

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

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2018-106

██████████
██████████ OS3

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 425. The Chair docketed the case after receiving the completed application on February 24, 2018, and assigned it to staff attorney ██████████ to prepare the decision for the Board pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated February 8, 2019, 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 that his current reenlistment contract, with an end of enlistment (EOE) of April 13, 2022, be voided and removed from his record. He claimed that he signed the contract under "false pretenses" because he was led to believe he was eligible for a Zone "A" Selective Reenlistment Bonus (SRB) of \$36,000. He stated that he was not eligible for this bonus, so he would like his reenlistment contract voided and his EOE returned to August 2018, which is what it was before he reenlisted. In support of his application, he provided several documents which are discussed below in the Summary of the Record.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on April 28, 2014, for a period of four years. He extended this enlistment for a period of four months on July 30, 2015, creating an EOE of August 27, 2018, to be eligible to attend Operations Specialist training, and he received a \$10,000 Critical Skills Training Bonus (CSTB) for agreeing to remain on active duty for three years upon completion of Operations Specialist training. This bonus was for service from August 14, 2015, to August 13, 2018.

In early 2016, the applicant received transfer orders that required him to have sufficient obligated service to complete a full three-year tour of duty at his next duty station in order to accept

the orders. On March 4, 2016, the applicant received an administrative entry in his record documenting counseling on his SRB eligibility. It states:

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

My current Selective Reenlistment Bonus (SRB) multiple is \$36,000 and is listed in ALCOAST 346/15, which has been made available for my review.

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

On April 14, 2016, the applicant reenlisted for a period of six years, which changed his EOE from August 27, 2018, to April 13, 2022. This is the reenlistment at issue here.

The applicant provided an email chain between members from the Pay and Personnel Center (PPC) regarding his SRB from June 2016. The first email requested to have the applicant's SRB reviewed because he had received the CSTB previously. An auditor responded that the applicant was eligible for the Zone "A" SRB, but he was only eligible for \$23,000 because he had only *newly* obligated 46 months, because the time during which the CSTB was in effect would not count towards the SRB. The applicant was then informed that he would receive an SRB bonus for 44 months (not 46 months as the auditor had stated) which would come out to \$22,000.

On July 8, 2016, the applicant executed a permanent change of station which required a three year service obligation. This move required the applicant's EOE to be no earlier July 7, 2019.

VIEWS OF THE COAST GUARD

On October 1, 2018, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he recommended that the Board grant alternative relief in this case. The JAG stated that the SRB announced in ALCOAST 346/15 was applicable to the applicant and he was eligible for a Zone "A" SRB. The maximum bonus available was \$36,000 for six additional years of active service obligation. The JAG stated that the applicant was informed during his counseling, as stated on his counseling document, that his bonus would be based on 46 months of newly obligated service and a specific amount is not promised to him on the document. The JAG stated that when PPC learned of the error in calculating the bonus amount the applicant was eligible for, he was informed as quickly as possible.

The JAG stated that the applicant's counseling document is confusing because it states that that his SRB *multiple* was \$36,000 but that his SRB would be based on 46 months of newly obligated service. The JAG stated that the applicant should have been counseled properly on what SRB amount he was entitled to. The JAG noted that this does not negate the fact that the applicant "should reasonably have been aware what his end of enlistment date was and about the newly obligated service requirement used to determine bonus amounts," particularly in light of the fact that he had previously received a CSTB.

The JAG stated that the applicant's command spoke with him regarding his current intentions and he stated that he understood that due to his most recent permanent change of station he had obligated service for three years due to that move. The applicant stated that he "desired to separate at the end of that obligation." The JAG stated that the applicant has not requested payment of the \$36,000, nor do they believe he should receive this payment even if he had requested it. "Such payment would result in applicant's unjust enrichment and would permit him, and potentially others in the future, to financially benefit from an ambiguous [counseling document] without the applicant suffering any real detriment based upon the ambiguity." The JAG stated that the applicant could be put back in the same position he would have been in before reenlisting on April 14, 2016. The JAG therefore recommended that the Board grant relief by way of voiding the April 14, 2016, reenlistment contract allowing the applicant to separate from the Coast Guard on July 7, 2019.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On October 26, 2018, the Chair sent the applicant a copy of the Coast Guard's views and invited him to respond within 30 days. The applicant responded and stated that he fully supported the recommendations of the Coast Guard. He stated that he wished to further his "personal life outside of the [Coast Guard] while remaining in good standing." He therefore asked the Board to grant relief as recommended.

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 his April 14, 2016, reenlistment contract in his military record is erroneous and unjust. 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.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
3. The Board finds that the applicant has proven by a preponderance of the evidence that an error or injustice exists in his record. While it is true that the applicant's counseling document states that he understood the SRB and the Coast Guard is presumed to have correctly explained his eligibility to him,³ the Board agrees with the Coast Guard that the counseling

¹ 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 *Id.*

document was confusing and misleading and the applicant was likely confused about the amount he would receive for a six-year reenlistment. He did sign a reenlistment contract for six years and the counseling document states that his bonus multiple was \$36,000. But bonuses are only paid for full months of newly obligated service.⁴ The Page 7 advised him that he would receive a bonus based on 46 months of newly obligated service, and PSC stated that the bonus would be based on 44 months, but in fact the reenlistment contract extended his service by only 43 full months from August 27, 2018, through April 13, 2022.

4. The Board agrees that alternative relief is justified in this case. The applicant accepted and executed the permanent change of station orders on July 8, 2016, knowing that he was obligating himself to serve through July 7, 2019. He had originally asked this Board to void his April 14, 2016, reenlistment contract and to make his EOE August 13, 2018. However, after reading the Coast Guard's advisory opinion and speaking with his command, he has changed his request to having his EOE be July 7, 2019, which would satisfy his three-year service obligation for his most recent permanent change of station. The Board finds that this is the most appropriate outcome in the interest of justice.

5. Accordingly, relief should be granted by correcting the applicant's current reenlistment contract to show that he reenlisted for three years on July 8, 2016, so that his EOE will be July 7, 2019. In addition, in case he has changed his mind while this decision was pending, the applicant should have the option of having the term of this enlistment be 4, 5, or 6 years, instead of 3 years. And the Coast Guard should pay him any SRB due as a result of this correction.

(ORDER AND SIGNATURES ON NEXT PAGE)

⁴ Military Bonus Programs, COMDTINST M7220.2, Article 1.B.7.

ORDER

The application of OS3 [REDACTED], USCG, for correction of his military record is granted. The Coast Guard shall correct his current reenlistment contract to show that he reenlisted on July 8, 2016, instead of April 14, 2016, and the term of that enlistment shall be 3, 4, 5, or 6 years, at his discretion. He shall be counseled about his options under this order and given 30 days to elect to have the term of that enlistment be 3, 4, 5, or 6 years. If he makes no such election within 30 days, the term of the enlistment shall be 3 years. The Coast Guard shall pay the applicant any amount that he may be due as a result of this correction if an SRB was in effect for his rating on July 8, 2016.

February 8, 2019

