

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2007-210

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

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. The Chair docketed the case on September 13, 2007, upon receipt of the applicant's completed application, and assigned it to staff member [REDACTED] to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated May 29, 2008, 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, a first class gunner's mate (GM1/E-6), asked the Board to correct his record to show that he reenlisted for six years on both his sixth and tenth active duty anniversaries to receive Zone A and Zone B selective reenlistment bonuses (SRBs).¹ The applicant alleged that on November 16, 2006, he learned from his unit's yeoman that he had been eligible to receive SRBs on the anniversaries. He alleged that he had never been advised of his eligibility for the SRBs and that if he had been, he would have reenlisted to receive them. The applicant stated that his command failed to timely counsel him about his SRB eligibility on his anniversaries because, although he had served in the Coast Guard from October 31, 1995, to August 30, 2000, when he reenlisted on September 4, 2001, his recruiter failed to complete his enlistment forms properly to show his prior active service. Therefore, his active duty anniversary date was incorrectly calculated in the Coast Guard's database.

The applicant further explained that when he reenlisted on May 26, 2004, he was told that he would receive a Zone A SRB. He received his bonus payments and never knew that he was being paid a Zone B SRB, instead of a Zone A SRB, because his Leave and Earnings Statements (copies of which he submitted) showed the payments as "bonus payments" without identifying

¹ SRBs vary according to the length of each member's active duty service, the length of the period of 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 used to calculate the SRB as announced in an ALCOAST. Coast Guard members who have served less than six years on active duty are in Zone A. Those who have more than six and up to ten years of active duty are in Zone B. Members may receive only one SRB per zone. Personnel Manual, Article 3.C.4.

the zone. He did not learn of the switch until 2006 when his unit's yeoman inquired about his eligibility for a Zone B SRB. She was told that he was not eligible for one because he had already received a Zone B SRB and only one SRB per zone is authorized. Further investigation revealed that in June 2004, the Personnel Services Center had prepared a Statement of Creditable Service and determined that on May 26, 2004, he had more than six years of active duty and was in Zone B. As a result, they paid him a Zone B SRB in lieu of a Zone A SRB without ever advising him of the switch.

The applicant stated that because of the miscalculation of his active duty anniversary in the Coast Guard's database, he was not timely counseled about his eligibility for a Zone A SRB on his sixth anniversary, as required by regulation. If he had been timely counseled, he would have reenlisted on his sixth anniversary and would not have needed to reenlist again until his tenth anniversary, when he was eligible for a Zone B SRB. As his record currently stands, he has missed his opportunity for a Zone A SRB because he was not counseled on his sixth anniversary.

In support of his allegation, the applicant submitted a statement from his current yeoman supporting his claims and calculating his potential Zone A and Zone B SRBs. The statement recommends that the Board correct the applicant's record to show that he reenlisted for six years on his sixth anniversary.

SUMMARY OF THE RECORD

On October 31, 1995, the applicant enlisted on active duty in the Coast Guard. On August 30, 2000, he was released to the Reserve with four years and ten months of active duty.

On September 4, 2001, the applicant reenlisted for four years, through September 3, 2005, as a third class gunner's mate (GM3/E-4). On May 1, 2002, he advanced to GM2/E-5. On June 1, 2003, he advanced to GM1/E-6.

On May 26, 2004, the applicant reenlisted for six years, through May 25, 2010, to receive an SRB. In addition to his reenlistment contract, he and his unit's chief yeoman both signed a form CG-3307 ("Page 7") in which the applicant was advised that in accordance with ALCOAST 182/03, he was eligible for a Zone A SRB calculated with a multiple of 2.5 and based on 56 months of newly obligated service. (There were still 16 months of previously obligated service remaining to run on his September 4, 2001, reenlistment contract, and SRBs are paid only for months of *newly* obligated service.)

On June 18, 2004, the Personnel Services Center prepared a Statement of Creditable Service for the applicant and determined that his active duty base date is November 4, 1996, which is four years and ten months prior to his September 4, 2001, reentry on active duty. Therefore, the applicant's sixth active duty anniversary was November 4, 2002. The applicant's record does not contain a Page 7 documenting SRB counseling on his sixth anniversary.

The applicant's Leave and Earnings Statements show that he received an SRB for his May 26, 2004, reenlistment, but they do not show whether it was a Zone A or Zone B SRB.

On November 1, 2006, the applicant reenlisted for six years. However, he did not receive a Zone B SRB because the Coast Guard determined that the SRB he had received for reenlisting on May 26, 2004, was a Zone B SRB.

VIEWS OF THE COAST GUARD

On February 1, 2008, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion and recommended that the Board grant the relief requested. The JAG stated that the Page 7 in the applicant's record proves that he was told on May 26, 2004, that he was reenlisting for a Zone A SRB even though his sixth anniversary had passed. The JAG stated that under Article 3.C.5.9. of the Personnel Manual, the applicant was eligible for a Zone A SRB on his sixth anniversary and should have been counseled about it. The JAG recommended that the Board reenlist the applicant for four years on his sixth anniversary for a Zone A SRB and void his May 26, 2004, SRB so that he will be eligible for a Zone B SRB for his November 1, 2006, reenlistment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On February 13, 2008, the applicant responded to the JAG's advisory opinion, stating that he had no objection to the JAG's recommendation for relief. The BCMR staff called the applicant to determine whether he still wanted a six-year reenlistment on his sixth anniversary, as stated in his application, or the four-year reenlistment recommended by the JAG. The applicant stated that he was uncertain which would be in his best interest.

APPLICABLE REGULATIONS

Article 1.G.2.A. of the Personnel Manual provides that members who have less than ten years of active service are allowed to reenlist for periods of three, four, five, or six years. Article 3.C.5.9. of the Personnel Manual states that

Commanding 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. Commanding officers shall ensure that such personnel are fully qualified to receive an SRB and advise them that all periods of unserved obligated service will be deducted from their bonus entitlement. Any such discharges shall be under authority of Article 12.B.12., indicating discharge for the purpose of immediate reenlistment at the Convenience of the Government.

Article 3.C.5. states the following:

1. Members 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. If they have previously received a Zone A bonus or no Zone A bonus is designated, they are entitled to a Zone B bonus if one is in effect.
2. Members with exactly 10 years active duty on the date of reenlistment or operative date of extension will be entitled to the Zone B multiple in effect for their rating if they are otherwise eligible. If they have previously received a Zone B bonus or no Zone B bonus is designated, they are entitled to a Zone C bonus if one is in effect.

Article 3.C.11.2. provides that within the three months preceding a member's sixth or tenth anniversary, the command must counsel the member about his eligibility to be reenlisted on the anniversary to receive a Zone A or Zone B SRB and must document that counseling on a Page 7.

ALCOAST 329/02, which was in effect on the applicant's sixth anniversary, November 4, 2002, authorized an SRB multiple of 3 for members in the GM2 rating in Zone A or Zone B.

ALCOAST 182/03, which was in effect when the applicant reenlisted on May 26, 2004, authorized an SRB multiple of 2.5 for members in the GM1 rating in either Zone A or Zone B.

ALCOAST 283/06, which was in effect on the applicant's tenth anniversary, November 4, 2006, authorized an SRB multiple of 2 for members in the GM1 rating in Zone B.

Article 3.C.7.1. of the Personnel Manual provides that "[b]onus payments will be computed by taking the authorized SRB multiple, multiplying it by the member's monthly basic pay and multiplying the result by the number of months of newly obligated service and dividing this figure by 12. Shown as an equation, this would be:

$$\frac{\text{"SRB multiple x monthly basic pay x months newly obligated service}}{12}$$

Article 3.C.7.2. states that "[w]hen computing the additional obligated service for which SRB can be paid, a fraction of a month will be rounded up to the whole month. ... An exception to this rule, however, is members who are discharged no more than 7 days early because their period of active obligated service expires on a Friday, Saturday, Sunday, or holiday. In such cases, members will be considered to have completed the full enlistment for SRB computation." November 4, 2006, was a Saturday.

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

2. The applicant's record does not contain a Page 7 documenting SRB counseling on his sixth anniversary, as required by Article 3.C.11.2. of the Personnel Manual. Therefore, the applicant has proved by a preponderance of the evidence that the Coast Guard erred by failing to counsel him about his eligibility for a Zone A SRB on his sixth anniversary, November 4, 2002. If the applicant had been timely counseled, he could have reenlisted on his sixth anniversary to receive a Zone A SRB calculated with a multiple of 3 under ALCOAST 329/02. Therefore, the

² *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").

Board finds that the applicant's record should be corrected to show that he reenlisted on his sixth anniversary for a Zone A SRB.

3. If the applicant had reenlisted on November 4, 2002, he would not have been authorized to reenlist on May 26, 2004, because members may only reenlist within 90 days of the end of their enlistments or of their sixth or tenth anniversaries or when required to obligate sufficient service to accept orders for transfer, training, etc.³ Therefore, his May 26, 2004, reenlistment contract should be removed from his record as null and void.

4. If the applicant's May 26, 2004, reenlistment contract is voided, the Zone B SRB he received for that contract will be recouped and under ALCOAST 283/06, the applicant will be entitled to a Zone B SRB for the six-year reenlistment contract he signed on November 1, 2006. Although the SRB multiple in effect in May 2004 was larger than the multiple in effect in November 2006, these corrections are in the applicant's interest because the applicant will receive both a Zone A and a Zone B SRB. In addition, the Board notes that although the applicant reenlisted on November 1, 2006, three days prior to his tenth anniversary on November 4, 2006, under Article 3.C.7.2. of the Personnel Manual, those three days should not reduce any Zone B SRB he receives for the reenlistment because his anniversary fell on a Saturday.

5. The Coast Guard recommended that the Board correct the applicant's record to show that he reenlisted for four years on his sixth anniversary, but he could have reenlisted for up to six years, as he requested. A four-year contract would give him a smaller Zone A SRB calculated with a multiple of 3, in accordance with ALCOAST 329/02, and 14 months of newly obligated service, and it would not reduce his Zone B SRB for reenlisting for six years on his tenth anniversary because he would have no previously obligated service on that date. Therefore, his Zone B SRB would be calculated with a multiple of 2, in accordance with ALCOAST 283/06, and 72 months (six full years) of newly obligated service. A six-year contract on his sixth anniversary would give the applicant a Zone A SRB calculated with a multiple of 3 and 38 months of newly obligated service but would mean that he would have two years of previously obligated service remaining on his tenth anniversary. Therefore, his Zone B SRB would be calculated with a multiple of 2 and only 48 months of newly obligated service.

6. Since on his sixth anniversary, the applicant would have had the option of reenlisting for four or six years, the Board finds that he should again have the option of reenlisting for either four or six years on his sixth anniversary. In addition, the Coast Guard should counsel him about the impact of these options so that he may make an informed decision.

7. Accordingly, relief should be granted by correcting the applicant's record to show that he reenlisted for at least four years, but at his discretion, for up to six years on his sixth active duty anniversary for a Zone A SRB under ALCOAST 329/02. In addition, his reenlistment contract dated May 26, 2004, should be removed from his record as null and void, and he should be entitled to the Zone B SRB authorized under ALCOAST 283/06 when he reenlisted for six years on November 1, 2006, instead of the Zone B SRB he received for the May 26, 2004, contract.

³ Personnel Manual, Articles 1.G.10.e., 12.B.7.b., 4.B.6.a., and 3.C.5.9.

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is granted as follows:

After the Coast Guard counsels him about his options under this order, his record shall be corrected to show that he reenlisted on his sixth active duty anniversary for at least four years, but at his discretion for up to six years, to receive a Zone A SRB under ALCOAST 329/02.

His reenlistment contract dated May 26, 2004, shall be removed from his record as null and void, so that he is not entitled to a Zone B SRB for that contract. Instead, his November 1, 2006, reenlistment contract shall be corrected to show that he is entitled to a Zone B SRB under ALCOAST 283/06.

The Coast Guard shall pay him the amount due as a result of these corrections.

