

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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2016-009



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 application after receiving the applicant's completed application on October 21, 2015, 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 August 26, 2016, is 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, currently an Operations Specialist Third Class (OS3) asked the Board to correct his record by cancelling the five-year reenlistment contract that he signed on April 1, 2015. He stated that he signed the reenlistment contract after receiving transfer orders but alleged that the orders contained an erroneous obligated service requirement. He stated that if the orders had been correct then he could have signed an extension contract instead of a reenlistment contract and would have been eligible to reenlist at a later date to receive a Selected Reenlistment Bonus (SRB).¹

¹ SRBs allow the Coast Guard to offer a reenlistment incentive to members who possess highly desired skills at certain points during their career. 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 at least 21 months but no more than 6 years of active duty service are in "Zone A", while those who have more than 6 but less than 10 years of active duty service are in "Zone B". Members may not receive more than one SRB per zone. Chapter 1.B.1. of COMDTINST M7220.2, Military Bonus Programs.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 26, 2009, for a term of four years, through October 25, 2013. He subsequently signed two extension contracts for a total of two years, seven months, and so his end of enlistment (EOE) was adjusted to June 25, 2015.

On February 18, 2015, the Coast Guard issued orders for the applicant to report to the Coast Guard Cutter (CGC) Mellon no later than July 28, 2015. The first page of the transfer orders state that his estimated reporting date to the cutter would be July 28, 2015, and that his rotation date from the cutter would be July 1, 2018 (three years). However, the third page states that the obligated service requirement for accepting the transfer orders is four years from the date he reports to his new unit.

On April 1, 2015, the applicant signed a five-year reenlistment contract so that he would have the four years of obligated service required by the orders to accept the transfer. Although he signed a five-year reenlistment contract to obligate service pursuant to the orders, the orders were later corrected by the OS Assignment Officer to reflect a three-year tour instead of a four-year tour, but the correction was not made until after the applicant signed the five-year reenlistment contract. There is no Page 7 to document SRB counseling when the applicant signed the reenlistment contract, but the contract includes the statement that he is not eligible to receive an SRB pursuant to ALCOAST 162/14.

APPLICABLE REGULATIONS

Chapter 1.A.4.b. of COMDTINST M1000.8A, the Military Assignments and Authorized Absences manual, states that the tour length for an enlisted member aboard the CGC Mellon is three years.

Chapter 1.B.6.b. of the Military Assignments and Authorized Absences manual states that members with fewer than six years of active duty must reenlist or extend to have enough obligated service for a full tour upon reporting to a new unit.

Chapter 1.B.5.f. of COMDTINST M7220.2, the Military Bonus Programs manual, states that extensions may be canceled prior to their operative dates for the purpose of extending or reenlisting for a longer term to earn an SRB. However, such extensions reduce the SRB by the number of months of previously obligated service unless the extension is for a period of two years or less, in which case the SRB is not diminished. It also states that members should be informed that their "SRB entitlement will be based only on newly acquired obligated service."

Chapter 1.B.6.b. of the Military Bonus Programs manual requires that all personnel with ten years or less of active service who reenlist or extend for any period shall be counseled on the SRB program and shall sign a Page 7 outlining the effect that particular action has on their SRB entitlement.

On May 6, 2015, the Coast Guard issued ALCOAST 193/15, announcing bonus programs for the Food Service (FS) and OS rates. The ALCOAST states that a bonus of \$20,000

would be authorized for OS members who reenlist or extend their enlistment for an additional six years. It also noted that the member must have more than 17 months and less than six years of time in service, with a service obligation that expires prior to October 1, 2018.

VIEWS OF THE COAST GUARD

On March 1, 2016, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board grant relief. The JAG adopted the findings and recommendation provided in a memorandum submitted by the Personnel Service Center (PSC).

PSC argued that relief should be granted because the transfer orders that were issued on February 18, 2015, contain an erroneous obligated service requirement which caused the applicant to reenlist for five years and miss the SRB that he would have qualified for if he had extended for a shorter term and then cancelled that extension contract to reenlist for an SRB after ALCOAST 193/15 was issued. PSC noted that the applicant did not sign a four-year extension contract when he received his transfer orders because he had already signed extension contracts totaling two years and seven months, and with an erroneous four-year obligated service requirement he could not sign another four-year extension because article 1.B.1.c. of the Enlisted Accessions, Evaluations, and Advancements Manual, states that the total of all extensions may not exceed six years.

PSC stated that the applicant missed his opportunity for an SRB because he was miscounseled about the obligated service requirement for his transfer and because his EOE date after signing the five-year reenlistment contract was March 31, 2020, and the ALCOAST states that the member must have an EOE date prior to October 1, 2018, to be eligible for an SRB. PSC argued that if the transfer orders had contained the correct three-year obligated service requirement then the applicant could have executed a three-year extension contract and then cancelled that contract following the release of ALCOAST 193/15 and reenlisted for the SRB.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On March 10, 2016, the BCMR sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The BCMR did not receive a response.

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 concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely.

2. The applicant alleged that he missed the opportunity to receive an SRB because his transfer orders contained an erroneous obligated service requirement. When considering allegations of error and injustice, the Board begins its analysis 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 record shows that the applicant’s February 18, 2015, transfer orders contain conflicting information about his obligated service requirement, and this in turn caused him to obligate more service than necessary. Page 1 of the orders state that his rotation date from the CGC Mellon would be July 1, 2018 (three years from the reporting date), but page three of the orders clearly states that the assignment requires a minimum of four years obligated service. The four-year obligated service requirement is wrong, because Chapter 1.A.4.b. of COMDTINST M1000.8A, the Military Assignments and Authorized Absences Manual, states that the tour length for an enlisted member aboard the CGC Mellon is three years. The JAG agreed that the four-year requirement is erroneous. Accordingly, the applicant has proven by a preponderance of the evidence that his original transfer orders contain erroneous information about the amount of service that he needed to obligate to accept the transfer to the CGC Mellon.

4. The Board finds that if the applicant had received transfer orders with an accurate obligated service requirement then he would have been required to obligate only 37 months to accept the orders. Chapter 1.B.6.b. of the Military Assignments and Authorized Absences manual states that members with fewer than six years of active duty must reenlist or extend to have enough obligated service for a full tour upon reporting to a new unit. The record shows that the applicant’s EOE date was June 25, 2015, when the Coast Guard issued the transfer orders, and if he had to have at least three years remaining on his enlistment when he reported to the CGC Mellon on July 28, 2105, then he would have needed to sign a 37-month extension contract on April 1, 2015, to obligate enough service to accept the orders.

5. The Board further finds that if the applicant had signed a 37-month extension contract on April 1, 2015, instead of a five-year reenlistment contract, then his new EOE would have been July 25, 2018. Pursuant to Article 1.B.5.f. of the Military Bonus Programs manual, he could have canceled that extension before its operative date to sign a six-year reenlistment contract to receive the Zone “A” SRB in accordance with ALCOAST 193/15. The Board notes in this regard that when ALCOAST 193/15 was issued on May 6, 2015, the applicant had less than six years of service, and his EOE would have been prior to October 1, 2018, as required by the ALCOAST.

6. The applicant has proven by a preponderance of the evidence that his transfer orders were erroneous and required him to obligate a longer period of service than regulations required to accept the transfer. He has further shown that this error unjustly caused him not to be eligible for the SRB authorized in ALCOAST 193/15 because if he had extended his enlistment for 37 months to accept the orders, instead of reenlisting, he would have been entitled to cancel the extension to receive an SRB. Because he had been erroneously required to sign the

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).

reenlistment contract, he could not legally cancel the contract to reenlist for an SRB when ALCOAST 193/15 was issued.

7. Under 10 U.S.C. § 1552, when an applicant shows that he has been prejudiced by an error in his record, the applicant is entitled to “placement in the same position he would have been had no error been made.”⁴ Accordingly, the applicant’s record should be corrected by replacing his April 1, 2015, five-year reenlistment contract with a 37-month extension contract. In addition, his record should be corrected to show that he cancelled the 37-month extension contract on June 24, 2015, by signing a six-year reenlistment contract to receive a Zone “A” SRB in accordance with ALCOAST 193/15. The Board notes that pursuant to Chapter 1.B.5.f. of COMDTINST M7220.2, the SRB might be reduced by the months of service previously obligated under the 37-month extension contract.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ *Denton v. United States*, 204 Ct. Cl. 188, 199-200, *cert. denied*, 421 U.S. 963 (1975), *cited in Bliss v. Johnson*, 279 F. Supp. 2d 29, 35 (D.D.C. 2003); *see Kimmel v. United States*, 196 Ct. Cl. 579, 591 (1971) (“The injustice was removed by placing plaintiff in the same position he would have been had no error been made. This was all that plaintiff was entitled to receive.”); *Hamrick v. United States*, 120 Ct. Cl. 17, 25, 96 F. Supp. 940, 943 (1951) (holding that “full correction of the error would require plaintiff’s being put in the same position he would be in had the erroneous determination not been made”), *cited in Ramsey v. United States*, 123 Ct. Cl. 504, 506 (1952), *cert. denied*, 345 U.S. 994 (1953).

ORDER

The application of OS3 [REDACTED] USCG, for correction of his military record is granted. The Coast Guard shall remove his April 1, 2015, five-year reenlistment contract from his record as null and void and replace it with a 37-month extension contract. The Coast Guard shall also correct his record to show that he cancelled the 37-month extension contract by signing a six-year reenlistment contract on June 24, 2015, to receive a Zone "A" SRB pursuant to ALCOAST 193/15 and COMDTINST M7220.2. The Coast Guard shall pay him any amount due as a result of these corrections.

August 26, 2016

