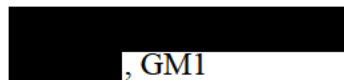


**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-091

, GM1

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the applicant's completed application on March 8, 2019, and this decision of the Board was prepared pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated May 1, 2020, 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 Gunner's Mate, first class (GM1/E-6) currently on active duty, asked the Board to correct his record to show that he reenlisted on his 6th active duty anniversary to receive a Selective Reenlistment Bonus (SRB)¹. He stated that on February 8, 2019, a yeoman from his unit was preparing for a Force Readiness Command (FORCECOM) inspection and noticed that his record did not contain a Page 7² documenting SRB counseling on his 6th active duty anniversary, which was October 7, 2009. The applicant alleged that if he had been properly counseled regarding his eligibility to reenlist on the anniversary, then he would have reenlisted to receive an SRB. He did not state how many years he would have reenlisted for if he had been properly counseled.

In support of his request, the applicant submitted a copy of a Page 7 dated February 8, 2019, documenting that he had been belatedly counseled about his eligibility to reenlist on or

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 3.C of COMDTINST M1000.6A, the Coast Guard Personnel 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.

within three months prior to his 6th active duty anniversary, October 7, 2009, to receive a Zone A SRB in accordance with ALCOAST 393/09. The Page 7 notes that if he had reenlisted for six years then his SRB would have been calculated with 38 months of newly obligated service.³

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 7, 2003, for a term of four years, through October 6, 2007.

On June 7, 2007, he signed a 24-month extension contract to obligate service to accept transfer orders, which extended his enlistment contract through October 6, 2009.

On March 6, 2009, the applicant signed a 34-month extension contract as a GM3 to obligate service for another transfer, extending his service through August 6, 2012, but there is nothing in his record to show that he was counseled regarding his eligibility to reenlist for an SRB instead of signing an extension contract.

On October 7, 2009, the applicant reached his 6th active duty anniversary, and there is nothing in his record to show that he was counseled on or before that date about his eligibility to reenlist on the anniversary to receive an SRB.

On January 26, 2012, the applicant signed a six-year reenlistment contract, through January 25, 2018, and on October 30, 2017, he signed another six-year reenlistment contract, extending his active duty service through October 29, 2023.

APPLICABLE REGULATIONS

Article 3.C.3. and 3.C.11. of the Coast Guard Personnel Manual in effect in 2009 requires documented SRB counseling on a Page 7 for all personnel with ten years or less of active service who reenlist or extend for any period and for all personnel within three months of their 6th, 10th, and 14th active duty anniversaries.

Article 1.B.5.i. of the manual provides that Commanders are authorized to effect early discharge and reenlist members within three months prior to their 6th, 10th, and 14th year anniversaries, for the purpose of qualifying for an SRB.

Article 3.C.5.9 of the manual states that Commanding officers are authorized to effect early discharge and reenlist members within 3 months prior to their 6th, 10th, or 14th year active service anniversary dates (not to be confused with the normal expiration of enlistment), for the purpose of qualifying for a Zone A, B, or C SRB. In such cases payments will be reduced by any portion of unserved service obligation. Commanding officers shall ensure that such personnel are fully qualified to receive an SRB and advise them that all periods of unserved obligated service will be deducted from their bonus entitlement.

³ His SRB would be reduced by the 34 months of obligated service created by his March 6, 2009, extension contract.

Article 3.C.7.1 of the manual provides that bonus payments will be computed by taking the authorized SRB multiple, multiplying it by the member's monthly basic pay, multiplying the result by the number of months of newly obligated service, and dividing this figure by 12.

ALCOAST 286/08 was issued on June 13, 2008, and authorized a Zone A SRB calculated with a multiple of 1.0 for a GM3.

ALCOAST 353/09 was issued on June 12, 2009, and authorized GM3s a Zone A SRB calculated with a multiple of 1.0 for contracts signed between July 16, 2009, and October 7, 2009.

ALCOAST 393/09 was issued on July 10, 2009, and suspended SRB payments for contracts executed between July 16, 2009, and September 30, 2009, due to a lack of FY09 funding.

VIEWS OF THE COAST GUARD

On August 26, 2019, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion recommending that the Board deny relief. The JAG agreed that the applicant's record does not contain evidence of SRB counseling on his 6th active duty anniversary and noted that the Page 7 submitted by the applicant documenting 6th anniversary counseling was prepared in 2019, after the yeoman discovered that the applicant had not been counseled.

The JAG argued that although the applicant was not properly counseled about his eligibility to reenlist on his 6th active duty anniversary to receive an SRB, relief should be denied because the Doctrine of Laches precludes the issuance of an SRB. The JAG asserted that the first prong of the Doctrine of Laches requires that the delay in asserting the claim be unreasonable and unexcused. The JAG argued that this prong is satisfied because the applicant submitted his application to the Board nine years after his 6th anniversary. The JAG argued that the second prong – a showing of prejudice – is satisfied because the applicant's many personnel actions over the past 9-10 years make it impossible for the Coast Guard to accurately determine whether the applicant would have elected to cancel his extension and reenlist for six years. Finally, the JAG argued that it is likely that important records have been lost, and that it is impossible to determine whether the applicant was not counseled about this eligibility to reenlist on his 6th anniversary or whether he was counseled and the record has been lost in the interim.

The JAG noted that if the applicant had signed a 6-year reenlistment contract on March 6, 2009, instead of a 34-month extension, then he would have been eligible to receive a Zone A SRB in the amount of \$11,347.20, pursuant to ALCOAST 286/08.

The JAG concluded by arguing that due to the passage of time, the Coast Guard is prejudiced by the inability to determine 1) whether the applicant was in fact improperly counseled; 2) whether he was aware of the bonus opportunity, counseled or not; and 3) if he was not properly counseled, whether he would have in fact have reenlisted for six years on his 6th active duty anniversary to receive an SRB. The JAG noted that the applicant did not state that he would have reenlisted for six years in 2009.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 29, 2019, 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 based on 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 he was not counseled on his 6th active duty anniversary about his eligibility to reenlist for an SRB and asked the Board to correct his record to show that he did reenlist. 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.⁴ 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."⁵

3. The applicant's record does not contain a Page 7 documenting timely counseling about his eligibility to reenlist for an SRB on his 6th active duty anniversary, October 7, 2009, as required by Articles 3.C.3. and 3.C.11. of the Personnel Manual. Although the Coast Guard claimed that he might have been counseled and that the Page 7 might have been lost somehow in the interim, the Coast Guard did not explain how or why a Page 7 documenting SRB counseling in 2009 might have been removed from the applicant's electronic record. Accordingly, the applicant has proven by a preponderance of the evidence that he was not properly counseled. If the applicant had been properly counseled on the anniversary, then he would have been told that he was eligible to reenlist for three, four, five, or six years, to receive a Zone A SRB in accordance with ALCOAST 353/09, and that his SRB would be reduced by the service obligated by the 34-month extension contract that he signed on March 6, 2009. However, because ALCOAST 393/09 suspended all SRBs from July 16, 2009, to September 30, 2009, he would have had to sign the reenlistment contract between September 30, 2009, and October 7, 2009.

4. As noted in the findings above, the Board agrees with the applicant that the Coast Guard failed to timely counsel him about his chance to reenlist on his 6th active duty anniversary. The Board could order the Coast Guard to correct his record to show that he reenlisted on his 6th active duty anniversary for an SRB, but the Board finds that the applicant was also not properly counseled when he signed the 34-month extension contract on March 6, 2009. Articles

⁴ 33 C.F.R. § 52.24(b).

⁵ *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.C.3. and 3.C.11. of the Personnel Manual require that members be counseled on their eligibility for an SRB anytime they reenlist or extend their enlistment contracts, and the counseling must be documented in their records on a Page 7. There is no Page 7 documenting SRB counseling at the time of his March 6, 2009, extension in the applicant's record, and he was eligible to receive a much larger SRB than the one he would have received for reenlisting on his 6th anniversary.

5. The applicant signed a 34-month extension contract on March 6, 2009, to obligate service for transfer, as required by his transfer orders, and there is nothing in his record to show that he was counseled about his eligibility to reenlist or extend for a longer term to receive a Zone A SRB, as required by Articles 3.C.3. and 3.C.11. of the Personnel Manual. On March 6, 2009, ALCOAST 286/08 was in effect and offered a GM3 a Zone A SRB with a multiple of 1.0. The Board finds that if the applicant had been properly counseled, then he would have been told that instead of signing a 34-month extension contract and receiving no SRB, he was in fact eligible to reenlist or extend his enlistment for three, four, five, or six years, to receive a Zone A SRB. Moreover, if he chose to sign an extension contract instead of a reenlistment contract, then his SRB would not be reduced by any previously obligated service because it would go into effect on October 7, 2009.

6. Although the Coast Guard argued that it cannot now determine whether the applicant would have reenlisted or extended his enlistment for six years had he been properly counseled about his SRB eligibility in 2009, the applicant's record of continuous active duty proves by a preponderance of the evidence that he would have. There is no evidence that the applicant ever sought to be discharged from the Service. Therefore, the Board will order the Coast Guard to correct the term of the applicant's March 6, 2009, extension contract to six years so he will be eligible to receive a Zone A SRB not reduced by any previously obligated service in accordance with ALCOAST 286/08.

7. Accordingly, relief should be granted by correcting the term of the applicant's March 6, 2009, extension contract from 34 months to 72 months so that he will be eligible for a Zone A SRB pursuant to ALCOAST 286/08.

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of GM1 [REDACTED], USCG, for correction of his military record is granted as follows:

The Coast Guard shall correct the term of his March 6, 2009, extension contract from 34 months to 72 months, so that he will be eligible for a Zone A SRB pursuant to ALCOAST 286/08. The Coast Guard shall pay him any amount he is due as a result of this correction.

May 1, 2020

