


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-086

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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

This final decision, dated December 31, 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 by canceling a three-year extension contract he signed on February 20, 2002, when he was in pay grade E-4, and reenlisting him for six years as of April 2, 2002, the day after he was advanced to pay grade E-5. He alleged that when he received his transfer orders to xxxxxxxx in February 2002, he was told that, to accept them, he needed to obligate sufficient service to complete a full three-year tour of duty at the new station. He was to report to the new station on May 15, 2002, and his enlistment was due to end on July 6, 2002. Therefore, he extended his enlistment for three years, though July 6, 2005, to accept the transfer orders.

The applicant alleged, however, that in February 2002, he knew that he would be advanced to E-5 before he had to report to the new station. Therefore, he asked if he could extend his enlistment for three years, but then cancel it before his transfer and reenlist for six years after he was advanced so that he would get an SRB at the E-5 rate under ALCOAST 585/01. However, when he tried to reenlist for an SRB after he was advanced, he was told that his three-year extension would reduce his SRB, since only extensions of two years or less can be canceled without offsetting the SRB received for a longer reenlistment.

The applicant alleged that if he had known he could not cancel the three-year extension, he would have waited to sign a contract until after he was advanced to E-5. The three-year extension contract he signed on February 20, 2002, has "NA" (not applicable) typed into all of the spaces where information about his SRB eligibility should have appeared. There is no other entry in his record documenting SRB counseling in February 2002, although there is a "page 7" entry documenting SRB counseling dated January 20, 2000.

APPLICABLE REGULATIONS

Article 4.B.6.a. of the Personnel Manual provides that members with fewer than six years of active duty may not be transferred "unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit." Article 4.A.5.b. specifies that a full tour of duty at the station to which the applicant was transferred is three years.

Article 2 of Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that "[a]ll personnel with 14 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program. They shall sign a page 7 service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement."

ALCOAST 585/01 was issued on December 20, 2001, and became effective on February 1, 2002. It established SRBs for personnel in certain skill ratings who reenlisted or extended their enlistments for at least three years. The multiple to be used for calculating SRBs for members in the BM rating in pay grade E-4 was one. The multiple to be for such members in pay grade E-5 was two.

Paragraph 3.f.(1) of Enclosure (1) to the SRB Instruction states that SRBs are calculated based on the member's base pay on the day before he signs a reenlistment contract.

Paragraph 3.d.(13) of Enclosure (1) to the SRB Instruction states that when a member reenlists before finishing his previous contract term, "[a]ll periods of unexecuted service obligation ... will be deducted from SRB computation." However, paragraph 3.d.(6) states that an "exception to this rule is made for extensions of 2 years or less ... required of a member for transfer, training, advancement, or tuition assistance. These extensions may be canceled prior to their operative date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement."

VIEWS OF THE COAST GUARD

On September 30, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant alternative relief. He alleged that “there is insufficient proof showing that the member’s intention [in February 2002] was to delay his extension until April—when he was advanced to E-5—possibly qualifying him for an SRB with a higher multiple. However, he recommended that the Board replace the applicant’s three-year extension dated February 20, 2002, with a six-year reenlistment so that the applicant would be eligible for the SRB authorized for his rating and pay grade on that day. The Chief Counsel alleged that the page 7 entry documenting SRB counseling in the applicant’s record dated January 20, 2000, was actually signed in 2002, prior to the applicant’s extension.

APPLICANT’S RESPONSE TO THE COAST GUARD’S VIEWS

On October 7, 2002, the BCMR sent the applicant a copy of the Chief Counsel’s advisory opinion and invited him to respond. No response was received.

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. When the applicant received transfer orders to Alaska in February 2002, he was required to obligate sufficient service to complete a full three-year tour of duty before accepting the orders. Personnel Manual, Articles 4.B.6.A. and 4.B.5.b. He signed a three-year extension contract to accept the orders, but he alleged that someone told him that he could cancel that extension after being advanced to E-5 and reenlist for a larger SRB under ALCOAST 585/01. Under the provisions of Enclosure (1) to the SRB Instruction, however, extensions of greater than two years’ duration count as previously obligated service against any SRB.
3. The applicant alleged that in February 2002, he knew he would advance to pay grade E-5 before being transferred. However, there is no evidence in the record that in February 2002, the applicant was guaranteed advancement before his transfer. In addition, there was no guarantee in February 2002 that the SRB provided under ALCOAST 585/01 would still be in effect in April or May 2002, after he allegedly expected to advance.
4. Furthermore, there is no evidence in the record that the applicant’s command would have allowed him to avoid obligating sufficient service to accept his transfer orders until April 2, 2002, just six weeks before he had to report to his new station in

xxxxx. Therefore, the Board finds that the applicant has not proved by a preponderance of the evidence in the record that, had he been properly counseled, he would have chosen and been allowed to wait until April 2, 2002, to obligate sufficient service to accept his transfer orders.

5. The record does indicate, however, that the applicant was not properly counseled with respect to his SRB eligibility in pay grade E-4 on February 20, 2002. The Chief Counsel alleged that if the applicant had been properly counseled he would have reenlisted for six years on that day to receive the SRB as an E-4. However, under paragraph 3.f.(1) of Enclosure (1) to the SRB Instruction, the applicant could have signed a six-year extension contract on February 20, 2002, with the expectation that by the time it became operative on July 7, 2002, he would likely have advanced to pay grade E-5 so that he could receive the larger SRB in effect for that pay grade. The applicant alleged that he was expecting to advance to E-5 soon, and the Chief Counsel did not contradict this allegation. He further alleged that he wanted the higher SRB multiple in effect for the E-5 pay grade. Although advancements are never guaranteed, the Board finds that if the applicant had been properly counseled about his eligibility for an SRB under ALCOAST 585/01 and about the regulations regarding obligating service for transfer and previously obligated service, he would likely have extended his enlistment for up to six years to receive the SRB with the multiple of two in effect for members in his rating in pay grade E-5 under ALCOAST 585/01.

6. Accordingly, relief should be granted by voiding the applicant's three-year extension and replacing it with a four, five, or six year extension contract or reenlistment contract dated February 20, 2002, so that he may receive an SRB at pay grade E-5, if he chooses an extension contract, or at pay grade E-4, if he chooses to reenlist, under ALCOAST 585/01.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows.

After proper counseling regarding his choices under this order, his military record shall be corrected to show that, to accept his transfer orders on February 20, 2002, he either—at his sole discretion—extended his enlistment for 4, 5, or 6 years to receive an SRB calculated at pay grade E-5 or reenlisted for 4, 5, or 6 years to receive an SRB calculated at pay grade E-4, in accordance with ALCOAST 585/01. The 3-year extension contract he signed on that day shall be null and void.

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

