

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-018

XXXXXX, XXXXXX X.
XXX XX XXXX, XXX

FINAL DECISION



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 9, 2002 upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated September 26, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST

The applicant asked the Board to correct his record by substituting the three-year extension agreement he signed on March 27, 2001, with a three-year extension agreement dated for May 2, 2001. He stated that the correction will entitle him to receive a Zone A selective reenlistment bonus (SRB) with a higher multiple under ALCOAST 127/01, which was issued on March 27, 2001, rather than the SRB with a multiple of XX, promised in his extension agreement under ALCOAST 488/00.

APPLICANT'S ALLEGATIONS

The applicant stated that he signed a three-year extension agreement on March 27, 2001, in order to meet obligated service requirements to accept permanent change of station (PCS) orders to XXXXXXXXXXXX. He stated that on the date he executed the extension agreement, ALCOAST 127/01 was issued, increasing the SRB multiple for his rating from two to three for members who reenlisted or extended after May 1, 2001.

The applicant alleged that he was not counseled on March 27, 2001 about his eligibility to receive the higher multiple under ALCOAST 127/01. In support, the applicant submitted a copy of ALCOAST 127/01, sent on Wednesday, March 28, 2001 at 7:24 a.m. by electronic mail to a petty officer at his current station, and a letter from his command stating that it appeared that he was not informed about ALCOAST 127/01 at the time he extended. The applicant moreover claimed that had he been properly counseled, he would have canceled his leave and extended his enlistment after May 1, 2001 to receive the larger SRB.

SUMMARY OF THE APPLICANT'S RECORD

On September 17, 1997, the applicant enlisted in the Coast Guard Reserve under the Delayed Entry/Enlistment Program (DEP) for eight years. On September 23, 1997, the applicant was honorably discharged from the Reserve and enlisted in the regular component of the Coast Guard for four years, through September 22, 2001.

On March 27, 2001, the Commandant of the Coast Guard issued ALCOAST 127/01, which authorized a Zone A SRB calculated with a multiple of xx for members in the XX rating, who extended or reenlisted for at least three years. On the same date, the applicant executed a three-year extension agreement for the purpose of obligating service necessary to transfer to XXXXXXXXXXXX. Although there is no page 7 in the applicant's record formally documenting counseling about his obligated service requirement prior to accepting transfer orders, as required by Article 4.B.1.i.1.b. of the Personnel Manual, his extension agreement specifies that he was informed of and acknowledged his eligibility to receive a Zone A SRB with a multiple of xx, pursuant to ALCOAST 488/00.

On April 27, 2001, the applicant executed his PCS orders and on May 7, 2001, he reported to XXXXXXXXXXXX. The applicant's military record shows that on September 23, 2001, he received the first of three installments of the promised Zone A SRB under ALCOAST 488/00. To date, he continues to serve on active duty.

VIEWS OF THE COAST GUARD

On May 22, 2002, the Board received an advisory opinion from the Chief Counsel of the Coast Guard recommending that the Board deny relief. He stated that the applicant has failed to prove, or even allege, that an error was committed or that an injustice exists in this case.

The Chief Counsel stated that in March 2001, the applicant received PCS orders to XXXXXXXXXXXX. He stated that in order to execute those orders, the applicant was required to have a minimum of four years of obligated service remaining in the Coast Guard upon reporting to his new unit. *See* Articles 4.A.5 and 4.B.6 of the Personnel Manual. The Chief Counsel asserted that, unless the applicant entered into an agreement to extend or reenlist prior to executing the PCS orders, he would not have been permitted to transfer.

The Chief Counsel contended that on March 27, 2001, the applicant voluntarily chose to extend his enlistment for three years to accept PCS orders, and that in the absence of fraud or duress, he is bound by his agreement. He stated that once the applicant received his PCS orders, he was required to accept the orders and its associated obligation or reject them and serve the remainder of his obligated service. He stated that in light of the foregoing, the applicant's agreement to extend is neither erroneous or unjust.

The Chief Counsel asserted that although the applicant executed his extension agreement on the same date that ALCOAST 127/01 was issued, the record shows that there was no failure to counsel the applicant with respect to this ALCOAST. He stated that because routine messages, such as ALCOAST 127/01, are required to be delivered within 24 hours of the time of publication, the applicant's former command likely did not receive this ALCOAST until March 28, 2001. He argued that the evidence that the applicant submitted suggests that even his new command received ALCOAST 127/01 on the date after it was promulgated. He further stated that neither the applicant nor the Coast Guard could predict the impending promulgation of ALCOAST 127/01. The Chief Counsel contended that the applicant has failed to prove that he has suffered an injustice that "shocks the sense of justice" merely by the less than optimal results of the applicant's voluntary decision to enter into an extension agreement on March 27, 2001.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 24, 2002, the Chair sent a copy of the views of the Coast Guard to the applicant and invited him to respond within 15 days. The Board received no response.

APPLICABLE LAW

Personnel Manual (COMDTINST M1000.6A)

Article 4.B.6.a.1. of the Personnel Manual provides that members serving in a grade E-4 and above with fewer than six years of active duty may not accept PCS orders

unless they reenlist or extend to have enough obligated service for a full tour of duty on reporting to a new unit.

Article 4.B.1.i.1.b. provides that members who receive PCS orders must be counseled about obligated service requirements and sign a page 7 documenting that counseling.

ALCOAST 488/00, issued by the Commandant on December 21, 2000, authorized SRBs for members who reenlisted or extended their current enlistments between February 1, 2001 and April 30, 2001. An SRB with a multiple of xx was authorized for members in the XX rating in Zone A (having no more than six years active duty service).

Under ALCOAST 127/01, members in the XX rating with no more than six years of active service were eligible for a Zone A SRB, calculated with a multiple of xx if they reenlisted or extended their enlistments for at least three years between May 1, 2001 and January 31, 2002.

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 submission, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant extended his enlistment on the same date that ALCOAST 127/01 was issued; however, the applicant has failed to present any evidence to show that his former command received ALCOAST 127/01, prior to the signing of his extension agreement. Absent strong evidence to the contrary, the Board must presume that the Coast Guard officers have "discharge[d] their duties correctly, lawfully, and in good faith." Sanders v. United States, 219 Ct. Cl. 285, 302, 594 F.2d 804, 813-14 (1979). Therefore, the Board presumes that the applicant's command would have counseled him about ALCOAST 127/01, if they had received it before he signed the extension contract. The Board also presumes that he was not counseled about ALCOAST 127/01 because his command had not yet received it. The Board finds that the applicant has not overcome the presumption of regularity or proved that his command erred or committed an injustice when he signed the contract.

3. The applicant's original enlistment was due to expire on September 22, 2001. On March 27, 2001, he extended his enlistment for three years to obligate sufficient time remaining in the Coast Guard to complete a full tour of duty at his new station. In order to report to his new station on May 7, 2001, as the applicant did, he could not have waited until May 2, 2001 to execute an extension of enlistment. The Board is not inclined to find that the applicant would both have been able to delay his commitment to transfer and satisfy his reporting date of May 7, 2001, as the Board notes that a forty-day lapse occurred between date of his extension and the date of his reporting to his new assignment.

4. Moreover, although the applicant's command apparently failed to have him complete a page 7 entry regarding SRB counseling on March 27, 2001, in light of the foregoing, he has not proved that he was prejudiced by the Coast Guard's administrative error. The applicant was informed of and acknowledged his SRB eligibility under ALCOAST 488/00, which was in effect at the time the applicant voluntarily extended on March 27, 2001. The Board, therefore, finds no error or injustice that requires correction under the facts presented in this case.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of XXX XXXXXX X. XXXXXX, XXX XX XXXX, USCG, for the correction of his military record is denied.

