

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2002-176

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

FINAL DECISION

 **Deputy Chair:**

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 September 30, 2002, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated June 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 military record to make him entitled to a Zone B selective reenlistment bonus (SRB)¹ based on his pay grade as a BM1 and calculated with a multiple of two for the four-year reenlistment contract that he signed on June 12, 2002, upon receipt of transfer orders to a new unit. He alleged that he was never counseled about how reenlisting several weeks prior to the actual end of his enlistment would diminish the size of his SRB because an SRB is based only on periods of service newly obligated under the reenlistment contract.

The applicant alleged that if he had been properly counseled, he would have extended his prior enlistment just up to the day he reported for duty at his new station and reenlisted at that time, or he would have asked to have his report date delayed.

¹ SRBs vary according to the length of each member's active duty service, the number of months of service newly obligated by the reenlistment or extension of enlistment contract, and the need of the Coast Guard for personnel with the member's particular skills, which is reflected in the "multiple" of the SRB authorized for the member's skill/rating, which is published in an ALCOAST. Coast Guard members who have at least 21 months but no more than 6 years of active duty service are in "Zone A." Members who have completed at least 6 years but no more than 10 years of active duty service are in "Zone B." Members may not receive more than one bonus per zone. COMDTINST 7220.33.

However, on June 12, 2002, he alleged, he was told that he was required either to reenlist or to sign an indefinite reenlistment.

SUMMARY OF THE RECORD

On August 3, 1992, the applicant enlisted in the Coast Guard for a term of four years, through August 2, 1996. On May 28, 1996, the applicant extended his enlistment for three years, through August 2, 1999. On May 18, 1999, the applicant extended his enlistment a second time, for one year, through August 2, 2000, in order to accept transfer orders to a new station.

On August 2, 2000, the applicant was advised that he was eligible for a Zone B SRB with a multiple of 1.5 if he enlisted for at least three years. This counseling was documented on a form CG-3307 ("page 7") in his record. However, the applicant chose to extend his enlistment a third time, for a fifth year, through August 2, 2001. On August 2, 2001, the applicant extended his original enlistment for another, sixth year, through August 2, 2002.

In June 2002, the applicant received orders to transfer to a new station. He was ordered to report by July 9, 2002. On June 12, 2002, he reenlisted for four years. He received an SRB under ALCOAST 585/01 calculated with a multiple of two but based on only 46 months of newly obligated service since his prior enlistment had already obligated him to serve through August 2, 2002. His reenlistment contract shows that he was advised that he would receive an SRB with a multiple of two, but there is no page 7 in his record documenting proper SRB counseling.

APPLICABLE REGULATIONS

Article 1.G.14. of the Personnel Manual provides that a member may extend his reenlistment:

1. For any number of full years not less than two nor greater than six years, when requested by the member.
2. For any number of full years and/or full months up to six years to ensure sufficient obligated service for these purposes: ... c. INCONUS and OUTCONUS assignments; [see] Article 4.B.6. ...

Article 1.G.14.c. provides that the "total of all extensions of an enlistment may not exceed six years."

Article 4.B.6.a.2. of the Personnel Manual provides that members with more than six years of active duty "are required to have one year of OBLISERV remaining upon reporting to the new unit."

Article 1.G.2.a. of the Personnel Manual provides that reenlistments may be for periods of three, four, five, or six years.

Article 2 of Commandant Instruction 7220.33 (the SRB Instruction) 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.” The page 7 that members must sign normally states the amount of newly obligated service upon which their SRBs will be based.

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.”

ALCOAST 585/01 was issued on December 20, 2001, and was in effect from February 1 through August 4, 2002. It established SRB multiples for personnel in certain skill ratings who reenlisted or extended their enlistments for at least three years and up to six years. Under ALCOAST 585/01, members in the BM rating in pay grade E-2 or above were eligible for an SRB calculated with a multiple of two.

VIEWS OF THE COAST GUARD

On December 23, 2002, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant relief by correcting his record to show that he reenlisted for four years on August 3, 2002, thereby qualifying him for a Zone B SRB based on 48 months of newly obligated service. The Chief Counsel stated that the record supports the applicant’s allegation that he was not counseled about the fact that his SRB would be based on 46 months of newly obligated service rather than 48 months. The Chief Counsel did not address the applicant’s obligated service requirement under Article 4.B.6. of the Personnel Manual or his transfer date.

APPLICANT’S RESPONSE TO THE COAST GUARD’S VIEWS

On January 6, 2003, 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 in June 2002, he was required to obligate sufficient service to complete a full year of duty at his new station before he could accept the orders. Personnel Manual, Article 4.B.6.a.2. Since his report date was July 9, 2002, he was required, by or before that date, to have obligated service through July 8, 2003. Because he had already extended his original four-year enlistment for a total of six years, under Article 1.G.14.c. of the Personnel Manual, he could not extend his original enlistment again, for a seventh year. Therefore, to have obligated service through July 8, 2003, he could only reenlist, and the minimum term of a reenlistment contract is three years. Personnel Manual, Article 1.G.2.a.

3. The applicant alleged that he was not counseled that his SRB would be based on just 46 months of newly obligated service instead of 48 months. There is no page 7 in his record documenting proper SRB counseling, as required by the SRB Instruction. However, when an applicant proves that he has received improper SRB counseling, the Board's policy is not to fulfill the erroneous promises made by the applicant's unit's yeoman, but to return the applicant to the position he would have been in had he been properly counseled about his SRB eligibility.

4. If the applicant had been properly counseled in June 2002, he would have been told that, under Article 4.B.6.a.2. of the Personnel Manual, before accepting his transfer orders and reporting to his new unit on July 9, 2002, he had to obligate service through July 8, 2003. In addition, he would have been advised that the only way he could obligate that service was to reenlist for three, four, five, or six years because, under Article 1.G.14.c. of the Personnel Manual, he could not extend his original enlistment for a seventh year and under Article 1.G.2.a., the possible terms of a regular reenlistment contract are three, four, five, and six years.

5. The applicant alleged that if he had been properly counseled, he could have persuaded the Coast Guard to change his report date to the end of his enlistment on August 3, 2002, or he could have asked for another short extension. However, he provided no evidence that such requests would have been granted by the Personnel Command just to enable him to avoid having two months of obligated service remaining on his previous contract. Nor has he proved that his command would have allowed him to wait until August 3, 2002, or even until the day he was supposed to report to his new station, July 9, 2002, to accept his transfer orders by fulfilling the requirement for obligated service.

6. As indicated in Finding 4, in June 2002, to accept his transfer orders, the applicant was required to reenlist for at least three years. Under Article 1.G.2.a. of the Personnel Manual, ALCOAST 585/01, and the provisions of the SRB Instruction, he was eligible to reenlist for three, four, five, or six years to receive a Zone B SRB calculated with a multiple of two and reduced by the two months of service remaining on his previous enlistment contract as extended. In light of the fact that the applicant apparently

was not counseled about the SRB rules regarding previously obligated service, the Board finds that he should have the opportunity to change the term of his reenlistment contract from four years to three, five, or six years. If he chooses to shorten the term of the contract to three years, however, the Coast Guard will be entitled to recoup some of his Zone B SRB.

7. Although the Chief Counsel recommended changing the date of the applicant's four-year reenlistment to August 3, 2002, such a correction would ignore the obligated service requirement under Article 4.B.6.a.2. of the Personnel Manual. There is no evidence in the record that in June 2002, the applicant's command or the Personnel Command would have ignored this long-standing regulation.

8. Accordingly, the applicant is entitled only to the relief stated in Finding 6.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted in part as follows:

After properly counseling the applicant regarding his choices under this order, the Coast Guard shall, at the applicant's discretion, correct the term of his June 12, 2002, reenlistment contract to three, five, or six years, instead of four years. If the applicant does not opt to have the term of this contract corrected to three, five, or six years, it shall remain in effect as a four-year reenlistment.

The Coast Guard shall pay the applicant any sum he may be due as a result of any correction made to his reenlistment contract under this order.

