B.4. of the Personnel Manual provides that approximately six months prior to the end of an enlistment, each member must be counseled about reenlistment and the SRB program. If a member chooses not to reenlist, the "member must be fully informed of matters which are of interest to potential reenlistees." This interview must be documented with an administrative entry in the member's record. The administrative entry must state that the member must reenlist within three months of the date of discharge to maintain a "continuous service status."

Article 1.G.7.a. of the Personnel Manual states that to maintain "continuous service status," members must reenlist within three months of their date of discharge. This provision provides that "[t]o receive a selective reenlistment bonus (SRB), a member must reenlist within three months from date of discharge and meet the eligibility requirements contained in . . . COMDTINST 7220.33."

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's submissions, the Coast Guard's submission, 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 denied he was counseled about the requirement that in order to remain eligible for an SRB after discharge, he had to reenlist within three months of his discharge date. He also denied that he was counseled about the availability of an SRB at the time of his discharge. Although the Coast Guard was not required to specifically inform the applicant that he had to reenlist within three months of his discharge to remain eligible for an SRB during SRB counseling, this information should have been discussed with him during his reenlistment interview. Article 12.B.4. of the Personnel Manual requires that reenlistment counseling, including counseling about the continuous service requirement, be documented on a page 7 entry. The SRB regulation also requires that SRB counseling be documented on a page 7. There are no such page 7 entries in the applicant's record.

3. Notwithstanding the above, in cases where the Board has corrected a record to retroactively grant the payment of an SRB, the applicant's career intentions have been clearly established from his continuous reenlistments (no break) in the active duty Coast Guard whether or not there was an SRB available at the time. In this case, the applicant took a nine-month break from active duty. He did not explain why he chose not to reenlist. The Board has no way of knowing what the applicant would have done, even if he had known about the three-month continuous service rule or that an SRB was available for his rating at the time of discharge. He has demonstrated, however, by his voluntary release from active duty that at the time of his discharge he did not intend reenlist.

4. In addition, to correct the applicant's record to show that he reenlisted three months after his discharge (between August 28, 1998 and November 28, 1998) would result in granting him a period of active duty service for which he did not serve. That would be unfair to the Coast

Guard and unjustly enrich the applicant. Moreover, such a correction would indicate that the applicant's discharge was somehow wrongful. That would be a false impression. Regardless of the availability of an SRB, the applicant could have reenlisted if he had chosen to do so.

5. The Board finds that it would be a violation of the SRB regulation to grant the applicant an SRB based on his June 1, 1999 reenlistment. Under COMDTINST 7220.33, the applicant was not eligible for an SRB when he reenlisted on June 1, 1999 because he had a break in service of more than three months. Section 3.a.(1) of Enclosure (1) to COMDTINST 7220.33 states that to receive a Zone A SRB a member must "[r]eenlist not later than 3 months after discharge or release from active duty in a rating authorized an SRB multiple." Moreover, granting the requested relief, under the circumstances of this case, may open the floodgates for this type case and may unjustly enrich applicants.

6. Accordingly, the Board finds that the applicant has not demonstrated an error or injustice in this case that requires corrective action by the Board. The applicant's request for relief should be denied.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

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

