

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

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Application for the Correction of  
the Coast Guard Record of:

BCMR Docket No. 2002-026

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**FINAL DECISION**

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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 18, 2002, upon the BCMR's receipt of the applicant's completed application for correction.

This final decision, dated August 15, 2002, is signed by the three duly appointed members who were designated to serve as the Board in this case.

**APPLICANT'S REQUEST AND ALLEGATIONS**

The applicant asked the Board to correct his military record to show that he reenlisted on his sixth active duty anniversary, January 14, 2001, to receive a selective reenlistment bonus (SRB) pursuant to ALCOAST 218/00. He alleged that he was never counseled about his opportunity to reenlist on that day for the SRB and that, if he had been, he would have reenlisted. In support of his allegations, he submitted copies of SRB regulations and a copy of his September 2000 leave slip, the back side of which bears the following notice: "SRB counseling required within 3 months of 6th, 10th, or 14th AD base date. See your unit admin office for a page 7 entry."

**SUMMARY OF THE RECORD**

On February 29, 2000, the applicant enlisted in the Coast Guard for four years. He had previously served in the military for a total of five years and two months.<sup>1</sup> On

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<sup>1</sup> The applicant had served in the xxxx for three years and in the Coast Guard for 26 months, from November 28, 1995, to January 12, 1998, when he was honorably discharged because of xxxxxxxxxxxx. During that first enlistment in the Coast Guard, he received three negative administrative entries (page 7s) in his record. The page 7s indicated that he was counseled about having an apathetic attitude, failing to follow instructions, and leaving a communications center without properly securing the door.

his September 30, 2000, performance evaluation, he received marks of 4 and 5 (on a scale of 1 to 7, with 7 being best), his commanding officer's recommendation for advancement, and a satisfactory conduct mark.

On December 11, 2000, the applicant's command entered a page 7 in his record indicating that he had bounced a \$xx.xx check at the Exchange. The page 7 states that, although he was notified of the problem on August 31 and September 25, he failed to pay the debt and "forced the exchange to collect this debt by way of Pay Adjustment Authorization. Writing a check with insufficient funds to cover the payment is punishable by the [Uniform Code of Military Justice]. ... You are counseled that unsatisfactory progress toward resolution of financial difficulty should be considered as evidence of an unacceptable standard of conduct which warrants consideration for separation from the Coast Guard or for a recommendation against reenlistment."

January 14, 2001, marked the applicant's completion of six years of active service. There is no page 7 entry in his record documenting SRB counseling prior to the anniversary.

On the applicant's performance evaluation dated March 31, 2001, he received marks of 4 and 5 (with more 5s than before), his commanding officer's recommendation for advancement, and a satisfactory conduct mark. As of July 16, 2002, the applicant and the commanding officer who signed the page 7 both continued to work at the same station.

### **VIEWS OF THE COAST GUARD**

On May 31, 2002, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel argued that relief should be denied because the applicant "has failed to prove he would have received the required recommendation to reenlist from his commanding officer on January 14, 2001. He stated that such a recommendation is required under Article 1.G.5.1.b.3. of the Personnel Manual and that the text of the page 7 in the applicant's record dated December 11, 2000, "creates a rebuttable presumption" that his command would not have allowed him to reenlist for the SRB on his anniversary. He stated that if the applicant "presented clear evidence indicating his command would have approved such a request in January 2001, the Coast Guard would consider withdrawing its recommendation to deny relief."

### **APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD**

On June 3, 2002, the Chair sent a copy of the Coast Guard's advisory opinion to the applicant and invited him to respond within 15 days. No response was received.

## **APPLICABLE REGULATIONS**

Article 1.G.5.3. of the Personnel Manual states that “[e]ach member must receive from the officer effecting discharge a specific recommendation of whether or not he or she should be allowed to reenlist. In making such recommendation, the officer effecting discharge should consider the member's overall performance, potential for continued service, and conduct during the current enlistment. If a member has received an unsatisfactory conduct mark, court-martial conviction(s), or NJP [non-judicial punishment] punishment(s), the officer effecting discharge should also consider how the severity and nature of the offense(s) impact the member's overall record of service during the current enlistment.”

Article 10.B.7.1. of the Personnel Manual provides that, in deciding whether to recommend a member for advancement, “the rating chain must consider past performance, it must also consider and base the recommendation on the member's potential to perform satisfactorily the duties and responsibilities of the next higher pay grade, qualities of leadership, and adherence to the Service's core values.”

Enclosure (1) to Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration), Section 3.d.(1), states that “[m]embers with exactly 6 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone A multiple in effect for their rating if they are otherwise eligible.”

Section 3.d.(9) of Enclosure (1) states that “[c]ommanding 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 instruction provides that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled about their eligibility for an SRB. The counseling must be documented in a page 7 entry signed by the member.

ALCOAST 218/00, issued on May 19, 2000, established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments between July 1, 2000, and January 31, 2001. An SRB multiple was authorized for the applicant's rating.

## **PRIOR SIMILAR CASES**

In BCMR Docket No. 1999-006, the Board denied an applicant's request to correct his record by creating a reenlistment that would entitle him to an SRB because, during the six-month period before his anniversary, he received six negative page 7 entries

documenting substandard and irresponsible job performance. The Board found that the applicant's commanding officer would not have allowed him to reenlist.

In BCMR Docket No. 2000-122, the Board granted an applicant's request to correct his record by creating an extension contract that would entitle him to an SRB even though, three months before the date of the extension, he received NJP for assaulting a member with a curtain rod in a manner "likely to produce grievous bodily harm." After the assault and less than a month before the requested date of the extension, however, he had received evaluation marks of 3.6 (out of 4.0) in proficiency, 3.4 in leadership, and 4.0 in conduct, making his average marks for the enlistment 3.5 for proficiency, 3.4 for leadership, and 3.9 for conduct. Moreover, five months later, his commanding officer had allowed him to extend his contract for three years to accept transfer orders. The Board found that despite the NJP, the preponderance of the evidence suggested that the applicant's commanding officer would have permitted him to extend his enlistment for four years to receive an SRB.

### 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 10 U.S.C. § 1552. The application was timely.

2. Under Enclosure (3) to Commandant Instruction 7220.33, the applicant had a right to be counseled concerning his eligibility to receive an SRB under ALCOAST 218/00 on his sixth active duty anniversary. The regulation includes no exception for members who are not eligible because they do not have their commanding officers' permission to reenlist. The applicant was entitled to counseling about his SRB eligibility even if he did not have his commanding officer's permission to reenlist.

3. Enclosure (3) also requires that SRB counseling be memorialized on a page 7 entered in a member's record. No such page 7 entry appears in the applicant's record, and the lack of one does not prove or even suggest that he was not recommended for reenlistment by his commanding officer. In light of the lack of a page 7 entry documenting SRB counseling in the applicant's record, the Board concludes that the Coast Guard erred by failing to counsel him about his SRB eligibility. However, the Board must still determine whether that error actually harmed the applicant by depriving him of an SRB he would otherwise have received.

4. Under the provisions of COMDTINST 7220.33, members are eligible to reenlist on their sixth active duty anniversaries to receive an SRB if one is authorized for their rating. Under Article 1.G.5.1.b.3. of the Personnel Manual, however, the applicant

could not have reenlisted on January 14, 2001, without his commanding officer's recommendation. The Deputy General Counsel has stated in BCMR Docket No. 2000-037 that in cases before the Board, the burden of proof, which is the preponderance of the evidence, remains with the applicant. Therefore, even though the applicant has proved by a preponderance of the evidence that the Coast Guard erred in failing to counsel him about the SRB, to be entitled to the correction he has requested, he must still prove that he was harmed by that error in that he would have been recommended for reenlistment by his commanding officer if he had asked to reenlist on January 14, 2001.

5. Absent negative information in an applicant's record, the Board normally assumes that the applicant would have been recommended for reenlistment by his or her commanding officer. The Chief Counsel argued that the page 7 in the applicant's record dated December 11, 2000, "creates a rebuttable presumption" that his command would not have allowed him to reenlist on January 14, 2001. However, the language of the page 7 is extremely tentative in that it states that his actions "should be considered as evidence of an unacceptable standard of conduct which warrants consideration ... for a recommendation against reenlistment," rather than stating outright that the applicant is not recommended for reenlistment or that his actions actually warrant a recommendation against reenlistment. In light of the extremely tentative nature of the statement, the Board finds that it amounts to a warning about the potential consequences of further bad behavior and does not prove that the applicant had actually lost his commanding officer's recommendation for reenlistment. Therefore, the Board will not presume that he had actually lost his commanding officer's recommendation.

6. The applicant's record prior to his sixth anniversary is not nearly as poor as that of the applicant in BCMR Docket No. 1999-006. The page 7 documented counseling about having bounced a check and not repaying the money promptly, which is not as bad as assaulting a fellow member with a curtain rod in a manner "likely to produce grievous bodily harm," like the applicant in BCMR Docket No. 2000-122. In the latter case, the Board granted relief only because the applicant's performance evaluation—dated two months after the assault and less than one month before the requested date of extension—persuaded the Board that the applicant would have received his commanding officer's permission to extend his enlistment. In the instant case, there is no such intervening evidence between December 11, 2000, when he received the page 7 and January 14, 2001, his sixth anniversary.

7. On the applicant's performance evaluation dated March 31, 2001, however, he received his commanding officer's recommendation for advancement—the criteria for which are certainly more stringent than those for a recommendation for reenlistment—and marks that were all at least average and that were slightly higher than those on his previous evaluation, in which he also received his commanding officer's recommendation for advancement. Although the performance evaluation is dated two and one-half months after the applicant's sixth anniversary, the Board finds that his receipt of good marks, a satisfactory conduct mark, and his commanding officer's rec-

ommendation for advancement outweighs the tentative warning in the page 7 dated December 11, 2000, as evidence of whether the commanding officer would have recommended him for reenlistment on January 14, 2001.

8. In his advisory opinion, the Chief Counsel stated that the applicant should be required to present more evidence that his commanding officer would have recommended him for reenlistment. The applicant did not do so and did not respond to the advisory opinion. He still works at the unit where he was stationed in January 2001 and has had ample time to seek a statement from his commanding officer. However, the fact that the applicant chose to rely on his record and not present further evidence of his command's estimation of his performance cannot reasonably be considered evidence that his commanding officer would have denied him a recommendation for reenlistment in January 2001.

9. Therefore, the Board finds that the applicant has proved by a preponderance of the evidence in the record that the Coast Guard's error in failing to counsel him about his eligibility to reenlist for an SRB on his sixth active duty anniversary was not harmless. Moreover, the Board finds that, if he had been properly counseled, he would have sought and been allowed by his commanding officer to reenlist for six years.

10. Accordingly, the applicant's request should be granted.

**ORDER**

The application of xxxxxxxxxxxxxxxxxxxxxxxx, for correction of his military record is granted.

His record shall be corrected to show that he reenlisted for six years on his sixth active duty anniversary, January 14, 2001, to receive a Zone A SRB under ALCOAST 218/00.

The Coast Guard shall pay him any sum he may be due as a result of this correction.

