

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2009-262

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

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 September 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 July 8, 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 order the Coast Guard to pay him a 0.5 selective reenlistment bonus (SRB) multiple "kicker" in addition to the 2.0 SRB multiple he received for signing a 5-year reenlistment contract that is dated June 13, 2003, when ALCOAST 329/02¹ was in effect, but which, he alleged, he actually signed on July 5, 2003, when ALCOAST 182/03² was in effect.

The applicant alleged that on July 5, 2003, he was on leave and in the process of transferring from Station XXXXXX to Station XXXXXXXX. He alleged that he was called into the office of Station XXXXXX unit on July 5, 2003, and coerced into signing a reenlistment contract backdated to June 13, 2003, to obligate service required by the transfer orders. When he saw the contract, he noticed that he was being offered an SRB multiple of 2.0 under ALCOAST 329/02, whereas on April 29, 2003, he had been advised on a Page 7 that he was eligible for an SRB multiple of 2.5 under ALCOAST 182/03. When he advised his command that the SRB notation was incorrect, he "was told 'The contract was correct'" and that he needed to sign the contract because of his transfer orders. The applicant alleged that when he asked why the contract was dated June 13, 2003, he was told that June 13, 2003, was just the date the contract had been prepared and that the date did not matter.

¹ Under ALCOAST 329/02, which was canceled on July 1, 2003, BM2s were eligible for a Zone B SRB multiple of 2.0 but would receive a 0.5 "kicker" if they held the SJ, SK, or SM surfman competency codes.

² Under ALCOAST 182/03, which went into effect on July 1, 2003, BM2s were eligible for a Zone B multiple of 2.0 but would receive a 0.5 kicker if they held any of 21 different coxswain competency codes and a 1.5 kicker if they held the SJ, SK, SM, or SU competency codes.

The applicant alleged that he “signed the contract with the correct information” but refused to initial block 8c in section B, which stated, “member is eligible for a Zone B SRB at a multiple of 2 based on 58 months of newly obligated service [in accordance with] ALCOAST 329/02,” or block 13a, which is for certifying that he had not been promised anything not written on the contract. In support of his allegations, he submitted a copy of the contract with a yellow sticky note attached to it with the statement, “mbr didn’t initial due to contract being incorrect.” The applicant alleged that he signed the contract under the impression that the erroneous SRB multiple would be fixed once it was “in the system.”

The applicant alleged that after he reported to his new unit, Station Xxxxxxxx, he complained about not receiving the extra 0.5 SRB kicker but was told that because the contract was dated June 13, 2003, he was only entitled to the SRB multiple of 2.0 under ALCOAST 329/02. The applicant alleged that the contract is fraudulent because of the following errors:

- The Page 7 dated April 29, 2003, shows he was promised an SRB multiple of 2.5 under ALCOAST 182/03.
- The contract is backdated to June 13, 2003, whereas he signed it on July 5, 2003.
- The contract is datestamped as approved “JUN 1 2003.”
- The applicant never initialed blocks 8c and 13a on the contract.

SUMMARY OF THE RECORD

In April 2003, the applicant was a BM2 with more than eight years of active duty. After receiving transfer orders to Station Xxxxxxxx on June 1, 2003, he was advised on a Page 7 dated April 29, 2003, that he was eligible to reenlist for a Zone B SRB calculated with a multiple of 2.5 under ALCOAST 182/03, which had been issued on April 24, 2003, but did not go into effect until July 1, 2003. Because the applicant’s prior enlistment, as extended, was ending on August 13, 2003, he needed to obligate additional service to accept the transfer orders. The Coast Guard’s database shows that he actually reported to Station Xxxxxxxx on July 1, 2003.

The reenlistment contract in the applicant’s official record is a photocopy of the contract with the same sticky note that the applicant submitted to the Board. It shows that it was effective as of June 13, 2003, and both the applicant’s and the enlisting officer’s signatures on page 2 bear handwritten dates of June 13, 2003. Block 8 in section B on the first page states, “member is eligible for a Zone B SRB at a multiple of 2 based on 58 months of newly obligated service [in accordance with] ALCOAST 329/02.” However, the line for the applicant’s initials is empty. Likewise, his initials are missing from block 13a on page 2, which states in part, “I fully understand that only those agreements in section B of this document or recorded on the attached annex(es) will be honored. Any other promises or guarantees made to me by anyone are written below.” In addition, on page 1, a datestamp indicates that the contract was approved on “JUN 1 2003,” and a handwritten notation states, “original sent out 4/15/03.”

VIEWS OF THE COAST GUARD

On February 19, 2003, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief.

The JAG stated that in 2003, the applicant did not have one of the critical surfman competency codes needed to receive the 0.5 SRB kicker under ALCOAST 329/02. Therefore, on June 13, 2003, he was entitled only to the 2.0 Zone B multiple for BM2s under ALCOAST 329/02.

The JAG stated that the promise of the 2.0 SRB multiple under ALCOAST 329/02 on the reenlistment contract shows that the erroneous counseling that the applicant received on the Page 7 dated April 29, 2003, was corrected when he reenlisted on June 13, 2003. The JAG also alleged that the applicant's claim that he actually signed the contract on July 5, 2003, "is impossible because the contract that was dated 13 June 2003 was processed in Topeka, KS on 18 June 2003." In support of this allegation, the JAG submitted a database printout for the contract, which bears a transmission date of June 18, 2003.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

In response to the JAG's advisory opinion, the applicant alleged that at some point while he was on leave in late June and early July 2003 he was called back to his old unit to complete the reenlistment required by his transfer orders. However, the contract that had been prepared for him to sign showed an SRB multiple of 2.0, contrary to the 2.5 multiple shown on his Page 7. The applicant alleged that his Executive Petty Officer (XPO) and Commanding Officer (CO) reviewed everything and concluded that he was eligible for a multiple of 2.5 under ALCOAST 182/03. Therefore, his CO crossed out the multiple of 2.0 and the ALCOAST number on the contract and wrote in "2.5" and "182/03" instead. The applicant alleged that both the CO and XPO wholeheartedly believed that the 2.0 multiple on the contract was a mistake.

The applicant alleged that the CO told him that if he had reservations about the handwritten corrections to the multiple and ALCOAST number, "it would be fine if I opted out of the initialing." Therefore, the applicant did not initial block 8c and 13a but "signed the document under the pretext that the corrections would be made and submitted prior to my reporting date." He stated that his prior statement that he had been coerced into signing the contract was "a bit strong for the situation."

The applicant further alleged that "[t]he issue of the back dating was that any corrections made to my documents would be completed and back dated prior to my reporting to [his new unit]." In addition, he alleged that when he reviewed his official record, he was surprised to see that the first page of the contract entered in his record is the one to which he had objected and does not include the handwritten corrections made by his CO.

The applicant alleged that because his orders stated that he could report to his new unit up to 30 days after June 1, 2003, if his command had known that he would not be eligible for a 2.5 SRB multiple until July 1, 2003, they would have delayed his report date and he could have signed his reenlistment contract two weeks later when ALCOAST 182/03 was in effect.

In support of his allegations, the applicant submitted a copy of the contract showing the handwritten corrections that he alleged were made by his CO: In block 8c the SRB multiple "2" is crossed out and "2.5" is handwritten above it, and the ALCOAST number, 329/02, is crossed

out and “182/03” is handwritten below it. However, there are no initials in block 8c or 13a. This copy of the contract does not include the datestamp indicating that the contract was approved on “JUN 1 2003,” or the handwritten notation stating, “original sent out 4/15/03.”

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 submission, and applicable law:

1. The Board has jurisdiction over this matter pursuant to 10 U.S.C. § 1552. The application is timely because the applicant has served on continuous active duty since 2003.³

2. The applicant alleged on his original application that he actually reenlisted on July 5, 2003, but was coerced to sign a reenlistment contract backdated to June 13, 2003. He alleged that he inquired about the erroneous date and was told it would not matter. Because of the backdating, he alleged, he was denied the 0.5 SRB kicker authorized under ALCOAST 182/03 for the reenlistment and received only the regular SRB multiple of 2.0 under ALCOAST 329/02.

3. The JAG, however, pointed out that the contract was transmitted to the pay center in Topeka, Kansas, on June 18, 2003. After receiving the JAG's advisory opinion, the applicant did not explain how the database could show that the contract was transmitted on June 18, 2003, if he did not sign it until July 5, 2003. Instead, he said, “The issue of the back dating was that any corrections made to my documents would be completed and back dated prior to my reporting to [his new unit].” Therefore, it appears that the applicant's allegations about being coerced into signing a backdated document on July 5, 2003, are erroneous.

4. The applicant alleged in his original application that when he first saw the reenlistment contract, he advised his command that the SRB multiple was incorrect, but he “was told ‘The contract was correct.’” Therefore, he signed the contract but refused to initial blocks 8c and 13a because he thought the SRB multiple was erroneous. However, in his response to the advisory opinion, the applicant stated that when he advised his command that the SRB multiple was incorrect, the CO and XPO reviewed the documents, decided that the SRB notation on the contract was wrong, and made handwritten corrections to the SRB multiple and the ALCOAST number.

5. The applicant alleged that he agreed to sign the contract only after his CO made handwritten corrections to the SRB multiple and the ALCOAST number in block 8, and that the contract that was entered in his record is fraudulent because it does not bear the CO's corrections. The copy of the contract scanned into his official record shows that a note was attached to it at the time it was scanned saying, “mbr didn't initial, due to contract being incorrect,” which supports his second allegation about what the command said about the contract. The applicant submitted the original of this sticky note with his application. The Board also notes, however, that

³ *Detweiler v. Pena*, 38 F.3d 591, 598 (D.C. Cir. 1994) (holding that under § 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, the BCMR's three-year limitations period under 10 U.S.C. § 1552(b) is tolled during a member's active duty service).

like the contract in his record, the copy of the contract with handwritten corrections that the applicant submitted does not bear his initials in blocks 8c or 13a, either.

6. The applicant's official records support the JAG's theory that the applicant was miscounseled about his SRB multiple on April 29, 2003, but that the counseling error was corrected when he was given the reenlistment contract on June 13, 2003, and advised that the notation of the 2.0 SRB multiple under ALCOAST 293/02 in block 8c of the contract was correct. The applicant's refusal to initial blocks 8c and 13a indicates that he disagreed with the determination of his SRB multiple. However, the sticky note that was scanned into his record with the contract suggests that the command may have agreed that notation of the 2.0 SRB multiple was incorrect.

7. The applicant alleged that if his command had known that he would not be eligible for the 0.5 SRB kicker until July 1, 2003, they would have delayed his reporting date of June 1, 2003, by 30 days so that he could reenlist before reporting to his unit but after ALCOAST 182/03 went into effect. However, the database shows that the applicant's reporting date *was* delayed by 30 days, to July 1, 2003. Therefore, ALCOAST 182/03 went into effect on the last permissible reporting date under his transfer orders, but Article 4.B.6.a. of the Personnel Manual requires that a member have sufficient obligated service to execute a transfer before reporting to a new unit.

8. As shown in findings 2, 3, and 4, there are too many inconsistencies in the applicant's allegations for the Board to be confident that the reenlistment contract dated June 13, 2003, with the promise of a 2.0 multiple under ALCOAST 329/02 is fraudulent—i.e., that someone, without his consent, substituted a copy of page one of the contract without any handwritten corrections for a page one with handwritten corrections made by his CO. Although the SRB counseling he received on April 29, 2003, was erroneous, the reenlistment contract in his record shows that he was accurately advised when he signed it that he was only eligible for the SRB multiple of 2.0 under ALCOAST 329/02.

9. Accordingly, the applicant's request should be denied. However, the Board notes that he can apply for reconsideration from this Board by submitting an affidavit from the CO or XPO of Station XXXXXX about exactly what happened when he was shown and asked to sign the reenlistment contract in June 2003.

[ORDER AND SIGNATURES APPEAR ON NEXT PAGE]

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxx, USCG, for correction of his military record is denied.

