

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2003-062

[REDACTED]

FINAL DECISION

[REDACTED] **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 April 7, 2003, after the Board received the applicant's completed application.

This final decision, dated November 20, 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, currently a [REDACTED] asked the Board to remit the indebtedness he incurred when he changed ratings and the selective reenlistment bonus (SRB)¹ he had received for reenlisting on April 27, 1999, in his prior rating (electronics technician second class (ET2)) was recouped.²

The applicant alleged that when he first considered changing his rating from ET to TT, he asked a yeoman at his Personnel Reporting Unit (PERSRU) what he would have to do, whether he would lose a rank, and whether he could keep his SRB. He alleged that the yeoman told him that he would have to lose one rank (from second

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, 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 rating. Coast Guard members who have more than 21 months but less than 6 years of active duty service are in "Zone A." Those with between 6 and 10 years of active duty are in Zone B. Members may not receive more than one bonus per zone.

² On April 27, 1999, ALDIST 290/98 was in effect, authorizing an SRB calculated with a multiple of 3 for members in the ET rating and an SRB calculated with a multiple of 1 for members in the TT rating.

class to third class) if he changed ratings, but that he would be allowed to keep his SRB. Therefore, he asked to enroll in "A" School to join the TT rating.

The applicant alleged that in June 2001, when he received his orders to attend TT "A" School, he was told that he would have to extend his enlistment for four months in order to obligate sufficient service to attend the school. He alleged that the PERSRU again told him that "nothing would change [his] SRB eligibility and that this was why they put N/A in all of the blank spaces under the SRB section" of the extension contract.

The applicant alleged that on August 28, 2002, eight months after he had graduated from TT "A" School and four months after he received his third annual installment of the SRB, the Coast Guard's Human Resources Services and Information Center (HRSIC) told his PERSRU that he was no longer entitled to his SRB because of his change in rating. Since then, he alleged, HRSIC has been withholding \$287.42 per month from his pay check ("about 16.5% of [his] base pay") and will do so for 24 months until it has recouped a total of \$5,748.29 in alleged overpayments on his SRB.

The applicant alleged that his PERSRU did not know and never told him that his SRB would be recouped. He pointed to the fact that the PERSRU did not follow procedures to recoup his SRB until HRSIC required it as proof that the PERSRU miscounseled him about the effect his change of rating would have on his SRB. He also alleged that his PERSRU never completed an Administrative Remarks entry (CG-3307) outlining the effect his change in rate would have on his SRB entitlement. He alleged that if he had been told his SRB would be recouped, he would not have changed ratings because of the extreme financial hardship the recoupment of the SRB would cause. The applicant stated that he "willingly took a pay cut from E-5 to E-4 [in order to change ratings] but [he] can't afford to lose another \$287.42 a month without going bankrupt."

SUMMARY OF THE RECORD

On March 20, 1995, the applicant enlisted in the Coast Guard for four years, through March 19, 1999. He attended "A" School to become an ET3 and was advanced to ET2 on April 1, 1999.

On April 27, 1999, the applicant reenlisted for five years, through April 26, 2004. His reenlistment contract notes that the reenlistment entitled him to a Zone A SRB calculated with a multiple of 3 under ALDIST 290/98. There is no CG-3307 documenting SRB counseling at the time of this reenlistment.

On March 20, 2001, the applicant's sixth anniversary on active duty, he passed from Zone A to Zone B. There is no CG-3307 documenting SRB counseling at the time of this anniversary.

On June 19, 2001, the applicant extended his reenlistment contract for four months, through August 26, 2004, in order to obligate sufficient service to attend TT "A" School. There is no CG-3307 documenting SRB counseling at the time of this extension. However, the extension contract that the applicant signed contains the following paragraphs:

SRB ELIGIBILITY ACKNOWLEDGMENT

I have been provided with a copy [of] "SRB Questions and Answers" based on Commandant Instruction 7220.33 (series). I have been informed that: My current Selective Reenlistment Bonus (SRB) multiple under zone NA is NA and is listed in ALCOAST NA, which has been made available for review. I further understand the eligibility requirements for Zone A, B, and C SRB's and that the maximum SRB paid to my current pay grade is \$ NA. My SRB will be computed based on NA months newly obligated service.

EFFECT OF EXTENSION/REEXTENSION ON SRB ENTITLEMENT

I fully understand the effect my extension/reextension will have upon my current and future SRB eligibility. I understand that continued entitlement to unpaid installments may be terminated and a prorated portion of advance bonus payments recouped if I am considered not to be technically qualified or unable to perform the duties of the rating for which the bonus was paid, in accordance with COMDTINST 7220.33 (series). I further acknowledge that I have been given the chance to review COMDTINST 7220.33 (series) concerning my eligibility for SRB and have had all my questions answered.

On December 13, 2001, the applicant graduated from TT "A" School and became a TT3 (pay grade E-4) instead of an ET2 (pay grade E-5).

On August 28, 2002, HRSIC informed the applicant's PERSRU that he had been overpaid \$5,748.29 and that the money would be recouped in installments beginning on November 1, 2002.

On September 13, 2002, the applicant submitted to HRSIC a CG-5489, "Waiver/Remission Application," requesting the remission of his indebtedness. The application form shows that on October 10, 2002, his executive officer endorsed the application, recommending remission of the debt. He also stated that HRSIC should consider recouping only the difference between the SRB the applicant was eligible for as an ET2 (calculated with a multiple of 3) and the SRB for a TT3 (calculated with a multiple of 1). The application form also contains the following explanation of the debt:

[The applicant] reenlisted as ET2 on 27 April 1999 for 5 years and was entitled to a zone "A" SRB in the net amount of \$18,176.40. ... Under CGPC [Coast Guard Personnel Command] authority to change ratings (from ET to TT), [the applicant] graduated from TT "A" School and changed ratings/rate from ET2 to TT3 effective 13 December 2001. This resulted in a \$5,748.29 SRB overpayment for previously paid SRB in the former rating/rate (ET2) for unserved time as ET from 13 December 2001 to 26 April 2004.

[In accordance with COMDTINST 7220.33], a member who changes ratings within the period of reenlistment to which the SRB was paid, must repay the pro-rated SRB for unserved time in the former rating.

On November 2, 2002, the applicant's PERSRU recommended remission of the \$5,748.29 debt in full, finding that "it is reasonable to assume [the applicant] was not

properly counseled." The PERSRU noted that the applicant's record contains no CG-3307 documenting SRB counseling upon his enlistment in April 1999 or at the time his change in rating was approved by CGPC. The PERSRU stated that his "conclusion is reinforced by the fact the servicing PERSRU didn't execute the required SDAII transaction to suspend (upon [the applicant's] graduation from TT "A" School) SRB payments/installments. This never happened and the active SRB segment was discovered internally by HRSIC in August 2002 (approximately 8 months after [the applicant] graduated from TT "A" School)."

On December 6, 2002, the Chief of the Compensation Division at HRSIC disapproved the applicant's request for remission of his debt of \$5,748.29. Recoupment of the overpayment of the SRB began in January 2003.

VIEWS OF THE COAST GUARD

On October 1, 2003, the Chief Counsel of the Coast Guard recommended that the Board deny the applicant's request.

The Chief Counsel argued that the applicant has not proved that he was incorrectly counseled. He pointed out that the Board begins each case assuming that Coast Guard officials have acted correctly, lawfully, and in good faith, and that the applicant bears the burden of proving error or injustice. The Chief Counsel further pointed out that the regulations do not allow the applicant to retain an SRB for a rating in which he no longer serves. He stated that the "erroneous verbal counseling concerning his continuing SRB entitlement the Applicant allegedly received when he made the decision to change rate is regrettable, but the SRB policy clearly requires the recouping of any unearned SRB payments for his former rate."

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 14, 2003, the BCMR sent the applicant a copy of the Chief Counsel's advisory opinion and invited him to respond within 30 days. On November 18, 2003, the applicant responded by denying that he had ever been counseled about the effect of a rating change on his SRB.

APPLICABLE REGULATIONS

Paragraph 2 of Enclosure (1) to Commandant Instruction 7220.33, which contains the SRB regulations, states 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 [CG-3307] service record entry, enclosure (3), outlining the effect that particular action has on their SRB entitlement." On the CG-3307, which is Enclosure (3) to the instruction, the member also acknowledges having received and reviewed a copy of the instruction.

Paragraph 4.c. of Enclosure (1) provides that “[m]embers will be ineligible for continued SRB payment when they are no longer qualified in or serving in the rating for which the SRB was authorized. Additionally, all unearned SRB shall be recouped.

Paragraph 3.d.(7) of Enclosure (1) to the instruction provides that members who are changing rate shall be counseled and shall sign a CG-3307 “stating that they are aware that they shall not receive any bonus entitlement for the new rate until they have reenlisted/extended and have attained the new rate. When the new rate is attained, all unearned SRB for the previously held rate will be recouped. Members authorized an SRB for their present rate will continue to receive annual installments until they attain their new rate.”

Enclosure (3) to the instruction states that during the three months prior to their 6th, 10th, and 14th anniversary dates, members must be counseled about SRBs. The counseling must be memorialized on a form CG-3307 signed by the member.

ALDIST 290/98, issued on November 25, 1998, authorized a Zone A SRB with a multiple of 3 for members with the ET3 rating who reenlisted between November 25, 1998, and June 14, 1999. The multiple for members in the TT rating was 1.

Article 5.C.30. of the Personnel Manual authorizes commands to “[c]hange the rating of each graduate in pay grade E-4 or E-5 who is attending a basic petty officer course [“A” School] to pay grade E-4 in the appropriate rating.”

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. Under paragraphs 2 and 3.d.(7) of Enclosure (1) and Enclosure (3) to COMDTINST 7220.33, the Coast Guard had a duty (a) to counsel the applicant about SRB regulations when he reenlisted in April 1999; prior to his sixth anniversary on March 20, 2001; when he decided to change ratings; and when he extended his enlistment in June 2001 to obligate sufficient service to attend TT “A” School to change ratings and (b) to document each of these counseling sessions on a CG-3307 entered in his record. No such CG-3307s documenting SRB counseling appear in his record. The counseling the applicant should have received on each of these four occasions would have informed him that changing his rating would end the SRB payments he was receiving for having reenlisted as an ET2 in April 1999.

3. The applicant's command and PERSRU failed to document proper SRB counseling on four occasions when it was required and failed to complete the paperwork to end his SRB entitlement when he switched ratings in December 2001. Therefore, although one paragraph of the extension contract the applicant signed acknowledges SRB counseling at that time, the Board finds that a preponderance of the evidence in the record indicates that the applicant was not informed that he would lose his SRB entitlement if he changed ratings. The Coast Guard erred when it failed in its duty to advise the applicant about the SRB regulations and the financial impact of the proposed change in rating.

4. The record further indicates that the Coast Guard erred in implementing its regulations by waiting eight months to end the applicant's SRB payments and to inform him of the end of his entitlement to them. In the interim, the applicant apparently received \$5,748.29 in SRB overpayments, which the Coast Guard is now recouping from his basic pay. If the Coast Guard had processed his change in rating timely, the applicant would not have been led into this debt.

5. The government is not estopped from repudiating the bad advice of its employees. *Utah Power & Light v. United States*, 243 U.S. 389 (1917); *Montilla v. United States*, 457 F.2d 978 (Ct. Cl. 1972); *Goldberg v. Weinberger*, 546 F.2d 477 (2d Cir. 1976), cert. denied sub nom. *Goldberg v. Califano*, 431 U.S. 937 (1977). However, Coast Guard members are entitled to proper SRB counseling under COMDTINST 7220.33, and the Board is authorized to correct injustices in their records. 10 U.S.C. § 1552(a). In the decision of the delegate of the Secretary in BCMR Docket No. 2002-040, the delegate held that the BCMR has the authority to decide on a case-by-case basis whether the Coast Guard has committed an error or injustice when a member reasonably relies upon misinformation by a Coast Guard employee to his or her detriment. The delegate of the Secretary also specifically held that it was reasonable for members to rely on the advice given by yeomen, such as those who worked at the applicant's PERSRU, because a "yeoman's specific job duties include having the knowledge and skills to advise members on routine personnel matters." Decision of the Deputy General Counsel Acting Under Delegated Authority, BCMR Docket No. 2002-040, pp. 1-2 (citing *Lester J. Reschley—Transportation of Household Goods Incident to Transfer—Subsequent Voluntary Transfer* (1993) 72 Comp. Gen. 111).

6. Usually when the Board finds that a counseling error by the Coast Guard has caused an applicant to be denied an SRB, the Board corrects the applicant's record so as to put him or her in the position he or she would have been in had proper and timely SRB counseling been provided in accordance with COMDTINST 7220.33. In this case, had the applicant received proper counseling by the yeomen at his PERSRU and been informed of the full economic impact of a rating change, he might not have changed his rating. However, the applicant has not asked the Board to reverse his rating change, and at this point, reversing it to preserve his entitlement to the full SRB he

was promised in April 1999 would be impractical for both the applicant and the Coast Guard since he has been serving as a TT and has not worked as an ET for the past two years.

7. The record indicates that, contrary to the recommendations of the applicant's command and PERSRU, the Chief of the Compensation Division at HRSIC disapproved the applicant's request for remission of his debt without explanation. In light of the multiple administrative errors committed by the Coast Guard's yeomen, which induced the applicant to lose entitlement to his SRB and led him into debt, all without warning, the Board finds that the decision of the Chief of the Compensation Division at HRSIC not to remit the applicant's debt of \$5,748.29 in SRB overpayments constitutes a significant injustice in the applicant's record.

8. Accordingly, relief should be granted by remitting the applicant's debt of \$5,748.29 in SRB overpayments.

ORDER

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

His record shall be corrected to show that on December 6, 2002, his request for remission of his debt of \$5,748.29 due to SRB overpayments was approved.

The Coast Guard shall pay him any sum he is due as a result of this correction.

