

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-203

XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

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 after receiving the applicant's completed application on July 22, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated April 22, 2010, 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 record to show that he canceled his three-month extension contract by reenlisting for six years on June 29, 2009, for a Zone B selective reenlistment bonus (SRB) under ALCOAST 286/08. He alleged that when he signed the three-month extension on May 1, 2009, aboard the [REDACTED] he was told by a third class yeoman (YN3) that his SRB multiple was 1.7 and that he had to obligate at least three more months of service to accept his transfer orders to a new unit, the [REDACTED]. He was also told that he could reenlist for a longer period to get an SRB. However, he stated, "Knowing that the SRB message [a new ALCOAST] was set to come out a month from that time, I opted to just extend for three months to wait and see if the SRB multiple might increase." The applicant alleged that the YN3 told him that if he extended his enlistment for just 3 months and the SRB multiple changed under the new ALCOAST, he could cancel the extension by reenlisting to get an SRB after he arrived at his new unit. Therefore, he extended his enlistment for just 3 months.

After he reported to the [REDACTED] on June 3, 2009, a new ALCOAST was issued on June 12, 2009, which eliminated the SRB multiple for his rating as of July 15, 2009. Therefore, he tried to reenlist on June 29, 2009, and a YN1 on the [REDACTED] signed a Page 7 stating that he was eligible to reenlist for an SRB. However, two days later, the paperwork was rejected by the cutter's Servicing Personnel Office when a YNC advised the [REDACTED] that because the applicant already had sufficient obligated service for his transfer and his enlistment as extended

ran through July 17, 2010, he was not eligible to sign another reenlistment or extension contract and so could not receive an SRB.

Therefore, on July 10, 2009, the applicant signed his application to the BCMR. In it, he alleged that he believes the YN3's poor advice was based on a misunderstanding of the SRB rules, one of which says that "[e]xtensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment in accordance with Article 1.G.19.," because that sentence does not explain that there are limitations on when a member is eligible to execute a longer extension or reenlistment contract.

SUMMARY OF THE RECORD

The applicant first enlisted on August 28, 2001, and reenlisted for four years for a Zone A SRB on April 18, 2006. On May 1, 2009, the applicant extended his enlistment for three months to obligate sufficient service to accept transfer orders from the [REDACTED] to the [REDACTED]. His record does not contain a Page 7 documenting the SRB counseling that he received from the YN3 on May 1, 2009. In signing the extension, however, he acknowledged having had a chance to read the SRB rules and fully understanding the effect the extension would have "upon [his] current and future SRB eligibility."

The applicant's record does contain a Page 7 dated June 29, 2009, showing that he attempted to reenlist for an SRB on that date and was initially allowed to do so by a YN1 on the [REDACTED]. However, the reenlistment contract was rejected and is not in his record.

VIEWS OF THE COAST GUARD

On December 10, 2009, the Judge Advocate General (JAG) submitted an advisory opinion in which he recommended that the Board deny relief.

The JAG admitted that there is no Page 7 documenting proper SRB counseling on May 1, 2009, in the applicant's record and that the lack of a Page 7 "aids in supporting the applicant's allegation of error." However, the JAG stated, Article 3.C.5.5. of the Personnel Manual clearly states that "[u]nder no circumstances will an individual be permitted to extend their enlistment more than 3 months early for SRB purposes alone." Therefore, because the applicant already had sufficient obligated service in his record, there was no authority for him to sign a new contract just to get an SRB in June or July 2009.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 7, 2010, the applicant responded to the views of the Coast Guard. He stated that he disagreed with the JAG's analysis of his case. He stated that had he been properly counseled on May 1, 2009, he would have extended his enlistment for a longer period to become entitled to an SRB. "Quite simply," he stated, "if properly counseled, I would have been aware I did not have the option to wait and see if the SRB multiple might increase. With that knowledge, I would have extended for the appropriate period of time to be entitled to the SRB." He noted

that the JAG admitted that the lack of a Page 7 documenting SRB counseling on that date supports his allegation of erroneous counseling.

In support of his allegations, the applicant submitted a copy of an email dated January 5, 2010, from the YNC aboard the [REDACTED], where he signed the three-month extension contract on May 1, 2009, to a YNC aboard the [REDACTED]. The [REDACTED]'s YNC wrote the following in the email:

After review of some paperwork in his dead file, I do believe [the applicant] was incorrectly counseled by [the YN3]. After talking with [the YN3], she claims she has no memory of the conversation between [the applicant] and herself regarding his SRB. The paperwork reveals there was some confusion and inconsistency during the counseling session. I was on leave and unable to over[see] the procedure which means only [the YN3 and the applicant] know what was really said in their conversation. [The YN3] will be counseled to alleviate something like this ever happening again concerning a member's career. In closing, I believe the member should be entitled to receive the SRB after being counseled incorrectly.

APPLICABLE REGULATIONS

Under ALCOAST 286/08, which was in effect from July 16, 2008, to July 15, 2009, the applicant was eligible for a Zone B SRB calculated with a multiple of 1.7. However, on June 12, 2009, ALCOAST 353/09 was issued, which eliminated the SRB multiple for the applicant's rating as of July 16, 2009.

Article 3.C.3. of the Personnel Manual states, "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. They shall sign an Administrative Remarks, CG-3307 (page 7), service record entry outlining the effect that particular action has on their SRB entitlement."

Article 3.C.5. of the Personnel Manual includes the following SRB rules:

5. 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.

6. Extensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment in accordance with Article 1.G.19. Members should be informed that their SRB entitlement will be based only on newly acquired obligated service. For example, a member cancels a 3-year extension to reenlist for 6 years; the member will only be paid SRB entitlement for the additional 3 years of service. An exception to this rule is made for extensions of 2 years or less, or multiple extensions (each of which is 2 years or less in length), required of a member for transfer, training, advancement, or tuition assistance. These extensions may be canceled prior to their operation date for the purpose of immediate reenlistment or longer extension without any loss of SRB entitlement.

Article 3.C.6. of the manual, entitled "Changes in Multiples," states the following:

When a rating multiple is designated for increase, reduction, or termination, an effective date of the change shall be promulgated by ALCOAST at least 30 days in advance. 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.15. and 12.B.7.

Article 1.G.15.a. of the manual states that with the approval of their commanding officers, members may extend their enlistments for various purposes, such as to obligate sufficient service to attend training or to transfer to a new unit. Article 1.G.18.b. states the following:

An individual may not extend his or her enlistment more than three months (for regular active duty) or 30 days (for reservists) before the date the existing enlistment expires. For certain purposes, however, such as assignment to a Service school, duty outside CONUS, other duty requiring additional obligated service, or enabling a reservist to meet the 6-year selected Reserve affiliation requirement for the Montgomery G.I. Bill, an individual may extend his or her enlistment considerably in advance. An individual may not extend more than three months early for SRB bonus purposes only. (Article 1.G.15.).

Under Article 1.G.3. of the Personnel Manual, a commanding officer (CO) may reenlist a member within 24 hours of his end of enlistment (EOE). Under Article 12.B.7., a CO may discharge a member up to three months before his EOE for the purpose of immediately reenlisting the member if operations require it—e.g., the cutter will be at sea on the EOE. A CO may only discharge and reenlist a member more than three months before his EOE on the member's 6th, 10th, and 14th anniversaries when he is eligible for an SRB.

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.
2. The applicant alleged that he was miscounseled by a YN3 aboard the [REDACTED] on May 1, 2009, and so mistakenly thought that if he satisfied his obligated service requirement for transfer by extending his prior enlistment for just three months, he could sign a longer contract to get an SRB just two or three months later after learning from the new ALCOAST what new SRB multiple would go into effect on July 16, 2009. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.¹ Absent evidence to the contrary, the Board presumes that Coast Guard officials and other Government employees have carried out their duties "correctly, lawfully, and in good faith."² For the reasons stated below, the Board finds that the applicant has proved by a preponderance of the evidence that he was miscounseled about the SRB rules and is entitled to relief.

¹ 33 C.F.R. § 52.24(b); see Docket No. 2000-194, at 35-40 (DOT BCMR, Apr. 25, 2002, approved by the Deputy General Counsel, May 29, 2002) (rejecting the "clear and convincing" evidence standard recommended by the Coast Guard and adopting the "preponderance of the evidence" standard for all cases prior to the promulgation of the latter standard in 2003 in 33 C.F.R. § 52.24(b)).

² *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

3. The JAG argued that relief should be denied because Article 3.C.5.5. clearly states, “Under no circumstances will an individual be permitted to extend their enlistment more than 3 months early for SRB purposes alone,” and after obligating sufficient service to accept his transfer orders on May 1, 2009, the applicant’s only apparent reason for signing another contract in June or July 2009 would have been to gain an SRB. The applicant argued that the SRB regulations are confusing because Article 3.C.5.6. of the Personnel Manual states that “[e]xtensions previously executed by members may be canceled prior to their operative date for the purpose of executing a longer extension or reenlistment,” and does not note any other requirements or restrictions on executing a longer extension or reenlistment contract.

4. The Board agrees with the JAG that the rule under Article 3.C.5.5. is clear. Members may not normally sign extension or reenlistment contracts just to get an SRB. Under the Personnel Manual, members may reenlist or extend their enlistments only when their enlistments are ending; upon their 6th, 10th, and 14th anniversaries for an SRB; or when they must obligate additional service for a particular purpose, such as accepting orders to transfer or attend training.³ However, this finding does not end the Board’s inquiry because even though the rule is clear, the applicant may have been miscounseled about the rule by the YN3. Coast Guard members should be able to rely on their yeomen for accurate counseling about the SRB rules.

5. The fact that the applicant applied to the Board very quickly after his attempt to reenlist was denied and only two months after he signed the three-month extension contract is evidence that his desire to reenlist for the SRB is not a matter of retrospective reconsideration—i.e., this is not a situation in which the applicant was dissatisfied with his career on May 1, 2009, and so refused to reenlist for an SRB but, after several months, became more satisfied and regretted that he did not reenlist for an SRB on May 1. The Board is persuaded that the applicant wanted to reenlist or extend his service for an SRB on May 1, 2009, but believed that he could wait to see what his SRB multiple would be under the new SRB ALCOAST—which is always issued at least 30 days before the new multiples go into effect⁴—without losing his eligibility to reenlist before ALCOAST 286/08 expired. Therefore, he extended his enlistment for just three months.

6. The Board is persuaded that the applicant was confused about the rules. Otherwise, he would have reenlisted or extended his enlistment for six years on May 1, 2009, to get the SRB instead of signing a three-month extension contract and trying to reenlist in June. The question is whether he was actively miscounseled by the YN3, as he alleges, or whether he himself simply misunderstood. The YN3 has not admitted that she miscounseled the applicant. However, there is no Page 7 dated May 1, 2009, documenting SRB counseling in the applicant’s record, which indicates that the YN3 did not do her job correctly because Page 7s documenting SRB counseling must be prepared every time a member signs a reenlistment or extension contract.⁵ In addition, the YNC of the [REDACTED] has stated that, after reviewing the YN3’s paperwork, she believes that the YN3 miscounseled the applicant.

³ Personnel Manual, Articles 1.G.3., 1.G.15., 1.G.18., 3.C.5.9., and 12.B.7.

⁴ Personnel Manual, Article 3.C.6.

⁵ Personnel Manual, Article 3.C.3.

7. Therefore, the applicant has proved by a preponderance of the evidence that he was miscounseled on May 1, 2009, about the effect his three-month extension would have on his future SRB eligibility and that, if he had been accurately counseled, he would have reenlisted or extended his enlistment for six years instead of extending his enlistment for three months. Because the applicant stated in his response to the advisory opinion that he would have extended his enlistment for a longer period to get the SRB, because the extension contract would give the applicant more months of newly obligated service in the calculation of the SRB, and because the JAG recommended an extension instead of a reenlistment as alternative relief in a very similar case, BCMR Docket No. 2009-220, the Board finds that the applicant's record should be corrected to show that on May 1, 2009, he extended his enlistment for six years instead of just three months.

8. Accordingly, relief should be granted by correcting the term of the applicant's May 1, 2009, extension contract from three months to six years so that he will be entitled to a Zone B SRB under ALCOAST 286/08.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxx, USCG, for correction of his military record is granted. The Coast Guard shall correct his record to show that he extended his enlistment for six years, instead of just three months, on May 1, 2009, for a Zone B SRB under ALCOAST 286/08. The Coast Guard shall remove from his record as null and void any other reenlistment or extension contract he may have signed since that date. The Coast Guard shall pay him any amount due as a result of these corrections.

