

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-020

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

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 November 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 by voiding a four-year reenlistment contract that he signed on July 16, 2002, based on the promise of a Zone A selective reenlistment bonus (SRB)¹ that he never received, and by replacing that contract with a one-year extension contract. He alleged that he was advised that he would receive the SRB even though he did not have the coxswain's qualification necessary to be eligible for the SRB under ALCOAST 585/01, which was then in effect.

The applicant submitted with his application a statement from his PERSRU (personnel reporting unit), who wrote that "due to administrative oversight, [the applicant] was not properly counseled on the exact requirements (i.e. Coxswain Qualification) in order to receive an SRB. This led [him] to enter a reenlistment [for] which he did not

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.

obtain the benefits he assumed were to be provided—a Zone A selective reenlistment bonus, multiple of 1.”

SUMMARY OF THE RECORD

On January 28, 1997, the applicant enlisted in the Coast Guard for a term of four years, through January 27, 2001. On July 1, 1999, after receiving transfer orders to a new station, the applicant was advised that an SRB multiple was authorized for his rating and that if he reenlisted or extended his enlistment for at least three years, he would receive the SRB. However, the applicant chose to obligate only the one year—through January 27, 2002—of additional service that was necessary to accept his transfer orders. On January 3, 2001, the applicant signed a second, seven-month extension contract through August 27, 2002, in order to obligate sufficient service to attend school.

On May 2, 2002, the applicant signed a three-year extension contract in order to accept transfer orders to a station in Puerto Rico. On July 16, 2002, he reenlisted for four years, which effectively canceled his three-year extension contract. His reenlistment contract shows that he was promised an SRB.

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 1.G.15. provides that, prior to a member’s being transferred overseas, “the voluntary agreement to extend must be executed and accepted by the commanding officer before the transfer is effected.”

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.18. of the Personnel Manual states that, “[u]nless canceled for one of the reasons in Article 1.G.19., an Agreement to Extend Enlistment becomes effective on the date next following the normal date the enlistment expires or the enlistment expiration date as voluntarily extended” Article 1.G.19.2.b. provides that a “commanding officer may cancel an Agreement to Extend Enlistment on the effective extension date when the individual concerned has reenlisted or extended on that date for any authorized enlistment term longer than the original extension agreement.”

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. Under ALCOAST 585/01, members in the BM rating in pay grade E-4 who had certain coxswain qualifications were eligible for an SRB calculated with a multiple of one. Under ALCOAST 329/02, which went into effect on August 5, 2002, E-4s in the BM rating had to have successfully completed the Navigation Rules Exam to be eligible for an SRB.

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.”

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.”

Paragraph 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. In such cases, SRB payments will be reduced by any portion of unserved service obligation.”

Paragraph 3.d.(1) of Enclosure (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.”

VIEWS OF THE COAST GUARD

On March 26, 2003, the Chief Counsel of the Coast Guard recommended that the Board grant the applicant relief by voiding his reenlistment contract dated July 16, 2002. He stated that the record supports the applicant’s allegation that he reenlisted based on the promise of a Zone A SRB for which he was not eligible because he did not have coxswain’s qualifications. The Chief Counsel did not address the applicant’s request for a one-year extension.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On March 31, 2003, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond. On April 10, 2003, the applicant responded, stating, "I accept the advisory opinion recommendation to receive a one (1) year short-term extension."

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 four-year reenlistment contract that the applicant signed on July 16, 2002, shows that he was erroneously promised an SRB in exchange for the reenlistment. He was not eligible for the SRB under ALCOAST 585/01 because he did not have the necessary coxswain's qualifications. In addition, there is no evidence in the record that he had successfully completed the Navigation Rules Exam, which would have permitted him to reenlist after ALCOAST 329/02 went into effect on August 5, 2002, but before his three-year extension contract became operative on August 28, 2002. The Board finds that the applicant's reenlistment contract is voidable because it included an erroneous promise of an SRB for which the applicant was not eligible.

3. The applicant asked for the four-year reenlistment contract to be replaced with a one-year extension contract. However, under Article 1.G.14. of the Personnel Manual, the minimum possible duration of an extension contract that a member may receive upon his own request is two years. Moreover, when an applicant proves that he has received improper counseling, the Board's policy is to return the applicant to the position he would have been in had he been properly counseled about his SRB eligibility. The applicant has not shown that, if he had not reenlisted for four years, he would have been allowed to cancel the three-year extension contract that he had signed on May 2, 2002, to accept his transfer orders in accordance with Articles 4.B.6.a. and 1.G.15. of the Personnel Manual, and extend his reenlistment contract for just one year. The Coast Guard's error in promising the applicant an SRB for the reenlistment does not entitle him to avoid the obligated service requirement for his transfer orders.

4. If the applicant had been properly advised in July 2002 that he was not eligible for an SRB because he lacked the necessary qualifications, he would not have reenlisted and the three-year extension contract that he signed on May 2, 2002, to obligate sufficient service to accept his transfer orders to Puerto Rico would not have been canceled. Under Article 1.G.19., the extension contract could only be canceled because

he signed the longer, four-year contract. Under Article 1.G.18., the extension contract would have become operative on August 28, 2002, if the applicant had not reenlisted for four years on July 16, 2002.

5. The Board notes that the applicant's sixth anniversary on active duty fell on January 28, 2003. Members are entitled to counseling concerning their eligibility to be discharged and reenlisted on their sixth anniversaries to receive a Zone A SRB. There is no evidence in the applicant's record of proper sixth anniversary counseling, and it is not clear to the Board whether he was eligible for an SRB by that date under ALCOAST 329/02.

6. Accordingly, partial relief should be granted by voiding the applicant's four-year reenlistment contract dated July 16, 2002, and reinstating his three-year extension contract dated May 2, 2002. In addition, the Coast Guard should determine whether the applicant was eligible for a Zone A SRB on his sixth active duty anniversary under ALCOAST 329/02 and, if he was eligible, it should reenlist him for three, four, five, or six years as of that date, at his discretion.

ORDER

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

His four-year reenlistment contract dated July 16, 2002, shall be null and void and his three-year extension contract dated May 2, 2002, shall no longer be canceled but shall have become operative on August 28, 2002, in accordance with Article 1.G.18. of the Personnel Manual.

In addition, the Coast Guard shall determine whether the applicant was eligible for a Zone A SRB on his sixth active duty anniversary under ALCOAST 329/02 and, if he was eligible, it shall reenlist him for three, four, five, or six years as of that date, at his discretion. The Coast Guard shall pay the applicant any sum he may be due as a result of any correction made to his record in accordance with this order.

