

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-114

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 June 4, 2002, upon the BCMR's receipt of the applicant's request for correction.

This final decision, dated May 29, 2003, 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 to show that he was discharged and immediately reenlisted for a term of six years on October 22, 20xx, three months prior to his six-year active duty anniversary. He stated that the correction would make him eligible to receive a selective reenlistment bonus (SRB) pursuant to ALCOAST 127/01.

APPLICANT'S ALLEGATIONS

The applicant alleged that he was improperly counseled regarding his eligibility to reenlist for an SRB. He alleged that pursuant to Coast Guard regulations, his command should have counseled him that he could receive a Zone B SRB under ALCOAST 127/01 by reenlisting during the three months prior to January 22, 20xx, his sixth active duty anniversary. He alleged that instead, he was erroneously advised that he could reenlist no earlier than three months before April 23, 20xx, the expiration of his enlistment (EOE), for purposes of obtaining an SRB.

The applicant alleged that upon his acceptance to xxxxxx xxxxxx on January 18, 20xx, he was no longer eligible for an SRB. He alleged that had he been properly counseled about the option to be discharged and reenlisted for an SRB, he could have reenlisted as early as October 20xx, prior to becoming ineligible for the SRB due to his acceptance to xxxxxx xxxxxx. He alleged that it was his intention to reenlist and that he had no way of knowing prior to January 18, 20xx that he would be selected for xxxxxx xxxxxx.

In support of his allegations, the applicant submitted a signed statement from his former unit's chief warrant officer (CWO), who highly recommended approval of the applicant's request. The CWO wrote that if the applicant had been aware that he could have reenlisted three months prior to his six-year anniversary, "he would receive an SRB payment, regardless of his selection to [xxxxxx xxxxxx]."

The applicant also submitted a statement signed by his commanding officer (CO), stating that the applicant was improperly counseled regarding his SRB entitlement. The CO asserted that "it is highly likely [that the applicant] would have taken advantage of any possible bonus available." He further stated that the applicant was not made aware of his selection to xxxxxx xxxxxx until January 18, 20xx.

SUMMARY OF THE APPLICANT'S RECORD

On January 22, 19xx, the applicant enlisted in the Coast Guard for four years. On April 24, 19xx, he reenlisted for an additional four years through April 23, 20xx, to receive a Zone A SRB. His 6th anniversary on active duty fell on January 22, 20xx

The applicant's records indicate that prior to his 6th anniversary on active duty, he was advised that he could reenlist for SRB purposes no earlier than three months prior to his EOE.

On March 27, 2001, the Commandant issued ALCOAST 127/01, which allowed members to receive an SRB if they reenlisted or extended their current enlistments between May 1, 2001 and January 31, 2002. An SRB with a multiple of xxx was authorized for members in the xx rating in Zone B.

On January 18, 20xx, the applicant was accepted to xxxxxx xxxxxx and therefore, ineligible to receive an SRB. He signed a six-month extension agreement to obligate service to complete xxxxxx xxxxxx. On May 30, 20xx, he commenced training at xxxxxx xxxxxx.

VIEWS OF THE COAST GUARD

On November 29, 2002, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel admitted that the applicant's command improperly advised him that he could reenlist only if he was within 3 months of his EOE. He stated that the applicant should have been counseled regarding his eligibility to reenlist within three months of January 22, 20xx, his 6th anniversary. However, he contended, notwithstanding the applicant's willingness to obligate himself to an additional six years of service on or before his 6th anniversary, the fact remains that he was accepted to xxxxxx xxxxxx on January 18, 20xx and for that reason, unable to fulfill such an obligation. He therefore argued that the relief the applicant requests "would be contrary to the spirit of the SRB program," in that the program rewards members in critical ratings for not merely obligating but also serving additional periods of service.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 2, 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 12.B.4.a. of the Personnel Manual provides that "[i]n general, a member who meets ... reenlistment standards is eligible to reenlist, unless the reason for discharge precludes reenlistment, such as physical disqualification, disability, unsuitability, misconduct, or an alien's failure to become a naturalized citizen, or if the commanding officer did not recommend him or her. Commanding officers should not refuse reenlistment to members who have demonstrated a potential for successful, productive Coast Guard career."

Article 12.B.4.b.2. states that "[m]embers who meet the ... reenlistment criteria shall be assigned the Reenlistment Code Re-1, "Eligible for Reenlistment," and allowed to reenlist for a maximum of six years."

Article 1.G.15.h. states that "[t]he enlistment of a person designated as an officer candidate shall be involuntarily extended by such period as he or she may remain in such status beyond the normal expiration thereof."

SRB Manual Provisions

Section 3.a.(6). of Enclosure (1) to the Commandant Instruction 7220.33 (Reenlistment Bonus Programs Administration) provides that in order for a member to receive a Zone A SRB, they must have not previously received a Zone A SRB.

Section 3.d.(1) of the instruction states that members who have previously received a Zone A bonus and who have exactly 6 years of active duty service on the date of reenlistment are entitled to a Zone B bonus, if one is in effect.

Section 3.d.(9) of the instruction states that “[c]ommanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th 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.**” (emphasis added).

Enclosure (3) to the instruction states that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled concerning their eligibility of an SRB. The counseling must be memorialized in their records with a Form CG-3307 signed by the member.

ALCOAST 127/01, issued on March 27, 2001, announced a two-phase plan for assigning SRB multiples. The ALCOAST authorized SRBs for members who reenlisted or extended their current enlistments between May 1, 2001 and January 31, 2002. An SRB with a multiple of xxx was authorized for members in the xx rating in Zone B (having at least six but less than ten years of active duty service).

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 alleged that he was improperly counseled about his eligibility for an SRB pursuant to ALCOAST 127/01. In accordance with Enclosure (3) to Commandant Instruction 7220.33, the applicant had a right to be counseled about SRBs prior to his sixth active duty anniversary. There is no page 7 in the applicant's record documenting that he received SRB counseling prior to his 6th anniversary, as required by the instruction. Therefore, the applicant has proven by a preponderance of the evidence that he was improperly counseled by his command concerning his 6th anniversary SRB eligibility.

3. The applicant alleged that had he been properly counseled, he would have reenlisted in October 20xx, prior to his 6th anniversary, for six years to receive a Zone B SRB. Section 3.d.(9) of Enclosure (1) of the instruction provides that “[c]ommanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th anniversary dates ... for the purpose of qualifying for a Zone A, B, or C SRB respectively.” The regulation’s use of the term “respectively” establishes that a member can be reenlisted before his 6th anniversary for a Zone A, before his 10th anniversary for a Zone B SRB, or before his 14th anniversary for a Zone C SRB. Accordingly, there was no authority to reenlist the applicant before his 6th anniversary for a Zone B SRB. Moreover, because the applicant had previously received a Zone A SRB, he was not eligible to receive an additional Zone A SRB. See Section 3.a.(6) of Enclosure (1) to COMDTINST 7220.33. Consequently, the earliest date the applicant could have reenlisted to receive a Zone B SRB pursuant to ALCOAST 127/01 is January 22, 20xx, his 6th active duty anniversary. See Section 3.d.(1) of Enclosure (1) to COMDTINST 7220.33.

4. Generally, when a member meets reenlistment standards, the regulations provide that he or she is allowed to reenlist for a maximum of six years with his or her commanding officer’s approval. See Articles 12.B.4.a. and 12.B.4.b. of the Personnel Manual. The applicant submitted signed statements indicating that he would have received a Zone B SRB, regardless of his later xxxxxx xxxxxx selection, had he reenlisted in October 2001. However, neither statement proves that the applicant could have reenlisted on January 22, 20xx. In accordance with Article 1.G.15.h. of the Personnel Manual, the applicant’s command extended him for six months to obligate sufficient service to complete the training. Consequently, the Board finds that the applicant has failed to prove by a preponderance of the evidence that despite the notification of his acceptance to xxxxxx xxxxxx on January 18, 20xx, he would have been allowed to reenlist for a minimum of three years on January 22, 20xx to receive an SRB.

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.

