

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2008-036

XXXXXXXXXXXXXXXXXXXX.



FINAL DECISION

This proceeding was conducted according to 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 7, 2007, upon receipt of the applicant's completed application, and subsequently prepared the final decision for the Board as required by 33 CFR § 52.61(c).

This final decision, dated August 14, 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 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 instead of the 0.5 multiple he actually received. He alleged that he was promised the SRB with a multiple of 2 on his on April 9, 2007 enlistment extension agreement, in which he extended his enlistment for 41 months. However, the Coast Guard refused to pay the multiple of 2 and told the applicant he was only entitled to a multiple of 0.5 under the pertinent ALCOAST in effect at that time. In the alternative, the applicant requested that the extension be cancelled.

The applicant alleged that he was not properly counseled at the time he executed the extension agreement because he was told that he could cancel the extension prior to its operative date and reenlist for a longer period and still received an SRB without any of the extended period being deducted for previously obligated service. (Normally, SRBs are granted only for newly obligated service.) The applicant further alleged that he was never counseled on an

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 6 or fewer years of active duty service are in "Zone A." Article 3.C., Coast Guard Personnel Manual.

administrative remarks page (Page 7) about his SRB eligibility, as required by the Personnel Manual.

SUMMARY OF THE RECORD

On July 29, 2002, the applicant enlisted in the Coast Guard for a term of four years. On July 28, 2006, the applicant extended his enlistment for eighteen months with an operative date of July 29, 2006, and an end of enlistment date of January 28, 2008. On April 21, 2007, he extended his enlistment a second time for a period of 41 months “at the request of the individual” with an operative date of January 29, 2008, and an end of enlistment date of June 28, 2011. The April 21, 2007 extension contract shows that the Coast Guard promised the applicant an SRB with a multiple of 2 for the 41 months of service newly obligated under the contract.

VIEWS OF THE COAST GUARD

On April 23, 2008, the Judge Advocate General (JAG) of the Coast Guard recommended that the Board grant relief to the applicant, although the recommended relief was not that requested by the applicant. In this regard, the Coast Guard recommended that the extension contract be corrected to show that the applicant agreed to extend his enlistment for a period of 4 years and 6 months (54 months); that the extension was for the purpose of a PCS transfer; and that the applicant was entitled to receive a SRB with a multiple of 0.5.

The JAG stated that the Coast Guard failed to properly counsel the applicant about his SRB entitlement when he extended his enlistment in 2007. There is no page 7 documenting SRB counseling in the applicant’s military record, as required by the Personnel Manual. The JAG stated that the absence of the required counseling entry supports the applicant’s allegation of error. The JAG further stated the following:

Per Coast Guard Personnel Manual, COMDTINST M1000.6A, Article 3.C.5.11, “Entitlement to SRB multiple and bonus ceiling is established on the actual date of reenlistment or the date the member executes an agreement to extend enlistment by signing Form CG-3301B.” On 09 April 2007, when applicant signed the CG-3301B, ALCOAST 283/06 was in effect and the Zone “A” SRB multiple, listed for an IT2 (E-5) was “0.5”. However, the eligibility acknowledgment statement on the CG-3301B incorrectly contains [a] SRB multiple of “2”. In addition, Article 3.C.5.5.[of the Personnel Manual] states, “Under no circumstances will an individual be permitted to extend their enlistment more than 3 months early for SRB purposes alone. However, a member who must extend for some other reason (i.e., transfer, training, advancement, or tuition assistance) may extend for a period greater than the minimum required for the purpose of gaining entitlement to an SRB.” Applicant, extended his enlistment, not for the reasons listed, but at his request, nine . . . months early for a SRB. Therefore, based on the above discrepancies, the [enlistment extension agreement] is an erroneous contract and is invalid. It is believable that had the applicant been properly counseled on 9 April 2007, he would have extended his enlistment to obligate service for transfer for fifty four-

months, since he had a proper extension on 28 July 2006, for eighteen months, to gain the Zone A SRB entitlement he qualified for.

APPLICANT'S RESPONSE TO THE COAST GUARD'S VIEWS

On May 23, 2008, the Board received the applicant's response to the views of the Coast Guard. The applicant agreed with the Coast Guard that his extension agreement should be corrected to show that the extension was for the purpose of a PCS transfer to a new duty station. However, he disagreed with the Coast Guard's other recommendations for correction of his extension agreement. Contrary to the Coast Guard's other recommendations, the applicant stated that he needed only 4 years of remaining service to accept the PCS orders, which he accomplished by executing the 41-month extension. Therefore he suggested that block 7 of the extension agreement (which should show a total of all extensions) be corrected to reflect his earlier 18 month extension plus the 41-month extension for a total of 4 years and eleven months (currently block 7 only shows the 41-month extension). He further suggested that block 10 of the extension agreement be corrected to reflect his entitlement to an SRB with a multiple of 1 under the ALCOAST 286/08, which became effective on June 15, 2007, and that he executed the extension agreement on January 28, 2008, rather than on April 9, 2007. The applicant argued that the Coast Guard's recommendation for relief is not adequate or just because it requires him to serve beyond the enlistment expiration date to which he agreed in the extension contract, as well as a smaller SRB payment than was promised in the contract.

APPLICABLE REGULATIONS

Article 1.G.14.a.2. of the Personnel Manual provides that a member may extend his reenlistment "[f]or any number of full years and/or full months up to six years to ensure sufficient obligated service [OBLISERV] for these purposes:

- "a. Attend a resident school.
- "b. Participate in the Coast Guard Tuition Program.
- "c. **INCONUS and OUTCONUS** assignments; . . .
- "d. **Advance to E-7, E-8, or E-9**; . . .
- "e. Meet an approved retirement date."

Article 3.C.6. of the Personnel Manual (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].

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. On its face, the extension agreement shows that on April 9, 2007, the applicant and the Coast Guard executed an agreement that required the applicant to extend his enlistment for a period of 41 months, with an operative date of January 29, 2008, for which he would receive a Zone A SRB with a multiple of 2 under ALCOAST 283/06. The problem arose when the extension became operative on January 29, 2008. At that time the SRB payment became due, but the Coast Guard would only pay a multiple of 0.5 because that was the multiple authorized for IT2s under ALCOAST 283/06 on April 9, 2007, when the applicant executed the extension agreement.

3. However, the JAG admitted that the Coast Guard committed an error by not counseling the applicant about his SRB eligibility on a page 7, as required by the Personnel Manual. The JAG also noted that the Coast Guard had committed other errors by marking the incorrect reason for the enlistment extension and by erroneously promising the applicant an SRB multiple of 2, when it should have promised him a SRB multiple of 0.5 under the cited ALCOAST. To remedy these errors, the JAG recommended correcting the extension contract to show a term of 54 months, without any explanation for the increase from the agreed upon 41 months. The Coast Guard also recommended correcting the extension agreement to show "PCS transfer" as the reason for the extension. The Coast Guard further recommended correcting the extension agreement to show that the applicant was promised a SRB multiple of 0.5 rather than the multiple of 2 that was promised in the original agreement.

4. The applicant objected to the Coast Guard's recommendation that his extension contract be corrected to show that he extended his enlistment for 54 months, rather than 41 months, and that he was promised a multiple of 0.5, rather than a multiple of 2. In contrast, the applicant recommended that the extension period remain unchanged at 41 months and that the extension agreement be corrected to show that it was executed on January 28, 2008, rather than April 9, 2007, so that he would be entitled to at least a Zone A SRB with a multiple 1 under ALCOAST 286/08, which was in effect on January 28, 2008, rather than the SRB with a multiple of 0.5 under ALCOAST 283/06.

5. As the applicant and the Coast Guard are in disagreement on how to best remedy this situation, the Board finds the applicant's suggestion for resolving this matter to be the more fair and just solution. In reaching this conclusion, the Board finds the Coast Guard's recommended corrections, except for amending the reason for the extension to show a PCS transfer, would constitute a further injustice to the applicant. It would be unjust to increase the length of enlistment from 41 to 54 months over the applicant's objection and without any explanation from the Coast Guard why such a recommendation was made. It would also constitute an injustice, and probable error, to amend the extension agreement to show that the applicant was promised an SRB multiple of 0.5 in consideration for the 41-month enlistment extension, when clearly he was not.

6. Therefore, the Board should direct that the extension agreement be corrected to show that it was executed on January 27, 2008, and that it became operative on January 29, 2008,

which is the same operative date as the original extension, for a Zone A SRB with a multiple of 1 under ALCOAST 286/08. The 41-month extension period should remain unchanged.

7. In directing this relief, the Board recognizes the Coast Guard's reliance on Article 3.C.5.11. of the Personnel Manual which states that "Entitlement to SRB multiple and bonus ceilings is established on the date of reenlistment or the date the member executes an agreement to extend enlistment by signing [the Enlistment Extension Agreement]." However, under 10 USC § 1552, the BCMR may correct any military record to correct an error or remove an injustice, both of which are present in this case. We do so in this case by correcting the execution date of the extension agreement to a subsequent date that will entitle the applicant to at least one-half of the SRB multiple that he was erroneously promised on April 9, 2007. Moreover, the correction to be ordered will comply with Article 3.C.5.11. of the Personnel Manual because the corrected execution date for the extension will be January 27, 2008, two days before the extension's operative date of January 29, 2008, and well within the period covered by ALCOAST 286/08, which authorized a multiple of 1 for the applicant's rating.

8. The Coast Guard suggested that if the applicant had been properly counseled, he would have been told that ALCOAST 283/06 authorized only an SRB multiple of 0.5 for his rating and that he would have agreed to extend his enlistment for 54 months. However, this view overlooks and diminishes the fact that the Coast Guard did not provide the applicant with correct information about the SRB multiple authorized under the cited ALCOAST and in fact the Coast Guard failed completely to counsel him through the use of a page 7, as required by the Personnel Manual. There is no way to know what the applicant would have done had he been properly counseled, just as there is no way to know if the errors committed by the Coast Guard would have been eliminated if personnel had followed the direction provided for counseling in the Personnel Manual. To be sure, the Coast Guard is charged with the responsibility to provide proper counseling to its members about SRBs and in this case it failed to do so.

9. Accordingly, the applicant is entitled to the relief discussed above and directed below.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

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

His 41-month extension contract dated April 9, 2007, shall be corrected to show that it was executed on January 27, 2008, and became operative on January 29, 2008, for which the applicant is entitled to receive a Zone A SRB calculated with a multiple of 1 under ALCOAST 286/08. The extension agreement shall be further corrected to show that it was executed for the purpose of obligating service for transfer. The Coast Guard is further directed to review block 7 on the extension contract and to correct it to show the sum total of both the earlier 18-month extension and the 41-month extension. The Coast Guard shall pay the applicant the sum to which he is entitled as a result of this correction.

All other requests for relief are denied.

