

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-052

XXXXXXXXXXXXXXXXXXXX.

[REDACTED]

FINAL DECISION

[REDACTED]

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case on December 19, 2006, upon receipt of the applicant's completed application.

This final decision, dated August 16, 2007, is approved and 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 alleged that the Coast Guard failed to counsel him regarding his eligibility for a selective reenlistment bonus (SRB)¹ when he reenlisted on September 13, 1997. He alleged that as a result of the error, he missed his opportunity to reenlist for an SRB on his 6th anniversary (December 13, 1999).² Shortly after the applicant submitted his application, an employee of the BCMR contacted him to clarify the relief he was seeking. The applicant stated that he is not seeking a 6th anniversary SRB; rather, he wants to receive an SRB for reenlisting on December 12, 1997. He stated that he only reenlisted on September 13, 1997, because his ship's

¹ SRBs allow the Coast Guard to offer a reenlistment incentive to members who possess highly desired skills at certain points during their career. 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", while those who have more than 6 but less than 10 years of active duty service are in "Zone B". Members may not receive more than one SRB per zone. Articles 1.A. and 1.B. of Enclosure (1) to COMDTINST 7220.33.

² On a member's 6th and 10th active duty anniversary, the member is eligible to reenlist for either a Zone A or a Zone B SRB if one is authorized for his rating and the member has not already received one. The member must be counseled about this opportunity, and the counseling must be documented on a Page 7. Article 3.d.(1), Article 3.d.(2), and Article 2 of Enclosure (1) to COMDTINST 7220.33.

yeoman told him that he needed to reenlist on that date because he was within 90 days of his end of enlistment (EOE).³ He alleged that he would have waited to reenlist on December 12, 1997 (the date on which his enlistment would have expired), if he had known that he might be eligible for an SRB on that date.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on December 13, 1993, with an EOE date of December 12, 1997. On April 30, 1997, he signed a 19-month extension contract to obligate additional service for transfer, and the extension's operative date was December 13, 1997. His record does not contain a copy of the April 30, 1997, extension contract. On September 13, 1997, he canceled the extension contract by reenlisting for six years, but he did not receive an SRB because he was not eligible for one at the time. However, on September 30, 1997, the Coast Guard issued ALDIST 226/97, under which members with the applicant's grade and rate were eligible for a Zone A SRB. His record does not contain a Page 7⁴ documenting SRB counseling upon his September 13, 1997, reenlistment. On June 14, 2003, the applicant reenlisted for six years and received a Zone B SRB.

VIEWS OF THE COAST GUARD

On May 7, 2007, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant alternative relief by voiding the applicant's September 13, 1997, reenlistment contract and reenlisting him for six years on December 12, 1997. The JAG stated that the record supports the applicant's allegation that he was not counseled regarding SRBs when he reenlisted on September 13, 1997, and that he was eligible to cancel the April 30, 1997, extension contract before its operative date (December 13, 1997) and reenlist for an SRB.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 9, 2007, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 30 days. In his response, the applicant stated that he did not object to the Coast Guard's recommendations.

APPLICABLE REGULATIONS

Article 2 of Enclosure (1) to COMDINST 7220.33 requires that all personnel with 14 years or less of active service who reenlist or extend for any period shall be counseled on the SRB program and shall sign a Page 7 outlining the effect that particular action has on their SRB entitlement.

³ A member may reenlist "not earlier than 90 days before the expiration of his or her enlistment, and not later than the day following the date of expiration of enlistment." Personnel Manual, Article 1.G.10.e.

⁴ A Page 7 entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career. It is required any time a member reenlists or extends their reenlistment. Enclosure (3) to COMDINST 7220.33

Article 3.d.6. of Enclosure (1) to COMDINST 7220.33 states that extensions may be canceled prior to their operative dates for the purpose of executing a longer extension or reenlistment. However, such extensions reduce the SRB by the number of months of previously obligated service unless the extension is for a period of two years or less, in which case the SRB is not diminished.

Enclosure (3) to COMDINST 7220.33 provides the language for the Page 7 entry mandated by Article 2 of Enclosure (1) to COMDINST 7220.33:

<p>DATE: I have been provided with a copy of enclosure (5) to Commandant Instruction 7220.33 (series) entitled "SRB Questions and Answers." I have been informed that:</p> <p>My current Selective Reenlistment Bonus (SRB) multiple is _____ and is listed in ALDIST _____, which has been made available for my review.</p> <p>In accordance with article 12-B-4, CG Personnel Manual, I am eligible to reenlist/extend my enlistment for a maximum of _____ years.</p> <p>My SRB will be computed based on _____ months newly obligated service.</p> <p>The following SRB policies were unclear to me, but my SRB counselor provided me with the corresponding answers: (list specifics)</p> <p>_____ (Signature of Member/date)</p> <p>_____ (Signature of Counselor)</p>

ALDIST 135/97 was issued on June 5, 1997, and was in effect from July 1, 1997, through September 30, 1997. Under ALDIST 135/97, FS2s were not eligible for an SRB.

ALDIST 226/97 was issued on September 30, 1997, and was in effect from October 1, 1997, through March 31, 1998. Under ALDIST 226/97, FS2s in Zone A were eligible for an SRB calculated with a multiple of 1.0.

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 section 1552 of title 10 of the United States Code. The application was timely under *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 "tolls the BCMR's limitations period during a servicemember's period of active duty").

2. The applicant alleged that he was not counseled about his eligibility for an SRB when he reenlisted on September 13, 1997. The Board notes that although he was not eligible

for an SRB when he reenlisted on September 13, 1997, Article 2 of Enclosure (1) to COMDINST 7220.33 nonetheless requires “that all personnel with 14 years or less of 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.” There is no Page 7 in the applicant’s record to indicate that he was counseled regarding his SRB eligibility. Thus, he has proven by a preponderance of the evidence that he was not counseled.

3. The Board finds that the Coast Guard committed an error by not counseling the applicant on a Page 7 when he reenlisted on September 13, 1997, as required by Article 2 of Enclosure (1) to COMDINST 7220.33. If the Coast Guard had counseled the applicant as required, the Page 7 counseling would have required him to verify that he had reviewed Enclosure (5) to COMDINST 7220.33, entitled “SRB Questions and Answers,” which includes a thorough discussion of the SRB program.

4. The applicant alleged that he would not have reenlisted on September 13, 1997, if he had known that he was not required to do so until his enlistment expired on July 12, 1999.⁵ The Board finds that if the applicant had been properly counseled on September 13, 1997, he would have had the opportunity to read Enclosure (5) to COMDINST 7220.33 and would have been told that he was not eligible for an SRB under the ALDIST in effect at the time. Moreover, if he had been properly counseled on September 13, 1997, he would have known that since he was not required to reenlist until July 12, 1999, he could wait to reenlist because he might be eligible for an SRB under subsequent ALDISTs. In fact, the applicant became eligible for an SRB with a multiple of 1.0 under ALDIST 226/97, released on September 30, 1997.

5. The Board is persuaded that the applicant would have waited until December 12, 1997, to reenlist for six years, if he had received the counseling required by Article 2 of Enclosure (1) to COMDINST 7220.33. Since the Coast Guard failed to counsel him on a Page 7 and failed to require him to review Enclosure (5) to COMDINST 7220.33, he did not have the opportunity to learn that he would be better off if he waited to reenlist. In light of the fact that the applicant would have been interested in receiving an SRB and the fact that he was willing to make a six-year commitment, the Board is satisfied that if he had been properly counseled on a Page 7, requiring him to review Enclosure (5) to COMDTINST 7220.33, then he likely would have waited to reenlist, and that once eligible for the SRB, he would have reenlisted for six years on December 12, 1997, to maximize his SRB under ALDIST 226/97.

6. If the applicant had reenlisted for six years on December 12, 1997, he would not have been eligible to reenlist again, as he did, on June 14, 2003, because that date is not within three months of his EOE. Therefore, the date of his follow-on reenlistment contract should also be corrected from June 14, 2003, to December 12, 2003.⁶

7. Accordingly, relief should be granted by correcting the date of the applicant’s September 13, 1997, six-year reenlistment to December 12, 1997, so that he will be eligible for

⁵ If the applicant had not reenlisted on September 13, 1997, then his April 30, 1997, extension contract would have become operative on December 13, 1997, with an EOE date of July 12, 1999.

⁶ If the applicant reenlisted for six years on December 12, 1997, his EOE date would have been December 12, 2003.

a Zone A SRB under ALDIST 226/97. In addition, the Coast Guard should correct the date of his June 14, 2003, six-year reenlistment contract to December 12, 2003,⁷ and pay the applicant a Zone B SRB pursuant to ALCOAST 182/03.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

⁷ The applicant is eligible to reenlist on December 12, 2003, because his 10th anniversary is December 13, 2003. Article 3.d.(9) of Enclosure (1) to COMDTINST 7220.33.

ORDER

The application of [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall correct the date of his September 13, 1997, six-year reenlistment contract to December 12, 1997, so that he will be eligible for a Zone A SRB under ALDIST 226/97. In addition, the Coast Guard shall correct the date of his June 14, 2003, six-year reenlistment contract to December 12, 2003, for a Zone B SRB pursuant to ALCOAST 182/03. The Coast Guard shall pay him any amounts due as a result of these corrections.

