

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-098

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XXXXXXXXXXXXXXXXXXXXX

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The application was docketed on May 21, 2002, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated February 19, 2003, 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 record so that he would receive a selective reenlistment bonus (SRB) for the full 72 months (six years) for which he reenlisted on July 18, 2002.

The applicant alleged that when he received transfer orders in April 2001, they indicated that, to accept the orders, he would be required to obligate sufficient service to complete a full four-year tour of duty at his new station. Since he was transferring in July 2001, he needed to obligate service through July 2005 to accept the orders. His enlistment was due to expire on September 18, 2002, so he was advised to sign an extension contract for an additional 2 years and 10 months to have obligated service through July 18, 2005. He alleged that his yeoman told him that, if he signed the extension contract and became eligible for an SRB before September 18, 2002, he could cancel the extension before it became operative to reenlist for a full SRB, undiminished by any previously obligated service. Therefore, on April 11, 2001, he extended his enlistment for 2 years and 10 months (34 months) to accept the transfer orders.

The applicant alleged that in April 2002, before the extension contract was to go into effect, he inquired about reenlisting for an SRB and was told that even if he can-

celed the extension contract, it would still count as previously obligated service and reduce his SRB by almost half: if he reenlisted in September 2002 before the extension became operative for the maximum time allowed, 72 months, the 34 months of service obligated under the extension contract would not be included in the calculation of his SRB, which would be based on only 38 months of newly obligated service. When he inquired further, he alleged, he discovered that he had also missed the chance to receive an SRB when he signed the extension contract in April 2001 because only contracts of at least 36 months qualify a member for an SRB. He alleged that in April 2001, his command failed to complete a "page 7" entry documenting SRB counseling, as required by regulation.

The applicant concluded that because of the improper counseling he received, it was unjust for him to receive an SRB based on only 38 months of his 72-month contract.

SUMMARY OF THE RECORD

On September 19, 1995, the applicant enlisted in the Coast Guard for four years, through September 18, 1999. On April 1, 1997, he extended the enlistment for one year, through September 18, 2000, to obligate sufficient service to attend school. However, on September 19, 1999, he canceled the extension by reenlisting for three years, through September 18, 2002. For this reenlistment, he received a Zone A SRB calculated with a multiple of 3 in accordance with ALDIST 184/99.¹

In April 2001, the applicant received transfer orders. To accept them, he was required to have at least four years of obligated service to complete a full tour of duty at his new station from July 2001 through July 2005. At the time, ALCOAST 488/00 was in effect, and it authorized a Zone B SRB calculated with a multiple of 1 for members in the ET rating. The applicant was still in Zone A in April 2001, but because any extension contract he signed would become operative on September 19, 2002, after he entered Zone B, he could have received a Zone B SRB by signing an extension contract of at least 36 months' duration.

On April 11, 2001, the applicant signed a contract extending his enlistment for 34 months, from September 19, 2002, through July 18, 2005, to accept the transfer orders. The contract indicates that the SRB information was "NA," or not applicable, and there is no other documentation of SRB counseling in his record. He received no SRB for this extension because only contracts of at least 36 months' duration qualify a member for an SRB.

¹ SRBs vary according to the length of each member's active duty service, the length of the reenlistment or extension of enlistment, and the need of the Coast Guard for personnel in the member's skill rating. Coast Guard members who have served between 21 months and 6 years on active duty are in "Zone A." Those with at least 6 years but fewer than 10 years of active service are in "Zone B." Members may not receive more than one bonus per zone.

On July 18, 2002, before the 34-month extension became operative, the applicant reenlisted for six years, through July 17, 2008. The contract states that in accordance with ALCOAST 329/02,² the applicant was eligible for a Zone B SRB based on 36 months of newly obligated service from July 18, 2005 (the end of his 34-month extension contract), through July 17, 2008. On July 9, 2002, before signing this contract, he signed a page 7 entry for his record acknowledging having received SRB counseling and having read and fully understood the SRB Instruction, COMDTINST 7220.33.

VIEWS OF THE COAST GUARD

On October 21, 2002, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board administratively close the case instead of issuing a decision. The Chief Counsel alleged that when the applicant reenlisted on July 18, 2002, because of the higher multiple in effect, he received a larger Zone B SRB than he would have received if he had signed a six-year extension contract in April 2001.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 28, 2002, the BCMR sent the applicant a copy of the advisory opinion. In light of the Chief Counsel's recommendation, the Chair recommended to the applicant that he consult with someone knowledgeable about SRB regulations and reply to the Board within 30 days. In response to the advisory opinion, the applicant alleged that since he was told the extension could be canceled prior to its operative date without reducing his SRB entitlement, it was unfair for those 34 months to be deducted from his SRB. He asked the Board to correct his record to make the extension contract null and void and to show that he reenlisted on September 18, 2002, for six years to receive an SRB based on all 72 months of the contract.

APPLICABLE REGULATIONS

Section 2 of the SRB Instruction (COMDTINST 7220.33) 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." Enclosure (3) requires members to acknowledge that they have been counseled about SRBs, provided copies of the SRB Instruction and "SRB Questions and Answers," and had all their questions about SRBs answered.

² Actually, on July 18, 2002, ALCOAST 585/01 was in effect rather than ALCOAST 329/02. However, the Zone B SRB multiple provided under the two ALCOASTs for members in the ET rating was the same: 3.5.

Article 4.B.6.a.1. of the Personnel Manual, entitled "Obligated Service for Assignment," provides that members with less than six years of active duty will not normally be transferred "unless they reenlist or extend to have enough obligated service for a full tour on reporting to a new unit. ... [A] member must comply with OBLISERV requirements before he or she will be permitted to execute his or her preferred assignment."

Paragraph 3.d.(6) of Enclosure (1) to the SRB Instruction and Article 1.G.19. of the Personnel Manual provide that extensions of two years or less may be canceled prior to their operative dates to allow the member to sign a new, longer extension or reenlistment contract to receive an SRB and that, if the short-term extension was signed to enable the members to accept transfer or training orders, the term of the canceled extension will not reduce the size of the SRB received under the new, longer contract.

Paragraph 3.f. of Enclosure (1) provides that SRB payments are calculated by (a) multiplying the member's monthly basic pay (MBP) by both the number of months of newly obligated service under the contract (partial months are rounded up to whole months) and the SRB multiple authorized for the member's rating and (b) dividing the result by 12: $SRB = \frac{MBP \times \text{months of newly obligated service} \times \text{authorized multiple}}{12}$

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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. The applicant asked the Board to correct his record so that he would receive an SRB based on all 72 months of his July 18, 2002, contract. He alleged that he was told in April 2001 that he would be able to get a full SRB if he became eligible for one later even if he signed a 34-month extension contract to accept his transfer orders. There is no evidence in the applicant's record that he was properly counseled about SRBs in April 2001 as required under Section 2 of the SRB Instruction, COMDTINST 7220.33. In addition, however, the applicant has submitted no evidence to support his allegation that he was told that he would later be able to cancel the 34-month extension contract and get a maximum SRB without reduction for previously obligated service. Moreover, he was required to sign a contract of at least 34 months' duration, through July 2005, to accept his transfer orders regardless of the contract's effect on his SRB eligibility. Personnel Manual, Article 4.B.6.a.1. Because of this requirement, he could not accept the transfer orders without signing a contract that would count as previously

obligated service in the calculation of any Zone B SRB for which he might later become eligible. Personnel Manual, Article 1.G.19; COMDTINST 7220.33, Encl. (1), para. 3.d.(6).

3. The applicant argued that, despite the rules about previously obligated service in the SRB Instruction and Article 1.G.19. of the Personnel Manual, he should receive an SRB based on all 72 months of his July 18, 2002, contract because he was advised in April 2001 that he would be able to. Although he has not proved that he received this erroneous advice, assuming *arguendo* that he did, it is not the policy of this Board to fulfill erroneous promises of SRB payments to which members were never legally entitled. Rather, the Board's policy is to correct applicants' records so as to return them to the position they would have been in had they received proper and timely SRB counseling.

4. Because the applicant's enlistment was due to end on September 18, 2002, after his sixth active duty anniversary, any extension contract he signed in April 2001 of at least 36 months' duration would have earned him a Zone B SRB calculated with a multiple of just 1 under ALCOAST 488/00. If on April 11, 2001, in response to proper SRB counseling, he had chosen to extend his contract for the maximum allowable 72 months, under paragraph 3.f. of Enclosure (1) to the SRB Instruction, he would have received a Zone B SRB based on his monthly basic pay ("MBP"), times 72 months of newly obligated service, times the multiple of 1 authorized under ALCOAST 488/00, divided by 12, or $MBP \times 72 \times 1/12$. Therefore, if he had extended his contract for 72 months on April 11, 2001, he would have received a Zone B SRB of six times his monthly basic pay.

5. The Coast Guard argued that the case should be closed because the Zone B SRB the applicant received for reenlisting on July 18, 2002, when ALCOAST 585/01 was in effect is greater than what he would have received under ALCOAST 488/00 on April 11 2001. For his July 18, 2002, reenlistment, the applicant received a Zone B SRB based on his MBP, times the 36 months of service newly obligated under the contract, times the multiple of 3.5 authorized under ALCOAST 585/01, divided by 12, or $MBP \times 36 \times 3.5/12$. Therefore, he has received a Zone B SRB of ten and one-half times his monthly basic pay. The Board agrees with the Coast Guard that the applicant has received a bigger Zone B SRB than he could possibly have received if he had been properly and timely counseled about and taken advantage of the opportunity for a Zone B SRB under ALCOAST 488/00.

6. Therefore, the Board concludes that the Coast Guard's apparent failure to inform the applicant in April 2001 about his opportunity to receive a Zone B SRB under ALCOAST 488/00 was harmless error since he ultimately received a larger Zone B SRB than he would have under that ALCOAST. As explained in finding 3, above, the Board will not correct his record to provide him with a 72-month SRB to which he was never legally entitled and for which, under Article 4.B.6.a.1. of the Personnel Manual, he could

never have been entitled even if he had been properly counseled. Since the record indicates that the applicant was properly and timely counseled concerning the SRB regulations prior to signing his July 18, 2002, reenlistment contract, the Board sees no reason to disturb it.

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

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

