


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2004-026

XXXXXXXXXXXXXXXXXXXXXX

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 November 17, 2003, upon the BCMR's receipt of the applicant's completed application.

This final decision, dated August 19, 2004, 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 A selective reenlistment bonus (SRB)¹ with a multiple of 2.5 instead of the multiple of 2 that he received. He alleged that upon reenlisting for six years on June 30, 2003, he was advised that under ALCOAST 182/03, he would receive an SRB with a multiple of 2 plus an additional .5 for having certain engineering specialty codes. However, after reenlisting he was paid a Zone A SRB with a multiple of 2 under ALCOAST 329/02, which was in effect on the date he reenlisted. The applicant stated that the promise of a 2.5 SRB multiple was a factor in his decision to reenlist.

SUMMARY OF THE RECORD

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." Article 3.C., Coast Guard Personnel Manual.

On September 27, 1999, the applicant enlisted in the Coast Guard for a term of four years. His original four-year obligation was due to expire on September 26, 2003. However, on June 30, 2003, he reenlisted for six years through June 29, 2009, whereupon he was promised a Zone A SRB, with a multiple of 2.5.

APPLICABLE REGULATIONS

Coast Guard Personnel Manual

Article 3.C.3 (Written Agreements) states that "all personnel with 10 years or less active service who reenlist or extend for any period, however brief, shall be counseled on the SRB program."

Article 3.C.6. (Change in Multiple) states the following:

All Agreements to Extend Enlistments signed before the effective date of the change will be at the old multiple level. All agreements made on or after the effective date of the change will be at the new level. Members desiring to extend their enlistments or reenlist early to take advantage of a higher bonus multiple may do so within the provisions of this chapter and or Articles 1.G.14 and 12.B.7 [of this instruction].

Pertinent ALCOASTs

ALCOAST 182/03 was issued on April 24, 2003, and was effective from July 1, 2003, through July 30, 2004. 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 182/03, MK2s were eligible for a Zone A SRB calculated with a multiple of 1.5 plus an additional .5 multiple for having certain engineering competency codes.

ALCOAST 329/02 was issued on July 3, 2002, and was effective from August 5, 2002, through June 30, 2003. It established a multiple of 2 for MK2s and above.

VIEWS OF THE COAST GUARD

On February 2, 2004, the Judge Advocate General (TJAG) of the Coast Guard submitted an advisory opinion stating that the applicant was incorrectly promised a Zone A SRB with a multiple of 2.5 under ALCOAST 182/03 when he reenlisted on June 30, 2003. TJAG stated that ALCOAST 329/02 (not ALCOAST 182/03) was in effect on the date of the applicant's reenlistment and it authorized only a multiple of 2 for MK2s. He further stated that ALCOAST 182/03, which became effective on July 1, 2003 (after the applicant's reenlistment), authorized only a multiple of 1.5 for MK2s plus an additional .5 for having the required engineering competency codes. Therefore, he

argued that the applicant would have received only a multiple of 2 whether he had reenlisted on June 30, 2003 or July 1, 2003.

TJAG stated that the applicant is not entitled to the 2.5 multiple. However, he recommended that the applicant be granted alternative relief, consisting of the options set out below:

First, Applicant could have his record corrected by voiding his reenlistment contract dated 30 June 2003 and subsequently extending his period of service until the BCMR final decision. Applicant could then be discharged if he so desires. Under this option the applicant would be liable to the Coast Guard for his unearned SRB payments. The second option would be to have the Board correct his record to show the actual SRB multiple of "2" to which he was entitled and the correct authority for that multiple.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On March 5, 2004, the Board received the applicant's reply to the views of the Coast Guard. He expressed disappointment that the Coast Guard refused to live up to the terms of the reenlistment contract. He again noted the Coast Guard's error in providing him with erroneous counseling and he requested to be paid the 2.5 SRB multiple.

On May 26, 2004, the applicant called the BCMR and asked the Board to correct his record to show that he reenlisted for three years on June 30, 2003 rather than having reenlisted for six years. Although the Chair asked the applicant to put this request in writing, the Board has received nothing in writing.

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 was paid an SRB multiple of 2 for his June 30, 2003, reenlistment under ALCOAST 329/02, which was in effect at that time. However, when he reenlisted, he was incorrectly advised by Coast Guard personnel that he was entitled to an SRB multiple of 2.5 under ALCOAST 182/03. Even though the applicant was incorrectly promised the higher multiple, under the regulation he is entitled only to the multiple in effect at the time of reenlistment. See Article 3.C.6. of the Personnel Manual.

3. In addition, the evidence showed that the applicant would have received only a multiple of 2 under either ALCOAST 329/02 or 182/03. ALCOAST 329/02 authorized a multiple of 2 and ALCOAST 182/03 authorized a multiple of 1.5 plus an additional .5 for having certain engineering codes. Therefore, only an SRB multiple of 2 was authorized for the applicant.

4. However, the applicant has presented evidence showing that he was improperly promised a Zone A SRB with a multiple of 2.5. When an applicant proves that he has received improper SRB counseling, the Board's policy is not to offend the regulation by granting relief based on the erroneous promise, but to return the applicant to the position he would have been in had he been properly counseled.

6. Therefore, if the applicant had been properly counseled, he would have been told that under ALCOAST 329/02 he was eligible only for a multiple of 2. He would have been further advised that ALCOAST 182/03 did not become effective until July 1, 2003, and it only authorized a multiple of 1.5 plus an additional .5 for certain competency codes, totaling a multiple of 2. The applicant has stated that he relied on the incorrect counseling in making his decision to reenlist for six years on June 30, 2003. Since the applicant has proved that he was misadvised and has requested, in light thereof, that his six-year contract be shortened to three years, the Board will direct this relief. The Board is persuaded that if the applicant had been properly counseled he probably would have reenlisted only for three years, which he was authorized to do. The Board finds that modifying the applicant's six-year reenlistment to three years is a more equitable resolution under the circumstances of this case than the alternative relief recommended by the Coast Guard, particularly since the applicant has not requested to be discharged.

7. Accordingly, the applicant is entitled to limited relief.

[ORDER AND SIGNATURES ON NEXT PAGE]

ORDER

The application of XXXXXXXXX, XXXXXXXXX, USCG, for correction of his military record is granted. His June 30, 2003, reenlistment contract shall be corrected to show that he reenlisted for three years, rather than six years, for which he received a Zone A SRB under ALCOAST 329/02. The Coast Guard shall pay the applicant any sum due as a result of this correction.

