


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

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2017-271


ET3

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 after receiving the application on September 6, 2017, 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 May 11, 2018, 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, an electronics technician, third class (ET3/E-4) currently on active duty, asked the Board to correct his record to show that he is eligible to receive a Selective Reenlistment Bonus (SRB)¹ calculated with 72 months of newly obligated service, instead of the 57 months that he is being offered. He stated that he was counseled on a Page 7² that he was eligible to reenlist for an SRB and that if he reenlisted for six years then his SRB would be calculated with 72 months of service. He stated, however, that the Coast Guard later determined that it had made a mistake and that his SRB would be calculated with only 57 months of service. The applicant stated that he had not yet received the bonus that he was promised for reenlisting on May 10, 2017.

¹ The Selective Reenlistment Bonus (SRB) Program allows the Commandant to offer a reenlistment incentive to members who possess highly desired skills or are in eligible ratings, at certain specific points during their career. For the purpose of defining eligibility periods within the first 14 years of active service, three zones of consideration are established. Zone A is defined as the period from 17 months through 6 years of active service. Article 1.B.1. of COMDTINST M77220.2, the Military Bonus Programs manual.

² A Page 7 (CG-3307, or Administrative Remarks) entry documents any counseling that is provided to a service member as well as any other noteworthy events that occur during that member's military career.

SUMMARY OF THE RECORD

The applicant initially enlisted on active duty for a term of four years from February 7, 2012, through February 6, 2016. On May 15, 2014, he signed a 30-month extension contract to obligate sufficient service to accept transfer orders to a new unit in Alaska, which extended his enlistment from February 7, 2016, through August 6, 2018.

On November 22, 2016, the applicant received orders to transfer from Alaska to Florida in June 2017. The orders stated that to accept the transfer, he was required to have at least three years of obligated service (through June 2020) upon reporting to his new unit and that he had to execute the contract obligating new service within five days of the issuance of the orders.

On April 27, 2016, the Commandant issued ALCOAST 157/16, which authorized an SRB for the applicant's rating as follows:

5. Selective Reenlistment Bonus (SRB)

a. SRB Zone Definitions ...

b. Bonus Amounts

(1) A \$36,000 (prorated at \$500/month) Zone A SRB is authorized for EM, ET, FS, GM, MK, and OS members who reenlist for an additional 6 years of active service obligation.

(2) A \$20,000 Zone A (prorated at \$416.6667/month) SRB is authorized for EM, ET, FS, GM, MK, and OS members who reenlist for an additional 4 years of active service obligation. ...

e. Members meeting the criteria of Chapter 1.B.5.e. and 1.B.5.i. of [the Bonus Manual] are eligible for an SRB, regardless of their EOE [end of enlistment]. However, members will only be paid for newly obligated service (i.e., monthly prorated amount). ...

g. All members must reenlist for an SRB; members extending their contracts are not authorized to receive SRBs. ...

i. As an exception to Chapter 1.B.5.f. of [the Bonus Manual], a member who lost his or her eligibility for an SRB [in accordance with] this ALCOAST due to signing an agreement to obligate service as a condition of receiving AY16 orders may cancel the agreement and immediately reenlist to receive an SRB....

6. All bonuses authorized by this ALCOAST will be paid in lump sum ...

On a Page 7 dated April 26, 2017, the applicant was counseled on a Page 7 by the unit YNC as follows:

I have reviewed Article 1.B.13. of Military Bonus Programs, COMDTINST M7220.2 (series) entitled "Frequently Asked SRB Questions and Answers" and I have reviewed ALCOAST 157/16 and the associated FAQs. I have been informed that:

My current Selective Reenlistment Bonus (SRB), Zone A entitlement is a lump sum payment of \$36,000 for a six year reenlistment contract as listed in ALCOAST 157/16, which has been made available for my review. There will be no multiple assigned to this SRB.

In accordance with article 1-B-4, Military Separations, COMDTINST M1000.4 (series), I am eligible to reenlist/extend my enlistment for a maximum of 6 years. My SRB will be computed based on 72 months newly obligated service.

I have also been counseled on the opportunity to have my SRB payment contributed to the Thrift Savings Plan (TSP).

Per article 1.B.9. (Termination of Bonus Entitlement and Recoupment), Military Bonus Programs, COMDTINST M7220.2 (series), I understand that I will receive payment for my bonus in one lump sum, less 25% for mandatory federal income tax withholding, and as such I must remain eligible for the entire term of the newly obligated service. If at any time I am found to be ineligible for the bonus (under the conditions listed in Article 1.B.9. of the referenced instruction and as outlined in ALCOAST 157/16 the unearned amount will be recouped.

The following SRB policies were unclear to me, but my SRB counselor provided me with the corresponding answers: (list specifics) [None listed.]

On May 10, 2017, the applicant signed a six-year reenlistment contract to obligate sufficient service to transfer from Alaska to Florida. The reenlistment contract states, "Member eligible for Zone A SRB [in accordance with] ALCOAST 157/16."

APPLICABLE REGULATIONS

Article 1.B.2.g of COMDTINST M7220.2, the Coast Guard Military Bonus Programs manual ("Bonus Manual") defines "obligated service" as "[a]ll periods of military service covered by signed agreements in the form of enlistment contracts, reenlistment contracts and/or agreements to extend enlistment between Coast Guard members and the Coast Guard where members agree to serve for designated periods of time."

Article 1.B.2.h of the Bonus Manual defines "additional obligated service" as "[a]ll periods of military service covered by reenlistment or extension contracts that bind members and the Coast Guard to specified periods of time beyond any period for which the member has already obligated. For example, a member executes a 3-year extension to obligate for a PCS [transfer] assignment. Subsequently, but prior to the extension's operative date, the member decides to reenlist for four years. Only one year is considered additional obligated service since the member was already obligated for three years under the extension."

Article 1.B.3. of the manual states that "[a]ll 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, Form CG-3307, service record entry outlining the effect that particular action has on their SRB entitlement."

Article 1.B.5.m. of the manual states that SRBs payments will be recouped if the member fails to perform the required obligated service.

Article 1.B.13. of the manual provides FAQs about SRBs, including the following:

- Question #9 asks how an SRB is calculated. The answer states, in pertinent part, "Write down the number of months for which you are going to reenlist or extend your enlistment. (Reminder: this number must be at least 36 months.) Now, subtract from this amount any time which will be remaining on your enlistment at the time you will reenlist or your extension will go into effect. Any fraction of a month is rounded up to a full month. For example, if on the date you are going to reenlist for 4 years you will still have 2 months, 5 days remaining on your current enlistment, your SRB will be based only on 45 months newly obligated service. ..."

- Question #10 provides a sample calculation in which the member reenlists for 4 years (48 months) but receives an SRB based on only 47 months of newly obligated service because the member reenlisted 1 month before his prior enlistment expired.
- Question #11 asks, “why is it again that my SRB in the above example [from Question #10] is only based on 47 months service and not 48?” The answer explains that if you reenlist before your current enlistment ends, the number of months by which your current enlistment is cut short is subtracted from the calculation of your SRB.
- Question #12 further explains that the Government will not pay an SRB to a member for months of service that the member was already obligated to serve under a prior contract.

VIEWS OF THE COAST GUARD

On November 30, 2017, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief.

The JAG stated that the Page 7 signed by the applicant and the YNC is erroneous because it states that a six-year reenlistment would give the applicant six years (72 months) of newly obligated service, but the applicant’s then-current enlistment ran through August 6, 2018, and so his six-year reenlistment on May 10, 2017, created only 57 months of newly obligated service. The JAG stated that when the applicant’s servicing personnel office (SPO) forwarded the bonus request to the Personnel and Pay Center (PPC), the PPC Bonus Team spotted the newly obligated service error and asked the command to correct it. The JAG noted that the reenlistment contract did not specify the months of newly obligated service on which the SRB would be computed.

The JAG noted that policies in both the Bonus Manual and the ALCOAST state that SRBs are only paid for months of newly obligated service, and the Page 7 shows that the applicant had reviewed both the Bonus Manual and the ALCOAST. The JAG also noted that the Page 7 itself states that the SRB would be paid only for “newly obligated service.”

The JAG stated that because the applicant’s previous enlistment ran through August 6, 2018, the Board can place the applicant in the same position he was before he was miscounseled by voiding the reenlistment contract. The JAG argued that the error should not be fixed by paying the applicant the full amount of the bonus, because such relief would “permit him, and potentially others in the future, to financially benefit from an error without suffering any real detriment based upon that error. In other words, he will profit from an error his SPO made but one that can be corrected and one that will have no real impact on the applicant.”

The JAG noted that there is no evidence that the applicant would have made a different decision if he had been correctly counseled that a six-year reenlistment would entitle him to a bonus based on 57 months of newly obligated service, instead of 72 months.

Finally, the JAG argued that although the applicant’s Page 7 is erroneous, the error has not yet resulted in the applicant serving any additional time on active duty that he would not otherwise have served because even before he signed the six-year reenlistment contract on May 10, 2017, his then-current enlistment ran through August 6, 2018. Therefore, the JAG recom-

mended that the Board grant alternative relief by voiding the applicant's six-year reenlistment contract dated May 10, 2017, based on the error on the Page 7 dated April 26, 2017.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On December 6, 2017, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. No response was received.

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 argued that his SRB should be computed with 72 months of newly obligated service because that is what he was promised on the Page 7. 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.³ 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."⁴

3. The applicant's record contains a copy of a Page 7 dated April 26, 2017, which documents that the YNC counseled him that he was eligible to reenlist for a maximum of six years, that his SRB would be calculated with 72 months of newly obligated service. However, this counseling was incorrect. The applicant was not eligible to receive an SRB calculated with 72 months of service because under Article 1.B.2.h of the Bonus Manual, his SRB was reduced by the 15 months of previously obligated service remaining to run on his May 15, 2014, 30-month extension contract. Accordingly, he has proven by a preponderance of the evidence that he was erroneously counseled. The Board notes, however, that the Page 7 he signed acknowledges that he had reviewed Article 1.B.13. of the Bonus Manual and ALCOAST 157/16, both of which explain that reenlistment bonuses are only paid for months of service newly obligated by the reenlistment contract and so are reduced by months of service already obligated under previous contracts.

4. Although the applicant argued that he should receive an SRB based on 72 months of service as shown on the erroneous Page 7, when a member proves that he has received erroneous SRB counseling, the Board's policy is not to offend the regulation by fulfilling the erroneous promise, but to return the applicant to the position he would have been in had he been properly

³ 33 C.F.R. § 52.24(b).

⁴ *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992); *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979).

counseled.⁵ Because the Coast Guard advised the applicant in writing on a Page 7 that a six-month reenlistment would entitle him to an SRB based on 72 months of newly obligated service, the Board agrees with the JAG that his May 10, 2017, reenlistment contract is voidable.

5. Accordingly, the Board finds that the relief requested by the applicant should be denied, but the Coast Guard should provide him with proper counseling concerning his options under this order and allow him to choose, at his discretion, one of the following options:

- (a) He may maintain the status quo and continue serving on the six-year May 10, 2017, reenlistment contract with an SRB calculated with 57 months of newly obligated service;
- (b) He may have the May 10, 2017, six-year reenlistment contract removed from his record as null and void so that the 30-month extension contract dated May 15, 2014, is reinstated; or
- (c) He may have the term of his May 10, 2017, reenlistment contract reduced from six years to three, four, or five years, at his discretion, which reduction would entitle him to a smaller Zone A SRB.

If he makes no election pursuant to this Order, no correction should be made to his record, he should remain on active duty pursuant to his May 10, 2017, six-year contract, and he should receive a Zone A SRB based on 57 months of newly obligated service.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁵ Under 10 U.S.C. § 1552, an applicant is entitled to “nothing more than placement in the same position he would have been had no error been made.” *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 ET3 [REDACTED], USCG, for correction of his military record is denied, but alternative relief is granted:

Within 45 days of the date of this decision, the Coast Guard shall provide him with proper counseling concerning his options under this order and allow him to choose, at his discretion, one of the following options:

- (a) He may maintain the status quo and continue serving on the six-year May 10, 2017, reenlistment contract with a Zone A SRB calculated with 57 months of newly obligated service;
- (b) He may have the May 10, 2017, six-year reenlistment contract removed from his record as null and void, in which case his 30-month extension contract dated May 15, 2014, and ending on August 6, 2018, will be reinstated; or
- (c) He may have the term of his May 10, 2017, reenlistment contract reduced from six years to three, four, or five years, at his discretion, which reduction would entitle him to a smaller Zone A SRB.

If he makes no election pursuant to this Order within 60 days of the date of this decision, no correction shall be made to his record; his May 10, 2017, six-year contract shall remain in effect; and he shall be entitled to a Zone A SRB calculated with 57 months of newly obligated service. The Coast Guard shall pay him any amount due as a result of this decision.

May 11, 2018

