


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2014-061

, BMC (Retired)

FINAL DECISION

This proceeding was conducted under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the application upon receipt of the applicant's completed application on February 25, 2014, and assigned it to staff member  to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated October 3, 2014, 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 chief boatswain's mate (BMC) who received a disability retirement on April 9, 2014, asked the Board to correct his record to show that he is eligible to receive the final installment of the selective reenlistment bonus (SRB) that he received for signing a six-year reenlistment contract on November 30, 2007. He stated that he never received the final SRB payment because he was not in compliance with Coast Guard weight standards at the time of his retirement. He argued that he should receive it because he "completed the entire period of service for which the bonus was due." The applicant also argued that although he agrees that the SRB was properly suspended because of his noncompliance with the weight standards, his situation is unique because he served all six years of his reenlistment and the Government agreed to pay him the entire bonus if he served the entire six years.

SUMMARY OF THE APPLICANT'S RECORD

The applicant enlisted in the Coast Guard on October 31, 2000, and signed a six-year reenlistment contract on November 30, 2007, to receive an SRB. He received an initial bonus installment of \$16,988.40 and was scheduled to receive five yearly installments of \$3,397.68 on November 30 for the years 2008 thru 2012. He was placed on the weight probation on October 23, 2012, after he was found to be 57 pounds overweight. A doctor signed a Command Medical Referral Form indicating that the applicant had no underlying medical conditions causing his obesity or making fitness activities detrimental to his health, that it was safe for him to lose the excess weight and to comply with the Coast Guard's weight standards, and that he had been

referred for nutritional counseling. The applicant completed four more weigh-ins with the following results: November 13, 2012 – 65 pounds overweight; December 14, 2012 – 64 pounds overweight; March 4, 2013 – 62 pounds overweight; and March 25, 2013 – 72 pounds overweight.

The applicant's final SRB installment scheduled for November 30, 2012, was suspended on October 24, 2012, because he had been placed on the weight probation. On April 11, 2013, he was informed that the Coast Guard was going to initiate his discharge due to his failure to comply with the Coast Guard's maximum allowable weight and/or body fat standards. He objected to the discharge and submitted a statement in which he acknowledged his failure to meet the weight standards but argued that he should be processed for separation under the physical disability evaluation system (PDES). The applicant applied for a Medical Evaluation Board (MEB) and the Coast Guard temporarily suspended the administrative separation pending the outcome of the MEB. The applicant was placed on the Temporary Disability Retired List on April 8, 2014, and the narrative reason for separation on his DD 214 states Disability, Temporary. He did not receive the final installment of the SRB.

VIEWS OF THE COAST GUARD

On May 9, 2014, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG argued that the applicant is not eligible for the final SRB payment because he was not in compliance with Coast Guard weight standards on the day of his temporary disability retirement. The JAG stated that Article 3 of the Personnel Manual, COMDTINST M1000.6A, which was in effect when the applicant reenlisted for the SRB, suspends an unpaid SRB installment when the member is not in compliance with weight standards. The JAG added that the bonus remains suspended until the member is compliant with weight standards, and in this case the applicant never achieved compliance with weight standards so there is no authority to make the final SRB payment.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On May 12, 2014, the Chair sent the applicant a copy of the views of the Coast Guard and invited him to submit a response within thirty days. He responded on May 30, 2014, arguing that he feels that he is entitled to the final payment because he served all six years of the enlistment for which the SRB was to be paid. He asserted that he signed a six-year reenlistment contract to receive the SRB and nowhere on the contract does it state that payments would be withheld if he failed to maintain weight standards. The applicant stated that he is suffering from serious physical and mental disabilities but did not identify them. He alleged that at the time of his retirement in April 2014, he was taking Gabapentin and Paxil¹ "both of which contribute to weight gain."

APPLICABLE LAW AND POLICY

Article 3.C.10. of the Coast Guard Personnel Manual in effect in 2007, states that members who fail to comply with the Maximum Allowable Weight Standards for Coast Guard Mili-

¹ Gabapentin is an anticonvulsant and Paxil is an antidepressant. Porter, Robert S., *et al.*, eds., *The Merck Manual*, 19th ed. (Merck, 2011), pp. 1546, 1696.

tary Personnel, COMDTINST M1020.8 (series), shall have SRB installments suspended until the member is in compliance with weight standards.

Article 1.B.10 of COMDTINST 7220.2, the current Coast Guard Military Bonus Programs Manual, mirrors the language of Article 3.C.10, stating that members who fail to comply with the Coast Guard Weight and Body Fat Standards Program Manual, COMDTINST M1020.8 (series), shall have their SRB installments suspended until they are in compliance with weight standards.

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 is timely.

2. The applicant asked the Board to correct his record to show that he is eligible to receive the final installment payment of the SRB that he was promised for signing a six-year reenlistment contract on November 30, 2007. 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.² 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."³

3. The Board finds that the applicant is not eligible to receive the final SRB payment originally scheduled to be paid on November 30, 2012, because he was not in compliance with Coast Guard weight standards on that date and did not come into compliance before he retired. Article 3.C.10. of the Personnel Manual in effect in 2007 and Article 1.B.10 of the current Coast Guard Military Bonus Programs Manual state that members who fail to comply with weight standards shall have their SRB installments suspended until they are in compliance. The record shows that the applicant was placed on weight probation on October 23, 2012, after a doctor found that it was safe for him to exercise and lose weight, and that he had no underlying medical condition preventing him from doing so. The applicant was found to be 65 pounds overweight at the weigh-in on November 13, 2012, just seventeen days before he was scheduled to receive the final SRB installment payment. Therefore, the Board finds that his SRB payment was properly suspended.

4. The Board also finds that the applicant has not shown that the Coast Guard committed error or injustice by refusing to pay him the final installment of his SRB before his separation on April 8, 2014, because he apparently failed to achieve compliance with the weight standards during that time. The record shows that he was 72 pounds overweight at the weigh-in

² 33 C.F.R. § 52.24(b).

³ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

on March 25, 2013, and there is nothing in the record to show that the applicant met the weight or body fat standards before April 8, 2014, the date of his temporary disability retirement. Moreover, the Board notes that the applicant does not allege that he was in compliance with weight standards between November 30, 2012, and his separation date. Although he alleged that at the time of his separation, he was taking two medications that can contribute to weight gain, he did not submit sufficient evidence to overcome the presumption of regularity accorded his doctor's determination, when he was placed on weight probation, that he could safely lose the excess weight through diet and exercise and did not have an underlying medical condition causing the weight gain.

5. Accordingly, relief should be denied because the applicant has not proven by a preponderance of the evidence that the Coast Guard's refusal to pay him the final installment on his SRB was erroneous or unjust.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former BMC [REDACTED] USCG, for correction of his military record is denied.

October 3, 2014

